

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL  
YEAR 2005

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MAY 20, 2004.—Ordered to be printed  
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Mr. HUNTER, from the Committee on Armed Services,  
submitted the following

**SUPPLEMENTAL REPORT**

[To accompany H.R. 4200]

The supplemental report shows changes in existing law made by the bill (H.R. 4200), as reported. The material contained in this supplemental report was omitted in the report submitted on May 14, 2004 (H. Rept. 108-491).

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

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

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL  
YEAR 2004**

**DIVISION A—DEPARTMENT OF  
DEFENSE AUTHORIZATIONS**

**TITLE I—PROCUREMENT**

\* \* \* \* \*

**Subtitle B—Army Programs**

\* \* \* \* \*

**[SEC. 126. PILOT PROGRAM FOR FLEXIBLE FUNDING OF CRUISER CONVERSIONS AND OVERHAULS.**

[(a) ESTABLISHMENT.—The Secretary of the Navy may carry out a pilot program of flexible funding of conversions and overhauls of cruisers of the Navy in accordance with this section.

[(b) AUTHORITY.—Under the pilot program, the Secretary may, subject to subsection (d), transfer amounts described in subsection (c) to the appropriation for the Navy for procurement for shipbuilding and conversion for any fiscal year to continue to provide funds for any conversion or overhaul of a cruiser of the Navy for which funds were initially provided from the appropriation to which transferred.

[(c) FUNDS AVAILABLE FOR TRANSFER.—The amounts available for transfer under this section are amounts appropriated to the Navy for any fiscal year after fiscal year 2003 and before fiscal year 2013 for the following purposes:

[(1) For procurement, as follows:

[(A) For shipbuilding and conversion.

[(B) For weapons procurement.

[(C) For other procurement.

[(2) For operation and maintenance.

[(d) LIMITATIONS.—(1) A transfer may be made with respect to a cruiser under this section only to meet either (or both) of the following requirements:

[(A) An increase in the size of the workload for conversion or overhaul to meet existing requirements for the cruiser.

[(B) A new conversion or overhaul requirement resulting from a revision of the original baseline conversion or overhaul program for the cruiser.

[(2) A transfer may not be made under this section before the date that is 30 days after the date on which the Secretary of the Navy transmits to the congressional defense committees a written notification of the intended transfer. The notification shall include the following matters:

[(A) The purpose of the transfer.

[(B) The amounts to be transferred.

[(C) Each account from which the funds are to be transferred.

[(D) Each program, project, or activity from which the funds are to be transferred.

[(E) Each account to which the funds are to be transferred.

[(F) A discussion of the implications of the transfer for the total cost of the cruiser conversion or overhaul program for which the transfer is to be made.

[(e) MERGER OF FUNDS.—Amounts transferred to an appropriation with respect to the conversion or overhaul of a cruiser under this section shall be credited to and merged with other funds in the appropriation to which transferred and shall be available for the conversion or overhaul of such cruiser for the same period as the appropriation to which transferred.

[(f) RELATIONSHIP TO OTHER TRANSFER AUTHORITY.—The authority to transfer funds under this section is in addition to any other authority provided by law to transfer appropriated funds and

is not subject to any restriction, limitation, or procedure that is applicable to the exercise of any such other authority.

[(g) FINAL REPORT.—Not later than October 1, 2011, the Secretary of the Navy shall submit to the congressional defense committees a report containing the Secretary’s evaluation of the efficacy of the authority provided under this section.

[(h) TERMINATION OF PROGRAM.—No transfer may be made under this section after September 30, 2012.]

\* \* \* \* \*

### Subtitle D—Air Force Programs

\* \* \* \* \*

#### SEC. 134. AIRCRAFT FOR PERFORMANCE OF AERIAL REFUELING MISSION.

(a) \* \* \*

\* \* \* \* \*

(c) INTERPRETATION.—Nothing in subsection (b) or section 1111 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1215) is intended to prohibit the Secretary of the Air Force from executing the program described in section 135(a) of this Act and section 116 of the National Defense Authorization Act for Fiscal Year 2005.

#### SEC. 135. PROCUREMENT OF TANKER AIRCRAFT.

(a) \* \* \*

[(b) MULTIYEAR PROCUREMENT AUTHORITY.—(1) Beginning with the fiscal year 2004 program year, the Secretary of the Air Force may, in accordance with section 2306b of title 10, United States Code, enter into a multiyear contract for the purchase of tanker aircraft necessary to meet the requirements of the Air Force for which leasing of tanker aircraft is provided for under the multiyear aircraft lease pilot program but for which the number of tanker aircraft leased under the authority of subsection (a) is insufficient.

[(2) The total number of tanker aircraft purchased through a multiyear contract under this subsection may not exceed 80.

[(3) Notwithstanding subsection (k) of section 2306b of title 10, United States Code, a contract under this subsection may be for any period not in excess of 10 program years.

[(4) A multiyear contract under this subsection may be initiated or continued for any fiscal year for which sufficient funds are available to pay the costs of such contract for that fiscal year, without regard to whether funds are available to pay the costs of such contract for any subsequent fiscal year. Such contract shall provide, however, that performance under the contract during the subsequent year or years of the contract is contingent upon the appropriation of funds and shall also provide for a cancellation payment to be made to the contractor if such appropriations are not made.]

\* \* \* \* \*

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

\* \* \* \* \*

**Subtitle C—Defense Acquisition and Support Workforce Flexibility**

\* \* \* \* \*

**SEC. 832. ELIMINATION OF ROLE OF OFFICE OF PERSONNEL MANAGEMENT.**

(a) **WORKFORCE QUALIFICATION REQUIREMENTS AND EXAMINATIONS.**—Section 1725 of [such title] *title 10, United States Code*, is repealed.

\* \* \* \* \*

**SEC. 834. CONSOLIDATION OF CERTAIN EDUCATION AND TRAINING PROGRAM REQUIREMENTS.**

(a) **CONSOLIDATION OF AUTHORITY.**—Section 1742 of [such title] *title 10, United States Code*, is amended to read as follows:

\* \* \* \* \*

**TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT**

\* \* \* \* \*

**Subtitle D—Other Matters**

**SEC. 931. AUTHORITY FOR ASIA-PACIFIC CENTER FOR SECURITY STUDIES TO ACCEPT GIFTS AND DONATIONS.**

(a) **AUTHORIZED SOURCES OF GIFTS AND DONATIONS.**—Subsection (a) of section 2611 of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “foreign gifts [and donations] *or donations*” and inserting “gifts and donations from sources described in paragraph (2)”;

\* \* \* \* \*

**DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS**

**SEC. 2001. SHORT TITLE.**

This division may be cited as the “Military Construction Authorization Act for Fiscal Year 2004”.

**TITLE XXI—ARMY**

\* \* \* \* \*

**SEC. 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(1), the Secretary of the Army may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Army: Inside the United States

State	Installation or location	Amount
Alabama	Redstone Arsenal	\$5,500,000
Alaska	Fort Richardson	\$2,500,000
	Fort Wainwright	\$138,800,000
Colorado	Fort Carson	\$2,150,000
Georgia	Fort Benning	\$34,500,000
	Fort Gordon	\$4,350,000
	Fort Stewart/Hunter Army Air Field	【\$113,500,000】 \$114,450,000
Hawaii	Helemano Military Reservation	\$1,400,000
	Schofield Barracks	\$128,100,000
Kansas	Fort Leavenworth	\$115,000,000
	Fort Riley	\$40,000,000
Kentucky	Fort Knox	\$13,500,000
Louisiana	Fort Polk	\$72,000,000
Maryland	Fort Meade	\$9,600,000
Massachusetts	Soldier Systems Center, Natick	\$5,500,000
New Jersey	Naval Air Engineering Center, Lakehurst	\$2,250,000
	Picatinny Arsenal	\$8,000,000
New York	Fort Drum	【\$130,700,000】 \$135,700,000
North Carolina	Fort Bragg	\$125,400,000
Oklahoma	Fort Sill	\$5,500,000
Texas	Fort Bliss	\$5,400,000
	Fort Hood	\$49,800,000
Virginia	Fort Belvoir	\$7,000,000
	Fort Lee	\$3,850,000
	Fort Myer	\$9,000,000
Washington	Fort Lewis	\$3,900,000
	Total	【\$1,037,200,000】 \$1,043,150,000

\* \* \* \* \*

**SEC. 2104. AUTHORIZATION OF APPROPRIATIONS, ARMY.**

(a) \* \* \*

\* \* \* \* \*

(b) **LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.**— Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2101 of this Act may not exceed the sum of the following:

(1) \* \* \*

(2) **[\$32,000,000]** *\$32,950,000* (the balance of the amount authorized under section 2101(a) for construction of a barracks, Fort Stewart/Hunter Army Airfield, Georgia).

\* \* \* \* \*

(4) **[\$43,000,000]** *\$48,000,000* (the balance of the amount authorized under section 2101(a) for construction of a barracks complex, Wheeler Army Airfield, Fort Drum, New York).

\* \* \* \* \*

**TITLE XXII—NAVY**

\* \* \* \* \*

**SEC. 2204. AUTHORIZATION OF APPROPRIATIONS, NAVY.**

(a) \* \* \*

\* \* \* \* \*

(b) **LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.**— Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2201 of this Act may not exceed the sum of the following:

(1) \* \* \*

(2) \$25,690,000 (the balance of the amount authorized under **[section 2101(a)]** *section 2201(a)* for construction of a tertiary sewage treatment facility, Marine Corp Base, Camp Pendleton, California).

(3) \$58,190,000 (the balance of the amount authorized under **[section 2101(a)]** *section 2201(a)* for construction of a battle station training facility, Naval Training Center, Great Lakes, Illinois).

(4) \$96,980,000 (the balance of the amount authorized under **[section 2101(a)]** *section 2201(a)* for construction of a general purpose berthing pier, Naval Weapons Station Earle, New Jersey).

(5) \$118,170,000 (the balance of the amount authorized under **[section 2101(a)]** *section 2201(a)* for construction of the Pier 11 replacement, Naval Station, Norfolk, Virginia).

(6) \$28,750,000 (the balance of the amount authorized under **[section 2101(a)]** *section 2201(a)* for construction of out-

lying landing field facilities, various locations in the continental United States).

\* \* \* \* \*

**TITLE XXVIII—GENERAL PROVISIONS**

\* \* \* \* \*

**Subtitle A—Military Construction Program and Military Family Housing Changes**

\* \* \* \* \*

**SEC. 2808. TEMPORARY, LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS OUTSIDE THE UNITED STATES.**

(a) TEMPORARY AUTHORITY.—During [fiscal year 2004] *fiscal years 2004 and 2005*, the Secretary of Defense may use this section as authority to obligate appropriated funds available for operation and maintenance to carry out a construction project outside the United States that the Secretary determines meets each of the following conditions:

(1) \* \* \*

\* \* \* \* \*

(c) LIMITATION ON USE OF AUTHORITY.—(1) The total cost of the construction projects carried out under the authority of this section using, in whole or in part, appropriated funds available for operation and maintenance shall not exceed \$200,000,000 [in fiscal year 2004] *in a fiscal year*.

\* \* \* \* \*

(d) QUARTERLY REPORT.—Not later than 30 days after the end of each fiscal-year quarter of [fiscal year 2004] *fiscal years 2004 and 2005*, the Secretary of Defense shall submit to the congressional committees specified in subsection (f) a report on the worldwide obligation and expenditure during that quarter of appropriated funds available for operation and maintenance for construction projects.

\* \* \* \* \*

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

**TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS**

\* \* \* \* \*



**Subtitle B—Program Authorizations,  
Restrictions, and Limitations**

\* \* \* \* \*

**SEC. 3114. TECHNICAL BASE AND FACILITIES MAINTENANCE AND RECAPITALIZATION ACTIVITIES.**

(a) DEADLINE FOR INCLUSION OF PROJECTS IN FACILITIES AND INFRASTRUCTURE RECAPITALIZATION PROGRAM.—(1) The Administrator for Nuclear Security shall complete the selection of a *baseline* of projects for inclusion in the Facilities and Infrastructure Recapitalization Program of the National Nuclear Security Administration not later than December 31, 2004.

[(2) No project may be included in the Facilities and Infrastructure Recapitalization Program after December 31, 2004, unless such project has been selected for inclusion in that program as of that date.]

*(2)(A) After December 31, 2004, a project may be added to or removed from the Facilities and Infrastructure Recapitalization Program only after the Administrator submits to the congressional defense committees a notice that the Administrator has identified such project for addition or removal and has approved such addition or removal as a modification to the baseline for that program.*

*(B) The Administrator may not obligate funds for any project added under subparagraph (A) until a period of 60 days has elapsed after the date on which such committees receive the notice under subparagraph (A) with respect to that project.*

*(C) The authority of the Administrator to identify and approve under subparagraph (A) may not be delegated.*

\* \* \* \* \*

**TITLE 10—ARMED FORCES**

**Subtitle A—General Military Law**

**PART I—ORGANIZATION AND GENERAL MILITARY POWERS**

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106A. *Educational Assistance for Persons Enlisting for Active Duty* ..... 2141  
 107. *Professional Military Education* ..... 2151  
 \* \* \* \* \*

**CHAPTER 1—DEFINITIONS**

\* \* \* \* \*

**§ 101. Definitions**

(a) \* \* \*

\* \* \* \* \*

(e) **FACILITIES AND OPERATIONS.**—The following definitions relating to facilities and operations apply in this title:

(1) \* \* \*

\* \* \* \* \*

(3) **OPERATIONAL RANGE.**—The term “operational range” means a range that is under the jurisdiction, custody, or control of the **Secretary of Defense** *Secretary of a military department* and—

(A) \* \* \*

\* \* \* \* \*

**CHAPTER 2—DEPARTMENT OF DEFENSE**

Sec.

111. Executive department.

\* \* \* \* \*

113a. Transmission of annual defense authorization request.

113b. *Response to congressional inquiries.*

\* \* \* \* \*

**§ 113b. Response to congressional inquiries**

*Whenever the Secretary of Defense or any other official of the Department of Defense is requested by the chairman of the Committee on Armed Services of the Senate or the chairman of the Committee on Armed Services of the House of Representatives to respond to a question or inquiry submitted by the chairman or another member of that committee pursuant to a committee hearing or other activity, the Secretary (or other official) shall respond to the request, in writing, within 21 days of the date on which the request is transmitted to the Secretary (or other official).*

\* \* \* \* \*

**§ 115. Personnel strengths: requirement for annual authorization**

(a) **ACTIVE-DUTY AND SELECTED RESERVE END STRENGTHS TO BE AUTHORIZED BY LAW.**—Congress shall authorize personnel strength levels for each fiscal year for each of the following:

(1) The end strength for each of the armed forces (other than the Coast Guard) for (A) active-duty personnel *unless on active duty pursuant to subsection (b)* who are to be paid from funds appropriated for active-duty personnel, and (B) active-

duty personnel and full-time National Guard duty personnel who are to be paid from funds appropriated for reserve personnel *unless on active duty or full-time National Guard duty pursuant to subsection (b).*

*(b) CERTAIN RESERVES ON ACTIVE DUTY TO BE AUTHORIZED BY LAW.—(1) Congress shall annually authorize the maximum number of members of a reserve component permitted to be on active duty or full-time National Guard duty at any given time who are called or ordered to—*

*(A) active duty under section 12301(d) of this title for the purpose of providing operational support, as prescribed in regulation issued by the Secretary of Defense;*

*(B) full-time National Guard duty under section 502(f)(2) of title 32 for the purpose of providing operational support when authorized by the Secretary of Defense;*

*(C) active duty under section 12301(d) of this title or full-time National Guard duty under section 502(f) of title 32 for the purpose of preparing for and performing funeral honors functions for funerals of veterans under section 1491 of this title;*

*(D) active duty or retained on active duty under sections 12301(g) of this title while in a captive status; or*

*(E) active duty or retained on active duty under 12301(h) or 12322 of this title for the purpose of medical evaluation or treatment.*

*(2) A member of a reserve component who exceeds either of the following limits shall be included in the strength authorized under subparagraph (A) or subparagraph (B), as appropriate, of subsection (a)(1):*

*(A) A call or order to active duty or full-time National Guard duty that specifies a period greater than three years.*

*(B) The cumulative periods of active duty and full-time National Guard duty performed by the member exceed 1095 days in the previous 1460 days.*

*(3) In determining the period of active service under paragraph (2), the following periods of active service performed by a member shall not be included:*

*(A) All periods of active duty performed by a member who has not previously served in the Selected Reserve of the Ready Reserve.*

*(B) All periods of active duty or full-time National Guard duty for which the member is exempt from strength accounting under paragraphs (1) through (7) of subsection (i).*

**[(b)] (c) LIMITATION ON APPROPRIATIONS FOR MILITARY PERSONNEL.—**No funds may be appropriated for any fiscal year to or for—

(1) the use of active-duty personnel or full-time National Guard duty personnel of any of the armed forces (other than the Coast Guard) unless the end strength for such personnel of that armed force for that fiscal year has been authorized by law; **[or]**

(2) the use of the Selected Reserve of any reserve component of the armed forces unless the end strength for the Selected Reserve of that component for that fiscal year has been authorized by law**[,]**; or

(3) *the use of reserve component personnel to perform active duty or full-time National Guard duty under subsection (b) unless the strength for such personnel for that reserve component for that fiscal year has been authorized by law.*

【(c)】 (d) MILITARY TECHNICIAN (DUAL STATUS) END STRENGTHS TO BE AUTHORIZED BY LAW.—Congress shall authorize for each fiscal year the end strength for military technicians (dual status) for each reserve component of the Army and Air Force. Funds available to the Department of Defense for any fiscal year may not be used for the pay of a military technician (dual status) during that fiscal year unless the technician fills a position that is within the number of such positions authorized by law for that fiscal year for the reserve component of that technician. This subsection applies without regard to section 129 of this title. In each budget submitted by the President to Congress under section 1105 of title 31, the end strength requested for military technicians (dual status) for each reserve component of the Army and Air Force shall be specifically set forth.

【(d)】 (e) END-OF-QUARTER STRENGTH LEVELS.—(1) The Secretary of Defense shall prescribe and include in the budget justification documents submitted to Congress in support of the President's budget for the Department of Defense for any fiscal year the Secretary's proposed end-of-quarter strengths for each of the first three quarters of the fiscal year for which the budget is submitted, in addition to the Secretary's proposed fiscal-year end-strengths for that fiscal year. Such end-of-quarter strengths shall be submitted for each category of personnel for which end strengths are required to be authorized by law under 【subsection (a) or (c)】 *subsection (a) or (d)*. The Secretary shall ensure that resources are provided in the budget at a level sufficient to support the end-of-quarter and fiscal-year end-strengths as submitted.

(2)(A) After annual end-strength levels required by 【subsections (a) and (c)】 *subsections (a) and (d)* are authorized by law for a fiscal year, the Secretary of Defense shall promptly prescribe end-of-quarter strength levels for the first three quarters of that fiscal year applicable to each such end-strength level. Such end-of-quarter strength levels shall be established for any fiscal year as levels to be achieved in meeting each of those annual end-strength levels authorized by law in accordance with subsection (a) (as such levels may be adjusted 【pursuant to subsection (e)】 and subsection (c)】 *pursuant to subsection (f) and subsection (d)*.

(B) At least annually, the Secretary of Defense shall establish for each of the armed forces (other than the Coast Guard) the maximum permissible variance of actual strength for an armed force at the end of any given quarter from the end-of-quarter strength established pursuant to subparagraph (A). Such variance shall be such that it promotes the maintaining of the strength necessary to achieve the end-strength levels authorized in accordance with subsection (a) (as adjusted 【pursuant to subsection (e)】 and subsection (c)】 *pursuant to subsection (f) and subsection (d)*.

\* \* \* \* \*

【(e)】 (f) AUTHORITY FOR SECRETARY OF DEFENSE VARIANCES FOR ACTIVE-DUTY AND SELECTED RESERVE 【END】 STRENGTHS.—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may—

(1) \* \* \*

(2) increase the end strength authorized pursuant to subsection (a)(1)(B) for a fiscal year for any of the armed forces by a number equal to not more than 2 percent of that end strength; **and**

(3) vary the end strength authorized pursuant to subsection (a)(2) for a fiscal year for the Selected Reserve of any of the reserve components by a number equal to not more than 2 percent of that end strength**]; and**

*(4) increase the maximum strength authorized pursuant to subsection (b)(1) for a fiscal year for certain reserves on active duty for any of the reserve components by a number equal to not more than 10 percent of that strength.*

**[(f)] (g) AUTHORITY FOR SERVICE SECRETARY VARIANCES FOR ACTIVE-DUTY END STRENGTHS.**—Upon determination by the Secretary of a military department that such action would enhance manning and readiness in essential units or in critical specialties or ratings, the Secretary may increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for any of the armed forces under the jurisdiction of that Secretary. Any such increase for a fiscal year—

(1) \* \* \*

(2) shall be counted as part of the increase for that armed force for that fiscal year authorized under **[(subsection (e)(1)] subsection (f)(1).**

**[(g)] (h) ADJUSTMENT WHEN COAST GUARD IS OPERATING AS A SERVICE IN THE NAVY.**—The authorized strength of the Navy under subsection (a)(1) is increased by the authorized strength of the Coast Guard during any period when the Coast Guard is operating as a service in the Navy.

**[(h) CERTAIN ACTIVE-DUTY PERSONNEL EXCLUDED FROM COUNTING FOR ACTIVE-DUTY END STRENGTHS.**—In counting active-duty personnel for the purpose of the end-strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:

**[(1) Members of the Ready Reserve ordered to active duty under section 12302 of this title.**

**[(2) Members of the Selected Reserve of the Ready Reserve ordered to active duty under section 12304 of this title.**

**[(3) Members of the National Guard called into Federal service under section 12406 of this title.**

**[(4) Members of the militia called into Federal service under chapter 15 of this title.**

**[(5) Members of reserve components on active duty for training.**

**[(6) Members of reserve components on active duty for 180 days or less to perform special work.**

**[(7) Members on full-time National Guard duty for 180 days or less.**

**[(8) Members of the Selected Reserve of the Ready Reserve on active duty for more than 180 days to support programs described in section 1203(b) of the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160; 22 U.S.C. 5952(b)).**

[(9) Members of reserve components (not described in paragraph (8)) on active duty for more than 180 days but less than 271 days to perform special work in support of the combatant commands, except that—

[(A) general and flag officers may not be excluded under this paragraph; and

[(B) the number of members of any of the armed forces excluded under this paragraph may not exceed the number equal to 0.2 percent of the end strength authorized for active-duty personnel of that armed force under subsection (a)(1)(A).

[(10) Members of reserve components on active duty to prepare for and to perform funeral honors functions for funerals of veterans in accordance with section 1491 of this title.

[(11) Members on full-time National Guard duty to prepare for and perform funeral honors functions for funerals of veterans in accordance with section 1491 of this title.]

(i) *CERTAIN PERSONNEL EXCLUDED FROM COUNTING FOR ACTIVE-DUTY END STRENGTHS.*—*In counting personnel for the purpose of the end strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:*

(1) *Members of a reserve component ordered to active duty under section 12301(a) of this title.*

(2) *Members of a reserve component in an active status ordered to active duty under section 12301(b) of this title.*

(3) *Members of the Ready Reserve ordered to active duty under section 12302 of this title.*

(4) *Members of the Selected Reserve of the Ready Reserve or members of the Individual Ready Reserve mobilization category described in section 10144(b) of this title ordered to active duty under section 12304 of this title.*

(5) *Members of the National Guard called into Federal service under section 12406 of this title.*

(6) *Members of the militia called into Federal service under chapter 15 of this title.*

(7) *Members of reserve components on active duty for training.*

(8) *Members of the Selected Reserve of the Ready Reserve on active duty to support programs described in section 1203(b) of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952(b)).*

(9) *Members of the National Guard on active duty or full-time National Guard duty for the purpose of carrying out drug interdiction and counter-drug activities under section 112 of title 32.*

(10) *Members of a reserve component on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.*

(11) *Members of the National Guard on full-time National Guard duty for the purpose of providing command, administrative, training, or support services for the National Guard Challenge Program authorized by section 509 of title 32.*

(i) *CERTAIN FULL-TIME NATIONAL GUARD DUTY PERSONNEL EXCLUDED FROM COUNTING FOR FULL-TIME NATIONAL GUARD DUTY*

*END STRENGTHS.—In counting full-time National Guard duty personnel for the purpose of end-strengths authorized pursuant to subsection (a)(1), persons involuntarily performing operational activities under chapter 9 of title 32 shall be excluded.*

\* \* \* \* \*

**CHAPTER 3—GENERAL POWERS AND FUNCTIONS**

\* \* \* \* \*

**§ 130a. Major Department of Defense headquarters activities personnel: limitation**

(a) **LIMITATION.**—[Effective October 1, 2002, the] *The number of major headquarters activities personnel in the Department of Defense may not exceed 85 percent of the [baseline number.*

[(b) **PHASED REDUCTION.**—The number of major headquarters activities personnel in the Department of Defense—

[(1) as of October 1, 2000, may not exceed 95 percent of the baseline number; and

[(2) as of October 1, 2001, may not exceed 90 percent of the baseline number.

[(c) **BASELINE NUMBER.**—In this section, the term “baseline number” means the] number of major headquarters activities personnel in the Department of Defense as of October 1, 1999.

[(e)] (b) **MAJOR HEADQUARTERS ACTIVITIES PERSONNEL.**—In this section, the term “major headquarters activities personnel” means military and civilian personnel of the Department of Defense who are assigned to, or employed in, functions in major headquarters activities.

[(d)] (c) **MAJOR HEADQUARTERS ACTIVITIES.**—(1) \* \* \*

\* \* \* \* \*

[(f)] (d) **LIMITATION ON REASSIGNMENT OF FUNCTIONS.**—In carrying out reductions in the number of personnel assigned to, or employed in, major headquarters activities in order to comply with this section, the Secretary of Defense and the Secretaries of the military departments may not reassign functions in order to evade the requirements of this section.

[(g) **FLEXIBILITY.**—(1) If during fiscal year 2001 or fiscal year 2002 the Secretary of Defense determines, and certifies to Congress, that the limitation under subsection (a), or a limitation under subsection (b), would adversely affect United States national security, the Secretary may take any of the following actions:

[(A) Increase the percentage specified in subsection (b)(1) by such amount as the Secretary determines necessary or waive the limitation under that subsection.

[(B) Increase the percentage specified in subsection (b)(2) by such amount as the Secretary determines necessary, not to exceed a cumulative increase of 7.5 percentage points.

[(C) Increase the percentage specified in subsection (a) by such amount as the Secretary determines necessary, not to exceed a cumulative increase of 7.5 percentage points.

[(2) Any certification under paragraph (1) shall include notice of the specific waiver or increases made pursuant to the authority provided in that paragraph.]

\* \* \* \* \*

**CHAPTER 5—JOINT CHIEFS OF STAFF**

- Sec.  
 151. Joint Chiefs of Staff: composition; functions.  
 \* \* \* \* \*  
 156. Assistants to the Chairman for National Guard members and for Reserve matters.  
 \* \* \* \* \*

**§ 156. Assistants to the Chairman for National Guard matters and for Reserve matters**

(a) *ESTABLISHMENT OF POSITIONS.*—The Secretary of Defense shall establish the following positions within the Joint Staff:

(1) Assistant to the Chairman of the Joint Chiefs of Staff for National Guard Matters.

(2) Assistant to the Chairman of the Joint Chiefs of Staff for Reserve Matters.

(b) *SELECTION.*—(1) The Assistant to the Chairman of the Joint Chiefs of Staff for National Guard Matters shall be selected by the Chairman from officers of the Army National Guard of the United States or the Air Guard of the United States who—

(A) are recommended for such selection by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

(B) have had at least 10 years of federally recognized commissioned service in the National Guard; and

(C) are in a grade above the grade of colonel.

(2) The Assistant to the Chairman of the Joint Chiefs of Staff for Reserve Matters shall be selected by the Chairman from officers of the Army Reserve, the Naval Reserve, the Marine Corps Reserve, or the Air Force Reserve who—

(A) are recommended for such selection by the Secretary of the military department concerned;

(B) have had at least 10 years of commissioned service in their reserve component; and

(C) are in a grade above the grade of colonel or, in the case of the Naval Reserve, captain.

(c) *TERM OF OFFICE.*—Each Assistant to the Chairman under subsection (a) serves at the pleasure of the Chairman for a term of four years and may be continued in that assignment in the same manner for one additional term. However, in time of war there is no limit on the number of terms.

(d) *GRADE.*—Each Assistant to the Chairman, while so serving, holds the grade of major general or, in the case of the Naval Reserve, rear admiral. Each such officer shall be considered to be serving in a position external to that officer's Armed Force for purposes of section 721 of title 10, United States Code, as added by section 501(a).

(e) *DUTIES.*—The Assistant to the Chairman for National Guard Matters is an adviser to the Chairman on matters relating



to the National Guard and performs the duties prescribed for that position by the Chairman. The Assistant to the Chairman for Reserve Matters is an adviser to the Chairman on matters relating to the reserves and performs the duties prescribed for that position by the Chairman.

(f) *OTHER RESERVE COMPONENT REPRESENTATION ON JOINT STAFF.*—The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs, shall develop appropriate policy guidance to ensure that, to the maximum extent practicable, the level of reserve component officer representation within the Joint Staff is commensurate with the significant role of the reserve components within the Total Force.

\* \* \* \* \*

**CHAPTER 6—COMBATANT COMMANDS**

\* \* \* \* \*

**§ 168. Military-to-military contacts and comparable activities**

(a) \* \* \*

\* \* \* \* \*

[(f) **ACTIVE DUTY END STRENGTHS.**—(1) A member of a reserve component referred to in paragraph (2) shall not be counted for purposes of the following personnel strength limitations:

[(A) The end strength for active-duty personnel authorized pursuant to section 115(a)(1) of this title for the fiscal year in which the member carries out the activities referred to in paragraph (2).

[(B) The authorized daily average for members in pay grades E-8 and E-9 under section 517 of this title for the calendar year in which the member carries out such activities.

[(C) The authorized strengths for commissioned officers under section 523 of this title for the fiscal year in which the member carries out such activities.

[(2) A member of a reserve component referred to in paragraph (1) is any member on active duty under an order to active duty for 180 days or more who is engaged in activities authorized under this section.]

(f) *ACTIVE DUTY END STRENGTHS.*—A member of a reserve component who is engaged in activities authorized under this section shall not be counted for purposes of the following personnel strength limitations:

(1) *The end strength for active-duty personnel authorized pursuant to section 115(a)(1) of this title for the fiscal year in which the member carries out the activities referred to under this section.*

(2) *The authorized daily average for members in pay grades E-8 and E-9 under section 517 of this title for the calendar year in which the member carries out such activities.*

(3) *The authorized strengths for commissioned officers under section 523 of this title for the fiscal year in which the member carries out such activities.*

**CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES**

- Sec.  
 171. Armed Forces Policy Council.  
 \* \* \* \* \*  
 186. *Defense Business System Management Committee.*

**§ 171. Armed Forces Policy Council**

(a) There is in the Department of Defense an Armed Forces Policy Council consisting of—

- (1) \* \* \*  
 \* \* \* \* \*

(14) *The Commandant of the Coast Guard, for discussion of matters pertaining to the Coast Guard.*

- \* \* \* \* \*

**§ 179. Nuclear Weapons Council**

(a) *ESTABLISHMENT; MEMBERSHIP.*—There is a **[Joint]** Nuclear Weapons Council (hereinafter in this section referred to as the “Council”) **[composed of three members as follows:]** *operated as a joint activity of the Department of Defense and the Department of Energy. The membership of the Council is comprised of the following officers of those departments:*

- (1) \* \* \*  
 \* \* \* \* \*

(4) *The Under Secretary of Defense for Policy.*

(b) *CHAIRMAN; MEETINGS.*—(1) \* \* \*  
 \* \* \* \* \*

(c) *STAFF AND ADMINISTRATIVE SERVICES; STAFF DIRECTOR.*—  
 (1) \* \* \*

- \* \* \* \* \*  
 (3)(A) \* \* \*

(B) An individual **[appointed]** *designated* under subparagraph (A) shall possess substantial technical and policy experience relevant to the management and oversight of nuclear weapons programs.

(d) *RESPONSIBILITIES.*—The Council shall be responsible for the following matters:

- (1) \* \* \*  
 \* \* \* \* \*

(e) **[In addition to the responsibilities set forth in subsection (d), the Council shall also]** *REPORT ON DIFFICULTIES RELATING TO SAFETY OR RELIABILITY.*— *The Council shall* submit to Congress a report on any analysis conducted by the Council with respect to difficulties at nuclear weapons laboratories or nuclear weapons production plants that have significant bearing on confidence in the safety or reliability of nuclear weapons or nuclear weapon types.

(f) *ANNUAL REPORT.*—Each fiscal year, at the same time the President submits the budget pursuant to section 1105 of title 31, the Chairman of the Council, through the Secretary of Energy, shall submit to the **[Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on**

Armed Services and the Committee on Appropriations of the House of Representatives] congressional defense committees a report, in classified form, on the following:

(1) \* \* \*

\* \* \* \* \*

**§ 186. Defense business system management Committee**

(a) *ESTABLISHMENT.*—The Secretary of Defense shall establish a Defense Business Systems Management Committee, to be composed of the following persons:

(1) *The Deputy Secretary of Defense, who shall serve as the chairman of the Committee.*

(2) *The Under Secretary of Defense for Acquisition, Logistics, and Technology.*

(3) *The Under Secretary of Defense for Personnel and Readiness.*

(4) *The Under Secretary of Defense (Comptroller).*

(5) *The Assistant Secretary of Defense for Networks and Information Integration.*

(6) *The Secretaries of the military departments and the heads of the Defense Agencies.*

(7) *Such additional personnel of the Department of Defense (including personnel assigned to the Joint Chiefs of Staff and combatant commands) as are designated by the Secretary of Defense.*

(b) *DUTIES.*—(1) *In addition to any other matters assigned to the Committee by the Secretary of Defense, the Committee shall—*

(A) *recommend to the Secretary of Defense policies and procedures necessary to effectively integrate the requirements of section 2222 of this title into all business activities and any transformation, reform, reorganization, or process improvement initiatives undertaken within the Department of Defense; and*

(B) *review and approve any major update of the defense business enterprise architecture developed under subsection (b) of section 2222 of this title, including evolving the architecture, and of defense business systems modernization plans.*

(2) *The Committee shall be responsible for coordinating defense business system modernization initiatives to maximize benefits and minimize costs for the Department of Defense and periodically report to the Secretary on the status of defense business system modernization efforts.*

(3) *The Committee shall ensure that funds are obligated for defense business system modernization in a manner consistent with section 2222 of this title.*

(c) *DEFINITIONS.*—*In this section, the terms “defense business system” and “defense business system modernization” have the meanings given such terms in section 2222 of this title.*

\* \* \* \* \*

**CHAPTER 9—DEFENSE BUDGET MATTERS**

Sec. 221. Future-years defense program: submission to Congress; consistency in budgeting.

\* \* \* \* \*

- 232. Operations and maintenance budget presentation.
- 232. United States Joint Forces Command: amounts for research, development, test, and evaluation to be derived only from Defense-wide amounts.

\* \* \* \* \*

**§ 232. Operations and maintenance budget presentation**

(a) *IN GENERAL.*—*In this section*

(1) *The term “O&M justification documents” means Department of Defense budget justification documents with respect to accounts for operation and maintenance submitted to the congressional defense committees in support of the Department of Defense component of the President’s budget for any fiscal year.*

(2) *The term “President’s budget” means the budget of the President submitted to Congress under section 1105 of title 31 for any fiscal year.*

(3) *The term “current year” means the fiscal year during which the President’s budget is submitted in any year.*

(b) *IDENTIFICATION OF BASELINE AMOUNTS IN O&M JUSTIFICATION DOCUMENTS.*—*In any case in which the amount requested in the President’s budget for a fiscal year for a Department of Defense operations and maintenance program, project, or activity is different from the amount appropriated for that program, project, or activity for the current year, the O&M justification documents supporting that budget shall identify that appropriated amount and the difference between that amount and the amount requested in the budget, stated as an amount and as a percentage.*

(c) *PERSONAL SERVICE CONTRACTS.*—*In the O&M justification documents for any fiscal year, costs programmed in the budget for that fiscal year for Department of Defense for personal service contracts, and the number of personal service contractors to be used by the Department of Defense during that fiscal year who will be compensated at an annual rate in excess of the annual rate of salary of the Vice President under section 104 of title 3, shall be separately set forth and identified.*

(d) *NAVY SUBACTIVITIES FOR SHIP DEPOT MAINTENANCE AND FOR INTERMEDIATE SHIP MAINTENANCE.*—*In the O&M justification documents for the Navy for any fiscal year, amounts requested for ship depot maintenance and amounts requested for intermediate ship maintenance shall be set forth as separate budget subactivity groups.*

(e) *CIVILIAN AVERAGE SALARY COSTS.*—*In the O&M justification documents for any fiscal year, average civilian salary costs, shown by subactivity group, shall be set forth as a component of the personnel summary exhibit.*

**§ 232. United States Joint Forces Command: amounts for research, development, test, and evaluation to be derived only from Defense-wide amounts**

(a) *REQUIREMENT.*—*Amounts for research, development, test, and evaluation for the United States Joint Forces Command shall be derived only from amounts made available to the Department of Defense for Defense-wide research, development, test, and evaluation.*

(b) *SEPARATE DISPLAY IN BUDGET.*—*Any amount in the budget submitted to Congress under section 1105 of title 31 for any fiscal*

*year for research, development, test, and evaluation for the United States Joint Forces Command shall be set forth under the account of the Department of Defense for Defense-wide research, development, test, and evaluation.*

\* \* \* \* \*

**CHAPTER 21—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS**

\* \* \* \* \*

**SUBCHAPTER II—INTELLIGENCE COMMERCIAL ACTIVITIES**

\* \* \* \* \*

**§ 431. Authority to engage in commercial activities as security for intelligence collection activities**

(a) **AUTHORITY.**—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after December 31, **[2004]** 2006.

\* \* \* \* \*

**§ 437. Congressional oversight**

(a) \* \* \*

\* \* \* \* \*

(c) **ANNUAL REPORT.**—Not later each year than the date provided in section 507 of the National Security Act of 1947 (50 U.S.C. 415b), the Secretary shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a report on all commercial activities authorized under this subchapter that were undertaken during the previous fiscal year. Such report shall include (with respect to the fiscal year covered by the report) the following:

(1) \* \* \*

\* \* \* \* \*

**CHAPTER 23—MISCELLANEOUS STUDIES AND REPORTS**

Sec.

480. Reports to Congress: submission in electronic form.

\* \* \* \* \*

489. *Annual report on Department of Defense operation and financial support for military museums.*

\* \* \* \* \*

**§ 487. Unit operations tempo and personnel tempo: annual report**

(a) \* \* \*

\* \* \* \* \*

(d) **[OTHER DEFINITIONS]** *INAPPLICABILITY TO COAST GUARD.*—In this section, the term “armed forces” does not include the Coast

Guard when it is not operating as a service in the Department of the Navy.

\* \* \* \* \*

**§ 489. Annual report on Department of Defense operation and financial support for military museums**

(a) *REPORT REQUIRED.*—As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, but in no case later than March 15 of each year, the Secretary of Defense shall submit a report identifying all museums that, during the preceding fiscal year—

(1) were operated by the Department of Defense or a military department; or

(2) were otherwise supported using funds appropriated to the Department of Defense.

(b) *CONTENT OF REPORT.*—For each museum identified in a report under this section, the Secretary of Defense shall include in the report the following:

(1) The purpose and functions of the museum and the justification for the museum

(2) A description of the facilities dedicated to the museum.

(3) An itemized listing of the funds appropriated to the Department of Defense that were obligated to support the museum during the fiscal year covered by the report, as well as any other Federal funds, funds from a nonappropriated fund instrumentality account of the Department of Defense, and non-Federal funds obligated to support the museum.

(4) The number of civilian employees of the Department of Defense who serve full-time or part-time at the museum.

(5) The number of members of the armed forces who serve full-time or part-time at the museum.

\* \* \* \* \*

**PART II—PERSONNEL**

\* \* \* \* \*

**CHAPTER 31—ENLISTMENTS**

Sec.						
501.	Definition.	*	*	*	*	*
511.	College First Program	*	*	*	*	*

**§ 503. Enlistments: recruiting campaigns; compilation of directory information**

(a) \* \* \*

\* \* \* \* \*

(c) **ACCESS TO SECONDARY SCHOOLS.**—(1)(A) \* \* \*

(B) A local educational agency may not release a student's name, address, and telephone listing under subparagraph (A)(ii) without the prior written consent of a parent of the student if the

student, or a parent of the student, has submitted a request to the local educational agency that the student's information not be released for a purpose covered by that subparagraph without prior written parental consent. Each local [education] educational agency shall notify parents of the rights provided under the preceding sentence.

\* \* \* \* \*

### **§ 511. College First Program**

(a) *PROGRAM AUTHORITY.*—The Secretary of each military department may establish a program to increase the number of, and the level of the qualifications of, persons entering the armed forces as enlisted members by encouraging recruits to pursue higher education or vocational or technical training before entry into active service.

(b) *DELAYED ENTRY WITH ALLOWANCE FOR HIGHER EDUCATION.*—The Secretary concerned may—

(1) exercise the authority under section 513 of this title—

(A) to accept the enlistment of a person as a Reserve for service in the Selected Reserve or Individual Ready Reserve of a reserve component, notwithstanding the scope of the authority under subsection (a) of that section, in the case of the Army National Guard of the United States or Air National Guard of the United States; and

(B) to authorize, notwithstanding the period limitation in subsection (b) of that section, a delay of the enlistment of any such person in a regular component under that subsection for the period during which the person is enrolled in, and pursuing a program of education at, an institution of higher education, or a program of vocational or technical training, on a full-time basis that is to be completed within the maximum period of delay determined for that person under subsection (c); and

(2) subject to paragraph (2) of subsection (d) and except as provided in paragraph (3) of that subsection, pay an allowance to a person accepted for enlistment under paragraph (1)(A) for each month of the period during which that person is enrolled in and pursuing a program described in paragraph (1)(B).

(c) *MAXIMUM PERIOD OF DELAY.*—The period of delay authorized a person under paragraph (1)(B) of subsection (b) may not exceed the 30-month period beginning on the date of the person's enlistment accepted under paragraph (1)(A) of such subsection.

(d) *ALLOWANCE.*—(1) The monthly allowance paid under subsection (b)(2) shall be equal to the amount of the subsistence allowance provided for certain members of the Senior Reserve Officers' Training Corps with the corresponding number of years of participation under section 209(a) of title 37. The Secretary concerned may supplement that stipend by an amount not to exceed \$225 per month.

(2) An allowance may not be paid to a person under this section for more than 24 months.

(3) A member of the Selected Reserve of a reserve component may be paid an allowance under this section only for months during which the member performs satisfactorily as a member of a unit of the reserve component that trains as prescribed in section

10147(a)(1) of this title or section 502(a) of title 32. Satisfactory performance shall be determined under regulations prescribed by the Secretary concerned.

(4) An allowance under this section is in addition to any other pay or allowance to which a member of a reserve component is entitled by reason of participation in the Ready Reserve of that component.

(e) *RECOUPMENT OF ALLOWANCE.*—(1) A person who, after receiving an allowance under this section, fails to complete the total period of service required of that person in connection with delayed entry authorized for the person under section 513 shall repay the United States the amount which bears the same ratio to the total amount of that allowance paid to the person as the unserved part of the total required period of service bears to the total period.

(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) A discharge of a person in bankruptcy under title 11 that is entered less than five years after the date on which the person was, or was to be, enlisted in the regular Army pursuant to the delayed entry authority under section 513 does not discharge that person from a debt arising under paragraph (1).

(4) The Secretary concerned may waive, in whole or in part, a debt arising under paragraph (1) in any case for which the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(f) *SPECIAL PAY AND BONUSES.*—Upon enlisting in the regular component of the member's armed force, a person who initially enlisted as a Reserve under this section may, at the discretion of the Secretary concerned, be eligible for all regular special pays, bonuses, education benefits, and loan repayment programs.

\* \* \* \* \*

**§ 517. Authorized daily average: members in pay grades E-8 and E-9**

(a) The authorized daily average number of enlisted members on active duty (other than for training) in an armed force in pay grades E-8 and E-9 in a fiscal year may not be more than 2.5 percent and 1 percent, respectively, of the number of enlisted members of that armed force who are on active duty (other than for training) on the first day of that fiscal year. In computing the limitations prescribed in the preceding sentence, there shall be excluded enlisted members of an armed force on active duty [(other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve component of an armed force.] as authorized under section 115(a)(1)(B) or 115(b) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title.

\* \* \* \* \*



**CHAPTER 32—OFFICER STRENGTH AND DISTRIBUTION  
IN GRADE**

Sec.	
521.	Authority to prescribe total strengths of officers on active duty and officer strengths in various categories.
【522.	Authorized total strengths: regular commissioned officers on active duty.】
	* * * * *
【525.	Distribution of commissioned officers on active duty in general officer and flag officer grades.】
525.	<i>Distribution in grade: general and flag officers on active duty.</i>
	* * * * *

**【§ 522. Authorized total strengths: regular commissioned officers on active duty**

【The authorized strengths of the Army, Navy, Air Force, and Marine Corps in regular officers (other than retired officers) in grades above chief warrant officer, (W-5), are as follows:

【Army .....	63,000
【Navy .....	55,000
【Air Force .....	80,000
【Marine Corps .....	17,000】

**§ 523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain**

(a)(1) \* \* \*

(b) Officers in the following categories shall be excluded in computing and determining authorized strengths under this section:

- 【(1) Reserve officers—
  - 【(A) on active duty for training;
  - 【(B) on active duty under section 10211, 10302 through 10305, or 12402 of this title or under section 708 of title 32;
  - 【(C) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;
  - 【(D) on active duty to pursue special work;
  - 【(E) ordered to active duty under section 12304 of this title; or
  - 【(F) on full-time National Guard duty.】
    - (A) *on active duty as authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;*
    - (B) *on active duty under section 10211, 10302 through 10305, or 12402 of this title or under section 708 of title 32;*
    - or
    - (C) *on full-time National Guard duty.*

\* \* \* \* \*

(7) 【Reserve or retired officers】 *Retired officers* on active duty under section 10(b)(2) of the Military Selective Service Act

(50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

\* \* \* \* \*

**【§ 525. Distribution of commissioned officers on active duty in general officer and flag officer grades】**

**§ 525. *Distribution in grade: general and flag officers on active duty***

【(a) No appointment may be made in a grade above brigadier general in the Army, Air Force, or Marine Corps if that appointment would result in more than 50 percent of the general officers of that armed force on active duty being in grades above brigadier general. No appointment may be made in a grade above rear admiral (lower half) in the Navy if that appointment would result in more than 50 percent of the flag officers of the Navy on active duty being in grades above rear admiral (lower half).】

【(b)(1) No appointment】 *(a) LIMITATION ON NUMBER OF GENERAL AND FLAG OFFICERS IN SENIOR GRADES.—(1) No appointment may be made in a grade above major general in the Army or Air Force if that appointment would result in more than 15.7 percent of the general officers of that armed force on active duty being in grades above major general. Of the 15.7 percent of general officers of the Army or Air Force on active duty who may be serving in grades above major general, not more than 25 percent may be serving in the grade of general.*

\* \* \* \* \*

【(3) An officer】 *(b) SPECIAL RULES AND EXCEPTIONS.—(1) An officer while serving as Chairman or Vice Chairman of the Joint Chiefs of Staff or as Chief of Staff to the President, if serving in the grade of general or admiral, is in addition to the number that would otherwise be permitted for his armed force for that grade under 【paragraph (1) or (2)】 subsection (a).*

【(4) (2)(A) An officer while serving in a position designated under subparagraph (B), if serving in the grade of lieutenant general or vice admiral, is in addition to the number that would otherwise be permitted for that officer's armed force for that grade under 【paragraph (1) or (2)】 subsection (a).

\* \* \* \* \*

【(5) (3)(A) An officer while serving in a position specified in section 604(b) of this title, if serving in the grade of general or admiral, is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above major general or rear admiral, as the case may be, 【under the first sentence of paragraph (1) or (2), as applicable】 *under subsection (a).* Any increase by reason of the preceding sentence in the number of officers of an armed force serving on active duty in grades above major general or rear admiral may only be realized by an increase in the number of lieutenant generals or vice admirals, as the case may be, serving on active duty, and any such increase may not be construed as authorizing an increase in the limitation on the total number of general or flag officers for that armed force under section 526(a) of this title or in the

number of general and flag officers that may be designated under section 526(b) of this title.

\* \* \* \* \*

[(6)] (4) An officer while serving as Chief of the National Guard Bureau is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above major general under [paragraph (1)] subsection (a)(1).

[(7)] (5) An officer of the Army while serving as Superintendent of the United States Military Academy, if serving in the grade of lieutenant general, is in addition to the number that would otherwise be permitted for the Army for officers serving on active duty in grades above major general under [paragraph (1)] subsection (a)(1). An officer of the Navy or Marine Corps while serving as Superintendent of the United States Naval Academy, if serving in the grade of vice admiral or lieutenant general, is in addition to the number that would otherwise be permitted for the Navy or Marine Corps, respectively, for officers serving on active duty in grades above major general or rear admiral under [paragraph (1) or (2)] subsection (a)(2). An officer while serving as Superintendent of the United States Air Force Academy, if serving in the grade of lieutenant general, is in addition to the number that would otherwise be permitted for the Air Force for officers serving on active duty in grades above major general under [paragraph (1)] subsection (a)(1).

[(8)] (6) An officer while serving in a position designated by the Secretary of Defense as Senior Military Assistant to the Secretary of Defense, if serving in the grade of lieutenant general or vice admiral, is in addition to the number that otherwise would be permitted for that officer's armed force for that grade under [paragraph (1) or (2)] subsection (a). Only one officer may be designated as Senior Military Assistant to the Secretary of Defense for purposes of this paragraph.

[(c)(1)] (c) REALLOCATION AUTHORITY.—(1) Subject to paragraph (3), the President—

(A) may make appointments in the Army, Air Force, and Marine Corps in the grade of lieutenant general and in the Army and Air Force in the grade of general in excess of the applicable numbers determined under [subsection (b)(1)] subsection (a)(1), and may make appointments in the Marine Corps in the grade of general in addition to the Commandant and Assistant Commandant, if each such appointment is made in conjunction with an offsetting reduction under paragraph (2); and

(B) may make appointments in the Navy in the grades of vice admiral and admiral in excess of the applicable numbers determined under [subsection (b)(2)] subsection (a)(2) if each such appointment is made in conjunction with an offsetting reduction under paragraph (2).

\* \* \* \* \*

(3)(A) The number of officers that may be serving on active duty in the grades of lieutenant general and vice admiral by reason of appointments made under the authority of paragraph (1) may not exceed the number equal to 10 percent of the total number of

officers that may be serving on active duty in those grades in the Army, Navy, Air Force, and Marine Corps under [subsection (b)] subsections (a) and (b).

\* \* \* \* \*

(d) *SPECIAL RULE FOR OFFICERS FORMERLY ON JOINT CHIEFS OF STAFF.*—An officer continuing to hold the grade of general or admiral under section 601(b)(4) of this title after relief from the position of Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps shall not be counted for purposes of this section.

\* \* \* \* \*

**CHAPTER 33—ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES**

\* \* \* \* \*

**§ 531. Original appointments of commissioned officers**

[(a) Original appointments in the grades of second lieutenant through colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign through captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.]

*(a)(1) Original appointments in the grades of second lieutenant, first lieutenant, and captain in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign, lieutenant (junior grade), and lieutenant in the Regular Navy shall be made by the President alone.*

*(2) Original appointments in the grades of major, lieutenant colonel, and colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of lieutenant commander, commander, and captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.*

\* \* \* \* \*

**§ 532. Qualifications for original appointment as a commissioned officer**

(a) \* \* \*

\* \* \* \* \*

[(e) After September 30, 1996, no person may receive an original appointment as a commissioned officer in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps until that person has completed one year of service on active duty as a commissioned officer (other than a warrant officer) of a reserve component.]

*(f) The Secretary of Defense may waive the requirement of paragraph (1) of subsection (a) with respect to a person who has been lawfully admitted to the United States for permanent residence when the Secretary determines that the national security so re-*

quires, but only for an original appointment in a grade below the grade of major or lieutenant commander.

\* \* \* \* \*

**CHAPTER 33A—APPOINTMENT, PROMOTION, AND INVOLUNTARY SEPARATION AND RETIREMENT FOR MEMBERS ON THE WARRANT OFFICER ACTIVE-DUTY LIST**

\* \* \* \* \*

**§ 582. Warrant officer active-duty list: exclusions**

Warrant officers in the following categories are not subject to this chapter:

- [(1) Reserve warrant officers—
  - [(A) on active duty for training;
  - [(B) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;
  - [(C) on active duty to pursue special work;
  - [(D) ordered to active duty under section 12304 of this title; or
  - [(E) on full-time National Guard duty.]

- (1) Reserve warrant officers—
  - (A) on active duty as authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title; or
  - (B) on full-time National Guard duty.

\* \* \* \* \*

**CHAPTER 36—PROMOTION, SEPARATION, AND INVOLUNTARY RETIREMENT OF OFFICERS ON THE ACTIVE-DUTY LIST**

\* \* \* \* \*

**SUBCHAPTER II—PROMOTIONS**

Sec. 619. Eligibility for consideration for promotion: time-in-grade and other requirements.

\* \* \* \* \*

619b. Eligibility for consideration for promotion: joint professional military education required before promotion to colonel or Navy captain; exceptions.

\* \* \* \* \*

**§ 619. Eligibility for consideration for promotion: time-in-grade and other requirements**

(a) \* \* \*

\* \* \* \* \*

(d) CERTAIN OFFICERS NOT TO BE CONSIDERED.—A selection board convened under section 611(a) of this title may not consider for promotion to the next higher grade any of the following officers:

(1) \* \* \*

\* \* \* \* \*

(5) *An officer of the Army, Air Force, or Marine Corps in the grade of captain, or of the Navy in the grade of lieutenant, who is not a citizen of the United States.*

**§ 619a. Eligibility for consideration for promotion: joint duty assignment required before promotion to general or flag grade; exceptions**

(a) GENERAL RULE.—An officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may not be appointed to the grade of brigadier general or rear admiral (lower half) unless—

(1) \* \* \*

(2) for appointments after September 30, [2007] 2008, the officer has been selected for the joint specialty in accordance with section 661 of this title.

(b) EXCEPTIONS.—Subject to subsection (c), the Secretary of Defense may waive paragraph (1) or paragraph (2) of subsection (a), or both paragraphs (1) and (2) of subsection (a), in the following circumstances:

(1) \* \* \*

\* \* \* \* \*

(4) In the case of an officer selected by a promotion board for appointment to the grade of brigadier general or rear admiral (lower half) while serving in a joint duty assignment [if—  
 [(A) at least 180 days of that joint duty assignment have been completed on the date of the convening of that selection board; and

[(B) the officer's] *if the officer's* total consecutive service in joint duty assignments within that immediate organization is not less than two years.

\* \* \* \* \*

**§ 619b. Eligibility for consideration for promotion: joint professional military education required before promotion to colonel or Navy captain; exceptions**

(a) GENERAL RULE.—*After September 30, 2007, an officer on the active-duty list of the Army, Air Force, or Marine Corps may not be appointed to the grade of colonel, and an officer on the active-duty list of the Navy may not be appointed to the grade of captain, unless the officer has successfully completed a program of instruction approved by the Secretary as qualifying for credit as the Joint Professional Military Education Phase I or Phase II program of instruction.*

(b) EXCEPTIONS.—*Subject to subsection (c), the Secretary of Defense may waive subsection (a) in the following circumstances:*

(1) *When necessary for the good of the service.*

(2) *In the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist.*

(3) *In the case of—*

(A) *a medical officer, dental officer, veterinary officer, medical service officer, nurse, or biomedical science officer;*

- (B) a chaplain; or
- (C) a judge advocate.

(c) **WAIVER TO BE INDIVIDUAL.**—A waiver may be granted under subsection (b) only on a case-by-case basis in the case of an individual officer.

(d) **SPECIAL RULE FOR GOOD-OF-THE-SERVICE WAIVER.**—In the case of a waiver under subsection (b)(1), the Secretary shall provide that the first duty assignment as a colonel or Navy captain of the officer for whom the waiver is granted shall be to a program of joint professional military education.

(e) **LIMITATION ON DELEGATION OF WAIVER AUTHORITY.**—The authority of the Secretary of Defense to grant a waiver under subsection (b) (other than under paragraph (1) of that subsection) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense.

(f) **REGULATIONS.**—The Secretary of Defense shall prescribe regulations to carry out this section. The regulations shall specifically identify for purposes of subsection (b)(2) those categories of officers for which selection for promotion to colonel or, in the case of the Navy, captain is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

\* \* \* \* \*

SUBCHAPTER III—FAILURE OF SELECTION FOR PROMOTION AND RETIREMENT FOR YEARS OF SERVICE

\* \* \* \* \*

**§ 632. Effect of failure of selection for promotion: captains and majors of the Army, Air Force, and Marine Corps and lieutenants and lieutenant commanders of the Navy**

(a) \* \* \*

\* \* \* \* \*

(c)(1) If a health professions officer described in paragraph [(2)] (3) is subject to discharge under subsection (a)(1) and, as of the date on which the officer is to be discharged [under that paragraph] *under that subsection*, the officer has not completed a period of active duty service obligation that the officer incurred under section 2005, 2114, 2123, or 2603 of this title, the officer shall be retained on active duty until completion of such active duty service obligation, and then be discharged under that subsection, unless sooner retired or discharged under another provision of law.

\* \* \* \* \*

SUBCHAPTER V—ADDITIONAL PROVISIONS RELATING TO PROMOTION, SEPARATION, AND RETIREMENT

\* \* \* \* \*

**§ 641. Applicability of chapter**

Officers in the following categories are not subject to this chapter (other than section 640 and, in the case of warrant officers, section 628):

- [(1) Reserve officers—

【(A) on active duty for training;

【(B) on active duty under section 3038, 5143, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32;

【(C) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

【(D) on active duty under section 12301(d) of this title, other than as provided under subparagraph (C), if the call or order to active duty, under regulations prescribed by the Secretary concerned, specifies a period of three years or less and continued placement on the reserve active-status list;

【(E) on active duty to pursue special work;

【(F) ordered to active duty under section 12304 of this title;

【(G) on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System; or

【(H) on full-time National Guard duty.】

(1) *Reserve officers—*

(A) *on active duty authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;*

(B) *on active duty under section 3038, 5143, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32; or*

(C) *on full-time National Guard duty.*

## CHAPTER 38—JOINT OFFICER MANAGEMENT

Sec.	
661.	Management policies for joint specialty officers.
【662.	Promotion policy objectives for joint officers.
【663.	Education.】
662.	<i>Promotion policy objectives for joint officers on the active-duty list.</i>
633.	<i>Joint duty assignments after completion of joint professional military education.</i>

### § 661. Management policies for joint specialty officers

(a) ESTABLISHMENT.—The Secretary of Defense shall establish policies, procedures, and practices for the effective management of officers of the Army, Navy, Air Force, and Marine Corps 【on the active-duty list】 who are particularly trained in, and oriented toward, joint matters (as defined in section 668 of this title). Such officers shall be identified or designated (in addition to their principal military occupational specialty) in such manner as the Secretary of Defense directs. For purposes of this chapter, officers to be managed by such policies, procedures, and practices are referred to as having, or having been nominated for, the “joint specialty”.

(b) NUMBERS AND SELECTION.—(1) \* \* \*

(2) Officers shall be selected for the joint specialty by the Secretary of Defense with the advice of the Chairman of the Joint Chiefs of Staff. Each officer on the active-duty list on December 28,



2001, who has not before that date been nominated for the joint specialty by the Secretary of a military department, [and] each officer who is placed on the active-duty list after such date,, and each reserve component officer in an active status who is not on the active-duty list, who meets the requirements of subsection (c) shall automatically be considered to have been nominated for the joint specialty. From among those officers considered to be nominated for the joint specialty, the Secretary may select for the joint specialty only officers—

(A) \* \* \*

\* \* \* \* \*

**[§ 662. Promotion policy objectives for joint officers]**

**§ 662. Promotion policy objectives for joint officers on the active-duty list**

(a) QUALIFICATIONS.—The Secretary of Defense shall ensure that the qualifications of officers on the active-duty list assigned to joint duty assignments are such that—

(1) \* \* \*

\* \* \* \* \*

(b) ANNUAL REPORT.—Not later than January 1 of each year, the Secretary of Defense shall submit to Congress a report on the promotion rates during the preceding fiscal year of officers on the active-duty list who are serving in, or have served in, joint duty assignments, especially with respect to the record of officer selection boards in meeting the objectives of paragraphs (1), (2), and (3) of subsection (a). If such promotion rates fail to meet such objectives for any fiscal year, the Secretary shall include in the report for that fiscal year information on such failure and on what action the Secretary has taken or plans to take to prevent further failures.

\* \* \* \* \*

**[§ 663. Education**

**[(a) CAPSTONE COURSE FOR NEW GENERAL AND FLAG OFFICERS.—(1) Each officer selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) shall be required, after such selection, to attend a military education course designed specifically to prepare new general and flag officers to work with the other armed forces.**

**[(2) Subject to paragraph (3), the Secretary of Defense may waive paragraph (1)—**

**[(A) in the case of an officer whose immediately previous assignment was in a joint duty assignment and who is thoroughly familiar with joint matters;**

**[(B) when necessary for the good of the service;**

**[(C) in the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist (as determined under regulations prescribed under section 619(e)(4) of this title); and**

**[(D) in the case of a medical officer, dental officer, veterinary officer, medical service officer, nurse, biomedical science officer, or chaplain.**

[(3) The authority of the Secretary of Defense to grant a waiver under paragraph (2) may only be delegated to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer.]

**§ 633. Joint duty assignments after completion of joint professional military education**

[(d) *POST-EDUCATION JOINT DUTY ASSIGNMENTS.*—(1) The] (a) JOINT SPECIALTY OFFICERS.—*The Secretary of Defense shall ensure that each officer with the joint specialty who graduates from a joint professional military education school shall be assigned to a joint duty assignment for that officer’s next duty assignment after such graduation (unless the officer receives a waiver of that requirement by the Secretary in an individual case).*

[(2)(A) The Secretary] (b) *OTHER OFFICERS.*—(1) *The Secretary of Defense shall ensure that a high proportion (which shall be greater than 50 percent) of the officers graduating from a joint professional military education school who do not have the joint specialty shall receive assignments to a joint duty assignment as their next duty assignment after such graduation or, to the extent authorized [in subparagraph (B)] in paragraph (2), as their second duty assignment after such graduation.*

[(B) The Secretary] (2) *The Secretary may, if the Secretary determines that it is necessary to do so for the efficient management of officer personnel, establish procedures to allow up to one-half of the officers subject to the joint duty assignment requirement in subparagraph (A) to be assigned to a joint duty assignment as their second (rather than first) assignment after such graduation from a joint professional military education school.*

[(e) DURATION OF PRINCIPAL COURSE OF INSTRUCTION AT JOINT FORCES STAFF COLLEGE.—(1) The duration of the principal course of instruction offered at the Joint Forces Staff College may not be less than three months.

[(2) In this subsection, the term “principal course of instruction” means any course of instruction offered at the Joint Forces Staff College as Phase II joint professional military education.]

\* \* \* \* \*

**§ 667. Annual report to Congress**

The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of this title, for the period covered by the report, the following information (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, and Marine Corps):

(1) \* \* \*

\* \* \* \* \*

(18) *The implementation of authority under section 661 of this title to certify reserve component officers as joint specialty officers, together with the number of reserve component officers who were so certified during the reporting period.*

[(18)] (19) Such other information and comparative data as the Secretary of Defense considers appropriate to demonstrate the performance of the Department of Defense and

the performance of each military department in carrying out this chapter.

**§ 668. Definitions**

(a) \* \* \*

\* \* \* \* \*

(c) CLARIFICATION OF "TOUR OF DUTY".—For purposes of this chapter, a tour of duty in which an officer served in more than one joint duty assignment [within the same organization] without a break between such assignments shall be considered to be a single tour of duty in a joint duty assignment.

\* \* \* \* \*

**CHAPTER 39—ACTIVE DUTY**

\* \* \* \* \*

**§ 691. Permanent end strength levels to support two major regional contingencies**

(a) \* \* \*

(b) Unless otherwise provided by law, the number of members of the armed forces (other than the Coast Guard) on active duty at the end of any fiscal year shall be not less than the following:

(1) \* \* \*

(2) For the Navy, [373,800] 365,900.

\* \* \* \* \*

(4) For the Air Force, [359,300] 359,700.

\* \* \* \* \*

**CHAPTER 40—LEAVE**

\* \* \* \* \*

**§ 704. Use of leave; regulations**

(a) \* \* \*

\* \* \* \* \*

(c) FACILITATING GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS.—

(1) REGULATIONS.—The Secretary concerned shall prescribe regulations to facilitate the granting of leave to a member of the armed forces under the jurisdiction of that Secretary in a case in which—

(A) the leave is needed for the member to attend a hearing described in paragraph (2);

(B) the member is not serving in or with a unit deployed in a contingency operation; and

(C) the exigencies of military service (as determined by the Secretary concerned) do not otherwise require that such leave not be granted.

(2) COVERED HEARINGS.—Paragraph (1) applies to a hearing that is conducted by a court or pursuant to an administrative process established under State law, in connection with a civil action—

(A) to determine whether a member of the armed forces is a natural parent of a child; or

(B) to determine an obligation of a member of the armed forces to provide child support.

(3) DEFINITIONS.—In this subsection:

(A) The term “court” has the meaning given that term in section 1408(a) of this title.

(B) The term “child support” has the meaning given that term in section 459(i) of the Social Security Act (42 U.S.C. 659(i)).

\* \* \* \* \*

**§ 708. Educational leave of absence**

(a) Under such regulations as the Secretary of Defense may prescribe after consultation with the Secretary of Homeland Security and subject to subsection (b), the Secretary concerned may grant to any eligible member (as defined in subsection (e)) a leave of absence for a period of not to exceed **[two]** *three* years for the purposes of permitting the member to pursue a program of education.

\* \* \* \* \*

**CHAPTER 49—MISCELLANEOUS PROHIBITIONS AND PENALTIES**

Sec.

971. Service credit: officers may not count service performed while serving as cadet or midshipman.

\* \* \* \* \*

**[977. Operation of commissary stores: assignment of active duty members generally prohibited.]**

\* \* \* \* \*

**§ 972. Members: effect of time lost**

(a) \* \* \*

\* \* \* \* \*

(3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial, *unless such confinement is excused as unavoidable*; or

\* \* \* \* \*

(b) OFFICERS NOT ALLOWED SERVICE CREDIT FOR TIME LOST.—In the case of an officer of an armed force who after February 10, 1996—

(1) \* \* \*

\* \* \* \* \*

(3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial, *unless such confinement is excused as unavoidable*; or

\* \* \* \* \*

**§ 977. Operation of commissary stores: assignment of active duty members generally prohibited**

[(a) GENERAL RULE.—A member of the armed forces on active duty may not be assigned to the operation of a commissary store.

[(b) EXCEPTION FOR DCA DIRECTOR.—The Secretary of Defense may assign an officer on the active-duty list to serve as the Director of the Defense Commissary Agency.

[(c) EXCEPTION FOR CERTAIN ADDITIONAL MEMBERS.—Not more than 18 members (in addition to the officer referred to in subsection (b)) of the armed forces on active duty may be assigned to the Defense Commissary Agency. Members who may be assigned under this subsection to regional headquarters of the agency shall be limited to enlisted members assigned to duty as advisors in the regional headquarters responsible for overseas commissaries and to veterinary specialists.

[(d) EXCEPTION FOR CERTAIN NAVY PERSONNEL.—(1) The Secretary of the Navy may assign to the Defense Commissary Agency a member of the Navy on active duty whose assignment afloat is part of the operation of a ship's food service or a ship's store. Any such assignment shall be on a nonreimbursable basis.

[(2) The number of such members assigned to the Defense Commissary Agency during any period may not exceed 400.]

\* \* \* \* \*

**§ 983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies**

(a) DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS.—(1) No funds described in subsection (d)(1) may be provided by contract or by grant [(including a grant of funds to be available for student aid)] to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect [prevents—] *prevents, either (or both) of the following:*

[(1) the] (A) *The* Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (in accordance with section 654 of this title and other applicable Federal laws) at that institution (or any subelement of that institution)[; or].

[(2) a] (B) A student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

(2)(A) *Not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005 and annually thereafter, the Secretary of Defense shall request from each institution of higher education that has students participating in a Senior Reserve Officer Training Corps program during the then-current academic year of that institution a certification that such institution, during the next academic year of the institution, will—*

(i) permit the Secretary of each military department to maintain a unit of the Senior Officer Training Corps (in accordance with subsection (a)) at that institution (or any subelement of that institution), should such Secretary elect to maintain such a unit; and

(ii) if the Secretary of the military department concerned elects not to establish or maintain a unit of the Senior Reserve Officer Training Corps at that institution, permit a student of that institution (or any subelement of that institution) to enroll in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

(B) Any certification under subparagraph (A) shall be made by the president of the institution (or equivalent highest ranking administrative official) and shall be submitted to the Secretary of Defense no later than 90 days after receipt of the request from the Secretary.

(C) In the case of any institution from which a certification is requested under subparagraph (A), if the Secretary of Defense does not receive a certification in accordance with subparagraph (B), or if the certification does not state that the university will comply with both clauses (i) and (ii) of subparagraph (A) during its next academic year, the Secretary shall make a determination under paragraph (1) as to whether the institution has a policy or practice described in that paragraph.

(b) DENIAL OF FUNDS FOR PREVENTING MILITARY RECRUITING ON CAMPUS.—No funds described in [subsection (d)(2)] subsection (d)(1) may be provided by contract or by grant [(including a grant of funds to be available for student aid)] to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department or Secretary of Homeland Security from gaining [entry to campuses] access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

\* \* \* \* \*

(d) COVERED FUNDS.—(1) [The limitation established in subsection (a) applies] Except as provided in paragraph (2), the limitations established in subsections (a) and (b) apply to the following:

(A) \* \* \*

(B) Any funds made available for any department or agency for which regular appropriations are made in a Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.

(C) Any funds made available for the Department of Homeland Security.

(D) Any funds made available for the National Nuclear Security Administration of the Department of Energy.

(E) Any funds made available for the Department of Transportation.

(F) Any funds made available for the Central Intelligence Agency.

[(2) The limitation established in subsection (b) applies to the following:

[(A) Funds described in paragraph (1).

[(B) Any funds made available for the Department of Homeland Security.]

(2) Any Federal funding specified in paragraph (1) that is provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.

(e) NOTICE OF DETERMINATIONS.—Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary—

(1) shall transmit a notice of the determination to the Secretary of Education, to the head of each other department and agency the funds of which are subject to the determination, and to Congress; and

\* \* \* \* \*

§ 986. Security clearances: limitations

(a) \* \* \*

\* \* \* \* \*

(c) PERSONS DISQUALIFIED FROM BEING GRANTED SECURITY CLEARANCES.—A person is described in this subsection if any of the following applies to that person:

(1) The person has been convicted in any court of the United States of a crime [and], was sentenced to imprisonment for a term exceeding one year, and was incarcerated as a result of that sentence for not less than one year.

\* \* \* \* \*

[(d) WAIVER AUTHORITY.—In a meritorious case, the Secretary of Defense or the Secretary of the military department concerned may authorize an exception to the prohibition in subsection (a) for a person described in paragraph (1) or (4) of subsection (c). The authority under the preceding sentence may not be delegated.]

(d) WAIVER AUTHORITY.—In a meritorious case, an exception to the prohibition in subsection (a) may be authorized for a person described in paragraph (1) or (4) of subsection (c) if there are mitigating factors. Any such waiver may be authorized only in accordance with standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President.

\* \* \* \* \*

CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS

Sec. 1031. Administration of oath.

\* \* \* \* \*

1060b. *Military ID cards: dependents and survivors of retirees; issuance of permanent ID card after attaining 70 years of age.*

\* \* \* \* \*

**§ 1044. Legal assistance**

(a) \* \* \*

\* \* \* \* \*

(e)(1) *Notwithstanding any law regarding the licensure of attorneys, a judge advocate or civilian attorney who is authorized to provide military legal assistance is authorized to provide that assistance in any jurisdiction, subject to such regulations as may be prescribed by the Secretary concerned.*

(2) *In this subsection, the term “military legal assistance” includes—*

- (A) *legal assistance provided under this section; and*
- (B) *legal assistance contemplated by sections 1044a, 1044b, 1044c, and 1044d of this title.*

\* \* \* \* \*

**§ 1047. Allowance for civilian clothing**

(a) *MEMBERS TRAVELING IN CONNECTION WITH MEDICAL EVACUATION.—The Secretary of the military department concerned may furnish civilian clothing to a member at a cost not to exceed \$250, or reimburse a member for the purchase of civilian clothing in an amount not to exceed \$250, in the case of a member who—*

(1) *is medically evacuated for treatment in a medical facility by reason of an illness or injury incurred or aggravated while on active duty; or*

(2) *after being medically evacuated as described in paragraph (1), is in an authorized travel status from a medical facility to another location approved by the Secretary.*

(b) *CERTAIN ENLISTED MEMBERS.—The Secretary of the military department concerned may furnish civilian clothing, at a cost of not more than \$40, to an enlisted member who is—*

(1) *discharged for misconduct or unsuitability or under conditions other than honorable;*

(2) *sentenced by a civil court to confinement in a prison;*

(3) *interned or discharged as an alien enemy; or*

(4) *discharged before completion of recruit training under honorable conditions for dependency, hardship, minority, or disability or for the convenience of the Government.*

\* \* \* \* \*

**§ 1060b. Military ID cards: dependents and survivors of retirees; issuance of permanent ID card after attaining 70 years of age**

(a) *PERMANENT ID CARD AFTER AGE 70.—In issuing military ID cards to retiree dependents, the Secretary concerned shall issue a permanent ID card (not subject to renewal) to any such retiree dependent who has attained 70 years of age. Such a permanent ID card shall be issued upon the expiration, after the retiree dependent attains 70 years of age, of any earlier, renewable military ID card*



or, if earlier, upon the request of such a retiree dependent after attaining age 70.

(b) DEFINITIONS.—In this section:

(1) The term “military ID card” means a card or other form of identification used for purposes of demonstrating eligibility for any benefit from the Department of Defense.

(2) The term “retiree dependent” means a person who is a dependent of a retired member of the uniformed services, or a survivor of a deceased retired member of the uniformed services, who is eligible for any benefit from the Department of Defense.

\* \* \* \* \*

**CHAPTER 55—MEDICAL AND DENTAL CARE**

Sec.

1071. Purpose of this chapter.

\* \* \* \* \*

1074b. Medical and dental care: members of, and designated applicants for membership in, Senior ROTC.

【1075. Officers and certain enlisted members: subsistence charges.】

\* \* \* \* \*

【1076b. TRICARE program: coverage for members of the Ready Reserve.】

1076b. TRICARE program: coverage for members of the Ready Reserve.

\* \* \* \* \*

**§ 1074. Medical and dental care for members and certain former members**

(a)(1) \* \* \*

\* \* \* \* \*

(d)(1) For the purposes of this chapter, a dependent of a member of a reserve component of the armed forces who is issued a delayed-effective-date active-duty order, or is covered by such an order, shall be treated as being a dependent of a member on active duty for a period of more than 30 days beginning on [the later of the date that is—

【(A) the date of the issuance of such order; or

【(B) 90 days before the date on which the period of active duty is to commence under such order for that member.】 the date described in paragraph (3).

(2) The Secretary of Defense may, beginning on the date described in paragraph (3), provide a member of a reserve component of the armed forces who is issued a delayed-effective-date active-duty order, or is covered by such an order, such medical and dental care (in addition to care for which the member is eligible under section 1074a(f) of this title or other provisions of law) the Secretary determines appropriate.

(3) The date referred to in paragraphs (1) and (2) with respect to a member is the later of the date that is—

(A) the date of the issuance of the delayed-effective-date active-duty order; or

(B) 90 days before the date on which the period of active duty is to commence under such order for that member.

【(2)】 (4) In this subsection, the term “delayed-effective-date active-duty order” means an order to active duty for a period of more than 30 days in support of a contingency operation under a provi-

sion of law referred to in section 101(a)(13)(B) of this title that provides for active-duty service to begin under such order on a date after the date of the issuance of the order.

[(3) This subsection shall cease to be effective on December 31, 2004.]

\* \* \* \* \*

**§ 1074b. Medical and dental care: members of, and designated applicants for membership in, Senior ROTC**

(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

(1) A member of, and a designated applicant for membership in, Senior ROTC who incurs or aggravates an injury, illness, or disease in the line of duty while performing duties pursuant to section 2109 of this title.

(2) A member of, and a designated applicant for membership in, Senior ROTC who incurs or aggravates an injury, illness, or disease while traveling directly to or from the place at which that member or applicant is to perform or has performed duties pursuant to section 2109 of this title.

(3) Each member of, and each designated applicant for membership in, Senior ROTC who incurs or aggravates an injury, illness, or disease in the line of duty while remaining overnight immediately before the commencement of duties performed pursuant to section 2109 of this title or, while remaining overnight, between successive periods of performing duties pursuant to section 2109 of this title, at or in the vicinity of the site of the duties performed pursuant to section 2109 of this title, if the site is outside reasonable commuting distance from the residence of the member or designated applicant.

(b) A person described in subsection (a) is entitled to—

(1) the medical and dental care appropriate for the treatment of the injury, illness, or disease of that person until the resulting disability cannot be materially improved by further hospitalization or treatment; and

(2) subsistence during hospitalization.

(c) A member of, and each designated applicant for membership in, Senior ROTC is not entitled to benefits under subsection (b) if the injury, illness, or disease or aggravation of an injury, illness, or disease of that person described in subsection (a)(2) is the result of the gross negligence or the misconduct of the member or applicant for membership in Senior ROTC.

(d) In this section, the term “Senior ROTC” means a program under chapter 103 of this title.

\* \* \* \* \*

**§ 1074g. Pharmacy benefits program**

(a) PHARMACY BENEFITS.—(1) \* \* \*

\* \* \* \* \*

(6)(A) The Secretary, in the regulations prescribed under subsection (g), may establish cost sharing requirements (which may be

established as a percentage or fixed dollar amount) under the pharmacy benefits program for generic, formulary, and nonformulary agents. For nonformulary agents, cost sharing shall be consistent with common industry practice and not in excess of amounts generally comparable to 20 percent for beneficiaries covered by section 1079 of this title or 25 percent for beneficiaries covered by section 1086 of this title.

*(B) For a medicare-eligible beneficiary, the cost-sharing requirements may not be in excess of the cost-sharing requirements applicable to all other beneficiaries covered by section 1086 of this title. For purposes of the preceding sentence, a medicare-eligible beneficiary is a beneficiary eligible for health benefits under section 1086 of this title pursuant to subsection (d)(2) of such section.*

\* \* \* \* \*

**§ 1074j. Sub-acute care program**

(a) \* \* \*

(b) BENEFITS.—(1) \* \* \*

\* \* \* \* \*

(3)(A) The program shall include a comprehensive, part-time or intermittent home health care benefit that shall be provided in the manner and under the conditions described in section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)).

*(B) The Secretary of Defense shall establish procedures for the transition to and implementation of the home health care benefit required by subparagraph (A). The Secretary may provide in such procedures that covered beneficiaries who, before the implementation of such benefit, received home health care under this chapter in excess of such benefit, may continue to receive such care for such time as the Secretary considers appropriate.*

\* \* \* \* \*

**§ 1075. Officers and certain enlisted members: subsistence charges**

**[(a) IN GENERAL.—**When an officer or former officer of a uniformed service, or an enlisted member of a uniformed service entitled to basic allowance for subsistence, is hospitalized under section 1074 of this title, he shall pay an amount equal to the part of the charge prescribed under section 1078 of this title that is attributable to subsistence.

**[(b) EXCEPTIONS.—**Subsection (a) shall not apply to any of the following:

**[(1) An enlisted member, or former enlisted member, of a uniformed service who is entitled to retired or retainer pay or equivalent pay.**

**[(2) An officer or former officer of a uniformed service, or an enlisted member or former enlisted member of a uniformed service not described in paragraph (1), who is hospitalized under section 1074 because of an injury incurred (as determined under criteria prescribed by the Secretary of Defense)—**

**[(A) as a direct result of armed conflict;**

**[(B) while engaged in hazardous service;**

[(C) in the performance of duty under conditions simulating war; or  
 [(D) through an instrumentality of war.]

\* \* \* \* \*

**§ 1076a. TRICARE dental program**

(a) \* \* \*

\* \* \* \* \*

(k) ELIGIBLE DEPENDENT DEFINED.—In this section, the term “eligible dependent”—

(1) \* \* \*

(2) includes any such dependent of a member who dies while on active duty for a period of more than 30 days or a member of the Ready Reserve if, on the date of the death of the member, the dependent is enrolled in a dental benefits plan established under subsection (a) or is not enrolled in such a plan by reason of *the dependent’s young age on the date of death of the member* of a discontinuance of a former enrollment under subsection (f), except that the term does not include the dependent after the end of the three-year period beginning on the date of the member’s death.

\* \* \* \* \*

**§ 1076b. TRICARE program: coverage for members of the Ready Reserve**

[(a) ELIGIBILITY.—Each member of the Selected Reserve of the Ready Reserve and each member of the Individual Ready Reserve described in section 10144(b) of this title is eligible, subject to subsection (h), to enroll in TRICARE and receive benefits under such enrollment for any period that the member—

[(1) is an eligible unemployment compensation recipient;

or

[(2) is not eligible for health care benefits under an employer-sponsored health benefits plan.

[(b) TYPES OF COVERAGE.—(1) A member eligible under subsection (a) may enroll for either of the following types of coverage:

[(A) Self alone coverage.

[(B) Self and family coverage.

[(2) An enrollment by a member for self and family covers the member and the dependents of the member who are described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

[(c) OPEN ENROLLMENT PERIODS.—The Secretary of Defense shall provide for at least one open enrollment period each year. During an open enrollment period, a member eligible under subsection (a) may enroll in the TRICARE program or change or terminate an enrollment in the TRICARE program.

[(d) SCOPE OF CARE.—(1) A member and the dependents of a member enrolled in the TRICARE program under this section shall be entitled to the same benefits under this chapter as a member of the uniformed services on active duty or a dependent of such a member, respectively.

[(2) Section 1074(c) of this title shall apply with respect to a member enrolled in the TRICARE program under this section.

[(e) PREMIUMS.—(1) The Secretary of Defense shall charge premiums for coverage pursuant to enrollments under this section. The Secretary shall prescribe for each of the TRICARE program options a premium for self alone coverage and a premium for self and family coverage.

[(2) The monthly amount of the premium in effect for a month for a type of coverage under this section shall be the amount equal to 28 percent of the total amount determined by the Secretary on an appropriate actuarial basis as being reasonable for the coverage.

[(3) The premiums payable by a member under this subsection may be deducted and withheld from basic pay payable to the member under section 204 of title 37 or from compensation payable to the member under section 206 of such title. The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums by members not entitled to such basic pay or compensation.

[(4) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subparagraph (B) of such section for such fiscal year.

[(f) OTHER CHARGES.—A person who receives health care pursuant to an enrollment in a TRICARE program option under this section, including a member who receives such health care, shall be subject to the same deductibles, copayments, and other nonpremium charges for health care as apply under this chapter for health care provided under the same TRICARE program option to dependents described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

[(g) TERMINATION OF ENROLLMENT.—(1) A member enrolled in the TRICARE program under this section may terminate the enrollment only during an open enrollment period provided under subsection (c), except as provided in subsection (h).

[(2) An enrollment of a member for self alone or for self and family under this section shall terminate on the first day of the first month beginning after the date on which the member ceases to be eligible under subsection (a).

[(3) The enrollment of a member under this section may be terminated on the basis of failure to pay the premium charged the member under this section.

[(h) RELATIONSHIP TO TRANSITION TRICARE COVERAGE UPON SEPARATION FROM ACTIVE DUTY.—(1) A member may not enroll in the TRICARE program under this section while entitled to transitional health care under subsection (a) of section 1145 of this title or while authorized to receive health care under subsection (c) of such section.

[(2) A member who enrolls in the TRICARE program under this section within 90 days after the date of the termination of the member's entitlement or eligibility to receive health care under subsection (a) or (c) of section 1145 of this title may terminate the enrollment at any time within one year after the date of the enrollment.

[(i) CERTIFICATION OF NONCOVERAGE BY OTHER HEALTH BENEFITS PLAN.—The Secretary of Defense may require a member to

submit any certification that the Secretary considers appropriate to substantiate the member's assertion that the member is not covered for health care benefits under any other health benefits plan.

【(j) ELIGIBLE UNEMPLOYMENT COMPENSATION RECIPIENT DEFINED.—In this section, the term “eligible unemployment compensation recipient” means, with respect to any month, any individual who is determined eligible for any day of such month for unemployment compensation under State law (as defined in section 205(9) of the Federal-State Extended Unemployment Compensation Act of 1970), including Federal unemployment compensation laws administered through the State.

【(k) REGULATIONS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.

【(l) TERMINATION OF AUTHORITY.—An enrollment in TRICARE under this section may not continue after December 31, 2004.】

**§ 1076b. TRICARE demonstration project: coverage for members of the Ready Reserve**

(a) *IN GENERAL.—(1) The Secretary of Defense shall conduct a demonstration project beginning in fiscal year 2005 to test whether TRICARE coverage for certain Ready Reserve members and their families enhances medical readiness and retention of such members.*

(2) *Under the demonstration project required by paragraph (1), within the scope of the project, as established by the Secretary, members of the Ready Reserve may be allowed to enroll for coverage under the TRICARE Standard option of the TRICARE program and receive benefits under such enrollment for any period that the member—*

(A) *is not eligible for health care benefits under an employer-sponsored health benefits plan; and*

(B) *either—*

(i) *is not on active duty; or*

(ii) *is on active duty but under a call or order to active duty for a period of 30 days or less.*

(3) *A member allowed to enroll in TRICARE Standard under the demonstration project may enroll for self-only coverage or self and family coverage.*

(b) *SCOPE OF COVERAGE.—A member and the dependents of a member enrolled in TRICARE Standard under this section shall be entitled to the same benefits and shall pay the same charges as are provided under section 1079 of this title.*

(c) *PREMIUMS.—(1) The Secretary of Defense shall charge premiums for coverage pursuant to enrollments under this section. The Secretary shall prescribe a premium for self only coverage and a premium for self and family coverage.*

(2) *The monthly amount of the premium in effect for a month for a type of coverage under this section shall be the amount equal to 28 percent of the total amount determined by the Secretary on an appropriate actuarial basis as being reasonable for the coverage.*

(3) *The premiums payable by a member under this subsection may be deducted and withheld from basic pay payable to the member under section 204 of title 37 or from compensation payable to the member under section 206 of such title. The Secretary shall prescribe the requirements and procedures applicable to the payment of*

premiums by members not entitled to such basic pay or compensation.

(4) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subparagraph (B) of such section for such fiscal year.

(d) *CONDITIONS OF ELIGIBILITY.*—(1) The Secretary of Defense may establish other conditions of eligibility, including requiring a member to submit any certification that the Secretary considers appropriate to substantiate the member’s assertion that the member is not eligible for health care benefits under any other health benefits plan.

(2) In the case of any member who is self-employed and not eligible for coverage under any other employer-sponsored health benefits plan, the member shall not be considered eligible to enroll under this section if the member’s income in the prior calendar year exceeded \$40,000.

(e) *SCOPE AND TERMS OF DEMONSTRATION PROJECT.*—The geographic scope and priorities for enrollment under the demonstration program, if any, shall be established by the Secretary of Defense. The Secretary may establish such other terms and conditions for the demonstration project required by subsection (a) as the Secretary determines appropriate to accomplish its purposes.

(f) *TERMINATION OF AUTHORITY.*—An enrollment in TRICARE under this section may not continue after December 31, 2007.

(g) *EVALUATION OF DEMONSTRATION AND REPORT TO CONGRESS.*—Not later than March 1, 2007, the Secretary shall provide to Congress a report on the results of the demonstration project required by this section. Such report shall include an analysis of the impact of the demonstration on medical readiness and retention of the members who enrolled, an assessment of the costs and benefits of any improvements in medical readiness or retention, and recommendations concerning TRICARE Standard coverage for Ready Reserve members.

(h) *DEFINITION.*—In this section, the term “TRICARE Standard” means the option of the TRICARE program that is also known as the Civilian Health and Medical Program of the Uniformed Services, as defined in section 1072(4) of this title.

**§ 1076c. Dental insurance plan: certain retirees and their surviving spouses and other dependents**

(a) \* \* \*

\* \* \* \* \*

(b) *PERSONS ELIGIBLE FOR PLAN.*—The following persons are eligible to enroll in the dental insurance plan established under subsection (a):

(1) \* \* \*

\* \* \* \* \*

(6) A person who—

(i) is an unremarried former spouse of a member described in paragraph (1) or (2);

(i) is described in section 1072(2)(F)(i) of this title; and

(ii) does not have dental coverage under an employer-sponsored health plan.

\* \* \* \* \*

**§ 1077. Medical care for dependents: authorized care in facilities of uniformed services**

(a) \* \* \*

\* \* \* \* \*

(c)[A] (1) Except as provided in paragraph (2), a dependent participating under a dental plan established under section 1076a of this title may not be provided dental care under section 1076(a) of this title except for emergency dental care, dental care provided outside the United States, and dental care that is not covered by such plan.

(2)(A) Dependents who have not attained age 13 and who are participating under a dental plan established under section 1076a of this title may be treated by post-graduate dental students in eligible dental treatment facilities if—

(i)(I) treatment of pediatric dental patients is required to comply with American Dental Association accreditation standards; or

(II) pediatric dental training is required to enable post-graduate dental students to provide dental care for such dependents outside the United States; and

(ii) there are insufficient numbers of children eligible to be provided dental care under section 1076(a) of this title to meet such standards or training requirements.

(B) The total number of dependents who may be treated under this paragraph may not exceed 2,000 in any fiscal year.

(C) In this paragraph, an eligible dental treatment facility is a dental treatment facility with a post-graduate dental education program accredited by the American Dental Association.

\* \* \* \* \*

**§ 1079. Contracts for medical care for spouses and children: plans**

(a) \* \* \*

\* \* \* \* \*

(h)(1) \* \* \*

\* \* \* \* \*

(4)(A) \* \* \*

\* \* \* \* \*

(C) In the case of services billed to a dependent referred to in subsection (a) of a member of a reserve component who is ordered to active duty for a period of more than 30 days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of this title, the regulations shall provide that, in addition to amounts otherwise payable by the United States, the Secretary may pay the amount referred to in subparagraph (B)(i) for the services.

\* \* \* \* \*



(p)(1) \* \* \*

\* \* \* \* \*

(4) *The Secretary of Defense may provide for coverage of a dependent referred to in subsection (a) who is not described in paragraph (3) if the Secretary determines that exceptional circumstances warrant such coverage.*

[(4)] (5) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this subsection.

\* \* \* \* \*

**§ 1095d. TRICARE program: waiver of certain deductibles**

(a) WAIVER AUTHORIZED.—The Secretary of Defense may waive the deductible payable for medical care provided under the TRICARE program to an eligible dependent of—

(1) a member of a reserve component on active duty pursuant to a call or order to active duty for a period of [less than one year] *more than 30 days*; or

(2) a member of the National Guard on full-time National Guard duty pursuant to a call or order to full-time National Guard duty for a period of [less than one year] *more than 30 days*.

\* \* \* \* \*

**§ 1096. Military-civilian health services partnership program**

(a) \* \* \*

\* \* \* \* \*

(c) COMPUTATION OF CHARGES.—A covered beneficiary *who is a dependent*, with respect to care provided to such beneficiary in facilities of the uniformed services under a sharing agreement entered into under subsection (a), [shall pay—

[(1) in the case of a dependent, the charges prescribed by section 1078 of this title; and

[(2) in the case of a member or former member entitled to retired or retainer pay, the charges prescribed by section 1075 of this title.] *shall pay the charges prescribed by section 1078 of this title.*

\* \* \* \* \*

**§ 1108. Health care coverage through Federal Employees Health Benefits program: demonstration project**

(a) \* \* \*

\* \* \* \* \*

(e) PROHIBITION AGAINST USE OF MTFs AND ENROLLMENT UNDER TRICARE.—Covered beneficiaries under this chapter who are provided coverage under the demonstration project shall not be eligible to receive care at a military medical treatment facility or to enroll in a [health] *health* care plan under the TRICARE program.

\* \* \* \* \*

**CHAPTER 56—DEPARTMENT OF DEFENSE MEDICARE-  
ELIGIBLE RETIREE HEALTH CARE FUND**

\* \* \* \* \*

**§ 1111. Establishment and purpose of Fund; definitions; authority to enter into agreements**

(a) \* \* \*

\* \* \* \* \*

(c) The Secretary of Defense shall enter into an agreement with each other administering Secretary (as defined in section 1072(3) of this title) for participation in the Fund by a uniformed service under the jurisdiction of that Secretary. The agreement shall require that Secretary to determine contributions to the Fund on behalf of the members of the uniformed service under the jurisdiction of that Secretary in a manner comparable to the determination with respect to contributions to the Fund made by the Secretary of Defense under section **1116** of this title, and such administering Secretary may make such contributions. *1115(b) of this title, and such contributions shall be paid into the Fund as provided in section 1116(a).*

\* \* \* \* \*

**§ 1115. Determination of contributions to the Fund**

(a) The Board shall determine the amount that is the present value (as of October 1, 2002) of future benefits payable from the Fund that are attributable to service in the participating uniformed services performed before October 1, 2002. That amount is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section **1116(c)** *1116* of this title.

(b)**(1)** The Secretary of Defense shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1116(a) of this title. *The Secretary of Defense shall determine, before the beginning of each fiscal year after September 30, 2005, the total amount of the Department of Defense contribution to be made to the Fund for that fiscal year for purposes of section 1116(b)(2).* That amount shall be the sum of the following:

**(A)** *(1)* The product of—

**(i)** *(A)* the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

**(ii)** *(B)* the expected average force strength during that fiscal year for members of the uniformed services under the jurisdiction of the Secretary of Defense on active duty (other than active duty for training) and full-time Na-

tional Guard duty (other than full-time National Guard duty for training only).

[(B)] (2) The product of—

[(i)] (A) the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

[(ii)] (B) the expected average force strength during that fiscal year for members of the Ready Reserve of the uniformed services under the jurisdiction of the Secretary of Defense (other than members on full-time National Guard duty other than for training) who are not otherwise described in [subparagraph (A)(ii)] *paragraph (1)(B)*.

[(2) The amount determined under paragraph (1) for any fiscal year is the amount needed to be appropriated to the Department of Defense (or to the other executive department having jurisdiction over the participating uniformed service) for that fiscal year for payments to be made to the Fund during that year under section 1116(a) of this title. The President shall include not less than the full amount so determined in the budget transmitted to Congress for that fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.]

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of the Fund. Each such actuarial valuation shall include—

(A) \* \* \*

\* \* \* \* \*

Such single level dollar amounts shall be used for the purposes of subsection (b) [and section 1116(a) of this title]. The Secretary of Defense may determine a separate single level dollar amount under subparagraph (A) or (B) for any participating uniformed service, if, in the judgment of the Secretary, such a determination would produce a more accurate and appropriate actuarial valuation for that uniformed service.

\* \* \* \* \*

(5) Contributions to the Fund in accordance with amortization schedules under paragraphs (2), (3), and (4) shall be made as provided in section [1116(c)] 1116 of this title.

\* \* \* \* \*

**[§ 1116. Payments into the Fund**

[(a) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that, subject to subsection (b), is the sum of the following:

[(1) The product of—

[(A) the monthly dollar amount determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1115(c)(1)(A) of this title (except that any statutory change in the uniformed services retiree health care programs for medicare-eligible beneficiaries

that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

【(B) the total end strength for that month for members of the uniformed services under the jurisdiction of the Secretary of Defense on active duty (other than active duty for training) and full-time National Guard duty (other than full-time National Guard duty for training).

【(2) The product of—

【(A) the level monthly dollar amount determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1115(c)(1)(B) of this title (except that any statutory change in the uniformed services retiree health care programs for medicare-eligible beneficiaries that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

【(B) the total end strength for that month for members of the Ready Reserve of the uniformed services under the jurisdiction of the Secretary of Defense other than members on full-time National Guard duty (other than for training) who are not otherwise described in paragraph (1)(B).

【(b) If an actuarial valuation referred to in paragraph (1) or (2) of subsection (a) has been calculated as a separate single level dollar amount for a participating uniformed service under section 1115(c)(1) of this title, the administering Secretary for the department in which such uniformed service is operating shall calculate the amount under such paragraph separately for such uniformed service. If the administering Secretary is not the Secretary of Defense, the administering Secretary shall notify the Secretary of Defense of the amount so calculated. To determine a single amount for the purpose of paragraph (1) or (2) of subsection (a), as the case may be, the Secretary of Defense shall aggregate the amount calculated under this subsection for a uniformed service for the purpose of such paragraph with the amount or amounts calculated (whether separately or otherwise) for the other uniformed services for the purpose of such paragraph.

【(c)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount certified to the Secretary by the Secretary of Defense under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal year required by sections 1115(a) and 1115(c) of this title.

【(2) At the beginning of each fiscal year the Secretary of Defense shall determine the sum of the following:

【(A) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1115(a) of this title for the amortization of the original unfunded liability of the Fund.

【(B) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(2) of this

title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

[(C) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial assumption changes.

[(D) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(4) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial experience.

[(3) The Secretary of Defense shall promptly certify the amount determined under paragraph (2) each year to the Secretary of the Treasury.

[(d) Amounts paid into the Fund under subsection (a) shall be paid from funds available for the pay of members of the participating uniformed services under the jurisdiction of the respective administering Secretaries.]

**§ 1116. Payments into the Fund**

*(a) At the beginning of each fiscal year after September 30, 2005, the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury—*

*(1) the amount certified to the Secretary by the Secretary of Defense under subsection (c), which shall be the contribution to the Fund for that fiscal year required by section 1115; and*

*(2) the amount determined by each administering Secretary under section 1111(c) as the contribution to the Fund on behalf of the members of the uniformed services under the jurisdiction of that Secretary.*

*(b) At the beginning of each fiscal year, the Secretary of Defense shall determine the sum of the following:*

*(1) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1115(a) of this title for the amortization of the original unfunded liability of the Fund.*

*(2) The amount (including any negative amount) of the Department of Defense contribution for that year as determined by the Secretary of Defense under section 1115(b) of this title.*

*(3) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.*

*(4) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial assumption changes.*

*(5) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(4) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial experience.*

(c) *The Secretary of Defense shall promptly certify the amount determined under subsection (b) each year to the Secretary of the Treasury.*

\* \* \* \* \*

**CHAPTER 57—DECORATIONS AND AWARDS**

Sec. 1121.	Legion of Merit: award.						
		*	*	*	*	*	*
1134.	<i>Joint professional military education ribbon: award.</i>						
1134.	<i>Civilian medals or decorations of the Department of Defense.</i>						
		*	*	*	*	*	*

**§ 1134. Joint professional military education ribbon: award**

(a) *JPME I.—The Secretary of Defense may award a ribbon, of appropriate design, as approved by the Secretary, to any person who successfully completes a program of instruction approved by the Secretary as qualifying for credit as the Joint Professional Military Education Phase I program of instruction.*

(b) *JPME II.—The Secretary of Defense may award a device, of appropriate design, as approved by the Secretary, for wear with the ribbon awarded under subsection (a), to any person who successfully completes a program of instruction approved by the Secretary as qualifying for credit as the Joint Professional Military Education Phase II course of instruction.*

**§ 1134. Civilian medals or decorations of the Department of Defense**

(a) *PROHIBITION.—Except with the written permission of the Secretary of Defense or when authorized by regulations, no person may knowingly—*

- (1) *wear; or*
- (2) *use, in connection with any merchandise, retail product, impersonation, solicitation, or commercial activity; medals, decorations, or other insignia awarded by the Secretary of Defense to recognize Department of Defense civilian employees and other individuals who render service to the Department of Defense.*

(b) *AUTHORITY TO ENJOIN VIOLATIONS.—Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other actions as is warranted, including imposing a civil penalty not to exceed \$25,000 for each violation, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.*

**CHAPTER 58—BENEFITS AND SERVICES FOR MEMBERS BEING SEPARATED OR RECENTLY SEPARATED**

\* \* \* \* \*

**§ 1145. Health benefits**

(a) TRANSITIONAL HEALTH CARE.—(1) \* \* \*

\* \* \* \* \*

[(3) Transitional health care shall be available under subsection (a) for a specified time period beginning on the date on which the member is separated as follows:

[(A) For members separated with less than six years of active service, 60 days.

[(B) For members separated with six or more years of active service, 120 days.]

(3) *Transitional health care shall be available under this subsection for a period beginning on the date on which the member is separated from active duty and ending on the earlier of—*

(A) *180 days after the date on which the member is separated from active duty; or*

(B) *the date on which the member and dependents of the member are covered by a health plan sponsored by an employer.*

\* \* \* \* \*

**CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY**

Sec.	
1201.	Regulars and members on active duty for more than 30 days: retirement.
	* * * * *
1206a.	<i>Reserve component members unable to perform duties when ordered to active duty: disability system processing.</i>
	* * * * *
1217.	Cadets, midshipmen, and aviation cadets: chapter does not apply to.
1217.	<i>Cadets, midshipmen, and aviation cadets: applicability of chapter.</i>
	* * * * *

**§ 1206a. Reserve component members unable to perform duties when ordered to active duty: disability system processing**

(a) *MEMBERS RELEASED FROM ACTIVE DUTY WITHIN 30 DAYS.—A member of a reserve component who is ordered to active duty for a period of more than 30 days and is released from active duty within 30 days of commencing such period of active duty for a reason stated in subsection (b) shall be considered for all purposes under this chapter to have been serving under an order to active duty for a period of 30 days or less.*

(b) *APPLICABLE REASONS FOR RELEASE.—Subsection (a) applies in the case of a member released from active duty because of a failure to meet—*

- (1) *physical standards for retention; or*
- (2) *medical or dental standards for deployment due to a preexisting condition not aggravated during the period of active duty.*

(c) *SAVINGS PROVISION FOR MEDICAL CARE PROVIDED WHILE ON ACTIVE DUTY.—Notwithstanding subsection (a), any benefit under chapter 55 of this title received by a member described in subsection (a) or a dependent of such member before or during the*

*period of active duty shall not be subject to recoupment or otherwise affected.*

\* \* \* \* \*

**§ 1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to**

【This chapter does not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or to midshipmen of the Navy.】

**§ 1217. Cadets, midshipmen, and aviation cadets: applicability of chapter**

*(a) This chapter applies to cadets at the United States Military Academy, the United States Air Force Academy, and the United States Coast Guard Academy and midshipmen of the Navy, but only with respect to physical disabilities incurred after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005.*

*(b) Monthly cadet pay and monthly midshipman pay under section 203(c) of title 37 shall be considered to be basic pay for purposes of this chapter and the computation of retired pay and severance and separation pay to which entitlement is established under this chapter.*

\* \* \* \* \*

**CHAPTER 63—RETIREMENT FOR AGE**

\* \* \* \* \*

**§ 1251. Age 62: regular commissioned officers; exceptions**

(a) \* \* \*

(b) Notwithstanding subsection (a), the President may defer the retirement of an officer serving in a position that carries a grade above major general or rear admiral, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes **【64】** 66 years of age. Not more than ten deferments of retirement under this subsection may be in effect at any one time.

\* \* \* \* \*

**CHAPTER 69—RETIRED GRADE**

\* \* \* \* \*

**§ 1370. Commissioned officers: general rule; exceptions**

(a) **RULE FOR RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—**(1) Unless entitled to a higher retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, **【except as provided in paragraph (2)】** *subject to paragraphs (2) and (3)*, be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned**【, for not less than six months】**.



[(2)(A) In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander, a commissioned officer of the Army, Navy, Air Force, or Marine Corps must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years.]

[(B) In the case of an officer to be retired in a general or flag officer grade, authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be exercised with respect to that officer only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.]

[(C) Authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be delegated within that military department only to a civilian official of that military department appointed by the President, by and with the advice and consent of the Senate.]

[(D) The President may waive subparagraph (A) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.]

[(E) In the case of a grade below the grade of lieutenant general or vice admiral, the number of members of one of the armed forces in that grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under this paragraph may not exceed the number equal to two percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade.]

*(2) In order to be eligible for voluntary retirement under this title in a grade below the grade of lieutenant colonel or commander, a commissioned officer of the Army, Navy, Air Force, or Marine Corps covered by paragraph (1) must have served on active duty in that grade for not less than six months.*

*(3)(A) In order to be eligible for voluntary retirement in a grade above major or lieutenant commander and below brigadier general or rear admiral (lower half), a commissioned officer of the Army, Navy, Air Force, or Marine Corps covered by paragraph (1) must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of the military department concerned to reduce such period to a period not less than two years.*

*(B) In order to be eligible for voluntary retirement in a grade above colonel or captain, in the case of the Navy, a commissioned officer of the Army, Navy, Air Force, or Marine Corps covered by paragraph (1) must have served on active duty in that grade for not less than one year.*

*(C) An officer in a grade above major general or rear admiral may be retired in the highest grade in which the officer served on active duty satisfactorily for not less than one year, upon approval by the Secretary of the military department concerned and concurrence by the Secretary of Defense. The function of the Secretary of Defense under the preceding sentence may only be delegated to a ci-*

*vilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.*

*(D) The President may waive subparagraph (A), (B) or (C) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.*

[(3)] (4) A reserve or temporary officer who is notified that he will be released from active duty without his consent and thereafter requests retirement under section 3911, 6323, or 8911 of this title and is retired pursuant to that request is considered for purposes of this section, to have been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) RETIREMENT IN NEXT LOWER GRADE.—An officer whose length of service in the highest grade he held while on active duty does not meet the service in grade requirements specified in subsection (a) or whose service on active duty in that grade was not determined to be satisfactory by the Secretary of the military department concerned shall be retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

[(c) OFFICERS IN O-9 AND O-10 GRADES.—(1) An officer who is serving in or has served in the grade of general or admiral or lieutenant general or vice admiral may be retired in that grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and Congress that the officer served on active duty satisfactorily in that grade.

[(2) In the case of an officer covered by paragraph (1), the three-year service-in-grade requirement in paragraph (2)(A) of subsection (a) may not be reduced or waived under that subsection—

[(A) while the officer is under investigation for alleged misconduct; or

[(B) while there is pending the disposition of an adverse personnel action against the officer for alleged misconduct.

[(3)(A) The Secretary of Defense may delegate authority to make a certification with respect to an officer under paragraph (1) only to the Under Secretary of Defense for Personnel and Readiness or the Deputy Under Secretary of Defense for Personnel and Readiness.

[(B) If authority is delegated under subparagraph (A) and, in the course of consideration of an officer for a certification under paragraph (1), the Under Secretary or (if such authority is delegated to both the Under and Deputy Under Secretary) the Deputy Under Secretary makes a determination described in subparagraph (C) with respect to that officer, the Under Secretary or Deputy Under Secretary, as the case may be, may not exercise the delegated authority in that case, but shall refer the matter to the Secretary of Defense, who shall personally determine whether to issue a certification under paragraph (1) with respect to that officer.

[(C) A determination referred to in subparagraph (B) is a determination that there is potentially adverse information concerning an officer and that such information has not previously been submitted to the Senate in connection with the consideration

by the Senate of a nomination of that officer for an appointment for which the advice and consent of the Senate is required.】

【(d)】 (c) RESERVE OFFICERS.—(1) \* \* \*

\* \* \* \* \*

(3)(A)(i) In order to be credited with satisfactory service in an officer grade above major or lieutenant commander *and below brigadier general or rear admiral (lower half)*, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than three years, *except that the Secretary of Defense may authorize the Secretary of the military department concerned to reduce such period to a period not less than two years.*

(ii) *In order to be credited with satisfactory service in a grade above colonel or captain, in the case of the Navy, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in active status, or in a retired status on active duty, for not less than one year.*

(iii) *An officer covered by paragraph (1) who is in a grade above the grade of major general or rear admiral may be retired in the highest grade in which the officer served satisfactorily for not less than one year, upon approval by the Secretary of the military department concerned and concurrence by the Secretary of Defense. The function of the Secretary of Defense under the preceding sentence may only be delegated to a civilian official in the Office of the Secretary of Defense appointed by the president, by and with the advice and consent of the Senate.*

\* \* \* \* \*

(D) To the extent authorized by the Secretary of the military department concerned, a person who, after having been recommended for promotion in a report of a promotion board but before being promoted to the recommended grade, served in a position for which that grade is the minimum authorized grade may be credited for purposes of subparagraph (A)(i) as having served in that grade for the period for which the person served in that position while in the next lower grade. The period credited may not include any period before the date on which the Senate provides advice and consent for the appointment of that person in the recommended grade.

(E) To the extent authorized by the Secretary of the military department concerned, a person who, after having been found qualified for Federal recognition in a higher grade by a board under section 307 of title 32, serves in a position for which that grade is the minimum authorized grade and is appointed as a reserve officer in that grade may be credited for the purposes of subparagraph (A)(i) as having served in that grade. The period of the service for which credit is afforded under the preceding sentence may only be the period for which the person served in the position after the Senate provides advice and consent for the appointment.

【(F) A person covered by subparagraph (A) who has completed at least six months of satisfactory service in a grade above colonel or (in the case of the Navy) captain and, while serving in an active

status in such grade, is involuntarily transferred (other than for cause) from active status may be credited with satisfactory service in the grade in which serving at the time of such transfer, notwithstanding failure of the person to complete three years of service in that grade.】

\* \* \* \* \*

【(5)(A) The Secretary of Defense may authorize the Secretary of a military department to reduce the 3-year period required by paragraph (3)(A) to a period not less than two years.

【(B) In the case of a person who, upon transfer to the Retired Reserve or discharge, is to be credited with satisfactory service in a general or flag officer grade under paragraph (1), authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be exercised with respect to that person only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.

【(C) Authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be delegated within that military department only to a civilian official of that military department appointed by the President, by and with the advice and consent of the Senate.

【(6) The number of reserve commissioned officers of an armed force in the same grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under paragraph (5) may not exceed the number equal to 2 percent of the strength authorized for that fiscal year for reserve commissioned officers of that armed force in an active status in that grade.

【(e) ADVANCE NOTICE TO CONGRESSIONAL COMMITTEES.—(1) In the case of an officer to be retired in a grade that is a general or flag officer grade who is eligible to retire in that grade only by reason of an exercise of authority under paragraph (2) of subsection (a) to reduce the three-year service-in-grade requirement otherwise applicable under that paragraph, the Secretary of Defense, before the officer is retired in that grade, shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the exercise of authority under that paragraph with respect to that officer.

【(2) In the case of a person to be credited under subsection (d) with satisfactory service in a grade that is a general or flag officer grade who is eligible to be credited with such service in that grade only by reason of an exercise of authority under paragraph (5) of that subsection to reduce the three-year service-in-grade requirement otherwise applicable under paragraph (3)(A) of that subsection, the Secretary of Defense, before the person is credited with such satisfactory service in that grade, shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the exercise of authority under paragraph (5) of that subsection with respect to that officer.

【(3) In the case of an officer to whom subsection (c) applies, the requirement for notification under paragraph (1) is satisfied if the

notification is included in the certification submitted with respect to that officer under paragraph (1) of such subsection.】

\* \* \* \* \*

**CHAPTER 71—COMPUTATION OF RETIRED PAY**

\* \* \* \* \*

**§ 1406. Retired pay base for members who first became members before September 8, 1980: final basic pay**

(a) \* \* \*

\* \* \* \* \*

(g) COMMISSIONED CORPS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—In the case of an officer whose retired pay is computed under section 【305】 245 of the National Oceanic and Atmospheric Administration Commissioned Officers Act of 2002 (33 U.S.C. 3045), the retired pay base is the basic pay of the rank with which the officer retired.

\* \* \* \* \*

(i) SPECIAL RULE FOR FORMER CHAIRMEN AND VICE CHAIRMEN OF THE JCS, CHIEFS OF SERVICE, COMMANDERS OF COMBATANT COMMANDS, AND SENIOR ENLISTED MEMBERS.—

(1) \* \* \*

(2) EXCEPTION FOR 【MEMBERS REDUCED IN GRADE OR WHO DO NOT SERVE SATISFACTORILY】 ENLISTED MEMBERS REDUCED IN GRADE.—Paragraph (1) does not apply in the case of 【a member】 an enlisted member who, while or after serving in a position specified in that paragraph and by reason of conduct occurring after October 16, 【1998—

【(A) in the case of an enlisted member, is reduced in】 1998, is reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or other administrative process【; or】.

【(B) in the case an officer, is not certified by the Secretary of Defense under section 1370(c) of this title as having served on active duty satisfactorily in the grade of general or admiral, as the case may be, while serving in that position.】

\* \* \* \* \*

**CHAPTER 73—ANNUITIES BASED ON RETIRED OR RETAINER PAY**

Subchapter	Sec.
I. Retired Serviceman's Family Protection Plan .....	1431
* * * * *	
【III. Supplemental Survivor Benefit Plan .....	1456】
* * * * *	

**SUBCHAPTER II—SURVIVOR BENEFIT PLAN**

\* \* \* \* \*

**§ 1448. Application of Plan**

(a) \* \* \*

- (b) INSURABLE INTEREST AND FORMER SPOUSE COVERAGE.—
  - (1) COVERAGE FOR PERSON WITH INSURABLE INTEREST.—
    - (A) \* \* \*

\* \* \* \* \*

(F) VITIATION OF ELECTION BY DISABILITY RETIREE WHO DIES OF DISABILITY-RELATED CAUSE.—If a member retired [on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004] *after November 23, 2003*, under chapter 61 of this title dies within one year after the date on which the member is so retired and the cause of death is related to a disability for which the member was retired under that chapter (as determined under regulations prescribed by the Secretary of Defense)—

- (i) \* \* \*

\* \* \* \* \*

- (d) COVERAGE FOR SURVIVORS OF MEMBERS WHO DIE ON ACTIVE DUTY.—

- (1) \* \* \*
- (2) DEPENDENT CHILDREN.—
  - (A) \* \* \*

(B) OPTIONAL ANNUITY WHEN THERE IS AN ELIGIBLE SURVIVING SPOUSE.—In the case of a member described in paragraph (1) who dies [on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004] *after November 23, 2003*, and for whom there is a surviving spouse eligible for an annuity under paragraph (1), the Secretary may pay an annuity under this subchapter to the member's dependent children under section 1450(a)(3) of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).

\* \* \* \* \*

- (6) DEEMED ELECTION.—
  - (A) ANNUITY FOR DEPENDENT.—In the case of a member described in paragraph (1) who dies [on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004] *after November 23, 2003*, the Secretary concerned may, if no other annuity is payable on behalf of the member under this subchapter, pay an annuity to a natural person who has an insurable interest in such member as if the annuity were elected by the member under subsection (b)(1). The Secretary concerned may pay such an annuity under this paragraph only in the case of a person who is a dependent of that member (as defined in section 1072(2) of this title).

\* \* \* \* \*

**§ 1451. Amount of annuity**

(a) COMPUTATION OF ANNUITY FOR A SPOUSE, FORMER SPOUSE, OR CHILD.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) \* \* \*

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to **35 percent** of the base amount. *the product of the base amount and the percent applicable to the month, as follows:*

*(I) For a month before October 2005, the applicable percent is 35 percent.*

*(II) For months after September 2005 and before April 2006, the applicable percent is 40 percent.*

*(III) For months after March 2006 and before April 2007, the applicable percent is 45 percent.*

*(IV) For months after March 2007 and before April 2008, the applicable percent is 50 percent.*

*(V) For months after March 2008, the applicable percent is 55 percent.*

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if **at the time the beneficiary becomes entitled to the annuity,** computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) \* \* \*

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

*(I) is less than **35 percent** the percent specified under subsection (a)(1)(B)(i) as being applicable for the month; and*

\* \* \* \* \*

(c) ANNUITIES FOR SURVIVORS OF CERTAIN PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.—

(1) IN GENERAL.—In the case of an annuity provided under section 1448(d) or 1448(f) of this title, the amount of the annuity shall be determined as follows:

(A) \* \* \*

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the person receiving the annuity (other than a dependent child) is 62 years of age or older when the member or former member dies, the monthly annuity shall be the amount equal to [35 percent] *the applicable percent* of the retired pay to which the member or former member would have been entitled as determined under subparagraph (A). *The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for that month.*

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if[, at the time the beneficiary becomes entitled to the annuity,] computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

\* \* \* \* \*

(d) REDUCTION OF ANNUITIES AT AGE 62.—

(1) \* \* \*

(2) AMOUNT OF ANNUITY AS REDUCED.—

(A) [35 PERCENT ANNUITY.—] *COMPUTATION OF ANNUITY.*—Except as provided in subparagraph (B), the reduced amount of the annuity shall be the amount of the annuity that the person would be receiving on that date if the annuity had initially been computed under subparagraph (B) of that subsection.

\* \* \* \* \*

SUBCHAPTER III—SUPPLEMENTAL SURVIVOR BENEFIT PLAN

\* \* \* \* \*

**§ 1457. Supplemental spouse coverage: payment of annuity; amount**

(a) \* \* \*

(b) AMOUNT OF ANNUITY FOR BENEFICIARY OF PERSON PROVIDING STANDARD ANNUITY UNDER SBP.—In the case of a person providing a standard annuity for a spouse or former spouse beneficiary under the Survivor Benefit Plan and providing a supplemental spouse annuity for that beneficiary under this subchapter, the monthly annuity payable to the beneficiary under this subchapter shall be the amount equal to [5, 10, 15, or 20 percent] *the applicable percent* of the base amount under the Survivor Benefit Plan of the person providing the annuity, as specified by that person when electing to provide the annuity. *The percent used for the computation shall be an even multiple of 5 percent and, whatever*



*the percent specified in the election, may not exceed 20 percent for months before October 2005, 15 percent for months after September 2005 and before April 2006, 10 percent for months after March 2006 and before April 2007, and 5 percent for months after March 2007 and before April 2008. The annuity shall be computed as of the date of the death of the person providing the annuity, notwithstanding that the annuity is not payable at that time by reason of subsection (a).*

\* \* \* \* \*

**§ 1458. Supplemental spouse coverage: eligible participants; elections of coverage**

(a) \* \* \*

\* \* \* \* \*

(j) **VITIATION OF ELECTION BY DISABILITY RETIREE WHO DIES OF DISABILITY-RELATED CAUSE.**—If a member retired [on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004] *after November 23, 2003*, under chapter 61 of this title dies within one year after the date on which the member is so retired and the cause of death is related to a disability for which the member was retired under that chapter (as determined under regulations prescribed by the Secretary of Defense)—

(1) \* \* \*

\* \* \* \* \*

[Effective April 1, 2008, subchapter III of chapter 73 is repealed.]

**[SUBCHAPTER III—SUPPLEMENTAL SURVIVOR BENEFIT PLAN**

- [Sec. 1456. Supplemental spouse coverage: establishment of plan; definitions.
- [1457. Supplemental spouse coverage: payment of annuity; amount.
- [1458. Supplemental spouse coverage: eligible participants; elections of coverage.
- [1459. Former spouse coverage: special rules.
- [1460. Supplemental spouse coverage: reductions in retired pay.
- [1460a. Incorporation of certain administrative provisions.
- [1460b. Regulations.

**[§ 1456. Supplemental spouse coverage: establishment of plan; definitions**

[(a) **ESTABLISHMENT OF SUPPLEMENTAL SURVIVOR BENEFIT PLAN.**—

[(1) **PLAN.**—The Secretary of Defense shall carry out a program in accordance with this subchapter to enable participants in the Survivor Benefit Plan who are providing coverage for a spouse or former spouse beneficiary under that Plan to also provide a supplemental annuity for that spouse or former spouse beginning when the participant dies or when the spouse or former spouse becomes 62 years of age, whichever is later, in order to offset the effects of the two-tier annuity computation under the Survivor Benefit Plan.

[(2) NAME OF PLAN.—The program under this subchapter shall be known as the Supplemental Survivor Benefit Plan.

[(b) DEFINITIONS.—

[(1) INCORPORATION OF DEFINITIONS APPLICABLE TO SURVIVOR BENEFIT PLAN.—The definitions in section 1447 of this title apply in this subchapter.

[(2) SUPPLEMENTAL SPOUSE ANNUITY DEFINED.—In this subchapter, the term “supplemental spouse annuity” means an annuity provided to a spouse or former spouse under this subchapter.

**[§ 1457. Supplemental spouse coverage: payment of annuity; amount**

[(a) COMMENCEMENT OF ANNUITY.—A supplemental spouse annuity commences on the later of—

[(1) the day on which an annuity under the Survivor Benefit Plan becomes payable to the beneficiary; or

[(2) the first day of the first month after the month in which the beneficiary becomes 62 years of age.

[(b) AMOUNT OF ANNUITY FOR BENEFICIARY OF PERSON PROVIDING STANDARD ANNUITY UNDER SBP.—In the case of a person providing a standard annuity for a spouse or former spouse beneficiary under the Survivor Benefit Plan and providing a supplemental spouse annuity for that beneficiary under this subchapter, the monthly annuity payable to the beneficiary under this subchapter shall be the amount equal to 5, 10, 15, or 20 percent of the base amount under the Survivor Benefit Plan of the person providing the annuity, as specified by that person when electing to provide the annuity. The annuity shall be computed as of the date of the death of the person providing the annuity, notwithstanding that the annuity is not payable at that time by reason of subsection (a).

[(c) AMOUNT OF ANNUITY FOR BENEFICIARY OF PERSON PROVIDING RESERVE-COMPONENT ANNUITY UNDER SBP.—In the case of a person providing a reserve-component annuity for a spouse or former spouse beneficiary under the Survivor Benefit Plan and providing a supplemental spouse annuity for that beneficiary under this subchapter, the monthly annuity payable to that beneficiary under this subchapter shall be determined as follows:

[(1) BENEFICIARY INITIALLY 62 YEARS OF AGE OR OLDER.—If the beneficiary is 62 years of age or older when the beneficiary becomes entitled to the reserve-component annuity under the Survivor Benefit Plan, the monthly amount of the supplemental spouse annuity is the difference between—

[(A) the amount of the reserve-component annuity under the Survivor Benefit Plan to which the beneficiary would be entitled if that beneficiary were under 62 years of age (as computed under section 1451(a)(2)(A) of this title); and

[(B) the amount of the reserve-component annuity to which the beneficiary is entitled (as computed under section 1451(a)(2)(B) of this title).

[(2) BENEFICIARY INITIALLY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age when the beneficiary becomes entitled to the reserve-component annuity under the

Survivor Benefit Plan, the monthly amount of the supplemental spouse annuity of that beneficiary (commencing on the date specified in subsection (a)(2)) is the amount by which the beneficiary's annuity under the Survivor Benefit Plan is reduced (on the same day) under section 1451(d) of this title.

[(3) EXCLUSION OF DIC OFFSET.—Computations under paragraphs (1) and (2) shall be made without regard to any reduction required under section 1450(c) of this title (or any other provision of law) with respect to the receipt of dependency and indemnity compensation under section 1311 of title 38.

[(d) ADJUSTMENTS IN ANNUITIES.—

[(1) PERIODIC ADJUSTMENTS (COLAS).—Whenever annuities under the Survivor Benefit Plan are increased under section 1451(g)(1) of this title (or any other provision of law) or recomputed under section 1451(i) of this title, each annuity under this subchapter shall be increased or recomputed at the same time. The increase shall, in the case of any such annuity, be by the same percent as the percent by which the annuity of that beneficiary is increased or recomputed under the Survivor Benefit Plan.

[(2) ROUNDING DOWN.—The monthly amount of an annuity payable under this subchapter, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

[(e) TERMINATION OF ANNUITY.—A supplemental spouse annuity terminates effective as of the first day of the month in which the beneficiary dies or otherwise becomes ineligible to continue to receive an annuity under the Survivor Benefit Plan.

**[(§ 1458. Supplemental spouse coverage: eligible participants; elections of coverage**

[(a) COVERAGE.—

[(1) IN GENERAL.—A person who provides an annuity for a spouse or former spouse under the Survivor Benefit Plan at the maximum level may elect in accordance with this section to provide a supplemental spouse annuity for that spouse or former spouse.

[(2) COVERAGE CONTINGENT ON CONCURRENT SBP COVERAGE.—When a person providing a supplemental spouse annuity under this subchapter ceases to be a participant under the Survivor Benefit Plan, that person's coverage under this subchapter automatically terminates.

[(3) ELECTIONS TO BE VOLUNTARY.—A person may not be ordered or required to elect (or to enter into an agreement to elect) to provide a spouse or former spouse with a supplemental spouse annuity under this subchapter. Except as provided in section 1459(b) of this title, in no case shall a person be deemed to have made an election to provide a supplemental annuity for a spouse or former spouse of such person.

[(b) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under this section if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan will be computed under section 1451(e) of this title. However,

such a person may waive the right to have that annuity computed under section 1451(e) of this title. Any such election is irrevocable. A person making such a waiver may make an election under this section as in the case of any other participant in the Survivor Benefit Plan.

**[(c) ELECTION OF SUPPLEMENTAL SPOUSE ANNUITY BEFORE BECOMING A PARTICIPANT IN SBP.—**

**[(1) IN GENERAL.—**A person anticipating becoming a participant in the Survivor Benefit Plan who has a spouse or former spouse may elect to provide a supplemental spouse annuity under this subchapter for that spouse or former spouse.

**[(2) CONDITIONS ON ELECTION.—**An election under paragraph (1)—

**[(A)** must be made before the day on which the person making the election first becomes a participant in the Survivor Benefit Plan; and

**[(B)** shall be made in the same manner as an election under section 1448 of this title that is available to that person at the same time.

**[(3) REQUIREMENT OF SPOUSE ANNUITY UNDER SBP.—**If upon becoming a participant in the Survivor Benefit Plan under section 1448 of this title the person is not providing an annuity for the person's spouse or former spouse, an election under this section to provide a supplemental spouse annuity shall be void.

**[(4) SPECIAL RULE FOR RCSBP PARTICIPANTS.—**For the purposes of this subsection, a person providing a reserve-component annuity under the Survivor Benefit Plan shall not be considered to have become a participant in that Plan until the end of the 90-day period referred to in clause (iii) of section 1448(a)(2)(B) of this title.

**[(d) ELECTION OF FORMER SPOUSE AFTER BECOMING ELIGIBLE FOR SURVIVOR BENEFIT PLAN.—**

**[(1) ELECTION OF COVERAGE.—**A person who elects under section 1448(b)(3) of this title to provide coverage under the Survivor Benefit Plan for a former spouse may elect to provide a supplemental spouse annuity for that former spouse. Any such election must be signed by the person and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

**[(2) EFFECTIVE DATE OF ELECTION.—**An election under paragraph (1) is effective as of the same day as the election under section 1448(b)(3) of this title.

**[(e) NOTICE TO SPOUSE OF FORMER SPOUSE COVERAGE.—**If a married person who is eligible to provide an annuity under the Survivor Benefit Plan elects to provide an annuity under that Plan for a former spouse (or for a former spouse and dependent child) and elects under this section to provide a supplemental spouse annuity for that former spouse, the notification to the person's spouse under section 1448(a)(3)(E) or 1448(b)(3)(D) of this title shall include notice of the election under this section.

**[(f) IRREVOCABILITY OF ELECTIONS.—**

**[(1) STANDARD ANNUITY.—**An election under subsection (c) to provide a supplemental spouse annuity by a person providing a standard annuity under the Survivor Benefit Plan is

irrevocable if not revoked on the day before the date on which the person first becomes a participant in that Plan.

[(2) RESERVE-COMPONENT ANNUITY.—An election under subsection (c) to provide a supplemental spouse annuity by a person providing a reserve-component annuity under the Survivor Benefit Plan is irrevocable if not revoked before the end of the 90-day period with respect to that person referred to in clause (iii) of section 1448(a)(2)(B) of this title.

[(3) FORMER SPOUSE ELECTIONS.—An election under subsection (d) may not be revoked except in accordance with subsection (h).

[(g) REMARRIAGE AFTER RETIREMENT.—

[(1) ELECTION UPON REMARRIAGE.—A person—

[(A) who is a participant in the Survivor Benefit Plan and is providing coverage under that Plan for a spouse (or a spouse and child) but is not a participant in the Supplemental Survivor Benefit Plan;

[(B) who does not have an eligible spouse beneficiary under that Plan; and

[(C) who remarries,

may (subject to paragraph (2)) elect to provide a supplemental spouse annuity under this subchapter for the person's spouse.

[(2) LIMITATIONS ON ELECTION.—A person may not make an election under paragraph (1) if the person elects under section 1448(a)(6)(A) of this title not to provide coverage under the Survivor Benefit Plan for the person's spouse.

[(3) CONDITIONS ON ELECTION.—An election under paragraph (1)—

[(A) is irrevocable;

[(B) shall be made within one year after the remarriage; and

[(C) shall be made in such form and manner as may be prescribed in regulations under section 1460b of this title.

[(h) CHANGE OF FORMER SPOUSE BENEFICIARY TO SPOUSE OR CHILD BENEFICIARY.—If a person who is providing an annuity for a former spouse under the Survivor Benefit Plan and a supplemental spouse annuity for that former spouse under this subchapter elects under section 1450(f)(1) of this title to change the beneficiary of the annuity under the Survivor Benefit Plan in order to provide an annuity under that Plan to that person's spouse or to a dependent child—

[(1) the beneficiary under the supplemental spouse annuity shall be deemed to be changed to that spouse also, if the change under section 1450(f)(1) was to provide the annuity for the person's spouse; and

[(2) participation in the supplemental spouse annuity program shall be terminated, if the change under section 1450(f)(1) of this title was to provide the annuity for a dependent child.

[(i) REINSTATEMENT OF DISCONTINUED ANNUITY UPON REINSTATEMENT OF SBP ANNUITY.—If a person who is providing an annuity for a former spouse under the Survivor Benefit Plan and a supplemental spouse annuity for that former spouse under this subchapter discontinues participation in the Survivor Benefit Plan

under any provision of law and subsequently resumes participation in that Plan under any provision of law, the participation of that person in the Supplemental Survivor Benefit Plan under this chapter shall be reinstated effective on the day on which participation in the Survivor Benefit Plan resumes.

**[(j) VITIATION OF ELECTION BY DISABILITY RETIREE WHO DIES OF DISABILITY-RELATED CAUSE.—**If a member retired on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004 under chapter 61 of this title dies within one year after the date on which the member is so retired and the cause of death is related to a disability for which the member was retired under that chapter (as determined under regulations prescribed by the Secretary of Defense)—

**[(1)** an election made by the member to provide a supplemental spouse annuity under this subchapter is vitiated; and

**[(2)** the amounts by which the member's retired pay was reduced under section 1460 of this title shall be refunded and paid to the person to whom the supplemental spouse annuity would have been paid pursuant to such election.

**【§ 1459. Former spouse coverage: special rules**

**[(a) DISCLOSURE OF VOLUNTARY WRITTEN AGREEMENT WITH FORMER SPOUSE.—**A person who elects under section 1458 of this title to provide a supplemental spouse annuity for a former spouse shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and former spouse) setting forth whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of or incident to a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

**[(b) ENFORCEMENT OF VOLUNTARY WRITTEN AGREEMENTS INCIDENT TO DIVORCE, ETC.—**

**[(1) ELECTIONS DEEMED TO HAVE BEEN MADE.—**If a person who is eligible to elect under section 1458 of this title to provide a supplemental spouse annuity for a former spouse voluntarily enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to elect to provide a supplemental annuity for a former spouse and that agreement is incorporated in or ratified or approved by a court order or is filed with the court of appropriate jurisdiction in accordance with applicable State law, and such person then fails or refuses to make the election as set forth in the voluntary agreement, such person shall be deemed to have made the election if the Secretary concerned—

**[(A)** receives from the former spouse concerned a written request, in such manner as the Secretary shall prescribe, requesting that the election be deemed to have been made; and

**[(B)** receives (i) a copy of the court order, regular on its face, which incorporates, ratifies, or approves the written agreement of such person, or (ii) a statement from the clerk of the court (or other appropriate official) that such

agreement has been filed with the court in accordance with applicable State law.

[(2) TIME LIMIT FOR REQUEST TO SECRETARY CONCERNED.—An election may not be deemed to have been made under paragraph (1) in the case of any person unless the Secretary concerned receives a request from the former spouse within one year after the date of the court order or filing involved.

[(3) EFFECTIVE DATE OF DEEMED ELECTION.—An election deemed to have been made under paragraph (1) shall become effective on the first day of the first month which begins after the date of the court order or filing involved.

**[(§ 1460. Supplemental spouse coverage: reductions in retired pay**

[(a) REDUCTION REQUIRED.—The retired pay of a person who elects to provide a supplemental spouse annuity shall be reduced each month as required under regulations prescribed under subsection (b).

[(b) REGULATIONS DETERMINING AMOUNT OF REDUCTION.—Regulations for the purposes of subsection (a) shall be prescribed by the Secretary of Defense. Those regulations shall be based upon assumptions used by the Department of Defense Retirement Board of Actuaries in the valuation of military retirement and survivor benefit programs under chapter 74 of this title (including assumptions relating to mortality, interest rates, and inflation) and shall ensure the following:

[(1) That reductions in retired pay under this section are made in amounts sufficient to provide that the Supplemental Survivor Benefit Plan operates on an actuarially neutral basis.

[(2) That such reductions are stated, with respect to the base amount (under the Survivor Benefit Plan) of any person, as a constant percentage of that base amount and, in the case of a person providing a supplemental spouse annuity computed under section 1457(b) of this title, a constant percentage of such person's base amount for each 5 percent increment specified in accordance with that section.

[(3) That the amounts of such reductions in retired pay of persons participating in the Supplemental Survivor Benefit Plan (stated as a percentage of base amount)—

[(A) are based on the age of the participant at the time participation in that Plan is first effective under this subchapter; and

[(B) are not determined by any other demographic differentiation among participants in the Plan.

[(4) That such reductions are otherwise determined in accordance with generally accepted actuarial principles and practices.

[(c) SUSPENSION OF REDUCTION WHEN THERE IS NO SPOUSE BENEFICIARY.—A reduction in retired pay under this section shall not be made in the case of any person during any month in which there is no eligible spouse or former spouse beneficiary.

[(d) ADJUSTMENTS IN AMOUNT OF REDUCTION.—Whenever the amount of the reduction in retired pay of a participant in the Survivor Benefit Plan is increased under section 1452(h) of this title or recomputed under section 1452(i) of this title, the amount of the

reduction in that retired pay under this section shall be increased or recomputed, as the case may be, at the same time and in the same manner as that increase or recomputation.

[(e) ADMINISTRATIVE PROVISIONS.—The provisions of subsections (d) and (f) of section 1452 of this title apply with respect to the participation of a person in the Supplemental Survivor Benefit Plan in the same manner that those provisions apply under the Survivor Benefit Plan.

**【§ 1460a. Incorporation of certain administrative provisions**

[(a) APPLICABILITY OF CERTAIN PROVISIONS OF SBP LAW.—The provisions of sections 1449, 1452(g), 1453, and 1454 of this title are applicable to a person eligible to make an election, and to an election, under this subchapter in the same manner as if made under subchapter II.

[(b) OTHER APPLICABLE PROVISIONS.—Except to the extent otherwise provided in regulations prescribed under section 1460b of this title, the provisions of subsections (h), (i), and (l) of section 1450 of this title apply to supplemental spouse annuities in the same manner that those provisions apply to annuities under the Survivor Benefit Plan.

**【§ 1460b. Regulations**

【The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the uniformed services and shall, so far as practicable, incorporate provisions of the regulations in effect under section 1455 of this title.】

\* \* \* \* \*

**CHAPTER 74—DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND**

\* \* \* \* \*

**§ 1463. Payments from the Fund**

- (a) There shall be paid from the Fund—
  - (1) retired pay payable to members on the retired lists of the Army, Navy, Air Force, and Marine Corps and payments under section **【1413, 1413a,】 1413a** or 1414 of this title paid to such members;

\* \* \* \* \*

**§ 1465. Determination of contributions to the Fund**

- (a) \* \* \*
- (b)(1) \* \* \*

\* \* \* \* \*

*(4) At the same time that the Secretary of Defense makes the determination required by paragraph (1) for any fiscal year, the Secretary shall determine the amount of the Treasury contribution to be made to the Fund for the next fiscal year under section 1466(b)(2)(E) of this title. That amount shall be determined in the same manner as the determination under paragraph (1) of the total amount of Department of Defense contributions to be made to the*



*Fund during that fiscal year under section 1466(a) of this title, except that for purposes of this paragraph the Secretary, in making the calculations required by subparagraphs (A) and (B) of that paragraph, shall use the single level percentages determined under subsection (c)(5), rather than those determined under subsection (c)(1).*

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of Department of Defense military retirement and survivor benefit programs. Each actuarial valuation of such programs shall include—

(A) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay for members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only), to be determined without regard to section [1413, 1413a,] 1413a or 1414 of this title *and as if benefits under subchapter II of chapter 73 of this title for beneficiaries 62 years of age and older were computed for any fiscal year on the basis of the percentage of 35 percent, rather than any percentage otherwise applicable for that computation for that fiscal year; and*

(B) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) for members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described by subparagraph (A), to be determined without regard to section [1413, 1413a,] 1413a or 1414 of this title *and as if benefits under subchapter II of chapter 73 of this title for beneficiaries 62 years of age and older were computed for any fiscal year on the basis of the percentage of 35 percent, rather than any percentage otherwise applicable for that computation for that fiscal year.*

Such single level percentages shall be used for the purposes of subsection (b)(1) and section 1466(a) of this title.

\* \* \* \* \*

(4) Whenever the Secretary carries out an actuarial valuation under paragraph (1), the Secretary shall include as part of such valuation the following:

(A) A determination of a single level percentage determined in the same manner as applies under subparagraph (A) of paragraph (1), but based only upon the provisions of sections [1413, 1413a,] 1413a and 1414 of this title.

(B) A determination of a single level percentage determined in the same manner as applies under subparagraph (B) of paragraph (1), but based only upon the provisions of sections [1413, 1413a,] 1413a and 1414 of this title.

Such single level percentages shall be used for the purposes of subsection (b)(3).

(5) *Whenever the Secretary carries out an actuarial valuation under paragraph (1), the Secretary shall include as part of such valuation the following:*

(A) A determination of a single level percentage determined in the same manner as applies under subparagraph (A) of paragraph (1), but determined as if benefits under subchapter II of chapter 73 of this title for beneficiaries 62 years of age and older were computed for any fiscal year on the basis of the percentage of 35 percent, rather than any percentage otherwise applicable for that computation for that fiscal year.

(B) A determination of a single level percentage determined in the same manner as applies under subparagraph (B) of paragraph (1), but determined as if benefits under subchapter II of chapter 73 of this title for beneficiaries 62 years of age and older were computed for any fiscal year on the basis of the percentage of 35 percent, rather than any percentage otherwise applicable for that computation for that fiscal year.

Such single level percentages shall be used for the purposes of subsection (b)(4).

[(5)] (6) Contributions to the Fund in accordance with amortization schedules under paragraphs (2) and (3) shall be made as provided in section 1466(b) of this title.

\* \* \* \* \*

**§ 1466. Payments into the Fund**

(a) \* \* \*

(b)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount certified to the Secretary by the Secretary of Defense under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal year required by sections 1465(a), 1465(b)(3), 1465(b)(4), 1465(c)(2), and 1465(c)(3) of this title.

(2) At the beginning of each fiscal year the Secretary of Defense shall determine the sum of the following:

(A) \* \* \*

\* \* \* \* \*

(D) The amount for that year determined by the Secretary of Defense under section 1465(b)(3) of this title for the cost to the Fund arising from increased amounts payable from the Fund by reason of section [1413, 1413a,] 1413a or 1414 of this title.

(E) The amount for that year determined by the Secretary of Defense under section 1465(b)(4) of this title for the cost to the Fund arising from increased amounts payable from the Fund by reason of benefits under subchapter II of chapter 73 of this title for beneficiaries 62 years of age and older being computed for any fiscal year on the basis of the percentage greater than 35 percent.

\* \* \* \* \*

**CHAPTER 76—MISSING PERSONS**

\* \* \* \* \*

**§ 1501. System for accounting for missing persons**

(a) OFFICE FOR MISSING PERSONNEL.—(1) \* \* \*

\* \* \* \* \*

(5)(A) \* \* \*

[(B) For any fiscal year, the number of military and civilian personnel assigned or detailed to the office may not be less than the number requested in the President’s budget for fiscal year 2003, unless a level below such number is expressly required by law.

[(C) For any fiscal year, the level of funding allocated to the office within the Department of Defense may not be below the level requested for such purposes in the President’s budget for fiscal year 2003, unless such a level of funding is expressly required by law.]

(B)(i) For any fiscal year—

(I) the number of full-time Department of Defense personnel permanently assigned or detailed to the office shall be not less than 46 members of the armed forces and not less than 69 civilian employees of the Department of Defense; and

(II) the number of permanent positions authorized for the office shall be not less than 46 positions for members of the armed forces and not less than 69 positions for civilian employees.

(ii) No reductions below the numbers assigned or authorized under clause (i) may be made unless expressly authorized by law.

(iii) If for any reason the number of military or civilian personnel assigned to the office should fall below the required level under clause (i)(I), the Secretary of Defense shall promptly notify the Committees on Armed Services of the Senate and House of Representatives of the number of personnel so assigned and of the Secretary’s plan to restore the staffing levels of the office to at least the required minimums under clause (i). The Secretary shall publish such notice and plan in the Federal Register.

(C) For any fiscal year, the level of funding allocated to the office shall be not less than \$16,000,000 unless a lower level of funding is expressly required by law.

\* \* \* \* \*

**CHAPTER 79—CORRECTION OF MILITARY RECORDS**

\* \* \* \* \*

**§ 1557. Timeliness standards for disposition of applications before Corrections Boards**

(a) \* \* \*

(b) CLEARANCE DEADLINE FOR ALL APPLICATIONS.—[Effective October 1, 2002, final] Final action by a Corrections Board on all applications received by the Corrections Board (other than those applications considered suitable for administrative correction) shall be completed within 18 months of receipt.

\* \* \* \* \*

**§ 1559. Personnel limitation**

(a) LIMITATION.—[During fiscal years 2003, 2004, and 2005,] *Before October 1, 2008*, the Secretary of a military department may not carry out any reduction in the number of military and civilian personnel assigned to duty with the service review agency for that military department below the baseline number for that agency until—

(1) \* \* \*

\* \* \* \* \*

**CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES**

\* \* \* \* \*

**§ 1566. Voting assistance: compliance assessments; assistance**

(a) \* \* \*

\* \* \* \* \*

(g) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) \* \* \*

(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall ensure that the measures implemented under the preceding sentence do not result in the delivery of absentee ballots to the final destination of such ballots after the date on which the election for Federal office is held. Not later than [the date that is 6 months after the date of the enactment of the Help America Vote Act of 2002] *April 29, 2003*, the Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

(h) NOTICE OF DEADLINES AND REQUIREMENTS.—The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the [Armed Forces] *armed forces* stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

(i) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the [Armed Forces] *armed forces* and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registra-

tion), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirements.

\* \* \* \* \*

(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the **[Armed Forces]** *armed forces* and their dependents of election timing, registration requirements, and voting procedures.

\* \* \* \* \*

**CHAPTER 81—CIVILIAN EMPLOYEES**

Sec.  
1580. Emergency essential employees: designation.

\* \* \* \* \*

1599e. *Senior executive compensation for nonappropriated fund instrumentalities.*

\* \* \* \* \*

**§ 1588. Authority to accept certain voluntary services**

(a) **AUTHORITY TO ACCEPT SERVICES.**—Subject to subsection (b) and notwithstanding section 1342 of title 31, the Secretary concerned may accept from any person the following services:

(1) \* \* \*

\* \* \* \* \*

(8) *Voluntary services provided to the United States Military Academy, United States Naval Academy, and United States Air Force Academy for the training of cadets and midshipmen.*

\* \* \* \* \*

(d) **STATUS OF PERSONS PROVIDING SERVICES.**—(1) Subject to paragraph (3), while providing voluntary services accepted under subsection (a) or receiving training under subsection (c), a person, other than a person referred to in paragraph (2), shall be considered to be an employee of the Federal Government only for purposes of the following provisions of law:

(A) \* \* \*

\* \* \* \* \*

(D) Chapter 11 of title 18 (relating to conflicts of interest), and chapters 20 and 22 of title 46 (relating to claims for damages or loss on navigable waters).

\* \* \* \* \*

**§ 1596a. Foreign language proficiency: special pay for proficiency beneficial for other national security interests**

(a) **AUTHORITY.**—The Secretary of Defense may pay special pay under this section to an employee of the Department of Defense who—

(1) \* \* \*

(2) is assigned duties requiring proficiency in that foreign language [during a contingency operation supported by the armed forces]; and

\* \* \* \* \*

(c) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—Special pay under this section is in addition to any other pay or allowances to which the employee is entitled and shall not be considered base pay for any purpose.

\* \* \* \* \*

**§ 1599e. Senior executive compensation for nonappropriated fund instrumentalities**

*Notwithstanding any provisions of title 5, the Secretary of Defense may regulate the amount of total compensation, including the rate of basic pay, of senior executives employed by Department of Defense nonappropriated fund instrumentalities, to provide for parity with the total compensation, including basic pay, of Department of Defense employees in the Senior Executive Service and other similar senior executive positions.*

\* \* \* \* \*

**CHAPTER 83—CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES**

\* \* \* \* \*

**SUBCHAPTER I—DEFENSE-WIDE INTELLIGENCE PERSONNEL POLICY**

\* \* \* \* \*

**§ 1602. Basic pay**

(a) AUTHORITY TO FIX RATES OF BASIC PAY.—The Secretary of Defense (subject to the provisions of this section) shall fix the rates of basic pay for positions established under section 1601 of this title [in relation to the rates of basic pay provided in subpart D of part III of title 5 for positions subject to that subpart which have corresponding levels of duties and responsibilities] *in relation to the rates of pay provided for Department of Defense Senior Executive, Senior Level, and other comparable positions.*

[(b) MAXIMUM RATES.—A rate of basic pay fixed under subsection (a) for a position established under section 1601 of this title may not (except as otherwise provided by law) exceed—

[(1) in the case of a Defense Intelligence Senior Executive Service position, the maximum rate provided in section 5382 of title 5;

[(2) in the case of an Intelligence Senior Level position, the maximum rate provided in section 5382 of title 5; and

[(3) in the case of any other position, the maximum rate provided in section 5306(e) of title 5.]

(b) PERFORMANCE APPRAISAL SYSTEM.—*The positions referred to in subsection (a) shall be subject to a performance appraisal system which, as designed and applied, is certified by the Secretary of Defense as making meaningful distinctions based on relative performance and may be the same performance appraisal system estab-*

lished and implemented within the Department for members of the Senior Executive Service.

\* \* \* \* \*

**CHAPTER 87—DEFENSE ACQUISITION WORKFORCE**

\* \* \* \* \*

**SUBCHAPTER II—DEFENSE ACQUISITION POSITIONS**

\* \* \* \* \*

**§ 1724. Contracting positions: qualification requirements**

(a) \* \* \*

\* \* \* \* \*

(d) **WAIVER.**—The Secretary of Defense may waive any or all of the requirements of subsections (a) and (b) with respect to an employee of the Department of Defense or member of the armed forces if the Secretary determines that the individual possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. With respect to each waiver granted under this subsection, the Secretary shall set forth in a written document the rationale for [its decision] *the decision of the Secretary* to waive such requirements.

\* \* \* \* \*

**SUBCHAPTER III—ACQUISITION CORPS**

\* \* \* \* \*

**§ 1732. Selection criteria and procedures**

(a) \* \* \*

(b) **ELIGIBILITY CRITERIA.**—Except as provided in subsections (c) and (d), only persons who meet all of the following requirements may be considered for service in the Corps:

(1)(A) In the case of an employee, the person must be currently serving in a position [within grade GS-13 or above of the General Schedule] *in any position designated by the Secretary of Defense.*

\* \* \* \* \*

(d) **WAIVER.**—(1) Except as provided in paragraph (2), the Secretary of Defense may waive any or all of the requirements of subsection (b) with respect to an employee if the Secretary determines that the employee possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated analytical and decisionmaking capabilities, job performance, and qualifying experience. With respect to each waiver granted under this subsection, the Secretary shall set forth in a written document the rationale for [its decision] *the decision of the Secretary* to waive such requirements.

\* \* \* \* \*

**§ 1733. Critical acquisition positions**

(a) \* \* \*

[(b) DESIGNATION OF CRITICAL ACQUISITION POSITIONS.—(1) The Secretary of Defense shall designate the acquisition positions in the Department of Defense that are critical acquisition positions. Such positions shall include the following:

[(A) Any acquisition position which—

[(i) in the case of employees, is required to be filled by an employee in a position within grade GS–14 or above of the General Schedule, or in the Senior Executive Service; or

[(ii) in the case of members of the armed forces, is required to be filled by a commissioned officer of the Army, Navy, Air Force, or Marine Corps who is serving in the grade of lieutenant colonel, or, in the case of the Navy, commander, or a higher grade.

[(B) Other selected acquisition positions not covered by subparagraph (A), including the following:

[(i) Program executive officer.

[(ii) Program manager of a major defense acquisition program (as defined in section 2430 of this title) or of a significant nonmajor defense acquisition program (as defined in section 1737(a)(3) of this title).

[(iii) Deputy program manager of a major defense acquisition program.

[(C) Any other acquisition position of significant responsibility in which the primary duties are supervisory or management duties.

[(2) The Secretary shall periodically publish a list of the positions designated under this subsection.]

(b) DESIGNATION OF CRITICAL ACQUISITION.—(1) The Secretary of Defense shall designate the acquisition positions in the Department of Defense that are critical acquisition positions. Such positions shall include the following:

(A) Program executive officer.

(B) Program manager of a major defense acquisition program (as defined in section 2430 of this title) or of a significant nonmajor defense acquisition program (as defined in section 1737(a)(3) of this title).

(C) Deputy program manager of a major defense acquisition program.

(D) Any other acquisition position of significant responsibility determined by the Secretary to be critical.

(2) The Secretary shall annually publish a list of the positions designated under this subsection.

\* \* \* \* \*

**SUBCHAPTER IV—EDUCATION AND TRAINING**

\* \* \* \* \*

**§ 1742. Internship, cooperative education, and scholarship programs**

(a) PROGRAMS.—The Secretary of Defense shall conduct the following education and training programs:



(1) \* \* \*

\* \* \* \* \*

(b) *SCHOLARSHIP PROGRAM REQUIREMENTS.*—*With respect to any scholarship program conducted under this section, the Secretary of Defense and the participant shall agree in writing to the terms of the scholarship. The agreement shall include the obligations of the Secretary and the participant, as well as actions available for either party to take if there is a failure to meet the obligations under the agreement.*

\* \* \* \* \*

**SUBCHAPTER V—GENERAL MANAGEMENT PROVISIONS**

\* \* \* \* \*

**§ 1761. Management information system**

(a) \* \* \*

(b) **MINIMUM INFORMATION.**—The management information system shall, at a minimum, **[provide for—]** *provide for the following:*

(1) **[the]** *The collection and retention of information concerning the qualifications, assignments, and tenure of persons in the acquisition workforce[;].*

(2) **[any]** *Any exceptions and waivers granted with respect to the application of qualification, assignment, and tenure policies, procedures, and practices to such persons[;].*

(3) **[relative]** *Relative promotion rates for military personnel in the acquisition workforce[; and].*

**[(4) collection of the information necessary for the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretary of Defense to comply with the requirements of section 1762 for the years in which that section is in effect.]**

\* \* \* \* \*

**CHAPTER 88—MILITARY FAMILY PROGRAMS AND MILITARY CHILD CARE**

\* \* \* \* \*

**SUBCHAPTER I—MILITARY FAMILY PROGRAMS**

Sec.  
1781. Office of Family Policy.

\* \* \* \* \*

**[1784. Employment opportunities for military spouses.]**  
*1784. Employment opportunities: military spouses; certain Department of Defense civilian spouses subject to relocation agreements.*

\* \* \* \* \*

**[§ 1784. Employment opportunities for military spouses]**

**§ 1784. Employment opportunities: military spouses; certain Department of Defense civilian spouses subject to relocation agreements**

(a) \* \* \*

\* \* \* \* \*

(h) *INCLUSION OF SPOUSES OF CERTAIN DOD CIVILIAN EMPLOYEES SUBJECT TO RELOCATION AGREEMENTS.*—(1) *For the purposes of this section, the spouse of a civilian employee described in paragraph (2) shall be considered to be the spouse of a member of the armed forces.*

(2) *An employee described in this paragraph is a Department of Defense employee who, pursuant to a mandatory mobility agreement executed as a condition of employment or pursuant to another civilian mobility program of the Department of Defense, has had a change of permanent duty assignment (A) that was based on the needs of the Government, and (B) that required a relocation of the employee’s residence.*

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**PART III—TRAINING AND EDUCATION**

Chap.		Sec.
101. Training Generally .....		2001
* * * * *		
107. Educational Assistance for Persons Enlisting for Active Duty .....		2141
106A. <i>Educational Assistance for Persons Enlisting for Active Duty</i> .....		2141
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**CHAPTER 101—TRAINING GENERALLY**

Sec.	
2002. Dependents of members of armed forces: language training.	
* * * * *	
2015. <i>Defense counterproliferation fellowship program.</i>	
* * * * *	

**§ 2007. Payment of tuition for off-duty training or education**

(a) \* \* \*

(b)(1) In the case of a commissioned officer on active duty or full-time National Guard duty, the Secretary of the military department concerned may not pay charges under subsection (a) unless the officer agrees to remain on active duty or full-time National Guard duty for a period of at least two years after the completion of the training or education for which the charges are paid.

(2) *Notwithstanding paragraph (1), the Secretary of the military department may reduce or waive the active duty service obligation—*

*(A) in the case of a commissioned officer who is subject to mandatory separation;*

*(B) in the case of a commissioned officer who has completed the period of active duty service in support of a contingency operation; or*

*(C) in other exigent circumstances as determined by the Secretary.*

(c)(1) Subject to paragraphs (2) and (3), the Secretary of the Army may pay not more than 75 percent of the charges of an edu-

cational institution for the tuition or expenses of an officer in the Selected Reserve of the Army National Guard or the Army Reserve for education or training of such officer in a program leading to a baccalaureate degree.】 (1) Subject to paragraphs (2) and (3), the Secretary of the Army may pay the charges of an educational institution for the tuition or expenses of an officer in the Selected Reserve of the Army National Guard or the Army Reserve for education or training of such officer.

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**§ 2015. Defense counterproliferation fellowship program**

(a) PROGRAM AUTHORITY.—The Secretary of Defense may carry out a program under which foreign military defense personnel are selected to attend Department of Defense courses and programs in counterproliferation and nonproliferation matters in order to improve the ability of the foreign military defense personnel to contribute to halting the illicit acquisition or transportation of weapons of mass destruction or of materials that support the development or use of such weapons.

(b) AUTHORITY TO PAY FOR COSTS OF PARTICIPANTS.—The Secretary of Defense may pay for all costs (including transportation, travel, and subsistence costs) associated with the attendance by a participant at courses and programs in the program under this section.

(c) PARTICIPANTS.—(1) The following persons may be selected for participation in the program under this section:

- (A) Foreign military officers.
- (B) Foreign ministry of defense officials.

(2) Participants in the program shall be selected by the Secretary of Defense based upon recommendations made by the commanders of the regional unified combatant commands.

(d) AUTHORIZED PROGRAM ACTIVITIES.—Participants in the program may be selected for attendance at, and may be authorize to attend, any of the following:

- (1) Department of Defense professional military educational institutions.
- (2) Regional centers for security studies of the Department of Defense.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of the program under this section.

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**CHAPTER 103—SENIOR RESERVE OFFICERS' TRAINING CORPS**

\* \* \* \* \*

**§ 2103a. Students not eligible for advanced training: commitment to military service**

(a) \* \* \*

\* \* \* \* \*

【(d) TERMINATION OF AUTHORITY.—No contract may be entered into under subsection (a)(1) after December 31, 2006.】

\* \* \* \* \*

**§ 2107. Financial assistance program for specially selected members**

(a) \* \* \*

\* \* \* \* \*

(c)(1) \* \* \*

\* \* \* \* \*

*(5)(A) The Secretary of the Army may provide an individual who received a commission as a Reserve officer in the Army from a military junior college through a program under this chapter and who does not have a baccalaureate degree with financial assistance for pursuit of a baccalaureate degree.*

*(B) Such assistance is in addition to any financial assistance provided under paragraph (1), (3), or (4).*

*(C) The agreement and reimbursement requirements established in section 2005 of this title are applicable to financial assistance under this paragraph.*

*(D) An officer receiving financial assistance under this paragraph shall be attached to the unit of the Army at the educational institution at which the officer is pursuing a baccalaureate degree and shall be considered to be a member of the Senior Reserve Officers' Training Corps on inactive duty for training, as defined in section 101(23) of title 38.*

*(E) A qualified officer who did not previously receive financial assistance under this section is eligible to receive educational assistance under this paragraph.*

*(F) A Reserve officer may not be called or ordered to active duty for a deployment while participating in the program under this paragraph.*

*(G) Any service obligation incurred by an officer under an agreement entered into under this paragraph shall be in addition to any service obligation incurred by that officer under any other provision of law or agreement.*

*(H) The amount obligated during any fiscal year under this paragraph and paragraph (4) of section 2107a(c) of this title may not exceed a total of \$1,500,000.*

\* \* \* \* \*

**§ 2107a. Financial assistance program for specially selected members: Army Reserve and Army National Guard**

(a) \* \* \*

\* \* \* \* \*

(c)(1) \* \* \*

\* \* \* \* \*

*(4)(A) The Secretary of the Army may provide an individual who received a commission as a Reserve officer in the Army from a military junior college through a program under this chapter and who does not have a baccalaureate degree with financial assistance for pursuit of a baccalaureate degree.*

*(B) Such assistance is in addition to any provided under paragraph (1) or (2).*

(C) *The agreement and reimbursement requirements established in section 2005 of this title are applicable to financial assistance under this paragraph.*

(D) *An officer receiving financial assistance under this paragraph shall be attached to the unit of the Army at the educational institution at which the officer is pursuing a baccalaureate degree and shall be considered to be a member of the Senior Reserve Officers' Training Corps on inactive duty for training, as defined in section 101(23) of title 38.*

(E) *A qualified officer who did not previously receive financial assistance under this section is eligible to receive educational assistance under this paragraph.*

(F) *A Reserve officer may not be called or ordered to active duty for a deployment while participating in the program under this paragraph.*

(G) *Any service obligation incurred by an officer under an agreement entered into under this paragraph shall be in addition to any service obligation incurred by that officer under any other provision of law or agreement.*

(H) *As provided in subparagraph (H) of section 2107(c)(5) of this title, the amount obligated during any fiscal year under this paragraph and paragraph (5) of section 2107(c) of this title may not exceed a total of \$1,500,000.*

\* \* \* \* \*

**CHAPTER 104—UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES**

\* \* \* \* \*

**§ 2114. Students: selection; status; obligation**

(a) \* \* \*

(b) **[**Medical students shall be commissioned officers of a uniformed service as determined under regulations prescribed by the Secretary of Defense after consulting with the Secretary of Health and Human Services. Notwithstanding any other provision of law, they shall serve on active duty in pay grade O-1 with full pay and allowances of that grade.**]** *They shall be appointed in a regular component of the uniformed services and shall serve on active duty as a second lieutenant or ensign (or the equivalent).* Upon graduation they shall be appointed in a regular component, if qualified, unless they are covered by section 2115 of this title. Medical students who graduate shall be required, except as provided in section 2115 of this title, to serve thereafter on active duty under such regulations as the Secretary of Defense or the Secretary of Health and Human Services, as appropriate, may prescribe for not less than seven years, unless sooner released. Upon completion of, or release from, the active-duty service obligation, a member of the program who served on active-duty for less than 10 years shall serve in the Ready Reserve for the period specified in the following table:

<b>Period of Service on Active Duty</b>	<b>Ready Reserve Obligation</b>
Less than 8 years .....	6 years
8 years or more, but less than 9 .....	4 years
9 years or more, but less than 10 .....	2 years

The service credit exclusions specified in section 2126 of this title shall apply to students covered by this section.

\* \* \* \* \*

**SUBCHAPTER II—NURSE OFFICER CANDIDATE ACCESSION PROGRAM**

\* \* \* \* \*

**§ 2130a. Financial assistance: nurse officer candidates**

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on December 31, [2004] 2005, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than \$10,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed \$5,000.

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**CHAPTER [107] 106A—EDUCATIONAL ASSISTANCE FOR PERSONS ENLISTING FOR ACTIVE DUTY**

\* \* \* \* \*

**CHAPTER 107—PROFESSIONAL MILITARY EDUCATION**

- Sec.
- 2151. *Definitions*
- 2152. *Professional military education: general requirements.*
- 2153. *Capstone course: newly selected general and flag officers.*
- 2154. *Joint professional military education: three-phase approach.*
- 2155. *Intermediate level service colleges: written examination for selection for attendance.*
- 2156. *Joint professional military education phase II program of instruction.*
- 2157. *Intermediate and senior level service colleges; Joint Forces Staff College: duration of principle course of instruction.*
- 2158. *Annual report to Congress.*

**§2151. Definitions**

(a) *JOINT PROFESSIONAL MILITARY EDUCATION.*—*Joint professional military education consists of the rigorous and thorough instruction and examination of officers of the armed forces in an environment designed to promote a theoretical and practical in-depth understanding of joint matters and, specifically, of the subject matter covered. The subject matter to be covered by joint professional military education shall include at least the following:*

- (1) *Integrated employment of land, sea, and air forces.*
- (2) *National military strategy.*
- (3) *Strategic planning.*
- (4) *Contingency planning.*
- (5) *Command and control of combat operations under unified command.*
- (6) *Joint and combined operations.*
- (7) *Joint doctrine.*
- (8) *Joint logistics.*
- (9) *Joint communications.*

- (10) *Joint intelligence.*
  - (11) *Campaign planning.*
  - (12) *Joint military command and control systems and the interface of those systems with national command systems.*
  - (13) *Joint force development, including mobilization.*
  - (14) *Joint requirements development.*
  - (15) *Military history.*
  - (16) *Awareness of cultures in areas outside of the United States where United States forces may operate or of forces of foreign countries with whom United States forces may operate.*
- (b) **OTHER DEFINITIONS.**—*In this chapter:*
- (1) *The term “senior level service school” means any of the following:*
    - (A) *The Army War College.*
    - (B) *The College of Naval Warfare.*
    - (C) *The Air War College.*
    - (D) *The Marine Corps University.*
  - (2) *The term “intermediate level service school” means any of the following:*
    - (A) *The United States Army Command and General Staff College.*
    - (B) *The College of Naval Command and Staff.*
    - (C) *The Air Command and Staff College.*
    - (D) *The Marine Corps Command and Staff College.*

(b) **JOINT MILITARY EDUCATION SCHOOLS.**—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall periodically review and revise the curriculum of each school of the National Defense University (and of any other joint professional military education school) to enhance the education and training of officers in joint matters. The Secretary shall require such schools to maintain rigorous standards for the military education of officers with the joint specialty.

(c) **OTHER PROFESSIONAL MILITARY EDUCATION SCHOOLS.**—The Secretary of Defense shall require that each Department of Defense school concerned with professional military education periodically review and revise its curriculum for senior and intermediate grade officers in order to strengthen the focus on—

- (1) joint matters; and
- (2) preparing officers for joint duty assignments.

**§2152. Joint professional military education: general requirements**

(a) **IN GENERAL.**—*The Secretary of Defense shall implement a coherent and comprehensive framework for the joint professional military education of officers, including officers nominated under section 661 of this title for the joint specialty.*

**§2153. Capstone course: newly selected general and flag officers**

(a) **REQUIREMENT.**—*Each officer selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) shall be required, after such selection, to attend a mili-*

tary education course designed specifically to prepare new general and flag officers to work with the other armed forces.

(b) **WAIVER AUTHORITY.**—(1) Subject to paragraph (2), the Secretary of Defense may waive subsection (a)—

(A) in the case of an officer whose immediately previous assignment was in a joint duty assignment and who is thoroughly familiar with joint matters;

(B) when necessary for the good of the service;

(C) in the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist (as determined under regulations prescribed under section 619(e)(4) of this title); and

(D) in the case of a medical officer, dental officer, veterinary officer, medical service officer, nurse, biomedical science officer, or chaplain.

(2) The authority of the Secretary of Defense to grant a waiver under paragraph (1) may only be delegated to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer.

**§2154. Joint professional military education: three-phase approach**

(a) **THREE-PHASE APPROACH.**—The Secretary of Defense shall implement a three-phase approach to joint professional military education, as follows:

(1) There shall be a course of instruction, designated and certified by the Secretary of Defense as Phase I instruction, consisting all the elements of a joint professional military education (as specified in section 2151(a) of this title), in addition to the principal curriculum taught to all officers at an intermediate level service school.

(2) There shall be a course of instruction, designated and certified by the Secretary of Defense as Phase II instruction, consisting of a joint professional military education curriculum taught in residence at—

(A) the Joint Forces Staff College; or

(B) a senior level service school that has been designated and certified by the Secretary of Defense as a joint professional military education institution.

(3) There shall be a course of instruction, designated and certified by the Secretary of Defense as the Capstone course, for officers selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) and offered in accordance with section 2153 of this title.

(b) **SEQUENCED APPROACH.**—The Secretary shall require the sequencing of joint professional military education so that the standard sequence of assignments for such education requires an officer to complete Phase I instruction before proceeding to Phase II instruction, as provided in section 2156(a) of this title.



**§2155. Intermediate level service school: written examination for selection for attendance**

(a) *REQUIREMENT.*—The Secretary of each military department shall require that performance on a comprehensive written examination shall constitute not less than 20 percent of the evaluation criteria for selection of any officer for full-time attendance at an intermediate level service school under the jurisdiction of the Secretary. Such an examination shall be designed so as to require substantive knowledge of military history, national military strategy, service and joint doctrine, and such other subjects as the Secretary may require. Such an examination shall be required for each class entering an intermediate level service school after September 30, 2007.

(b) *SELECTION FROM DIFFERENT SERVICE.*—The Secretary of a military department, in considering candidates for full-time attendance at an intermediate level service school under the jurisdiction of the Secretary who are officers of an armed force other than the armed force that administers that service school, shall consider such an officer to be qualified for selection for such attendance if the officer has met all the requirements for attendance at the equivalent intermediate level service school of that officer's own armed force.

**§2156. Joint professional military education phase II program of instruction**

(a) *PREREQUISITE OF COMPLETION OF JOINT PROFESSIONAL MILITARY EDUCATION I PROGRAM OF INSTRUCTION.*—(1) After September 30, 2009, an officer of the armed forces may not be accepted for, or assigned to, a program of instruction designated by the Secretary of Defense as joint professional military education Phase II unless the officer has successfully completed a program of instruction designated by the Secretary of Defense as joint professional military education Phase I.

(2) The Chairman of the Joint Chiefs of Staff may grant exceptions to the requirement under paragraph (1). Such an exception may be granted only on a case-by-case basis for compelling cause, as determined by the Chairman. An officer selected to receive such an exception shall be required to demonstrate a knowledge of joint matters and other aspects of the Phase I curriculum that, to the satisfaction of the Chairman, qualifies the officer to meet the minimum requirements established for entry into Phase II instruction without first completing Phase I instruction. The number of officers selected to attend an offering of the principal course of instruction at the Joint Forces Staff College or a senior level service school designated by the Secretary of Defense as a joint professional military education institution who have not completed Phase I instruction should comprise no more than 10 percent of the total number of officers selected.

(b) *PHASE II REQUIREMENTS.*—The Secretary shall require that the curriculum for Phase II joint professional military education at any school—

(1) focus on developing joint attitudes and perspectives and honing joint warfighting skills; and

(2) be structured —

(A) so as to adequately prepare students to perform effectively in an assignment to a joint, multiservice organization; and

(B) so that students progress from a basic knowledge of joint matters learned in Phase I instruction to the level of expertise necessary for successful performance in the joint arena.

(c) **CURRICULUM CONTENT.**—In addition to the subjects specified in section 2151(a) of this title, the curriculum for Phase II joint professional military education shall include the following:

- (1) National security strategy.
- (2) Theater strategy and campaigning.
- (3) Joint planning processes and systems.
- (4) Joint, interagency, and multinational capabilities and the integration of those capabilities.

(d) **STUDENT RATIO; FACULTY RATIO.**—(1) For courses of instruction in a Phase II program of instruction that is offered at senior level service school that has been designated by the Secretary of Defense as a joint professional military education institution—

(1) the percentage of students enrolled in any such course who are officers of the armed force that administers the school may not exceed 60 percent, with the remaining services proportionally represented; and

(2) of the faculty at the school who are active-duty officers who provide instruction in such courses, the percentage who are officers of the armed force that administers the school may not exceed 60 percent, with the remaining services proportionally represented.

**§2157. Intermediate and senior level service schools; Joint Forces Staff College: duration of principle course of instruction**

(a) **SERVICE SCHOOLS.**—The duration of the principal course of instruction offered at each intermediate level service school and each senior level service school may not be less than 10 months of resident instruction. The Secretary of Defense may waive the requirement in the preceding sentence during a period of war or during a national emergency declared by the President or the Congress.

(b) **JOINT FORCES STAFF COLLEGE.**—(1) The duration of the principal course of instruction offered at the Joint Forces Staff College may not be less than 10 weeks of resident instruction.

(2) In this subsection, the term “principal course of instruction” means any course of instruction offered at the Joint Forces Staff College as Phase II joint professional military education.

**§2158. Annual report to Congress**

The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of this title, for the period covered by the report, the following information (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, and Marine Corps and each reserve component):

(1) The number of officers who successfully completed a joint professional military education phase II course and were not selected for promotion.

(2) The number of officer students and faculty members assigned by each service to the professional military schools of the other services and to the joint schools.

**CHAPTER 108—DEPARTMENT OF DEFENSE SCHOOLS**

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**§ 2167. National Defense University: admission of private sector civilians to professional military education program**

(a) **AUTHORITY FOR ADMISSION.**—The Secretary of Defense may permit eligible private sector employees who work in organizations relevant to national security to receive instruction at the National Defense University in accordance with this section. No more than the equivalent of **[10]** 20 full-time student positions may be filled at any one time by private sector employees enrolled under this section. Upon successful completion of the course of instruction in which enrolled, any such private sector employee may be awarded an appropriate diploma or degree under section 2165 of this title.

\* \* \* \* \*

**CHAPTER 111—SUPPORT OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION**

\* \* \* \* \*

**§ 2193b. Improvement of education in technical fields: program for support of elementary and secondary education in science, mathematics, and technology**

(a) \* \* \*

\* \* \* \* \*

(c) **STARBASE ACADEMIES.**—(1) \* \* \*

(2) The Secretary of Defense shall establish guidelines, criteria, and a process for the establishment of STARBASE programs in addition to those in operation on **[the date of the enactment of this section]** *October 5, 1999*.

**[(3) The Secretary may support the establishment and operation of any academy in excess of two academies in a State only if the Secretary has first authorized in writing the establishment of the academy and the costs of the establishment and operation of the academy are paid out of funds provided by sources other than the Department of Defense. Any such costs that are paid out of appropriated funds shall be considered as paid out of funds provided by such other sources if such sources fully reimburse the United States for the costs.]**

*(3)(A) Subject to subparagraph (B), the Secretary may not support the establishment in any State of more than two academies.*

*(B) The Secretary may waive the limitation in subparagraph (A). Any such waiver shall be made under criteria to be prescribed by the Secretary.*

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**PART IV—SERVICE, SUPPLY, AND PROCUREMENT**

\* \* \* \* \*

## CHAPTER 131—PLANNING AND COORDINATION

Sec.							
2201.	Apportionment of funds: authority for exemption; excepted expenses.	*	*	*	*	*	*
【2219.	Retention of morale, welfare, and recreation funds by military installations: limitation.】						
		*	*	*	*	*	*
2222.	<i>Defense business systems: architecture, accountability, and modernization.</i>						
		*	*	*	*	*	*

**§ 2215. Transfer of funds to other departments and agencies: limitation**

【(a) CERTIFICATION REQUIRED.—】Funds available for military functions of the Department of Defense may not be made available to any other department or agency of the Federal Government pursuant to a provision of law enacted after November 29, 1989, unless, not less than 30 days before such funds are made available to such other department or agency, the Secretary of Defense submits to the 【congressional committees specified in subsection (b)】 *congressional defense committees* a certification that making those funds available to such other department or agency is in the national security interest of the United States.

【(b) CONGRESSIONAL COMMITTEES.—The committees referred to in subsection (a) are—

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

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

\* \* \* \* \*

**§ 2222. *Defense business systems: architecture, accountability, and modernization***

(a) *CONDITIONS FOR OBLIGATION OF FUNDS FOR DEFENSE BUSINESS SYSTEM MODERNIZATION.—Effective January 1, 2005, funds appropriated to the Department of Defense may not be obligated for a defense business system modernization that will have a total cost in excess of \$1,000,000 unless—*

(1) *the approval authority designated for the defense business system certifies to the Defense Business Systems Management Committee established by section 186 of this title that the defense business system modernization—*

(A) *is in compliance with the enterprise architecture developed under subsection (b), or such compliance is waived in writing by the approval authority as a result of the investment review process conducted under subsection (d) for the defense business system modernization; and*

(B) *will be acquired or developed in a manner consistent with the system acquisition regulations and instructions of the Department of Defense; and*

(2) *the Defense Business Systems Management Committee approves the certification by the approval authority.*

(b) *ENTERPRISE ARCHITECTURE FOR DEFENSE BUSINESS SYSTEMS.—Not later than September 30, 2005, the Secretary of Defense,*

acting through the Defense Business Systems Management Committee, shall develop—

(1) an enterprise architecture to cover all defense business systems, and the functions and activities supported by defense business systems, which shall be sufficiently defined to effectively guide, constrain, and permit implementation of interoperable defense business system solutions and consistent with the policies and procedures established by the Director of the Office of Management and Budget, and

(2) a transition plan for implementing the enterprise architecture for defense business systems.

(c) APPROVAL AUTHORITIES AND ACCOUNTABILITY FOR DEFENSE BUSINESS SYSTEMS.—The Secretary of Defense shall delegate responsibility for the planning, design, acquisition, deployment, operation, maintenance, modernization, and oversight of defense business systems as follows:

(1) The Under Secretary of Defense for Acquisition, Technology and Logistics shall be responsible and accountable for any defense business system the primary purpose of which is to support acquisition activities, logistics activities, or installations and environment activities of the Department of Defense.

(2) The Under Secretary of Defense (Comptroller) shall be responsible and accountable for any defense business system the primary purpose of which is to support financial management activities or strategic planning and budgeting activities of the Department of Defense.

(3) The Under Secretary of Defense for Personnel and Readiness shall be responsible and accountable for any defense business system the primary purpose of which is to support human resource management activities of the Department of Defense.

(4) The Assistant Secretary of Defense for Networks and Information Integration and the Chief Information Officer of the Department of Defense shall be responsible and accountable for any defense business system the primary purpose of which is to support information technology infrastructure or information assurance activities of the Department of Defense.

(5) The Deputy Secretary of Defense or an Under Secretary of Defense, as designated by the Secretary of Defense, shall be responsible for any defense business system the primary purpose of which is to support any activity of the Department of Defense not covered by paragraphs (1) through (4).

(d) DEFENSE BUSINESS SYSTEM INVESTMENT REVIEW.—(1) The Secretary of Defense shall require each approval authority designated under subsection (c) to establish, not later than March 15, 2005, an investment review process, consistent with section 11312 of title 40, to review the planning, design, acquisition, development, deployment, operation, maintenance, modernization, and project cost benefits and risks of all defense business systems for which the approval authority is responsible. The investment review process so established shall specifically address the responsibilities of approval authorities under subsection (a).

(2) The review of defense business systems under the investment review process shall include the following:

(A) Review and approval by an investment review board of each defense business system as an investment before the obligation of funds on the system.

(B) Periodic review, but not less than annually, of every defense business system investment.

(C) Representation on each investment review board by appropriate officials from among the armed forces, combatant commands, the Joint Chiefs of Staff, and Defense Agencies.

(D) Use of threshold criteria to ensure an appropriate level of review within the Department of Defense of, and accountability for, defense business system investments depending on scope, complexity, and cost.

(e) **BUDGET INFORMATION.**—In the materials that the Secretary submits to Congress in support of the budget submitted by the President to Congress under section 1105 of title 31 for fiscal year 2006 and fiscal years thereafter, the Secretary of Defense shall—

(1) identify the approval authority for each defense business system; and

(2) for each defense business system for which funding is proposed in the budget—

(A) certify that the defense business system complies with the defense business enterprise architecture; or

(B) explain why funds for such system are necessary to maintain a mission critical or mission essential system of the Department of Defense, notwithstanding its noncompliance with the defense business enterprise architecture.

(f) **CONGRESSIONAL REPORTS.**—Not later than March 15 of each year from 2005 through 2009, the Secretary of Defense shall submit to the congressional defense committees a report on Department of Defense compliance with the requirements of this section. The first report shall define plans and commitments for meeting the requirements of subsection (a), including specific milestones and performance measures. Subsequent reports shall—

(1) describe actions taken and planned for meeting the requirements of subsection (a), including—

(A) specific milestones and actual performance against specified performance measures, and any revision of such milestones and performance measures; and

(B) specific actions on the defense business system modernizations submitted for certification under such subsection;

(2) identify the number of defense business system modernizations so certified;

(3) identify any defense business system modernization with an obligation in excess of \$1,000,000 during the preceding fiscal year that was not certified under subsection (a), and the reasons for the waiver; and

(4) discuss specific improvements in business operations and cost savings resulting from successful defense business systems modernization efforts.

(g) **DEFINITIONS.**—In this section:

(1) The term “approval authority”, with respect to a defense business system, means the Department of Defense official responsible for the defense business system, as designated by subsection (c).

(2) The term “defense business system” means an information system, other than a national security system, operated by, for, or on behalf of the Department of Defense, including financial systems, mixed systems, financial data feeder systems, and information technology and information assurance infrastructure, used to support business activities, such as acquisition, financial management, logistics, strategic planning and budgeting, installations and environment, and human resource management.

(3) The term “defense business system modernization” means—

(A) the acquisition or development of a new defense business system; or

(B) any significant modification or enhancement of an existing defense business system (other than necessary to maintain current services).

(4) The term “enterprise architecture” has the meaning given that term in section 3601(4) of title 44.

(5) The terms “information system” and “information technology” have the meanings given those terms in section 11101 of title 40.

(6) The term “national security system” has the meaning given that term in section 2315 of this title.

\* \* \* \* \*

**§ 2224. Defense Information Assurance Program**

(a) \* \* \*

\* \* \* \* \*

(c) PROGRAM STRATEGY.—In carrying out the program, the Secretary shall develop a program strategy that encompasses those actions necessary to assure the readiness, reliability, continuity, and integrity of Defense information systems, networks, and infrastructure, including through compliance with subchapter III of chapter 35 of title 44, including through compliance with [subtitle] subchapter II of chapter 35 of title 44. The program strategy shall include the following:

(1) \* \* \*

\* \* \* \* \*

**CHAPTER 134—MISCELLANEOUS ADMINISTRATIVE PROVISIONS**

\* \* \* \* \*

**SUBCHAPTER I—MISCELLANEOUS AUTHORITIES, PROHIBITIONS, AND LIMITATIONS ON THE USE OF APPROPRIATED FUNDS**

Sec. 2241. Availability of appropriations for certain purposes.

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§ 2246. Department of Defense golf courses: limitation on use of appropriated funds.

[2247. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation.]

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**CHAPTER 137—PROCUREMENT GENERALLY**

\* \* \* \* \*

**§ 2304a. Task and delivery order contracts: general authority**

(a) \* \* \*

\* \* \* \* \*

**[(f) CONTRACT PERIOD.—**The head of an agency entering into a task or delivery order contract under this section may provide for the contract to cover a total period of not more than five years.]

*(f) CONTRACT PERIOD.—The head of an agency entering into a task or delivery order contract under this section may provide for the contract to cover any base period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification to the contract.*

\* \* \* \* \*

**§ 2305a. Design-build selection procedures**

(a) \* \* \*

\* \* \* \* \*

*(f) SPECIAL AUTHORITY FOR MILITARY CONSTRUCTION PROJECTS.—(1) The Secretary of a military department, and the Secretary of Defense with respect to matters concerning the Defense Agencies, may use funds available to the Secretary under section 2807(a) or 18233(e) of this title to accelerate the design effort in connection with a military construction project for which the two-phase selection procedures described in subsection (c) are used to select the contractor for both the design and construction portion of the project before the project is specifically authorized by law and before funds are appropriated for the construction portion of the project. Notwithstanding the limitations contained in such sections, use of such funds for the design portion of a military construction project may continue despite the subsequent authorization of the project. The advance notice requirement of section 2807(b) of this title shall continue to apply whenever the estimated cost of the design portion of the project exceeds the amount specified in such section.*

*(2) Any military construction contract that provides for an accelerated design effort, as authorized by paragraph (1), shall include as a condition of the contract that the liability of the United States in a termination for convenience may not exceed costs above the costs attributable to the final design of the project.*

*(3) Not more than 36 military construction projects containing the accelerated design effort authorized by paragraph (1) may be carried out.*

*(4) Not later than March 1, 2007, the Secretary of Defense shall submit to the congressional defense committees a report evaluating the usefulness of the authority provided by this subsection in expediting the design and construction of military construction projects.*



*The authority provided by this subsection expires September 30, 2008, except that, if the report required by this paragraph is not submitted by March 1, 2007, the authority shall expire on that date.*

**§ 2306b. Multiyear contracts: acquisition of property**

(a) \* \* \*

\* \* \* \* \*

(g) CONTRACT CANCELLATION CEILINGS EXCEEDING \$100,000,000.—(1) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the [Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives] *congressional defense committees*, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(2) *In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (1), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall, as part of the certification required by subsection (i)(1)(A), give written notification to the congressional defense committees of—*

(A) *the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;*

(B) *the extent to which costs of contract cancellation are not included in the budget for the contract; and*

(C) *a financial risk assessment of not including budgeting for costs of contract cancellation, including proposed funding sources to meet such cancellation costs if the contract is canceled.*

\* \* \* \* \*

**§ 2306c. Multiyear contracts: acquisition of services**

(a) \* \* \*

\* \* \* \* \*

(d) RESTRICTIONS APPLICABLE GENERALLY.—(1) The head of an agency may not initiate under this section a contract for services that includes an unfunded contingent liability in excess of \$20,000,000 unless the [committees of Congress named in paragraph (5)] *congressional defense committees* are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

\* \* \* \* \*

(3) The head of an agency may not terminate a multiyear procurement contract for services until 10 days after the date on which notice of the proposed termination is provided to the [committees of Congress named in paragraph (5)] *congressional defense committees*.

(4) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the [committees of Congress named in paragraph (5)] *congressional defense committees*, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

[(5) The committees of Congress referred to in paragraphs (1), (3), and (4) are as follows:

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

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

(5) *In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (4), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall give written notification to the congressional defense committees of—*

*(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;*

*(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and*

*(C) a financial risk assessment of not including budgeting for costs of contract cancellation, including proposed funding sources to meet such cancellation costs if the contract is canceled.*

\* \* \* \* \*

**CHAPTER 138—COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES**

\* \* \* \* \*

**SUBCHAPTER I—ACQUISITION AND CROSS-SERVICING AGREEMENTS**

\* \* \* \* \*

**§ 2349. Overseas Workload Program**

(a) \* \* \*

\* \* \* \* \*

(d) DEFINITION.—In this section, the term “major non-NATO ally” has the meaning given that term in section [2350a(i)(3)] 2350a(i)(2) of this title.

\* \* \* \* \*

**SUBCHAPTER II—OTHER COOPERATIVE AGREEMENTS**

\* \* \* \* \*

**§ 2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment**

(a) \* \* \*

\* \* \* \* \*

(g) Nothing in this section shall be construed as authorizing the Secretary of Defense—

(1) **the Secretary of Defense** to waive any of the financial management responsibilities administered by the Secretary of the Treasury; or

\* \* \* \* \*

**CHAPTER 139—RESEARCH AND DEVELOPMENT**

Sec. 2351. Availability of appropriations.

\* \* \* \* \*

**§ 2370a.** Medical countermeasures against biowarfare threats: allocation of funding between near-term and other threats.

\* \* \* \* \*

**§ 2370a. Medical countermeasures against biowarfare threats: allocation of funding between near-term and other threats**

**[(a) ALLOCATION BETWEEN NEAR-TERM AND OTHER THREATS.—**Of the funds appropriated or otherwise made available for any fiscal year for the medical component of the Biological Defense Research Program (BDRP) of the Department of Defense—

**[(1)** not more than 80 percent may be obligated and expended for product development, or for research, development, test, or evaluation, of medical countermeasures against near-term validated biowarfare threat agents; and

**[(2)** not more than 20 percent may be obligated or expended for product development, or for research, development, test, or evaluation, of medical countermeasures against mid-term or far-term validated biowarfare threat agents.

**[(b) DEFINITIONS.—**In this section:

**[(1)** The term “validated biowarfare threat agent” means a biological agent that—

**[(A)** is named in the biological warfare threat list published by the Defense Intelligence Agency; and

**[(B)** is identified as a biowarfare threat by the Deputy Chief of Staff of the Army for Intelligence in accordance with Army regulations applicable to intelligence support for the medical component of the Biological Defense Research Program.

**[(2)** The term “near-term validated biowarfare threat agent” means a validated biowarfare threat agent that has been, or is being, developed or produced for weaponization within 5 years, as assessed and determined by the Defense Intelligence Agency.

**[(3)** The term “mid-term validated biowarfare threat agent” means a validated biowarfare threat agent that is an emerging biowarfare threat, is the object of research by a foreign threat country, and will be ready for weaponization in

more than 5 years and less than 10 years, as assessed and determined by the Defense Intelligence Agency.

[(4) The term “far-term validated biowarfare threat agent” means a validated biowarfare threat agent that is a future biowarfare threat, is the object of research by a foreign threat country, and could be ready for weaponization in more than 10 years and less than 20 years, as assessed and determined by the Defense Intelligence Agency.

[(5) The term “weaponization” means incorporation into usable ordnance or other militarily useful means of delivery.]

\* \* \* \* \*

**§ 2374a. Prizes for advanced technology achievements**

(a) **AUTHORITY.**—The Secretary of Defense, [acting through the Director of the Defense Advanced Research Projects Agency] *acting through the Director of Defense Research and Engineering*, may carry out a program to award cash prizes in recognition of outstanding achievements in basic, advanced, and applied research, technology development, and prototype development that have the potential for application to the performance of the military missions of the Department of Defense.

\* \* \* \* \*

**CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS**

Sec.						
2381.	Contracts: regulations for bids.					
		*	*	*	*	*
2401b.	<i>Limitation on lease of foreign-built vessels.</i>					
		*	*	*	*	*
2410p.	<i>Rapid acquisition authority to respond to combat emergencies.</i>					
		*	*	*	*	*

**§ 2401b. Limitation on lease of foreign-built vessels**

(a) **LIMITATION.**—*The Secretary of a military department may not make a contract for a lease or charter of a vessel for a term of more than 12 months (including all options to renew or extend the contract) if the hull, a major component of the hull, or superstructure of the vessel is constructed in a foreign shipyard.*

(b) **PRESIDENTIAL WAIVER FOR NATIONAL SECURITY INTEREST.**—(1) *The President may authorize exceptions to the limitation in subsection (a) when the President determines that it is in the national security interest of the United States to do so.*

(2) *The President shall transmit notice to Congress of any such determination, and no contract may be made pursuant to the exception authorized until the end of the 30-day period beginning on the date on which the notice of the determination is received by Congress.*

\* \* \* \* \*

**§2410p. Rapid acquisition authority to respond to combat emergencies**

(a) *RAPID ACQUISITION AUTHORITY.*—The Secretary of Defense may rapidly acquire, in accordance with this section, equipment needed by a combatant commander to eliminate a combat capability deficiency that has resulted in combat fatalities.

(b) *PROCESS FOR RAPID ACQUISITION.*—Not later than 30 days after the date of the enactment of this section, the Secretary of Defense shall develop a process for the rapid acquisition authority provided by subsection (a) and submit to Congress a detailed explanation of the process, including procedures to be followed in carrying out the process. The process shall provide for the following:

(1) A requirement that the process may be used only to acquire the minimum amount of equipment needed until the needs of the combatant commander can be fulfilled under existing acquisition statutes, policies, directives, and regulations.

(2) A goal of awarding a contract for the equipment within 15 days after receipt of a request from a commander.

(3) In a case in which the equipment cannot be acquired without an extensive delay, a requirement for an interim solution to minimize the combat capability deficiency and combat fatalities until the equipment can be acquired.

(4) Waiver of the applicability of all policies, directives, and regulations related to—

(A) the establishment of the requirement for the equipment;

(B) the research, development, test, and evaluation of the equipment; and

(C) the solicitation and selection of sources, and the award of the contract, for procurement of the equipment.

(5) Such other procedures or requirements as the Secretary considers appropriate.

(c) *WAIVER OF CERTAIN STATUTES.*—For purposes of exercising the authority provided by subsection (a) with respect to equipment, laws relating to the following shall not apply:

(A) The establishment of the requirement for the equipment.

(B) The research, development, test, and evaluation of the equipment.

(C) The solicitation and selection of sources, and the award of the contract, for procurement of the equipment.

(d) *LIMITATIONS.*—The rapid acquisition authority provided by subsection (a) may be used only—

(1) after the Secretary of Defense, without delegation, determines in writing that there exists a combat capability deficiency that has resulted in combat fatalities; and

(2) to acquire equipment in an amount aggregating not more than \$100,000,000 during a fiscal year.

(e) *SOURCE OF FUNDS.*—For acquisitions under this section to be made during any fiscal year, the Secretary may use any funds made available to the Department of Defense for that fiscal year.

(f) *NOTIFICATION TO CONGRESS AFTER EACH USE OF AUTHORITY.*—The Secretary of Defense shall notify the congressional defense committees within 15 days after each use of the authority provided by subsection (a). Each such notice shall identify the equipment to

be acquired, the amount to be expended for such acquisition, and the source of funds for such acquisition.

(g) *COMBATANT COMMANDER.*—In this section, the term “combatant commander” means the commander of a unified combatant command with authority for the conduct of operations in a specific area of responsibility or who otherwise has authority to conduct operations at the direction of the President or Secretary of Defense.

\* \* \* \* \*

**CHAPTER 142—PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM**

\* \* \* \* \*

**§ 2416. Subcontractor information**

(a) \* \* \*

\* \* \* \* \*

(d) In this section, the term “defense contractor”, for any year, means a person awarded a contract with the Department of Defense in that year for an amount in excess of **[\$500,000]** \$1,000,000.

\* \* \* \* \*

**CHAPTER 144—MAJOR DEFENSE ACQUISITION PROGRAMS**

Sec. 2430.	Major defense acquisition program defined.
	* * * * *
2437.	<i>Development of major defense acquisition programs: sustainment and modernization of system to be replaced.</i>
	* * * * *

**§ 2437. Development of major defense acquisition programs: sustainment and modernization of system to be replaced**

(a) *REQUIREMENT FOR SUSTAINING AND MODERNIZING EXISTING FORCES.*—(1) The Secretary of Defense shall require that, whenever a new major defense acquisition program begins development, the defense acquisition authority responsible for that program shall develop a plan (to be known as a sustainment and modernization plan) for the existing system that the system under development is intended to replace. Any such sustainment and modernization plan shall provide for budgeting, sustaining, and modernizing the existing system until the replacement system to be developed under the major defense acquisition program is fielded and assumes the majority responsibility for the mission of the existing system. This section does not apply to a major defense acquisition that reaches initial operational capability before October 1, 2008.

(2) In this section, the term “defense acquisition authority” means the Secretary of a military department or the commander of the United States Special Operations Command.

(b) *SUSTAINMENT AND MODERNIZATION PLAN.*—The Secretary of Defense shall require that each sustainment and modernization plan under this section include, at a minimum, the following:

(1) *The milestone schedule for the development of the major defense acquisition program, including low-rate initial production, initial operational capability, full-rate production, full operational capability, and the date when the replacement system assumes the majority responsibility for the mission of the existing system.*

(2) *An analysis of the existing system to determine the following:*

(A) *A sustainment plan and budget requirements necessary to provide service life extension to the existing system at acceptable reliability and availability rates.*

(B) *A modernization plan and budget requirements necessary to maintain mission capability against the relevant threats.*

(C) *A modernization plan and budget requirements necessary—*

(i) *to transfer mature technologies from the new system or other systems so that the mission capability of the existing system is enhanced against relevant threats; and*

(ii) *to provide interoperability with the new system during the period from initial fielding until the new system assumes the majority of responsibility for the mission of the existing system.*

(c) *ANNUAL REVIEW.—Each fiscal year, before the submission to Congress of the President's budget for the next fiscal year, the Secretary of Defense shall review the schedule performance of each replacement major defense acquisition program for which a sustainment and modernization plan has been developed under this section to compare that performance with the schedule set forth under subsection (b)(1). If the schedule for the program has changed, then the Secretary shall notify the congressional defense committees of such change.*

(d) *EXCEPTIONS.—Subsection (a) shall not apply to a major defense acquisition program if the Secretary of Defense determines that—*

(1) *the existing system is no longer relevant to the mission;*

(2) *the mission has been eliminated;*

(3) *the mission has been consolidated with another mission in such a manner that another existing system can adequately meet the mission requirements; or*

(4) *the duration of time until the new system assumes the majority of responsibility for the existing system's mission is sufficiently short so that mission availability, capability, interoperability, and force protection requirements are maintained.*

(e) *WAIVER.—The Secretary of Defense may waive the applicability of subsection (a) to a major defense acquisition program if the Secretary determines that, but for such a waiver, the Department would be unable to meet national security objectives. Whenever the Secretary makes such a determination and authorizes such a waiver, the Secretary shall submit notice of such waiver and of the Secretary's determination and the reasons therefor in writing to the congressional defense committees.*

\* \* \* \* \*

**CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS**

Sec.	
2460.	Definition of depot-level maintenance and repair.
	* * * * *
2472.	Management of depot employees.]
2472.	Prohibition on management of depot employees by end strength.
	* * * * *

**§ 2461. Commercial or industrial type functions: required studies and reports before conversion to contractor performance**

- (a) \* \* \*
- (b) NOTIFICATION AND ELEMENTS OF ANALYSIS.—(1) \* \* \*

(5)(A) *A function of the Department of Defense performed by 10 or more civilian employees may not be converted, in whole or in part, to performance by a contractor unless, the conversion is based on the results of a public-private competition process that—*

- (i) *formally compares the cost of civilian employee performance of the function with the costs of performance by a contractor;*
- (ii) *creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A-76, as implemented on May 29, 2003;*
- (iii) *determines whether the submitted offers meet the needs of the Department of Defense with respect to factors other than cost, including quality and reliability;*
- (iv) *requires continued performance of the function by civilian employees if the cost of performance of the function by a contractor would, over all performance periods required by the solicitation, cost less than—*
  - (I) *10 percent of the personnel-related costs for performance of that activity or function in the agency tender; or*
  - (II) *\$10,000,000; and*
- (v) *provides no advantage to an offeror for a proposal to reduce costs for the Department of Defense by—*
  - (I) *not making an employer-sponsored health insurance plan available to the workers who are to be employed in the performance of such function under a contract; or*
  - (II) *offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than that which is paid by the Department of Defense for health benefits for civilian employees under chapter 89 of title 5.*

(B) *Any modification, reorganization, division, or other change in the organization of a function of the Department of Defense so that is performed by less than 10 civilian employees of the Department of Defense and, therefore, excluded from subparagraph (A), is prohibited.*

(C) *Any function that is performed by civilian employees of the Department of Defense and is proposed to be reengineered, reorga-*



nized, modernized, upgraded, expanded, or changed in order to become more efficient, but the civilian employees would still provide essentially the same service, is subject to the competition requirement in subparagraph (A).

(D) The cost savings requirement specified in subparagraph (A) does not apply to any contracts for special studies and analyses, construction services, architectural services, medical services, scientific and technical services related to (but not in support of) research and development, and depot-level maintenance and repair services.

(E) The Secretary of Defense may waive the competition requirement in specific instances if—

(i) the written waiver is prepared by the Secretary of Defense, or the relevant Assistant Secretary or agency head;

(ii) the written waiver is accompanied by a detailed determination that national security interests are so compelling as to preclude compliance with the requirement for a public-private competition; and

(iii) a copy of the waiver is published in the Federal Register within 10 working days after the date on which the waiver is invoked, although use of the waiver need not be delayed until its publication.

\* \* \* \* \*

**§ 2466. Limitations on the performance of depot-level maintenance of materiel**

(a) \* \* \*

\* \* \* \* \*

[(d) ANNUAL REPORTS.—(1) Not later than February 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that were expended during the preceding two fiscal years for performance of depot-level maintenance and repair workloads by the public and private sectors, as required by this section.

[(2) Not later than April 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that are projected to be expended during each of the next five fiscal years for performance of depot-level maintenance and repair workloads by the public and private sectors, as required by this section.

[(3) Not later than 60 days after the date on which the Secretary submits a report under this subsection, the Comptroller General shall submit to Congress the Comptroller General's views on whether—

[(A) in the case of a report under paragraph (1), the Department of Defense has complied with the requirements of subsection (a) for the fiscal years covered by the report; and

[(B) in the case of a report under paragraph (2), the expenditure projections for future fiscal years are reasonable.]

(d) ANNUAL REPORT AND REVIEW.—(1) Not later than April 1 of each year, the Secretary of Defense shall submit to Congress a re-

port identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that was expended during the preceding fiscal year, and are projected to be expended in the current fiscal year and next fiscal year, for performance of depot-level maintenance and repair workloads by the public and private sectors.

(2) Not later than 60 days after the date on which the Secretary submits a report under paragraph (1), the Comptroller General shall submit to Congress the Comptroller General's views on whether—

(A) the Department of Defense has complied with the requirements of subsection (a) during the preceding fiscal year covered by the report; and

(B) the expenditure projections for the current fiscal year and next fiscal year are reasonable.

\* \* \* \* \*

**[§ 2472. Management of depot employees**

**[(a) PROHIBITION ON MANAGEMENT BY END STRENGTH.—]**

**§ 2472. Prohibition on management of depot employees by end strength**

The civilian employees of the Department of Defense, including the civilian employees of the military departments and the Defense Agencies, who perform, or are involved in the performance of, depot-level maintenance and repair workloads may not be managed on the basis of any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. Such employees shall be managed solely on the basis of the available workload and the funds made available for such depot-level maintenance and repair.

**[(b) ANNUAL REPORT.—**Not later than December 1 of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the number of employees employed and expected to be employed by the Department of Defense during that fiscal year to perform depot-level maintenance and repair of materiel. The report shall indicate whether that number is sufficient to perform the depot-level maintenance and repair functions for which funds are expected to be provided for that fiscal year for performance by Department of Defense employees.**]**

\* \* \* \* \*

**CHAPTER 147—COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES**

- [Sec.**
- [2481.** Existence of defense commissary system and exchange stores system.
- [2482.** Commissary stores: operation.
- [2482a.** Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services.
- [2483.** Commissary stores: reimbursement for use of commissary facilities by military departments.

- [2484. Commissary stores: use of appropriated funds to cover operating expenses.
- [2485. Donation of unusable food: commissary stores and other activities.
- [2486. Commissary stores: merchandise that may be sold; uniform surcharges and pricing.
- [2487. Commissary stores: release of certain commercially valuable information to the public.
- [2488. Nonappropriated fund instrumentalities: purchase of alcoholic beverages.
- [2489. Overseas package stores: treatment of United States wines.
- [2489a. Sale or rental of sexually explicit material prohibited.
- [2490a. Combined exchange and commissary stores.
- [2492. Overseas commissary and exchange stores: access and purchase restrictions.
- [2493. Fisher Houses: administration as nonappropriated fund instrumentality.
- [2494. Uniform funding and management of morale, welfare, and recreation programs.

**[§2481. Existence of defense commissary system and exchange stores system**

[(a) IN GENERAL.—The Secretary of Defense shall operate a defense commissary system and an exchange stores system in the manner provided by this chapter and other provisions of law.

[(b) SEPARATE SYSTEMS.—(1) Except as provided in paragraph (2), the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.

[(2) This subsection does not apply to the following:

[(A) Combined exchange and commissary stores operated under the authority provided by section 2490a of this title.

[(B) NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.]

<i>Subchapter</i>	<i>Sec.</i>
<i>I. Defense Commissary System .....</i>	<i>2481</i>
<i>II. Relationship, Continuation, and Common Policies of Defense Commissary and Exchange Systems .....</i>	<i>2487</i>
<i>III. Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities .....</i>	<i>2491</i>

**SUBCHAPTER I—DEFENSE COMMISSARY SYSTEM**

- 2481. Existence and purpose of defense commissary system.*
- 2482. Commissary stores: criteria for establishment or closure; store size.*
- 2483. Commissary stores: use of appropriated funds to cover operating expenses.*
- 2484. Commissary stores: merchandise that may be sold; uniform surcharges and pricing.*
- 2485. Commissary stores: operation.*

**§2481. Existence and purpose of defense commissary system**

(a) *EXISTENCE OF SYSTEM.—The Secretary of the Defense shall operate, using funds appropriated to the Department of Defense, a world-wide system of commissary stores that sell, at reduced prices, food and other merchandise consistent with societal norms for product selection in commercial large-scale grocery stores in the United States to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and patrons authorized to use the system under chapter 54 of this title.*

(b) *PURPOSE OF SYSTEM.—The purpose of the defense commissary system is to enhance the quality of life of members of the uniformed services, retired members, dependents of such members,*

and other authorized patrons and to provide such members with an additional nonmonetary compensation in recognition of their service to the United States.

(c) *REDUCES PRICES DEFINED.*—In this section, the term “reduced prices” means prices for food and other merchandise determined using the price setting process specified in section 2484 of this title.

**§2482. Commissary stores: criteria for establishment or closure; store size**

(a) *PRIMARY CONSIDERATION FOR ESTABLISHMENT.*—The needs of members of the uniformed services on active duty and their dependents shall be the primary consideration whenever the Secretary of Defense—

- (1) assesses the need to establish a commissary store; and
- (2) selects the actual location for the store.

(b) *STORE SIZE.*—In determining the size of a commissary store, the Secretary of Defense shall take into consideration the number of all authorized patrons of the defense commissary system who are likely to use the store.

(c) *CLOSURE CONSIDERATIONS.*—(1) Whenever assessing whether to close a commissary store, the effect of the closure on the quality of life of members of the uniformed services and their dependents using the store and on the welfare and security of the military community in which the commissary is located shall be the primary consideration. In all cases, the quality of life for military patrons shall take priority over any consideration of economic criteria relative to store financial performance.

(2) The Secretary of Defense shall give the quality of life for members of a reserve component the same priority as the quality of life for active duty members whenever assessing whether to close a commissary store, including when the assessment is undertaken as a result of the closure or realignment of a military installation under a base closure law.

(d) *CONGRESSIONAL NOTIFICATION.*—The closure of a commissary store shall not take effect until the end of the 90-day period beginning on the date on which the Secretary of Defense submits to Congress written notice of the reasons supporting the closure. The written notice shall include an assessment of the impact closure will have on the quality of life for military patrons and the welfare and security of the military community in which the commissary is located.

**§ [2484] 2483. Commissary stores: use of appropriated funds to cover operating expenses**

(a) \* \* \*

\* \* \* \* \*

**【§ 2483. Commissary stores: reimbursement for use of commissary facilities by military departments**

【(a) *PAYMENT REQUIRED.*—The Secretary of a military department shall pay the Defense Commissary Agency the amount determined under subsection (b) for any use of a commissary facility by

the military department for a purpose other than commissary sales or operations in support of commissary sales.

[(b) AMOUNT.—The amount payable under subsection (a) for use of a commissary facility by a military department shall be equal to the share of depreciation of the facility that is attributable to that use, as determined under regulations prescribed by the Secretary of Defense.]

[(c) COVERED FACILITIES.—This section applies with respect to a commissary facility that is acquired, constructed, converted, expanded, installed, or otherwise improved (in whole or in part) with the proceeds of an adjustment or surcharge applied under section 2486(c) of this title.]

[(d) CREDITING OF PAYMENTS.—The Director of the Defense Commissary Agency shall credit amounts paid under this section for use of a facility to an appropriate account to which proceeds of an adjustment or surcharge referred to in subsection (c) are credited.]

**§ [2486] 2484. Commissary stores: merchandise that may be sold; uniform surcharges and pricing**

[(a) IN GENERAL.—Commissary stores are similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.]

[(b) AUTHORIZED COMMISSARY MERCHANDISE CATEGORIES.—Merchandise sold in, at, or by commissary stores may include items only in the following categories:

[(1) Health and beauty aids.]

[(2) Meat and poultry.]

[(3) Fish and seafood.]

[(4) Produce.]

[(5) Food and non-food grocery items.]

[(6) Bakery goods.]

[(7) Dairy products.]

[(8) Tobacco products.]

[(9) Delicatessen items.]

[(10) Frozen foods.]

[(11) Magazines and other periodicals.]

[(12) Such other merchandise categories as the Secretary of Defense may prescribe, except that the Secretary shall notify Congress of any addition of, or change in, a merchandise category under this paragraph.]

[(c) UNIFORM SALES PRICE SURCHARGE OR ADJUSTMENT.—An adjustment of or surcharge on sales prices in commissary stores under subsection (d) or section 2685(a) of this title or for any other purpose shall be applied as a uniform percentage of the sales price of all merchandise sold in, at, or by commissary stores. Effective on November 18, 1997, the uniform percentage shall be equal to five percent and may not be changed except by a law enacted after such date.]

*(a) IN GENERAL.—As provided in section 2481(a) of this title, commissary stores are intended to be similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores. The Secretary of Defense shall ensure that the design and format of commissary stores are consistent with modern grocery store stockage and format.*

(b) *REQUIRED COMMISSARY MERCHANDISE CATEGORIES.*—Merchandise sold in, at, or by commissary stores shall include items in the following categories:

- (1) Meat, poultry, and seafood.
- (2) Nonalcoholic beverages.
- (3) Produce.
- (4) Grocery food, whether stored chilled, frozen, or at room temperature.
- (5) Dairy products.
- (6) Bakery and delicatessen items.
- (7) Nonfood grocery items.
- (8) Health and beauty aids.
- (9) Magazines and periodicals.
- (10) Telephone cards, greeting cards, and film and one-time use cameras.

(c) *INCLUSION OF GENERAL MERCHANDISE ITEMS.*—(1) Among the various defense retail systems—

(A) commissary stores shall be the primary Department of Defense-operated store for the sale of items described in paragraphs (1) through (7) of subsection (b); and

(B) exchange stores shall continue to maintain the exclusive right to operate convenience stores, shopettes, and troop stores, including such stores established to support contingency operations.

(2) Merchandise sold in commissary stores may include such general merchandise items as the Secretary of Defense may prescribe, except that the Secretary may not exclude seasonal items, tobacco products, pet supplies, batteries, potted plants and floral bouquets, women's hosiery, and school supplies, to the extent such products have been available in commissary stores before June 1, 2004, unless the Secretary determines that space or other considerations preclude the sale of all or some of the specified items. The Secretary shall provide notice to Congress of any reduction in the availability of such items at least 30 days before the reduction takes effect.

(3) A military exchange may be considered as the vendor for the purchase of tobacco products, greeting cards, and film and one-time use cameras and shall serve as the vendor for telephone cards. Subsections (e) and (f) shall not apply to the pricing of such an item when a military exchange serves as the vendor of the item. Commissary store and exchange prices shall be comparable for such an item.

(4) During the two-year period ending March 31, 2007, the Secretary shall maintain sales data for commissary stores and exchange stores regarding the items identified in subsection (b)(10). Not later than August 1, 2007, the Secretary shall submit to Congress a report containing such sales data.

(d) *EXCLUDED GOODS OR SERVICES.*—Commissary stores shall not offer film development services.

(e) *UNIFORM SALES PRICE SURCHARGE.*—The Secretary of Defense shall apply a uniform surcharge equal to not more than five percent on the sales prices established under subsection (f) for each item of merchandise sold in, at, or by commissary stores.

**[(d)]** (f) *SALES PRICE ESTABLISHMENT.*—(1) The Secretary of Defense shall establish the sales price of each item of merchandise sold in, at, or by commissary stores at the level that will recoup

the actual product cost of the item [(consistent with this section and section 2685 of this title)].

\* \* \* \* \*

[(e)] (g) SPECIAL RULE FOR BRAND-NAME COMMERCIAL ITEMS.—The Secretary of Defense may not use the exception provided in section 2304(c)(5) of this title regarding the procurement of a brand-name commercial item for resale in, at, or by commissary stores unless the commercial item is regularly sold outside of commissary stores under the same brand name as the name by which the commercial item will be sold in, at, or by commissary stores. In determining whether a brand name commercial item is regularly sold outside of commissary stores, the Secretary shall consider only sales of the item on a regional or national basis by commercial grocery or other retail operations consisting of multiple stores.]

[(f)] (h) SPECIAL RULES FOR CERTAIN MERCHANDISE.—Notwithstanding the general requirement that merchandise sold in, at, or by commissary stores be commissary store inventory, the Secretary of Defense may authorize the sale of tobacco products as noncommissary store inventory. [Subsections (c) and (d)] *Subsections (e) and (f)* shall not apply to the pricing of such merchandise items.

[(g) COLLECTION OF DISHONORED CHECKS.—(1) The Secretary of Defense may impose a charge for the collection of a check accepted at a commissary store that is not honored by the financial institution on which the check is drawn. The imposition and amounts of charges shall be consistent with practices of commercial grocery stores regarding dishonored checks.

[(2)(A) The following persons are liable to the United States for the amount of a check referred to in paragraph (1) that is returned unpaid to the United States, together with any charge imposed under that paragraph:

[(i) The person who presented the check.

[(ii) Any person whose status and relationship to the person who presented the check provide the basis for that person's eligibility to make purchases at a commissary store.

[(B) Any amount for which a person is liable under subparagraph (A) may be collected by deducting and withholding such amount from any amounts payable to that person by the United States.

[(3) Amounts collected as charges imposed under paragraph (1) shall be credited to the commissary trust revolving fund.

[(4) Appropriated funds may be used to pay any costs incurred in the collection of checks and charges referred to in paragraph (1). An appropriation account charged a cost under the preceding sentence shall be reimbursed the amount of that cost out of funds in the commissary trust revolving fund.

[(5) In this subsection, the term "commissary trust revolving fund" means the trust revolving fund maintained by the Department of Defense for surcharge collections and proceeds of sales of commissary stores.]

(i) *USE OF SURCHARGE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1)(A) The Secretary of Defense may use the proceeds from the surcharges imposed under subsection (e) only—*

(i) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(ii) to cover environmental evaluation and construction costs related to activities described in clause (i), including costs for surveys, administration, overhead, planning, and design.

(B) In subparagraph (A), the term “physical infrastructure” includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(2)(A) The Secretary of Defense may authorize a non-appropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of surcharges under subsection (e) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(B) In subparagraph (A), the term “construction”, with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(3) The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the surcharges under subsection (e) for any use specified in paragraph (1) or (2), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in such paragraph.

(4) Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in paragraphs (1), (2), and (3):

(A) Sale of recyclable materials.

(B) Sale of excess and surplus property.

(C) License fees.

(D) Royalties.

(E) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

#### **【§ 2485. Donation of unusable food: commissary stores and other activities**

【(a) The Secretary of Defense may donate food described in subsection (b) to entities specified under subsection (d).

【(b) Food that may be donated under this section is commissary store food, mess food, meals ready-to-eat (MREs), rations known as humanitarian daily rations (HDRs), and other food available to the Secretary of Defense that—

【(1) is certified as edible by appropriate food inspection technicians;

【(2) would otherwise be destroyed as unusable; and

【(3) in the case of commissary store food, is unmarketable and unsaleable.



[(c) In the case of commissary store food, a donation under this section shall take place at the site of the commissary that is donating the food.]

[(d) A donation under this section may only be made to an entity that is one of the following:

[(1) A charitable nonprofit food bank that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.]

[(2) A State or local agency that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.]

[(3) A chapter or other local unit of a recognized national veterans organization that provides services to persons without adequate shelter and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.]

[(4) A not-for-profit organization that provides care for homeless veterans and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.]

[(e) This section does not authorize any service (including transportation) to be provided in connection with a donation under this section.]

#### § [2482] 2485. Commissary stores: operation

(a) PRIVATE OPERATION.—(1) \* \* \*

(2) Any change to private operation of a commissary store function that is being performed by more than 10 Department of Defense civilian employees shall not take effect until the end of the 75-day period beginning on the date on which the Secretary of Defense submits to Congress written notice of the change. *Until December 31, 2009, the Defense Commissary Agency is not required to conduct any cost-comparison study under the policies and procedures of Office of Management and Budget Circular A-76 relating to the possible contracting out of commissary store functions.*

(b) CONTRACTS WITH OTHER AGENCIES AND INSTRUMENTALITIES.—(1) \* \* \*

(2) A commissary store operated by a nonappropriated fund instrumentality of the Department of Defense shall be operated in accordance with [section 2484] *section 2483* of this title. Subject to such section, the Secretary of Defense may authorize a transfer of goods, supplies, and facilities of, and funds appropriated for, the Defense Commissary Agency or any other agency of the Department of Defense that supports the operation of the commissary system to a nonappropriated fund instrumentality for the operation of a commissary store.

(c) GOVERNING BOARD.—(1) \* \* \*

(2) The Secretary of Defense shall determine the membership of the governing board, which shall include, at a minimum, appropriate representatives from each military department. *The chairman of the governing board shall be a commissioned officer or member of the senior executive service who has demonstrated experience or knowledge relevant to the management of the defense commissary system. In selecting other members of the governing board, the Secretary shall give priority to persons with experience related to legis-*

*tics, military personnel, military entitlements or other experiences of value of management of commissaries.*

\* \* \* \* \*

*(d) ASSIGNMENT OF ACTIVE DUTY MEMBERS.—(1) Except as provided in paragraph (2), members of the armed forces on active duty may not be assigned to the operation of a commissary store.*

*(2)(A) The Secretary of Defense may assign an officer on the active-duty list to serve as the Director of the Defense Commissary Agency.*

*(B) Not more than 18 members (in addition to the officer referred to in subparagraph (A)) of the armed forces on active duty may be assigned to the Defense Commissary Agency. Members who may be assigned under this subparagraph to regional headquarters of the agency shall be limited to enlisted members assigned to duty as advisers in the regional headquarters responsible for overseas commissaries and to veterinary specialists.*

*(e) REIMBURSEMENT FOR USE OF COMMISSARY FACILITIES BY MILITARY DEPARTMENTS.—(1) The Secretary of a military department shall pay the Defense Commissary Agency the amount determined under paragraph (2) for any use of a commissary facility by the military department for a purpose other than commissary sales or operations in support of commissary sales.*

*(2) The amount payable under paragraph (1) for use of a commissary facility by a military department shall be equal to the share of depreciation of the facility that is attributable to that use, as determined under regulations prescribed by the Secretary of Defense.*

*(3) The Director of the Defense Commissary Agency shall credit amounts paid under paragraph (1) for use of a facility to an appropriate account to which proceeds of a surcharge applied under section 2484(e) of this title are credited.*

*(4) This subsection applies with respect to a commissary facility that is acquired, constructed, converted, expanded, installed, or otherwise improved (in whole or in part) with the proceeds of a surcharge applied under section 2484(e) of this title.*

*(f) DONATION OF UNUSABLE FOOD.—(1) The Secretary of Defense may donate food described in paragraph (2) to any of the following entities:*

*(A) A charitable nonprofit food bank that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.*

*(B) A State or local agency that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.*

*(C) A chapter or other local unit of a recognized national veterans organization that provides services to persons without adequate shelter and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.*

*(D) A not-for-profit organization that provides care for homeless veterans and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.*

*(2) Food that may be donated under this subsection is commissary store food, mess food, meals ready-to-eat (MREs), rations known as humanitarian daily rations (HDRs), and other food available to the Secretary of Defense that—*

(A) is certified as edible by appropriate food inspection technicians;

(B) would otherwise be destroyed as unusable; and

(C) in the case of commissary store food, is unmarketable and unsaleable.

(3) In the case of commissary store food, a donation under this subsection shall take place at the site of the commissary store that is donating the food.

(4) This subsection does not authorize any service (including transportation) to be provided in connection with a donation under this subsection.

(g) COLLECTION OF DISHONORED CHECKS.—(1) The Secretary of Defense may impose a charge for the collection of a check accepted at a commissary store that is not honored by the financial institution on which the check is drawn. The imposition and amounts of charges shall be consistent with practices of commercial grocery stores regarding dishonored checks.

(2)(A) The following persons are liable to the United States for the amount of a check referred to in paragraph (1) that is returned unpaid to the United States, together with any charge imposed under that paragraph:

(i) The person who presented the check.

(ii) Any person whose status and relationship to the person who presented the check provide the basis for that person's eligibility to make purchases at a commissary store.

(B) Any amount for which a person is liable under subparagraph (A) may be collected by deducting and withholding such amount from any amounts payable to that person by the United States.

(3) Amounts collected as charges imposed under paragraph (1) shall be credited to the commissary trust revolving fund.

(4) Appropriated funds may be used to pay any costs incurred in the collection of checks and charges referred to in paragraph (1). An appropriation account charged a cost under the preceding sentence shall be reimbursed the amount of that cost out of funds in the commissary trust revolving fund.

(5) In this subsection, the term "commissary trust revolving fund" means the trust revolving fund maintained by the Department of Defense for surcharge collections and proceeds of sales of commissary stores.

(h) RELEASE OF CERTAIN COMMERCIALY VALUABLE INFORMATION TO PUBLIC.—(1) The Secretary of Defense may limit the release to the public of any information described in paragraph (2) if the Secretary determines that it is in the best interest of the Department of Defense to limit the release of such information. If the Secretary determines to limit the release of any such information, the Secretary may provide for limited release of such information in accordance with paragraph (3).

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

(A) Information contained in the computerized business systems of commissary stores or the Defense Commissary Agency that is collected through or in connection with the use of electronic scanners in commissary stores, including the following information:

(i) Data relating to sales of goods or services.

(ii) *Demographic information on customers.*

(iii) *Any other information pertaining to commissary transactions and operations.*

(B) *Business programs, systems, and applications (including software) relating to commissary operations that were developed with funding derived from commissary surcharges.*

(3)(A) *The Secretary of Defense may, using competitive procedures, enter into a contract to sell information described in paragraph (2).*

(B) *The Secretary of Defense may release, without charge, information on an item sold in commissary stores to the manufacturer or producer of that item or an agent of the manufacturer or producer.*

(C) *The Secretary of Defense may, by contract entered into with a business, grant to the business a license to use business programs referred to in paragraph (2)(B), including software used in or comprising any such program. The fee charged for the license shall be based on the costs of similar programs developed and marketed by businesses in the private sector, determined by means of surveys.*

(D) *Each contract entered into under this paragraph shall specify the amount to be paid for information released or a license granted under the contract, as the case may be.*

(4) *Information described in paragraph (2) may not be released, under paragraph (3) or otherwise, in a form that identifies any customer or that provides information making it possible to identify any customer.*

(5) *Amounts received by the Secretary under this section shall be credited to funds derived from commissary surcharges applied under section 2484(e) of this title, shall be merged with those funds, and shall be available for the same purposes as the funds with which merged.*

**【§ 2487. Commissary stores: release of certain commercially valuable information to the public**

【(a) AUTHORITY TO LIMIT RELEASE.—(1) The Secretary of Defense may limit the release to the public of any information described in paragraph (2) if the Secretary determines that it is in the best interest of the Department of Defense to limit the release of such information. If the Secretary determines to limit the release of any such information, the Secretary may provide for limited release of such information in accordance with subsection (b).

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

【(A) Information contained in the computerized business systems of commissary stores or the Defense Commissary Agency that is collected through or in connection with the use of electronic scanners in commissary stores, including the following information:

【(i) Data relating to sales of goods or services.

【(ii) Demographic information on customers.

【(iii) Any other information pertaining to commissary transactions and operations.

【(B) Business programs, systems, and applications (including software) relating to commissary operations that were developed with funding derived from commissary surcharges.

[(b) RELEASE AUTHORITY.—(1) The Secretary of Defense may, using competitive procedures, enter into a contract to sell information described in subsection (a)(2).

[(2) The Secretary of Defense may release, without charge, information on an item sold in commissary stores to the manufacturer or producer of that item or an agent of the manufacturer or producer.

[(3) The Secretary of Defense may, by contract entered into with a business, grant to the business a license to use business programs referred to in subsection (a)(2)(B), including software used in or comprising any such program. The fee charged for the license shall be based on the costs of similar programs developed and marketed by businesses in the private sector, determined by means of surveys.

[(4) Each contract entered into under this subsection shall specify the amount to be paid for information released or a license granted under the contract, as the case may be.

[(c) FORM OF RELEASE.—Information described in subsection (a)(2) may not be released, under subsection (b) or otherwise, in a form that identifies any customer or that provides information making it possible to identify any customer.

[(d) RECEIPTS.—Amounts received by the Secretary under this section shall be credited to funds derived from commissary surcharges, shall be merged with those funds, and shall be available for the same purposes as the funds with which merged.

[(e) DEFINITION.—In this section, the term “commissary surcharge” means any adjustment or surcharge applied under section 2486(c) of this title.]

## **SUBCHAPTER II—RELATIONSHIP, CONTINUATION, AND COMMON POLICIES OF DEFENSE COMMISSARY AND EXCHANGE SYSTEMS**

*Sec.*

2487. *Existence and purpose of defense commissary system.*

2488. *Combined exchange and commissary stores.*

2489. *Overseas commissary and exchange stores: access and purchase restrictions.*

### **§2487. Relationship between defense commissary system and exchange stores system**

(a) *SEPARATE SYSTEMS.—(1) Except as provided in paragraph (2), the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.*

(2) *Paragraph (1) does not apply to the following:*

(A) *Combined exchange and commissary stores operated under the authority provided by section 2489 of this title.*

(B) *NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.*

(b) *CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEFENSE RETAIL SYSTEMS.—(1) The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by an Act of Congress.*

(2) *In this subsection, the term “defense retail systems” means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated*

*fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces*

**§ [2490a] 2488. Combined exchange and commissary stores**

(a) \* \* \*  
\* \* \* \* \*

**§ [2492] 2489. Overseas commissary and exchange stores: access and purchase restrictions**

(a) \* \* \*  
\* \* \* \* \*

**SUBCHAPTER III—MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES**

- Sec.*  
 2491. *Uniform funding and management of morale, welfare, and recreation programs.*  
 2491a. *Department of Defense golf courses: limitation on use of appropriated funds.*  
 2491b. *Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation.*  
 2491c. *Retention of morale, welfare, and recreation funds by military installations: limitation.*  
 2492. *Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services.*  
 2493. *Fisher Houses: administration as nonappropriated fund instrumentality.*  
 2494. *Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes.*  
 2495. *Nonappropriated fund instrumentalities: purchase of alcoholic beverages.*  
 2495a. *Overseas package stores: treatment of United States wines.*  
 2495b. *Sale or rental of sexually explicit material prohibited.*

**§ [2494] 2491. Uniform funding and management of morale, welfare, and recreation programs**

(a) \* \* \*  
\* \* \* \* \*

**§ [2246] 2491a. Department of Defense golf courses: limitation on use of appropriated funds**

(a) \* \* \*  
\* \* \* \* \*

**§ [2247] 2491b. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation**

(a) \* \* \*  
\* \* \* \* \*

**§ [2219] 2491c. Retention of morale, welfare, and recreation funds by military installations: limitation**

Amounts may not be retained in a nonappropriated morale, welfare, and recreation account of a military installation of an armed force in excess of the amount necessary to meet cash requirements of that installation. Amounts in excess of that amount shall be transferred to a single nonappropriated morale, welfare,

and recreation account for that armed force. This section does not apply to the Coast Guard.

**§ [2482a] 2492. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services**

An agency or instrumentality of the Department of Defense that supports the operation of the exchange system, or the operation of a morale, welfare, and recreation system, of the Department of Defense may enter into a contract or other agreement with another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain goods and services beneficial to the efficient management and operation of the exchange system or that morale, welfare, and recreation system.

**§2494. Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes**

*Appropriations for the Department of Defense may be used to provide utility services for—*

- (1) buildings on military installations authorized by regulation to be used for morale, welfare, and recreation purposes; and*
- (2) other morale, welfare, and recreation activities for members of the armed forces.*

**§ [2488] 2495. Nonappropriated fund instrumentalities: purchase of alcoholic beverages**

(a) \* \* \*

\* \* \* \* \*

**§ [2489] 2495a. Overseas package stores: treatment of United States wines**

The Secretary of Defense shall ensure that each non-appropriated fund activity engaged principally in selling alcoholic beverage products in a packaged form (commonly referred to as a “package store”) that is located at a military installation outside the United States shall give appropriate treatment with respect to wines produced in the United States to ensure that such wines are given, in general, an equitable distribution, selection, and price when compared with wines produced by the host nation.

**§ [2489a] 2495b. Sale or rental of sexually explicit material prohibited**

(a) \* \* \*

\* \* \* \* \*

**CHAPTER 148—NATIONAL DEFENSE TECHNOLOGY AND INDUSTRIAL BASE, DEFENSE REINVESTMENT, AND DEFENSE CONVERSION**

\* \* \* \* \*

SUBCHAPTER III—PROGRAMS FOR DEVELOPMENT, APPLI-  
CATION, AND SUPPORT OF DUAL-USE TECHNOLOGIES

\* \* \* \* \*

**§ 2515. Office of Technology Transition**

(a) \* \* \*

\* \* \* \* \*

(d) BIENNIAL REPORT.—**[(1)]** The Secretary of Defense shall submit to the **[congressional committees specified in paragraph (2)]** *congressional defense committees* a biennial report on the activities of the Office. The report shall be submitted each even-numbered year at the same time that the budget is submitted to Congress by the President pursuant to section 1105 of title 31. The report shall contain a discussion of the accomplishments of the Office during the two fiscal years preceding the fiscal year in which the report is submitted.

**[(2)]** The committees referred to in paragraph (1) are—

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

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

\* \* \* \* \*

SUBCHAPTER V—MISCELLANEOUS TECHNOLOGY BASE  
POLICIES AND PROGRAMS

Sec.

2531. Defense memoranda of understanding and related agreements.

\* \* \* \* \*

2532a. *Defense trade reciprocity.*

\* \* \* \* \*

**§ 2532a. Defense trade reciprocity**

(a) *POLICY.—(1) It is the policy of Congress that procurement regulations used in the conduct of trade in defense articles and defense services shall be based on the principle of fair trade and reciprocity consistent with United States national security, including the need to ensure comprehensive manufacturing capability in the United States defense industrial base for military system essential items.*

(2) *The Secretary of Defense shall make every effort to ensure that the policies and practices of the Department of Defense reflect the goal of establishing an equitable trading relationship between the United States and its foreign defense trade partners, including ensuring that United States firms and United States employment in the defense sector are not disadvantaged by unilateral procurement practices by foreign governments, such as the imposition of offset agreements or similar requirements in defense procurements by those governments. In pursuing this goal, the Secretary shall—*

*(A) develop a comprehensive defense acquisition trade policy that provides the necessary guidance and incentives for the elimination of offset agreements as an accepted practice in defense trade; and*



(B) review and make necessary modifications to existing acquisition policies and strategies, and review and seek to make necessary modifications to existing memoranda of understanding, cooperative project agreements, or related agreements with foreign defense trade partners, to reflect this goal.

(b) *REQUIREMENT.*—The Secretary of Defense may not enter into a contract, or approve or permit any subcontract under a contract entered into by the Department of Defense, for the procurement of any defense article or defense service from a foreign firm unless the country in which the foreign firm performs substantially all of its manufacturing, production, and research and development activities in the performance of the contract (or subcontract) agrees to apply offset agreements to the procurement of defense articles and defense services from the United States firms in the same manner and to the same degree as such agreements are applied by the Department of Defense to the procurement of defense articles and defense services from that country.

(c) *EXCEPTION.*—Subsection (b) does not apply to a contract or subcontract for the procurement of a defense article or defense service from a foreign firm if the Secretary of Defense determines in writing, with respect to the specific contract or subcontract, that an exception to subsection (b) is necessary for the Department to be able to meet national security objectives.

(d) *NOTIFICATION REQUIRED WHEN EXCEPTION APPLIED.*—The Secretary of Defense may not apply an exception under subsection (c) until—

(1) a notification of the intent to apply such exception is submitted to the congressional defense committees and published in the Federal Register; and

(2) a period of 30 days has expired after the date on which such notification is so submitted and published.

(e) *AUTHORITY TO APPLY EXCEPTION NOT DELEGABLE.*—The authority of the Secretary to apply the exception under subsection (c) may not be delegated to any officer or employee in a position at a level lower than the position of the Under Secretary of Defense for Acquisition, Technology, and Logistics.—

(f) *REGULATIONS.*—The Secretary shall prescribe regulations to implement this section in the Department of Defense supplement to the Federal Acquisition Regulation.

(g) *EFFECTIVE DATE.*—This section and the regulations prescribed under this section shall apply to contracts and subcontracts entered into on and after the date occurring one year after the date of the enactment of this Act.

(h) *DEFINITIONS.*—In this section:

(1) The term “foreign firm” means a business entity that performs substantially all of its manufacturing, production, and research and development activities outside of the United States.

(2) The term “United States firm” means a business entity that performs substantially all of its manufacturing, production, and research and development activities in the United States.

(3) The term “foreign defense trade partner” means a foreign country with respect to which there is—

- (A) a memorandum of understanding or related agreement described in section 2531(a) of title 10, United States Code; or
- (B) a cooperative project agreement described in section 27 of the Arms Export Control Act (22 U.S.C. 2767).
- (4) The term “offset agreement” has the meaning provided that term by section 36(e) of the Arms Export Control Act (22 U.S.C. 2776(e)).
- (5) The terms “defense article” and “defense service” have the meanings provided those terms by section 47(7) of the Arms Export Control Act (22 U.S.C. 2794(7)).
- (6) The term “military system essential item” means an item on the military system essential item breakout list produced pursuant to section 813(b) of the National Defense Authorization Act for Fiscal Year 2004 (P.L. 108–136; 117 Stat. 1544).

\* \* \* \* \*

**§ 2533a. Requirement to buy certain articles from American sources; exceptions**

- (a) \* \* \*
- (b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:
  - (1) An article or item of—
    - (A) \* \* \*
    - (B) clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);

\* \* \* \* \*

(k) NOTIFICATION REQUIRED WHEN CERTAIN EXCEPTIONS APPLIED.—(1) Funds appropriated or otherwise available to the Department of Defense may not be used to enter into a contract to procure an item described in subsection (b) pursuant to an exception set forth in subsection (c) or (e) until—

- (A) a notification of the intent to apply such exception is submitted to Congress and posted on the website maintained by the General Services Administration known as FedBizOpps.gov (or any successor site); and
- (B) a period of 15 days has expired after the date on which such notification is so submitted and published.

(2) In any case in which the Secretary of Defense or the Secretary of the military department concerned intends to apply or applies the exception set forth in subsection (d)(1), the Secretary concerned shall submit to Congress a notification of such intent or such application during the period beginning six months before the date of application of such exception and ending six months after the date of application of such exception.

\* \* \* \* \*

**SUBCHAPTER VI—DEFENSE EXPORT LOAN GUARANTEES**

\* \* \* \* \*

**§ 2540. Establishment of loan guarantee program**

- (a) \* \* \*
- (b) COVERED COUNTRIES.—The authority under subsection (a) applies with respect to the following countries:
  - (1) \* \* \*
  - (2) A country designated as of March 31, 1995, as a major non-NATO ally pursuant to section 2350a(i)(3) of this title, as in effect on that date.

\* \* \* \* \*

**CHAPTER 155—ACCEPTANCE OF GIFTS AND SERVICES**

Sec.	
2601.	General gift funds.
	* * * * *
2613.	<i>Acceptance of frequent traveler miles, credits, and tickets; use to facilitate rest and recuperation travel of deployed members and their families.</i>
	* * * * *

**§ 2606. Scouting: cooperation and assistance in foreign areas**

(a) *AUTHORITY TO COOPERATE AND PROVIDE ASSISTANCE.*—**[Subject to subsection (b)]** *In the interest of promoting the recognized morale, welfare, and recreation of members of the armed forces, the Secretary concerned may cooperate with and assist qualified scouting organizations in establishing and providing facilities and services for members of the armed forces and their dependents, and civilian employees of the Department of Defense and their dependents, at locations outside the United States.*

(b) Cooperation and assistance under subsection (a) shall be provided under regulations prescribed by the Secretary of Defense **[and may be provided only if the President determines that such cooperation and assistance is necessary in the interest of the morale, welfare, and recreation of members of the armed forces].**

(c) *TREATMENT AS NONAPPROPRIATED FUND INSTRUMENTALITIES.*—(1) *Subject to paragraphs (2) and (3), to the extent a qualified scouting organization is providing services for members of the armed forces and their dependents, or civilian employees of the Department of Defense and their dependents, at a location outside the United States consistent with the regulations prescribed under subsection (b), the qualified scouting organization shall be a nonappropriated fund instrumentality of the Department of Defense.*

(2) *Notwithstanding treatment as a nonappropriated fund instrumentality of the Department of Defense, personnel of the qualified scouting organization who are performing duties in connection with cooperation and assistance provided under subsection (a) may continue such policies and procedures related to personnel management and such other policies or procedures established by the qualified scouting organization as the personnel consider appropriate, subject to the approval of the qualified scouting organization.*

(3) *A qualified scouting organization operating outside the United States may operate as a private association overseas for the purpose of raising funds. Any funds so raised may not be commingled with amounts retained in a nonappropriated morale, welfare, and recreation account of the Department of Defense.*

(d) *TREATMENT AS NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEES.*—(1) *Personnel of a qualified scouting organization who are performing duties in connection with cooperation and assistance provided under subsection (a) for members of the armed forces and their dependents, or civilian employees of the Department of Defense and their dependents, shall be nonappropriated fund instrumentality employees of the United States for any period during which the personnel perform such duties.*

(2) *Such personnel of a qualified scouting organization shall receive the same benefits, entitlements, and logistical support as other nonappropriated fund instrumentality employees, except that such personnel—*

(A) *shall be allowed to decline to participate in retirement programs or other personnel management policies or procedures available to other nonappropriated fund instrumentality employees and elect to continue the programs, policies or procedures made available by the qualified scouting organization; and*

(B) *shall not receive nonappropriated fund instrumentality employment credit nor rehire priority.*

(3) *In the regulations prescribed under subsection (b), the Secretary of Defense may authorize the use of funds appropriated to the Department of Defense to pay costs of such personnel of a qualified scouting organization, including reimbursement of the personnel or the qualified scouting organization, in the case of those retirement, personnel management, and other compensation programs regarding which the personnel have elected to continue the programs made available to them by the qualified scouting organization.*

[(c)] (e) *PROVISION OF TRANSPORTATION, SPACE, AND SERVICES.*—Personnel of a qualified scouting organization, including officials certified by that organization as representing that organization, who are performing duties in connection with cooperation and assistance provided under subsection (a) may be furnished, *using the authority of subsection (d)(3)—*

(1) \* \* \*

\* \* \* \* \*

[(d)] (f) *TRANSPORTATION OF SUPPLIES.*—Supplies of a qualified scouting organization may be transported at the expense of the United States if the Secretary concerned determines, under regulations prescribed under subsection (b), that the supplies are necessary to the cooperation and assistance provided under this section.

[(e)] The Secretary concerned may reimburse a qualified scouting organization for all or part of the pay of an employee of that organization for any period during which the employee was performing services under subsection (a). Any such reimbursement may not be made from appropriated funds and shall be made under regulations prescribed under subsection (b).

[(f)] For the purposes of this section, employees of a qualified scouting organization performing services under subsection (a) may not be considered to be employees of the United States.】

(g) *DEFINITION.*—In this section, the term “qualified scouting organization” means the Girl Scouts of the United States of America and the Boy Scouts of America.

\* \* \* \* \*

**§2613. Acceptance of frequent traveler miles, credits, and tickets; use to facilitate rest and recuperation travel of deployed members and their families**

(a) *AUTHORITY TO ACCEPT DONATION OF TRAVEL BENEFITS.*—Subject to subsection (c), the Secretary of Defense may accept from any person or government agency the donation of travel benefits for the purposes of use under subsection (d).

(b) *TRAVEL BENEFIT DEFINED.*—In the section, the term “travel benefit” means frequent traveler miles, credits for tickets, or tickets for air or surface transportation issued by an air carrier or a surface carrier, respectively, that serves the public.

(c) *CONDITION ON AUTHORITY TO ACCEPT DONATION.*—The Secretary may accept a donation of a travel benefit under this section only if the air or surface carrier that is the source of the benefit consents to such donation. Any such donation shall be under such terms and conditions as the surface carrier may specify, and the travel benefit so donated may be used only in accordance with the rules established by the carrier.

(d) *USE OF DONATED TRAVEL BENEFITS.*—A travel benefit accepted under this section may be used only for the purpose of—

(1) facilitating the travel of a member of the armed forces who—

(A) is deployed on active duty away from the permanent duty station of the member; and

(B) is granted, during such deployment, rest and recuperative leave, emergency leave, convalescent leave, or another form of leave authorized for the member; or

(2) facilitating the travel of family members of a member described in paragraph (1) in order to be reunited with the member.

(e) *ADMINISTRATION.*—The Secretary shall designate a single office in the Department of Defense to carry out this section. That office shall be responsible for developing rules and procedures to facilitate the acceptance and distribution of travel benefit under this section.

(f) *STATUS OF BENEFITS RECEIVED.*—A member of the armed forces, or a family member of a member of the armed forces, who receives a travel benefit under this section is deemed to recognize no income from the receipt or use of such benefit. A donor of a travel benefit under this section is deemed to obtain no tax benefit from such donation.

(g) *FAMILY MEMBER DEFINED.*—In this section, the term “family member” has the meaning given that term in section 411h(b)(1) of title 37.

\* \* \* \* \*

**CHAPTER 157—TRANSPORTATION**

Sec. 2631.	Supplies: preference to United States vessels.
	* * * * *
2648.	<i>Persons and supplies: sea transportation.</i>
2649.	<i>Civilian passengers and commercial cargoes: transportation on Department of Defense vessels.</i>

2650. *Civilian personnel in Alaska.*  
 2651. *Passengers and merchandise to Guam: sea transport.*

\* \* \* \* \*

**§ [4744] 2648. Persons and supplies: sea transportation**

Whenever the [Secretary of the Army] *Secretary of Defense* considers that space is available, the following persons and supplies may be transported on vessels operated by [Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels operated by any military transport agency of] the Department of Defense:

- [(1) Members of the Navy, Marine Corps, or Coast Guard.
- [(2) Officers and employees of the Department of the Army, the Department of the Navy, the Department of the Air Force, or the Coast Guard.
- [(3) Supplies of the Department of the Navy.]
- [(4)] (1) Members of Congress.
- [(5)] (2) Other officers of the United States traveling on official business.
- [(6)] (3) Secretaries and supplies of the Armed Services Department of the Young Men's Christian Association.
- [(7)] (4) Officers and employees of the Commonwealth of Puerto Rico on official business.
- [(8)] (5) The families of [persons described in clauses (1), (2), (4), (5), and (7)] *members of the armed forces, officers and employees of the Department of Defense or the Coast Guard, and persons described i paragraphs (1), (2), and (4).*

However, a person described in [clause (7) or (8)] *paragraph (4) or (5)* may be so transported only if the transportation is without expense to the United States.

**[§ 4745. Civilian passengers and commercial cargoes: transports in trans-Atlantic service]**

**§ 2649. *Civilian passengers and commercial cargoes: transportation on Department of Defense vessels***

(a) Whenever space is unavailable on commercial lines and is available [(1) on vessels operated by Army transport agencies, or (2) within bulk space allocations made to the Department of the Army] on vessels operated by [any transport agency of] the Department of Defense, civilian passengers and commercial cargo may, in the discretion of the [Secretary of the Army and the Secretary of Homeland Security, be transported] *Secretary of Defense, be transported* on those vessels. Rates for transportation under this section may not be less than those charged by commercial lines for the same kinds of service.

\* \* \* \* \*

**§ [4746] 2650. Civilian personnel in Alaska**

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on vessels or airplanes operated by [Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels or airplanes operated by any military transport agency of] the Department of Defense, if—

(1) the [Secretary of the Army] *Secretary of Defense* considers that accommodations are available;

\* \* \* \* \*

(4) in case of travel [by air—

[(A) the Secretary of Transportation has not certified that commercial air carriers of the United States that can handle the transportation are operating between Alaska and the United States; and

[(B) the transportation cannot] *by air, the transportation cannot* be reasonably handled by a United States commercial air carrier.

**§ [4747] 2651. Passengers and merchandise to Guam: sea transport**

Whenever space is available, passengers, and merchandise produced in the United States, or the Territories, Commonwealths, and possessions, and consigned to residents and mercantile firms of Guam, may be transported to Guam on vessels operated by [Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels operated by any transport agency of the Department of Defense, under regulations and at rates to be prescribed by the Secretary of the Army.] *the Department of Defense, under regulations and at rates to be prescribed by the Secretary of Defense.*

\* \* \* \* \*

**CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NONEXCESS PROPERTY**

Sec. 2661. Miscellaneous administrative provisions relating to real property.

\* \* \* \* \*

[2664. Acquisition of property for lumber production.]

\* \* \* \* \*

[2666. Acquisition: land purchase contracts; limitation on commission.]

\* \* \* \* \*

[2673. Acquisition of certain interests in land: availability of funds.]

\* \* \* \* \*

**§ 2661. Miscellaneous administrative provisions relating to real property**

(a) *AVAILABILITY OF OPERATION AND MAINTENANCE FUNDS.*—Appropriations for operation and maintenance of the active forces shall be available for the following:

(1) \* \* \*

\* \* \* \* \*

(b) *LEASING AND ROAD MAINTENANCE AUTHORITY.*—The Secretary of Defense and the Secretary of each military department may provide for the following:

\* \* \*

\* \* \* \* \*

(c) *COMMISSIONS ON LAND PURCHASE CONTRACTS.*—*The maximum amount payable as a commission on a contract for the pur-*

*chase of land from funds appropriated for the Department of Defense is two percent of the purchase price.*

**§ 2662. Real property transactions: reports to congressional committees**

(a) GENERAL NOTICE AND WAIT REQUIREMENTS.—(1) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until the Secretary submits a report, subject to paragraph (3), to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives:

(A) An acquisition of fee title to any real property, if the estimated price is more than ~~【\$750,000】~~ *\$1,500,000*.

(B) A lease of any real property to the United States, if the estimated annual rental is more than ~~【\$750,000】~~ *\$1,500,000*.

(C) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than ~~【\$750,000】~~ *\$1,500,000*.

(D) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than ~~【\$750,000】~~ *\$1,500,000*.

(E) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than ~~【\$750,000】~~ *\$1,500,000*.

\* \* \* \* \*

(2) If a transaction covered by subparagraph (A) or (B) of paragraph (1) is part of a project, the report ~~【must include a summarization】~~ *shall include a summary* of the general plan for that project, including an estimate of the total cost of the lands to be acquired or leases to be made. The report required by this subsection concerning any report of excess real property described in subparagraph (E) of paragraph (1) shall contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such property for other real property authorized to be acquired for military purposes and has determined that the property proposed to be declared excess is not suitable for such purpose.

\* \* \* \* \*

(b) ANNUAL REPORTS ON CERTAIN MINOR TRANSACTIONS.—The Secretary of each military department shall submit annually to the congressional committees named in subsection (a) a report on transactions described in ~~【subsection (a) that involve an estimated value of more than \$250,000, but not more than \$750,000】~~ *such subsection that involve an estimated value of more than \$500,000, but not more than the amount specified in such subsection.*

\* \* \* \* \*

(e) NOTICE AND WAIT REGARDING LEASES OF SPACE FOR DOD BY GSA.—No element of the Department of Defense shall occupy any general purpose space leased for it by the General Services Administration at an annual rental in excess of ~~【\$750,000】~~ *\$1,500,000* (excluding the cost of utilities and other operation and maintenance services), if the effect of such occupancy is to increase the total amount of such leased space occupied by all elements of



the Department of Defense, until the end of the 30-day period beginning on the date on which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a) or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

\* \* \* \* \*

**【§ 2664. Acquisition of property for lumber production**

【(a) The Secretary of a military department, the Secretary of Transportation, or any one or more of them, may have proceedings brought in the name of the United States to acquire by condemnation any interest in property named in subsection (b), including temporary use, and needed for—

- 【(1) the production of aircraft, vessels, dry docks, or equipment for them;
- 【(2) the procurement of supplies for aircraft, vessels, and dry docks; or
- 【(3) housing for persons employed by the United States in connection with functions of the Army, Navy, Air Force, or Marine Corps, or the functions transferred to the Secretary of Transportation under section 3 of the Maritime Act of 1981 (46 U.S.C. App. 1602).

【(b) The kinds of property that may be acquired by condemnation under subsection (a) are—

- 【(1) standing or fallen timber;
- 【(2) sawmills;
- 【(3) camps;
- 【(4) machinery;
- 【(5) logging roads;
- 【(6) rights-of-way;
- 【(7) supplies; and
- 【(8) works, property, or appliances suitable for the production of lumber and timber products.

【(c) Jurisdiction over condemnation proceedings under this section is vested in the United States District Court for the district in which the property, or any part of it, sought to be condemned is located, regardless of its value.

【(d) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the property to the extent of the interest sought to be acquired.

【(e) A person named in subsection (a) may contract for or buy any interest in property named in subsection (b), including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and that person considers that price to be reasonable.

【(f) A person named in subsection (a) may accept for the United States a gift of any property named in subsection (b), including temporary use, for any purpose named in subsection (a).】

\* \* \* \* \*

**§ 2666. Acquisition: land purchase contracts; limitation on commission**

【The maximum amount payable as commission on a contract for the purchase of land from funds appropriated for the Department of Defense is 2 percent of the purchase price.】

**§ 2667. Leases: non-excess property of military departments**

(a) \* \* \*

\* \* \* \* \*

(d)(1)(A) \* \* \*

(B) Subparagraph (A) does not apply to the following proceeds:

(i) \* \* \*

(ii) *Money rentals deposited in a nonappropriated morale, welfare, and recreation account under paragraph (3).*

【(ii)】 (iii) *Money rentals referred to in paragraph (4) or (5).*

\* \* \* \* \*

(3) *The Secretary of the Army may deposit up to 50 percent of the money rentals received by the United States from a lease involving the golf course at Rock Island Arsenal, Illinois, in the nonappropriated morale, welfare, and recreation account for that installation, to be used for quality-of-life programs at that installation.*

\* \* \* \* \*

**§ 2672. Authority to acquire low-cost interests in land**

【(a) ACQUISITION AUTHORITY.—(1) The Secretary of a military department may acquire any interest in land that—

【(A) the Secretary determines is needed in the interest of national defense; and

【(B) does not cost more than \$750,000, exclusive of administrative costs and the amounts of any deficiency judgments.

【(2) The Secretary of a military department may acquire any interest in land that—

【(A) the Secretary determines is needed solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; and

【(B) does not cost more than \$1,500,000, exclusive of administrative costs and the amounts of any deficiency judgments.

【(b) ACQUISITION OF MULTIPLE PARCELS.—This section does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than \$750,000, in the case of an acquisition under subsection (a)(1), or \$1,500,000, in the case of an acquisition under subsection (a)(2).】

(a) ACQUISITION AUTHORITY.—*The Secretary of a military department may acquire any interest in land that—*

(1) *the Secretary determines is needed in the interest of national defense; and*

(2) *does not cost more than \$1,500,000, exclusive of administrative costs and the amounts of any deficiency judgments.*

(b) *TREATMENT OF MULTIPLE PARCELS.*—This section does not authorize the acquisition, as a part of the same project, of more than one parcel of land unless—

- (1) the parcels are noncontiguous; or
- (2) if contiguous, the total cost for the acquisition of all of the contiguous parcels does not cost more than the amount specified in subsection (a)(2).

\* \* \* \* \*

(d) *AVAILABILITY OF FUNDS.*—Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of land or interests in land under this section.

\* \* \* \* \*

**§ 2672a. Acquisition: interests in land when need is urgent**

(a) The Secretary of a military department may acquire any interest in land *in any case in which the Secretary determines* that—

- (1) **[the Secretary determines]** *the acquisition* is needed in the interest of national defense;
- (2) *the acquisition* is required to maintain the operational integrity of a military installation; and

\* \* \* \* \*

**[§ 2673. Acquisition of certain interests in land: availability of funds**

**[**Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of land or interests in land under section 2672 of this title and for the acquisition of interests in land under section 2675 of this title.**]**

\* \* \* \* \*

**§ 2675. Leases: foreign countries**

(a) *LEASE AUTHORITY; DURATION.*—The Secretary of a military department may acquire by lease in foreign countries structures and real property relating to structures that are needed for military purposes other than for military family housing. A lease under this section may be for a period of up to five years, or 15 years in the case of a lease in Korea, and the rental for each yearly period may be paid from funds appropriated to that military department for that year.

(b) *AVAILABILITY OF FUNDS.*—Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of interests in land under this section.

**§ 2676. Acquisition: limitation**

(a) \* \* \*

\* \* \* \* \*

(d) The limitations on reduction in scope or increase in cost of a land acquisition in subsection (c) do not apply if the reduction in scope or the increase in cost, as the case may be, is approved by the Secretary concerned and a written notification of the facts re-

lating to the proposed reduced scope or increased cost (including a statement of the reasons therefor) is submitted by the Secretary concerned to the [appropriate committees of Congress] congressional defense committees. A contract for the acquisition may then be awarded only after a period of 21 days elapses from the date the notification is received by the committees or, if over sooner, a period of 14 days elapses from the date on which a copy of that notification is provided in an electronic medium pursuant to section 480 of this title.

\* \* \* \* \*

**§ 2694a. Conveyance of surplus real property for natural resource conservation**

(a) \* \* \*

\* \* \* \* \*

(e) CONGRESSIONAL NOTIFICATION.—The Secretary concerned may not approve of the reconveyance of real property under subsection (c) or grant the release of a covenant under subsection (d) until the Secretary notifies the [appropriate committees of Congress] congressional defense committees of the proposed reconveyance or release and a period of 21 days elapses from the date the notification is received by the committees.

\* \* \* \* \*

(i) DEFINITIONS.—In this section:

(1) The term “[appropriate committees of Congress] congressional defense committees” has the meaning given such term in section 2801 of this title.

[(2) The term “base closure law” means the following:

[(A) Section 2687 of this title.

[(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (10 U.S.C. 2687 note).

[(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

[(D) Any other similar authority for the closure or realignment of military installations that is enacted after the date of the enactment of the Bob Stump National Defense Authorization Act for Fiscal Year 2003.]

(2) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

\* \* \* \* \*

[(4) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.]

\* \* \* \* \*

**CHAPTER 160—ENVIRONMENTAL RESTORATION**

\* \* \* \* \*

**§ 2701. Environmental restoration program**

(a) ENVIRONMENTAL RESTORATION PROGRAM—

(1) \* \* \*

(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of CERCLA (42 U.S.C. 9620).

\* \* \* \* \*

(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

(1) \* \* \*

(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 [of CERCLA (relating to settlements)] (relating to settlements) of CERCLA (42 U.S.C. 9622).

\* \* \* \* \*

(e) RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA (42 U.S.C. 9619) apply to response action contractors (as defined in that section) who carry out response actions under this section.

\* \* \* \* \*

(j) APPLICABILITY.—(1) \* \* \*

(2) Subsections (h) and (i) shall not apply to bonds to which section 119(g) of [the Comprehensive Environmental Response, Compensation, and Liability Act of 1980] CERCLA (42 U.S.C. 9619(g)) applies.

\* \* \* \* \*

**§ 2702. Research, development, and demonstration program**

(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator and the advisory council established under section 311(a)(5) of CERCLA (42 U.S.C. 9660(a)(5)). The program shall include research, development, and demonstration with respect to each of the following:

(1) \* \* \*

\* \* \* \* \*

**§ 2703. Environmental restoration accounts**

(a) \* \* \*

(b) PROGRAM ELEMENTS FOR ORDNANCE REMEDIATION.—The Secretary of Defense shall establish a program element for remediation of unexploded ordnance, discarded military munitions, and munitions constituents within each environmental restoration account established under subsection (a). [The terms] *For purposes of the preceding sentence, the terms “unexploded ordnance”, “discarded military munitions”, and “munitions constituents” have the meanings given such terms in section 2710 of this title.*

\* \* \* \* \*

**§ 2704. Commonly found unregulated hazardous substances**

(a) \* \* \*

\* \* \* \* \*

(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related activities under section 104(i) of CERCLA (42 U.S.C. 9604(i)). The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

\* \* \* \* \*

(e) CROSS REFERENCE.—Section 104(i) of CERCLA (42 U.S.C. 9604(i)) applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 104(i) of CERCLA (42 U.S.C. 9604(i)).

\* \* \* \* \*

**CHAPTER 165—ACCOUNTABILITY AND RESPONSIBILITY**

Sec.	
2771.	Final settlement of accounts: deceased members.
	* * * * *
2780a.	<i>Debt collection: general waiver authority for small amounts owed the United States.</i>
	* * * * *
2788.	<i>Licensing of intellectual property of the military departments; authority to charge and retain fees.</i>
	* * * * *

**§ 2780a. Debt collection: general waiver authority for small amounts owed the United States**

(a) AUTHORITY.—In the case of an indebtedness to the United States described in subsection (b) that is for an amount that is less than the threshold amount specified in subsection (c), the Secretary of Defense may, under regulations prescribed under this section, cancel the indebtedness and waive recovery of the amount owed. Such authority may be used only when, based on a cost-benefit analysis, the Secretary determines that the costs of collection are expected to exceed the amount recoverable.

(b) COVERED DEBTS.—(1) Except as provided in paragraph (2), this section applies with respect to amounts owed to the United States that arise out of the activities of, or that are referred to, the Department of Defense (including amounts owed by members of the armed forces and Department of Defense civilian personnel).

(2) *The authority under this section does not apply to amounts owed to the United States arising out of activities of the Department of Defense that have been referred to another executive agency for collection action or that are otherwise within the purview of another executive agency.*

(c) *MAXIMUM AMOUNT WAIVABLE.—The threshold amount referred to in subsection (a) is the micropurchase threshold amount in effect under section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428).*

(d) *REGULATIONS.—The Secretary of Defense shall prescribe regulations for the purposes of this section.*

\* \* \* \* \*

**§2788. Licensing of intellectual property of the military departments; authority to charge and retain fees**

(a) *AUTHORITY TO RETAIN FEES.—(1) Under regulations prescribed by the Secretary of Defense, the Secretary concerned may license trademarks, service marks, certification marks, and collective marks owned by a military department and may retain and expend fees received from such licensing in accordance with subsection (b).*

(2) *In this section, the terms “trademark”, “service mark”, “certification mark”, “collective mark”, and “mark” have the meanings given those terms in section 45 of the Trademark Act of 1946 (15 U.S.C. 1127).*

(b) *USE OF LICENSING FEES.—(1) Funds received by a military department from licensing under subsection (a)(1) shall be used for the expenses incurred by the department in securing the registration of marks owned by the department and in licensing those marks.*

(2) *If the amount of fees received by a military department during any fiscal year from the licensing of marks exceeds the anticipated expenses under paragraph (1) during that year, the Secretary concerned may designate those funds as excess and expend them as provided in paragraph (3).*

(3) *Not more than 50 percent of any such excess funds shall be available for military personnel recruiting and retention activities of the department. The remainder of such funds shall be available for morale, welfare, and recreation activities of the department.*

(4) *Funds received pursuant to subsection (a)(1) shall remain available for two years after the end of the fiscal year during which the funds are received.*

\* \* \* \* \*

**CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING**

\* \* \* \* \*

**SUBCHAPTER I—MILITARY CONSTRUCTION**

Sec. 2801. Scope of chapter; definitions.

\* \* \* \* \*

【2808. Construction authority in the event of a declaration of war or national emergency.】

2808. Construction authority related to declaration of war or national emergency; construction requirements related to antiterrorism and force protection.

\* \* \* \* \*

**§ 2801. Scope of chapter; definitions**

(a) \* \* \*

\* \* \* \* \*

(c) In this chapter:

(1) \* \* \*

[(4) The term “appropriate committees of Congress” means the congressional defense committees and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.]

(4) The term “congressional defense committees” includes, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense—

- (A) the Permanent Select Committee on Intelligence of the House of Representatives; and
- (B) the Select Committee on Intelligence of the Senate.

\* \* \* \* \*

**§ 2803. Emergency construction**

(a) \* \* \*

(b) When a decision is made to carry out a military construction project under this section, the Secretary concerned shall submit a report in writing to the [appropriate committees of Congress] congressional defense committees on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, (2) the justification for carrying out the project under this section, and (3) a statement of the source of the funds to be used to carry out the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

\* \* \* \* \*

**§ 2804. Contingency construction**

(a) \* \* \*

(b) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the [appropriate committees of Congress] congressional defense committees on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, and (2) the justification for carrying out the project under this section. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which



a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

\* \* \* \* \*

**§ 2805. Unspecified minor construction**

(a) \* \* \*

(b)(1) An unspecified minor military construction project costing more than ~~[\$750,000]~~ \$1,000,000 may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the ~~appropriate committees of Congress~~ congressional defense committees of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(c)(1) Except as provided in paragraphs (2) and (3), the Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than—

~~[(A) \$1,500,000, in the case of an unspecified minor military construction project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or~~

~~[(B) \$750,000, in the case of any other unspecified minor military construction project.]~~

~~(1) Except as provided in paragraphs (2) and (3), the Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than \$1,500,000.~~

\* \* \* \* \*

(3) The ~~limitations~~ limitation specified in paragraph (1) shall not apply to an unspecified minor military construction project if the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

\* \* \* \* \*

**§ 2806. Contributions for North Atlantic Treaty Organizations Security Investment**

(a) \* \* \*

\* \* \* \* \*

(c)(1) \* \* \*

(2) If the Secretary determines that the amount appropriated for contribution under subsection (a) in any fiscal year must be exceeded by more than the amount authorized under paragraph (1),

the Secretary may make contributions in excess of such amount, but not in excess of 125 percent of the amount appropriated (A) after submitting a report in writing to the [appropriate committees of Congress] *congressional defense committees* on such increase, including a statement of the reasons for the increase and a statement of the source of the funds to be used for the increase, and (B) after a period of 21 days has elapsed from the date of receipt of the report.

**§ 2807. Architectural and engineering services and construction design**

(a) \* \* \*

(b) In the case of architectural and engineering services and construction design to be undertaken under subsection (a) for which the estimated cost exceeds \$1,000,000, the Secretary concerned shall notify the [appropriate committees of Congress] *congressional defense committees* of the scope of the proposed project and the estimated cost of such services before the initial obligation of funds for such services. The Secretary may then obligate funds for such services only after the end of the 21-day period beginning on the date on which the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(c) If the Secretary concerned determines that the amount authorized for activities under subsection (a) in any fiscal year must be increased the Secretary may proceed with activities at such higher level (1) after submitting a report in writing to the [appropriate committees of Congress] *congressional defense committees* on such increase, including a statement of the reasons for the increase and a statement of the source of funds to be used for the increase, and (2) after a period of 21 days has elapsed from the date of receipt of the report or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

\* \* \* \* \*

**[§ 2808. Construction authority in the event of a declaration of war or national emergency]**

**§ 2808. Construction authority related to declaration of war or national emergency; construction requirements related to antiterrorism and force protection**

(a) *CONSTRUCTION AUTHORITY; LIMITATION.*—In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces. Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.

(b) *CONGRESSIONAL NOTIFICATION.*—When a decision is made to undertake military construction projects authorized by this section, the Secretary of Defense shall notify the [appropriate committees of Congress] *congressional defense committees* of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.

(c) *TERMINATION.*—The authority described in subsection (a) shall terminate with respect to any war or national emergency at the end of the war or national emergency.

(d) *ANTITERRORISM AND FORCE PROTECTION ASSESSMENTS AND MILITARY CONSTRUCTION REQUIREMENTS.*—(1) *The Secretary of Defense shall develop common guidance and criteria to be used by the Secretary concerned—*

(A) *to assess the vulnerability of military installations located inside and outside of the United States to terrorist attack;*

(B) *to develop construction standards designed to reduce the vulnerability of structures to terrorist attack and improve the security of the occupants of such structures;*

(C) *to prepare and carry out military construction projects, such as gate and fenceline construction, to improve the physical security of military installations; and*

(D) *to assist in prioritizing such projects within the military construction budget of each of the armed forces.*

(2) *The Secretary of Defense shall require vulnerability assessments of military installations to be conducted, at regular intervals, using the criteria developed under paragraph (1).*

(3) *As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, but in no case later than March 15 of each year, the Secretary of Defense shall submit a report describing—*

(A) *the location and results of the vulnerability assessments conducted during the preceding fiscal year;*

(B) *the military construction requirements anticipated to be necessary during the next three fiscal years to improve the physical security of military installations; and*

(C) *the extent to which funds are not requested in the Department of Defense budget for the next fiscal year to meet those requirements.*

(4) *In the case of the report required under paragraph (3) to be submitted in 2006, the Secretary of Defense shall include a certification by the Secretary that since September 11, 2001, vulnerability assessments have been undertaken at all major military installations. The Secretary shall indicate the basis by which the Secretary differentiated between major and nonmajor military installations for purposes of making the certification.*

**§ 2809. Long-term facilities contracts for certain activities and services**

(a) \* \* \*

\* \* \* \* \*

(f) *NOTICE AND WAIT REQUIREMENTS.*—A contract may not be entered into under this section until—

(1) the Secretary concerned submits to the [appropriate committees of Congress] *congressional defense committees*, in writing, a justification of the need for the facility for which the contract is to be awarded and an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same facility; and

\* \* \* \* \*

**§ 2811. Repair of facilities**

(a) \* \* \*

\* \* \* \* \*

(d) CONGRESSIONAL NOTIFICATION.—When a decision is made to carry out a repair project under this section with an estimated cost in excess of [ \$10,000,000 ] \$7,500,000, the Secretary concerned shall submit to the [appropriate committees of Congress] *congressional defense committees* a report containing—

(1) \* \* \*

\* \* \* \* \*

**§ 2812. Lease-purchase of facilities**

(a) \* \* \*

\* \* \* \* \*

(c)(1) The Secretary concerned may not enter into a lease under this section until—

(A) the Secretary submits to the [appropriate committees of Congress] *congressional defense committees* a justification of the need for the facility for which the proposed lease is being entered into and an economic analysis (based upon accepted life-cycle costing procedures) that demonstrates the cost effectiveness of the proposed lease compared with a military construction project for the same facility; and

\* \* \* \* \*

**§ 2813. Acquisition of existing facilities in lieu of authorized construction**

(a) \* \* \*

\* \* \* \* \*

(c) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the acquisition of a facility under subsection (a) until the Secretary concerned transmits to the [appropriate committees of Congress] *congressional defense committees* a written notification of the determination to acquire an existing facility instead of carrying out the authorized military construction project. The notification shall include the reasons for acquiring the facility. After the notification is transmitted, the Secretary may then enter into the contract only after the end of the 30-day period beginning on the date on which the notification is received by the committees or, if earlier, the end of the 21-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

**§ 2814. Special authority for development of Ford Island, Hawaii**

(a) IN GENERAL.—(1) \* \* \*  
(2) The Secretary of the Navy may not exercise any authority under this section until—

(A) the Secretary submits to the [appropriate committees of Congress] *congressional defense committees* a master plan for the development of Ford Island, Hawaii; and

\* \* \* \* \*

(g) NOTICE AND WAIT REQUIREMENTS.—The Secretary of the Navy may not carry out a transaction authorized by this section until—

(1) the Secretary submits to the [appropriate committees of Congress] *congressional defense committees* a notification of the transaction, including—

- (A) a detailed description of the transaction; and
- (B) a justification for the transaction specifying the manner in which the transaction will meet the purposes of this section; and

\* \* \* \* \*

**SUBCHAPTER II—MILITARY FAMILY HOUSING**

\* \* \* \* \*

**§ 2825. Improvements to family housing units**

(a) \* \* \*

(b)(1) Funds may not be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units that are to be converted into or are to be used as a single family housing unit, if the cost per unit of such improvement will exceed (A) \$50,000 multiplied by the area construction cost index as developed by the Department of Defense for the location concerned at the time of contract award, or (B) in the case of improvements necessary to make the unit suitable for habitation by a handicapped person, \$60,000 multiplied by such index. The Secretary concerned may waive the limitations contained in the preceding sentence if such Secretary determines that, considering the useful life of the structure to be improved and the useful life of a newly constructed unit and the cost of construction and of operation and maintenance of each kind of unit over its useful life, the improvement will be cost-effective. If the Secretary concerned makes a determination under the preceding sentence with respect to an improvement, the waiver under that sentence with respect to that improvement may take effect only after the Secretary transmits a notice of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective, to the [appropriate committees of Congress] *congressional defense committees* and a period of 21 days has elapsed after the date on which the notification is received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.

\* \* \* \* \*

**§ 2827. Relocation of military family housing units**

(a) \* \* \*

(b) A contract to carry out a relocation of military family housing units under subsection (a) may not be awarded until (1) the Secretary concerned has notified the [appropriate committees of Congress] *congressional defense committees* of the proposed new locations of the housing units to be relocated and the estimated cost of and source of funds for the relocation, and (2) a period of 21 days has elapsed after the notification has been received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

**§ 2828. Leasing of military family housing**

(a) \* \* \*

\* \* \* \* \*

(f) A lease for family housing facilities, or for real property related to family housing facilities, in a foreign country for which the average estimated annual rental during the term of the lease exceeds \$500,000 may not be made under this section until (1) the Secretary concerned provides to the [appropriate committees of Congress] *congressional defense committees* written notification of the facts concerning the proposed lease, and (2) a period of 21 days elapses after the notification is received by those committees.

\* \* \* \* \*

**§ 2831. Military family housing management account**

(a) \* \* \*

\* \* \* \* \*

(e) *ANNUAL REPORT OF COST OF GENERAL OFFICERS AND FLAG OFFICERS QUARTERS.*—As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, but in no case later than March 30 of each year, the Secretary of Defense shall submit a report—

- (1) *identifying family housing units used, or intended for use, as quarters for general officers or flag officers for which the total operation and maintenance costs, utility costs, and repair costs are anticipated to exceed \$20,000 in the next fiscal year; and*
- (2) *specifying the total of such costs for each unit of family housing identified under paragraph (1).*

\* \* \* \* \*

**§ 2835. Long-term leasing of military family housing to be constructed**

(a) \* \* \*

\* \* \* \* \*

(g) *NOTICE AND WAIT REQUIREMENTS.*—A contract may not be entered into for the lease of housing facilities under this section until—

(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, submits to the [appropriate committees of Congress] *congressional defense committees*, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost-effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 calendar days has expired following the date on which the economic analysis is received by those committees.

\* \* \* \* \*

**§ 2836. Military housing rental guarantee program**

(a) \* \* \*

\* \* \* \* \*

(f) NOTICE AND WAIT REQUIREMENTS.—An agreement may not be entered into under subsection (a) until—

(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, submits to the [appropriate committees of Congress] *congressional defense committees*, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed agreement is cost effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 days has expired following the date on which the economic analysis is received by those committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the economic analysis is provided in an electronic medium pursuant to section 480 of this title.

\* \* \* \* \*

**§ 2837. Limited partnerships with private developers of housing**

(a) \* \* \*

\* \* \* \* \*

(c) SELECTION OF INVESTMENT OPPORTUNITIES.—(1) \* \* \*

(2) When a decision is made to enter into a limited partnership under subsection (a), the Secretary concerned shall submit a report in writing to the [appropriate committees of Congress] *congressional defense committees* on that decision. Each such report shall include the justification for the limited partnership, the terms and conditions of the limited partnership, a description of the development costs for projects under the limited partnership, and a description of the share of such costs to be incurred by the Secretary concerned. The Secretary concerned may then enter into the limited partnership only after the end of the 21-day period beginning on the date the report is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

\* \* \* \* \*

SUBCHAPTER III—ADMINISTRATION OF MILITARY  
CONSTRUCTION AND MILITARY FAMILY HOUSING

\* \* \* \* \*

**§ 2853. Authorized cost variations**

(a) \* \* \*

\* \* \* \* \*

(c) The limitation on cost increase in subsection (a) or the limitation on scope reduction in subsection (b) does not apply if—

(1) \* \* \*

(2) the Secretary concerned notifies the [appropriate committees of Congress] *congressional defense committees* in writing of the increase or reduction and the reasons therefor; and

(3) a period of 21 days has elapsed after the date on which the notification is received by the committees *or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.*

\* \* \* \* \*

**§ 2854. Restoration or replacement of damaged or destroyed facilities**

(a) \* \* \*

(b) When a decision is made to carry out construction under this section and the cost of the repair, restoration, or replacement is greater than the maximum amount for a minor construction project, the Secretary concerned shall notify in writing the [appropriate committees of Congress] *congressional defense committees* of that decision, of the justification for the project, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under this section. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

**§ 2854a. Conveyance of damaged or deteriorated military family housing; use of proceeds**

(a) \* \* \*

\* \* \* \* \*

(c) NOTICE AND WAIT REQUIREMENTS.—The Secretary concerned may not enter into an agreement to convey a family housing facility under this section until—

(1) the Secretary submits to the [appropriate committees of Congress] *congressional defense committees*, in writing, a justification for the conveyance under the agreement, including—

(A) an estimate of the consideration to be provided the United States under the agreement;

(B) an estimate of the cost of repairing the family housing facility to be conveyed; and



(C) an estimate of the cost of replacing the family housing facility to be conveyed; and

\* \* \* \* \*

**§ 2865. Energy savings at military installations**

(a) \* \* \*

\* \* \* \* \*

(1) (e) ENERGY CONSERVATION CONSTRUCTION PROJECTS.—

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify in writing the [appropriate committees of Congress] *congressional defense committees* of that decision. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

\* \* \* \* \*

**§ 2866. Water conservation at military installations**

(a) \* \* \*

\* \* \* \* \*

(c) WATER CONSERVATION CONSTRUCTION PROJECTS.—(1) \* \* \*

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify the [appropriate committees of Congress] *congressional defense committees* of that decision. Such project may be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

\* \* \* \* \*

**§ 2868. Utility services: furnishing for certain buildings**

Appropriations for the Department of Defense may be used for utility services [for—

[(1) buildings constructed at private cost, as authorized by law; and

[(2) buildings on military reservations authorized by regulation to be used for morale, welfare, and recreational purposes.] *for buildings constructed at private cost, as authorized by law.*

\* \* \* \* \*

**SUBCHAPTER IV—ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING**

\* \* \* \* \*

**§ 2875. Investments**

(a) \* \* \*

\* \* \* \* \*

(e) CONGRESSIONAL NOTIFICATION REQUIRED.—Amounts in the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund may be used to make a cash investment under this section in an eligible entity only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the investment to the [appropriate committees of Congress] *congressional defense committees* or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title.

\* \* \* \* \*

**§ 2881a. Pilot projects for acquisition or construction of military unaccompanied housing**

(a) \* \* \*

\* \* \* \* \*

(d) FUNDING.—(1) \* \* \*

(2) Subject to 90 days prior notification to the [appropriate committees of Congress] *congressional defense committees*, such additional amounts as the Secretary of Defense considers necessary may be transferred to the Department of Defense Military Unaccompanied Housing Improvement Fund from amounts appropriated for construction of military unaccompanied housing in military construction accounts. The amounts so transferred shall be merged with and be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund.

(e) REPORTS.—(1) The Secretary of the Navy shall transmit to the [appropriate committees of Congress] *congressional defense committees* a report describing—

(A) \* \* \*

\* \* \* \* \*

**§ 2883. Department of Defense Housing Funds**

(a) \* \* \*

\* \* \* \* \*

(f) NOTIFICATION REQUIRED FOR TRANSFERS.—A transfer of appropriated amounts to a Fund under paragraph (1)(B) or (2)(B) of subsection (c) may be made only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the transfer to the [appropriate committees of Congress] *congressional defense committees* or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title.

(g) LIMITATION ON AMOUNT OF BUDGET AUTHORITY.—The total value in budget authority of all contracts and investments undertaken using the authorities provided in this subchapter shall not exceed—

[(1) \$850,000,000 for the acquisition or construction of military family housing; and

[(2) \$150,000,000 for the acquisition or construction of military unaccompanied housing.]

(g) *LIMITATION ON USE OF AUTHORITY TO ACQUIRE OR CONSTRUCT MILITARY UNACCOMPANIED HOUSING.—The total value in budget authority of all contracts and investments undertaken using the authorities provided in this subchapter for the acquisition or construction of military unaccompanied housing shall not exceed \$150,000,000.*

\* \* \* \* \*

**§ 2884. Reports**

(a) PROJECT REPORTS.—(1) The Secretary of Defense shall transmit to the [appropriate committees of Congress] *congressional defense committees* a report describing—

(A) \* \* \*

\* \* \* \* \*

**Subtitle B—Army**

\* \* \* \* \*

**PART I—ORGANIZATION**

\* \* \* \* \*

**CHAPTER 305—THE ARMY STAFF**

\* \* \* \* \*

**§ 3033. Chief of Staff**

(a)(1) There is a Chief of Staff of the Army, appointed [for a period of four years] by the President, by and with the advice and consent of the Senate, from the general officers of the Army. [He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.] *The Chief of Staff serves at the pleasure of the President for a term of four years. The President may extend the service of an officer as Chief of Staff for an additional period of not to exceed two years. In time of war or during a national emergency declared by Congress, the President may extend the service of an officer as Chief of Staff for such additional periods as the President determines necessary, except that the total period of an officer's service as Chief of Staff may not exceed eight years.*

\* \* \* \* \*

**§ 3038. Office of Army Reserve: appointment of Chief**

(a) \* \* \*

\* \* \* \* \*

(b) APPOINTMENT.—(1) \* \* \*

\* \* \* \* \*

(4) Until **[December 31, 2004,]** *December 31, 2006*, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Army Reserve if the Secretary of the Army requests the waiver and, in the judgment of the Secretary of Defense—

(A) \* \* \*

\* \* \* \* \*

**PART II—PERSONNEL**

\* \* \* \* \*

**CHAPTER 357—DECORATIONS AND AWARDS**

Sec.  
3741. Medal of honor: award.  
\* \* \* \* \*

**[3755]** 3756. Korea Defense Service Medal.  
\* \* \* \* \*

**§ [3755] 3756. Korea Defense Service Medal**

(a) \* \* \*

\* \* \* \* \*

**CHAPTER 367—RETIREMENT FOR LENGTH OF SERVICE**

Sec.  
3911. Twenty years or more: regular or reserve commissioned officers.  
\* \* \* \* \*

**[3921.** Mandatory retirement: Superintendent of the United States Military Academy.]  
\* \* \* \* \*

**[§ 3921. Mandatory retirement: Superintendent of the United States Military Academy**

**[Upon the termination of the detail of an officer to the position of Superintendent of the United States Military Academy, the Secretary of the Army shall retire the officer under any provision of this chapter under which that officer is eligible to retire.]**

\* \* \* \* \*

**PART III—TRAINING**

\* \* \* \* \*

**CHAPTER 403—UNITED STATES MILITARY ACADEMY**

Sec.  
4331. Establishment; Superintendent; faculty.  
\* \* \* \* \*

**[4333a.** Superintendent: condition for detail to position.]  
4333a. *Superintendent: length of assignment.*  
\* \* \* \* \*

4359. *Cadets: charges and fees for attendance; limitation.*  
\* \* \* \* \*

**[§ 4333a. Superintendent: condition for detail to position**

**[As a condition for detail to the position of Superintendent of the Academy, an officer shall acknowledge that upon termination of that detail the officer shall be retired.]**

**§ 4333a. Superintendent: length of assignment**

*An officer who is detailed to the position of Superintendent of the Academy shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before having completed three years service as Superintendent, or otherwise leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Army shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.*

\* \* \* \* \*

**§ 4359. Cadets: charges and fees for attendance; limitation**

*(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.*

*(b) EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.*

\* \* \* \* \*

**PART IV—SERVICE, SUPPLY, AND  
PROCUREMENT**

\* \* \* \* \*

**CHAPTER 443—DISPOSAL OF OBSOLETE OR SURPLUS  
MATERIAL**

\* \* \* \* \*

**§ 4689. Transfer of material and equipment to the Architect  
of the Capitol**

The Secretary of the Army is authorized to transfer, without payment, to the Architect of the Capitol, such material and equipment, not required by the Department of the Army, as the Architect may request for use at the Capitol power plant, the Capitol [Building], and the Senate and House Office Buildings.

\* \* \* \* \*

CHAPTER 447—TRANSPORTATION

- Sec.
- 【4741. Control and supervision.
- 【4743. Officers: use of transportation.
- 【4744. Persons and supplies: sea transportation.
- 【4745. Civilian passengers and commercial cargoes: transports in trans-Atlantic service.
- 【4746. Civilian personnel in Alaska.
- 【4747. Passengers and merchandise to Guam: sea transport.】

\* \* \* \* \*

【§ 4741. Control and supervision

【The transportation of members, munitions of war, equipment, military property, and stores of the Army throughout the United States shall be under the immediate control and supervision of the Secretary of the Army and agents appointed or designated by him.

【§ 4743. Officers: use of transportation

【Under such conditions as the Secretary of the Army may prescribe, officers of the Army may, in the performance of their duties, use means of transportation provided for the Army and its supplies.】

\* \* \* \* \*

Subtitle C—Navy and Marine Corps

\* \* \* \* \*

PART I—ORGANIZATION

\* \* \* \* \*

CHAPTER 505—OFFICE OF THE CHIEF OF NAVAL OPERATIONS

\* \* \* \* \*

§ 5033. Chief of Naval Operations

(a)(1) There is a Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate. The Chief of Naval Operations shall be appointed for a term of four years, from the flag officers of the Navy. 【He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.】 *The Chief of Naval Operations serves at the pleasure of the President. The President may extend the service of an officer as Chief of Naval Operations for an additional period of not to exceed two years. In time of war or during a national emergency declared by Congress, the President may extend the service of an officer as Chief of Naval Operations for such additional periods as the President determines necessary, except that the total period of an officer's service as Chief of Naval Operations may not exceed eight years.*

\* \* \* \* \*

**§ 5036. Deputy Chiefs of Naval Operations**

(a) There are in the Office of the Chief of Naval Operations not more than five Deputy Chiefs of Naval Operations, detailed by the Secretary of the Navy from officers on the active-duty list [in the line] of the Navy serving in grades above captain.

\* \* \* \* \*

**§ 5037. Assistant Chiefs of Naval Operations**

(a) There are in the Office of the Chief of Naval Operations not more than three Assistant Chiefs of Naval Operations, detailed by the Secretary of the Navy from officers on the active-duty list [in the line] of the Navy and officers on the active-duty list of the Marine Corps.

\* \* \* \* \*

**CHAPTER 506—HEADQUARTERS, MARINE CORPS**

\* \* \* \* \*

**§ 5043. Commandant of the Marine Corps**

(a)(1) There is a Commandant of the Marine Corps, appointed by the President, by and with the advice and consent of the Senate. The Commandant shall be appointed for a term of four years from the general officers of the Marine Corps. [He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.] *The Commandant serves at the pleasure of the President. The President may extend the service of an officer as Commandant for an additional period of not to exceed two years. In time of war or during a national emergency declared by Congress, the President may extend the service of an officer as Commandant for such additional periods as the President determines necessary, except that the total period of an officer's service as Commandant may not exceed eight years.*

\* \* \* \* \*

**CHAPTER 513—BUREAUS; OFFICE OF THE JUDGE  
ADVOCATE GENERAL**

\* \* \* \* \*

**§ 5143. Office of Naval Reserve: appointment of Chief**

(a) \* \* \*

\* \* \* \* \*

(b) APPOINTMENT.—(1) \* \* \*

\* \* \* \* \*

(4) Until [December 31, 2004,] *December 31, 2006*, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Naval Reserve if the Secretary of the Navy requests the waiver and, in the judgment of the Secretary of Defense—

(A) \* \* \*

\* \* \* \* \*

**§ 5144. Office of Marine Forces Reserve: appointment of Commander**

(a) \* \* \*

(b) APPOINTMENT.—(1) \* \* \*

\* \* \* \* \*

(4) Until **December 31, 2004,** *December 31, 2006*, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Commander, Marine Forces Reserve, if the Secretary of the Navy requests the waiver and, in the judgment of the Secretary of Defense—

(A) \* \* \*

\* \* \* \* \*

**PART II—PERSONNEL**

\* \* \* \* \*

**CHAPTER 567—DECORATIONS AND AWARDS**

Sec. 6241. Medal of honor.

\* \* \* \* \*

**[6257] 6258.** Korea Defense Service Medal.

\* \* \* \* \*

**§ [6257] 6258. Korea Defense Service Medal**

(a) \* \* \*

\* \* \* \* \*

**CHAPTER 573—INVOLUNTARY RETIREMENT, SEPARATION, AND FURLOUGH**

Sec. **[6371.** Mandatory retirement: Superintendent of the United States Naval Academy.]

\* \* \* \* \*

**[§ 6371. Mandatory retirement: Superintendent of the United States Naval Academy**

**Upon the termination of the detail of an officer to the position of Superintendent of the United States Naval Academy, the Secretary of the Navy shall retire the officer under any provision of chapter 571 of this title under which the officer is eligible to retire.]**

\* \* \* \* \*

**PART III—EDUCATION AND TRAINING**

\* \* \* \* \*



**CHAPTER 603—UNITED STATES NAVAL ACADEMY**

Sec.							
6951.	Location.						
		*	*	*	*	*	*
4359.	<i>Midshipmen: charges and fees for attendance; limitation.</i>						
		*	*	*	*	*	*

**§ 6951a. Superintendent**

(a) \* \* \*

(b) The Superintendent shall be detailed to that position by the President. **[As a condition for detail to that position, an officer shall acknowledge that upon termination of that detail the officer shall be retired.]**

(c) *An officer who is detailed to the position of Superintendent shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before having completed three years service as Superintendent, or otherwise leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Navy shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.*

\* \* \* \* \*

**§ 6978. Midshipmen: charges and fees for attendance; limitation**

(a) *PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Naval Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.*

(b) *EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to midshipmen for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made by the Naval Academy in the amount of a charge or fee authorized under this subsection.*

**CHAPTER 605—UNITED STATES NAVAL POSTGRADUATE SCHOOL**

Sec.							
7041.	Function.						
<b>[7042.</b>	Superintendent; assistants.						
<b>[7043.</b>	Academic Dean.]						
7042.	<i>President; assistants.</i>						
7043.	<i>Provost and Academic Dean.</i>						
		*	*	*	*	*	*

**[§ 7042. Superintendent; assistants]**

**§ 7042. President; assistants**

(a) The Secretary of the Navy shall detail as **[Superintendent]** *President* of the Naval Postgraduate School an officer on the active-

duty list in the line of the Navy eligible for command at sea not below the grade of captain. The **【Superintendent】** *President* has military command of the Postgraduate School.

(b) The Secretary shall detail officers of the Navy and the Marine Corps of appropriate grades and qualifications to assist the **【Superintendent】** *President* in—

- (1) the advanced instruction and technical education of students; and
- (2) the administration of the Postgraduate School.

**【§ 7043. Academic Dean】**

**【(a)** There is at the Naval Postgraduate School the civilian position of Academic Dean. The Academic Dean shall be appointed, to serve for periods of not more than five years, by the Secretary of the Navy upon the recommendation of the Postgraduate School Council consisting of the Superintendent, the Deputy Superintendent, and the directors of the Technical, Administrative, and Professional Divisions of the school.**】**

**§ 7043. Provost and Academic Dean**

*(a) There is at the Naval Postgraduate School the civilian position of Provost and Academic Dean. The Provost and Academic Dean shall be appointed, to serve for periods of not more than five years, by the Secretary of the Navy after consultation with the Naval Postgraduate School Board of Advisors and consideration of the recommendation of the leadership and faculty of the Naval Postgraduate School.*

(b) The **【Academic Dean】** *Provost and Academic Dean* is entitled to such compensation for his services as the Secretary prescribes, but not more than the rate of compensation authorized for level IV of the Executive Schedule.

**§ 7044. Civilian teachers: number; compensation**

The Secretary of the Navy may employ as many civilians as he considers necessary to serve at the Naval Postgraduate School under the direction of the **【Superintendent】** *President of the school* as senior professors, professors, associate professors, assistant professors, and instructors. The Secretary shall prescribe the compensation of those persons.

\* \* \* \* \*

**§ 7048. Conferring of degree on graduates**

(a) The **【Superintendent】** *President* of the Naval Postgraduate School, under regulations prescribed by the Secretary of the Navy, may confer on any qualified graduate a bachelor's, master's, or doctor's degree in engineering or a related field.

\* \* \* \* \*

**§ 7049. Defense industry civilians: admission to defense product development program**

(a) \* \* \*

\* \* \* \* \*

(e) TUITION.—The [Superintendent] of the school shall charge tuition for students enrolled under this section at a rate not less than the rate charged for employees of the United States outside the Department of the Navy.

\* \* \* \* \*

**CHAPTER 609—PROFESSIONAL MILITARY EDUCATION SCHOOLS**

\* \* \* \* \*

**§ 7102. Marine Corps University: masters degrees; board of advisors**

(a) [AUTHORITY] *MASTER OF MILITARY STUDIES*.—Upon the recommendation of the Director and faculty of the Command and Staff College of the Marine Corps University, the President of the Marine Corps University may confer the degree of master of military studies upon graduates of the Command and Staff College who fulfill the requirements for that degree.

(b) [MARINE CORPS WAR COLLEGE] *MASTER OF STRATEGIC STUDIES*.—Upon the recommendation of the Director and faculty of the Marine Corps War College of the Marine Corps University, the President of the Marine Corps University may confer the degree of master of strategic studies upon graduates of the Marine Corps War College who fulfill the requirements for that degree.

(c) [COMMAND AND STAFF COLLEGE OF THE MARINE CORPS UNIVERSITY] *MASTER OF OPERATIONAL STUDIES*.—Upon the recommendation of the Director and faculty of the Command and Staff College of the Marine Corps University, the President of the Marine Corps University may confer the degree of master of operational studies upon graduates of the Command and Staff College's School of Advanced Warfighting who fulfill the requirements for that degree.

(d) REGULATIONS.—The authority provided by [subsections (a) and (b)] *this section* shall be exercised under regulations prescribed by the Secretary of the Navy.

\* \* \* \* \*

**PART IV—GENERAL ADMINISTRATION**

\* \* \* \* \*

**CHAPTER 631—SECRETARY OF THE NAVY: MISCELLANEOUS POWERS AND DUTIES**

Sec.	
7204.	Schools near naval activities: financial aid.
	* * * * *
7234.	<i>Submarine safety programs: participation of allied naval personnel.</i>
	* * * * *

**§ 7234. Submarine safety programs: participation of allied naval personnel**

(a) *ACCEPTANCE OF ASSIGNMENT OF FOREIGN NAVAL PERSONNEL*.—*In order to facilitate the development, standardization,*

and interoperability of submarine vessel safety and rescue systems and procedures, the Secretary of the Navy may conduct a program under which members of the naval service of any of the member nations of the North Atlantic Treaty Organization and Australia, Japan, the Republic of Korea, and Sweden may be assigned to United States commands to work on such systems and procedures.

(b) **COSTS FOR FOREIGN PERSONNEL.**—(1) The United States may not pay the following costs for a member of a foreign naval service sent to the United States under the program authorized by this section:

- (A) Salary.
- (B) Per diem.
- (C) Cost of living.
- (D) Travel costs.
- (E) Cost of language or other training.
- (F) Other costs.

(2) Paragraph (1) does not apply to the following costs, which may be paid by the United States:

- (A) The cost of temporary duty directed by the United States Navy.
- (B) The cost of training programs conducted to familiarize, orient, or certify members of foreign naval services regarding unique aspects of their assignments.
- (C) Costs incident to the use of the facilities of the United States Navy in the performance of assigned duties.

(d) **APPLICABILITY TO AUTHORITY TO ENTER INTO AGREEMENTS.**—The requirements of this section shall apply in the exercise of any authority of the Secretary of the Navy to enter into an agreement with the government of a foreign country, subject to the concurrence of the Secretary of State, to provide for the assignment of members of the naval service of the foreign country to a United States Navy submarine safety program.

(e) **REGULATIONS.**—The Secretary of the Navy may prescribe regulations for the application of this section in the exercise of authority referred to in subsection (d).

\* \* \* \* \*

**CHAPTER 633—NAVAL VESSELS**

\* \* \* \* \*

Sec.						
7291.	Classification.					
		*	*	*	*	*
7305a.	Vessels stricken from Naval Vessel Register: contracts for dismantling on net-cost basis.					
		*	*	*	*	*

**§ 7305a. Vessels stricken from Naval Vessel Register: contracts for dismantling on net-cost basis**

(a) **AUTHORITY FOR NET-COST BASIS CONTRACTS.**—When the Secretary of the Navy awards a contract for the dismantling of a vessel stricken from the Naval Vessel Register, the Secretary may award the contract on a net-cost basis.

(b) **RETENTION BY CONTRACTOR OF PROCEEDS OF SALE OF SCRAP AND REUSABLE ITEMS.**—When the Secretary awards a con-

tract on a net-cost basis under subsection (a), the Secretary shall provide in the contract that the contractor may retain the proceeds from the sale of scrap and reusable items removed from the vessel dismantled under the contract.

(c) DEFINITIONS.—In this section:

(1) The term “net-cost basis”, with respect to a contract for the dismantling of a vessel, means that the amount to be paid to the contractor under the contract for dismantling and for removal and disposal of hazardous waste material is discounted by the offeror’s estimate of the value of scrap and reusable items that the contractor will remove from the vessel during performance of the contract.

(2) The term “scrap” means personal property that has no value except for its basic material content.

(3) The term “reusable item” means a demilitarized component or a removable portion of a vessel or equipment that the Secretary of the Navy has identified as excess to the needs of the Navy but which has potential resale value on the open market.

\* \* \* \* \*

**Subtitle D—Air Force**

\* \* \* \* \*

**PART I—ORGANIZATION**

\* \* \* \* \*

**CHAPTER 805—THE AIR STAFF**

\* \* \* \* \*

**§ 8033. Chief of Staff**

(a)(1) There is a Chief of Staff of the Air Force, appointed [for a period of four years] by the President, by and with the advice and consent of the Senate, from the general officers of the Air Force. [He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.] *The Chief of Staff serves at the pleasure of the President for a period of four years. The President may extend the service of an officer as Chief of Staff for an additional period of not to exceed two years. In time of war or during a national emergency declared by Congress, the President may extend the service of an officer as Chief of Staff for such additional periods as the President determines necessary, except that the total period of an officer’s service as Chief of Staff may not exceed eight years.*

\* \* \* \* \*

**§ 8038. Office of Air Force Reserve: appointment of Chief**

(a) \* \* \*

(b) APPOINTMENT.—(1) \* \* \*

\* \* \* \* \*

(4) Until **[December 31, 2004,]** *December 31, 2006*, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Air Force Reserve if the Secretary of the Air Force requests the waiver and, in the judgment of the Secretary of Defense—

(A) \* \* \*

\* \* \* \* \*

**CHAPTER 807—THE AIR FORCE**

\* \* \* \* \*

**§ 8084. Officer career field for space**

The Secretary of the Air Force shall establish and implement policies and procedures to develop a career field for officers in the Air Force with technical competence in space-related matters to have the **[capability]** *capability* to—

(1) \* \* \*

\* \* \* \* \*

**PART II—PERSONNEL**

\* \* \* \* \*

**CHAPTER 857—DECORATIONS AND AWARDS**

Sec.  
8741. Medal of honor: award.

\* \* \* \* \*

**[8755]** 8756. Korea Defense Service Medal.

\* \* \* \* \*

**§ [8755] 8756. Korea Defense Service Medal**

(a) \* \* \*

\* \* \* \* \*

**CHAPTER 867—RETIREMENT FOR LENGTH OF SERVICE**

\* \* \* \* \*

**[§ 8921. Mandatory retirement: Superintendent of the United States Air Force Academy**

**[Upon the termination of the detail of an officer to the position of Superintendent of the United States Air Force Academy, the Secretary of the Air Force shall retire the officer under any provision of this chapter under which the officer is eligible to retire.]**

\* \* \* \* \*

**PART III—TRAINING**

\* \* \* \* \*

**CHAPTER 901—TRAINING GENERALLY**

Sec.	
9301.	Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals.
	* * * * *
9317.	Air University: [graduate-level] degrees.
	* * * * *

**§ 9315. Community College of the Air Force: associate degrees**

(a) \* \* \*

\* \* \* \* \*

(c) CONFERRAL OF DEGREES.—(1) Subject to paragraph (2), the commander of the [Air Education and Training Command of the Air Force] *Air University* may confer an academic degree at the level of associate upon any enlisted member who has completed the program prescribed by the Community College of the Air Force.

(2) No degree may be conferred upon any enlisted member under this section unless (A) the Community College of the Air Force certifies to the commander of the [Air Education and Training Command of the Air Force] *Air University* that such member has satisfied all the requirements prescribed for such degree, and (B) the Secretary of Education determines that the standards for the award of academic degrees in agencies of the United States have been met.

\* \* \* \* \*

**§ 9317. Air University: [graduate-level] degrees**

(a) AUTHORITY.—Upon the recommendation of the faculty of the appropriate school of the Air University, the commander of the Air University [may confer—] *may confer degrees as follows:*

(1) [the] *The* degree of master of strategic studies upon graduates of the Air War College who fulfill the requirements for that degree[;].

(2) [the] *The* degree of master of military operational art and science upon graduates of the Air Command and Staff College who fulfill the requirements for that degree[; and].

(3) [the] *The* degree of master of airpower art and science upon graduates of the School of Advanced Airpower Studies who fulfill the requirements for that degree.

(4) *An associate level degree upon graduates of the Community College of the Air Force.*

\* \* \* \* \*

**CHAPTER 903—UNITED STATES AIR FORCE ACADEMY**

Sec.	
9331.	Establishment; Superintendent; faculty.
	* * * * *
[9333a.	Superintendent: condition for detail to position.]
9333a.	<i>Superintendent: length of assignment.</i>
	* * * * *
9359.	<i>Cadets: charges and fees for attendance; limitation.</i>
	* * * * *

**[§ 9333a. Superintendent: condition for detail to position**

**[As a condition for detail to the position of Superintendent of the Academy, an officer shall acknowledge that upon termination of that detail the officer shall be retired.]**

**§ 9333a. Superintendent: length of assignment**

*An officer who is detailed to the position of Superintendent of the Academy shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before having completed three years service as Superintendent, or otherwise leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Air Force shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.*

\* \* \* \* \*

**§ 9335. Dean of the Faculty**

(a) The Dean of the Faculty is responsible to the Superintendent for developing and sustaining the curriculum and overseeing the faculty of the Academy. The qualifications, selection procedures, training, pay grade, and retention of the Dean shall be prescribed by the Secretary of the Air Force, *except that, if the Dean is not an officer on active duty, the Dean shall be a retired officer or former officer, and a person may not be appointed or assigned as Dean unless that person holds the highest academic degree in that person's academic field.* If a person appointed as the Dean is not an officer on active duty, the person shall be appointed as a member of the Senior Executive Service.

\* \* \* \* \*

**§ 9359. Cadets: charges and fees for attendance; limitation**

(a) *PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.*

(b) *EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.*

\* \* \* \* \*

**PART IV—SERVICE, SUPPLY, AND  
PROCUREMENT**

\* \* \* \* \*



**CHAPTER 947—TRANSPORTATION**

- Sec.  
 [9741. Control and supervision.  
 [9743. Officers: use of transportation.  
 [9746. Civilian personnel in Alaska.]

**[§ 9741. Control and supervision**

The transportation of members, munitions of war, equipment, military property, and stores of the Air Force throughout the United States shall be under the immediate control and supervision of the Secretary of the Air Force and agents appointed or designated by him.

**[§ 9743. Officers: use of transportation**

Under such conditions as the Secretary of the Air Force may prescribe, officers of the Air Force may, in the performance of their duties, use means of transportation provided for the Air Force and its supplies.

**[§ 9746. Civilian personnel in Alaska**

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on airplanes operated by Air Force transport agencies or, within bulk space allocations made to the Department of the Air Force, on vessels or airplanes operated by any military transport agency of the Department of Defense, if—

[(1) the Secretary of the Air Force considers that accommodations are available;

[(2) the transportation is without expense to the United States;

[(3) the transportation is limited to one round trip between Alaska and the United States during any two-year period, except in an emergency such as sickness or death; and

[(4) in case of travel by air—

[(A) the Secretary of Transportation has not certified that commercial air carriers of the United States that can handle the transportation are operating between Alaska and the United States; and

[(B) the transportation cannot be reasonably handled by a United States commercial air carrier.]

\* \* \* \* \*

**Subtitle E—Reserve Components**

\* \* \* \* \*

**PART I—ORGANIZATION AND ADMINISTRATION**

\* \* \* \* \*

**CHAPTER 1003—RESERVE COMPONENTS GENERALLY**

\* \* \* \* \*

**§ 10102. Purpose of reserve components**

The purpose of each reserve component is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever[, during and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization,] more units and persons are needed than are in the regular components.

\* \* \* \* \*

**CHAPTER 1011—NATIONAL GUARD BUREAU**

- Sec.  
 10501. National Guard Bureau.  
**[10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade.]**  
 10502. *Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade; succession.*  
 \* \* \* \* \*  
**[10505. Vice Chief of the National Guard Bureau.]**  
 10505. *Director of the Joint Staff of the National Guard Bureau.*  
 \* \* \* \* \*

**[§ 10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade]**

**§ 10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade; succession**

- (a) \* \* \*  
 \* \* \* \* \*

(e) *SUCCESSION.—(1) Unless otherwise directed by the President or Secretary of Defense, when there is a vacancy in the office of the Chief of the National Guard Bureau or in the event the Chief of the National Guard Bureau is unable to perform the duties of that office, the senior of the officers specified in paragraph (2) shall serve as the acting Chief until a successor is appointed or the Chief once again is able to perform the duties of that office.*

- (2) *The officers specified in this paragraph are the following:*  
 (A) *The senior officer of the Army National Guard of the United States on duty with the National Guard Bureau.*  
 (B) *The senior officer of the Air National Guard of the United States on duty with the National Guard Bureau.*

\* \* \* \* \*

**[§ 10505. Vice Chief of the National Guard Bureau]**

**§ 10505. Director of the Joint Staff of the National Guard Bureau**

(a) *APPOINTMENT.—(1) There is a [Vice Chief of the National Guard Bureau] Director of the Joint Staff of the National Guard Bureau, selected by the Secretary of Defense from officers of the Army National Guard of the United States or the Air National Guard of the United States who—*

(A) \* \* \*

\* \* \* \* \*

(2) The Chief and **【Vice Chief of the National Guard Bureau】** *Director of the Joint Staff of the National Guard Bureau* may not both be members of the Army or of the Air Force.

(3)(A) Except as provided in subparagraph (B), an officer appointed as **【Vice Chief of the National Guard Bureau】** *Director of the Joint Staff of the National Guard Bureau* serves for a term of four years, but may be removed from office at any time for cause.

(B) The term of the **【Vice Chief of the National Guard Bureau】** *Director of the Joint Staff of the National Guard Bureau* shall end upon the appointment of a Chief of the National Guard Bureau who is a member of the same armed force as the Vice Chief.

(4) The Secretary of Defense may waive the restrictions in paragraph (2) and the provisions of paragraph (3)(B) for a limited period of time to provide for the orderly transition of officers appointed to serve in the positions of Chief and **【Vice Chief of the National Guard Bureau】** *Director of the Joint Staff of the National Guard Bureau*.

(b) DUTIES.—The **【Vice Chief of the National Guard Bureau】** *Director of the Joint Staff of the National Guard Bureau* performs such duties as may be prescribed by the Chief of the National Guard Bureau.

(c) GRADE.—The **【Vice Chief of the National Guard Bureau】** *Director of the Joint Staff of the National Guard Bureau* shall be appointed to serve in the grade of major general.

**【(d) FUNCTIONS AS ACTING CHIEF.—**When there is a vacancy in the office of the Chief of the National Guard Bureau or in the absence or disability of the Chief, the Vice Chief of the National Guard Bureau acts as Chief and performs the duties of the Chief until a successor is appointed or the absence or disability ceases.

**【(e) SUCCESSION AFTER CHIEF AND VICE CHIEF.—**When there is a vacancy in the offices of both Chief and Vice Chief of the National Guard Bureau or in the absence or disability of both the Chief and Vice Chief of the National Guard Bureau, or when there is a vacancy in one such office and in the absence or disability of the officer holding the other, the senior officer of the Army National Guard of the United States or the Air National Guard of the United States on duty with the National Guard Bureau shall perform the duties of the Chief until a successor to the Chief or Vice Chief is appointed or the absence or disability of the Chief or Vice Chief ceases, as the case may be.**】**

**§ 10506. Other senior National Guard Bureau officers**

(a) ADDITIONAL GENERAL OFFICERS.—(1) \* \* \*

\* \* \* \* \*

(3)(A) \* \* \*

\* \* \* \* \*

(D) Until **【December 31, 2004,】** *December 31, 2006*, the Secretary of Defense may waive clause (ii) of subparagraph (B) with respect to the appointment of an officer as Director, Army National Guard, or as Director, Air National Guard, if the Secretary of the

military department concerned requests the waiver and, in the judgment of the Secretary of Defense—

(i) \* \* \*

\* \* \* \* \*

**PART II—PERSONNEL GENERALLY**

\* \* \* \* \*

**CHAPTER 1201—AUTHORIZED STRENGTHS AND DISTRIBUTION IN GRADE**

\* \* \* \* \*

**§ 12004. Strength in grade: reserve general and flag officers in an active status**

(a) \* \* \*

\* \* \* \* \*

(c) **[(1)]** The authorized strength of the Navy under subsection (a) is exclusive of officers counted under section 526 of this title. **[Of the number authorized under subsection (a), 39 are distributed among the line and the staff corps as follows:**

<b>[Line</b> .....	28
<b>[Medical Department staff corps</b> .....	9
<b>[Chaplain Corps</b> .....	1
<b>[Judge Advocate General's Corps</b> .....	1

**[(2)]** The remaining authorizations for the Navy under subsection (a) shall be distributed among such other staff corps as are established by the Secretary of the Navy under the authority provided by section 5150(b) of this title, except that—

**[(A)]** if the Secretary has established a Supply Corps, the authorized strength for the Supply Corps shall be seven; and

**[(B)]** if the Secretary has established a Civil Engineering Corps, the authorized strength for the Civil Engineering Corps shall be two.

**[(3)]** Not more than 50 percent of the officers in an active status authorized under this section for the Navy may serve in the grade of rear admiral.

**[(4)(A)]** For the purposes of paragraph (1), the Medical Department staff corps referred to in the table are as follows:

- [(i)]** The Medical Corps.
- [(ii)]** The Dental Corps.
- [(iii)]** The Nurse Corps.
- [(iv)]** The Medical Service Corps.

**[(B)]** Each of the Medical Department staff corps is authorized one rear admiral (lower half) within the strength authorization distributed to the Medical Department staff corps under paragraph (1). The Secretary of the Navy shall distribute the remainder of the strength authorization for the Medical Department staff corps under that paragraph among those staff corps as the Secretary determines appropriate to meet the needs of the Navy.]

\* \* \* \* \*

**§ 12005. Strength in grade: commissioned officers in grades below brigadier general or rear admiral (lower half) in an active status**

(a) \* \* \*

\* \* \* \* \*

(c)(1) The authorized strengths of the Marine Corps Reserve in officers in an active status in the grades of colonel, lieutenant colonel, major, and captain, and in the grades of first lieutenant and second lieutenant combined, are the following percentages of the total authorized number of those officers:

Colonel .....	2 percent
Lieutenant colonel .....	6 percent
Major .....	12 percent
Captain .....	35 percent
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title) .....	32.5 percent.]
<i>Colonel .....</i>	<i>2 percent</i>
<i>Lieutenant colonel .....</i>	<i>8 percent</i>
<i>Major .....</i>	<i>16 percent</i>
<i>Captain .....</i>	<i>39 percent</i>
<i>First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title) .....</i>	<i>35 percent.</i>

\* \* \* \* \*

**§ 12011. Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard**

(a) \* \* \*

\* \* \* \* \*

(e) FULL-TIME RESERVE COMPONENT DUTY DEFINED.—In this section, the term “full-time reserve component duty” means the following duty:

(1) \* \* \*

[(2) Full-time National Guard duty (other than for training) under section 502(f) of title 32.]

(2) *Full-time National Guard duty (other than for training) under section 502(f) of title 32, except for duty under section 115(b)(1)(B) and (C) of this title and section 115(i)(9) of this title.*

\* \* \* \* \*

**§ 12012. Authorized strengths: senior enlisted members on active duty or on full-time National Guard duty for administration of the reserves or the National Guard**

(a) LIMITATIONS.—Of the total number of members of a reserve component who are serving on full-time reserve component duty at the end of any fiscal year, the number of those members in each of pay grades of E-8 and E-9 who may be serving on active duty under section 10211 or 12310, or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) in connection with organizing, administering, recruiting,

instructing, or training the reserve components or the National Guard may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of a reserve component serving on full-time reserve component duty:	Number of members of that reserve component who may be serving in the grade of:	
	E-8	E-9
<b>Army Reserve:</b>		
10,000 .....	1,052	154
11,000 .....	1,126	168
12,000 .....	1,195	180
13,000 .....	1,261	191
14,000 .....	1,327	202
15,000 .....	1,391	213
16,000 .....	1,455	224
17,000 .....	1,519	235
18,000 .....	1,583	246
19,000 .....	1,647	257
20,000 .....	1,711	268
21,000 .....	1,775	278
* * * *	*	*
<b>Air National Guard:</b>		
5,000 .....	1,020	405
6,000 .....	1,070	435
7,000 .....	1,120	465
8,000 .....	1,170	490
9,000 .....	1,220	510
10,000 .....	1,270	530
11,000 .....	1,320	550
12,000 .....	1,370	570
13,000 .....	1,420	589
14,000 .....	1,470	608
15,000 .....	1,520	626
16,000 .....	1,570	644
17,000 .....	1,620	661
18,000 .....	1,670	678
19,000 .....	1,720	695
20,000 .....	1,770	712.
* * * *	*	*

**CHAPTER 1209—ACTIVE DUTY**

\* \* \* \*

**§ 12301. Reserve components generally**

(a) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty [(other than for training)] for the duration of the war or emergency and for six

months thereafter. However a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.

\* \* \* \* \*

(c) So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty [(other than for training)] *as provided in subsection (a)*, members of units organized and trained to serve as units who are ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being [ordered to active duty (other than for training)] *so ordered to active duty*.

\* \* \* \* \*

(e) The period of time allowed between the date when a Reserve ordered to active duty [(other than for training)] *as provided in subsection (a)* is alerted for that duty and the date when the Reserve is required to enter upon that duty shall be determined by the Secretary concerned based upon military requirements at that time.

\* \* \* \* \*

**§ 12302. Ready Reserve**

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty [(other than for training)] for not more than 24 consecutive months.

\* \* \* \* \*

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty [(other than for training)], without their consent, under this section at any one time.

\* \* \* \* \*

**§ 12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency**

(a) **AUTHORITY.**—Notwithstanding the provisions of section 12302(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any operational mission or that it is necessary to provide assistance referred to in subsection (b), he may authorize the Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit

of the Selected Reserve (as defined in section 10143(a) of this title), or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, under their respective jurisdictions, to active duty [(other than for training)] for not more than 270 days.

\* \* \* \* \*

**§ 12306. Standby Reserve**

(a) Units and members in the Standby Reserve may be ordered to active duty [(other than for training) only] *as provided in section 12301(a)* as provided in section 12301 of this title.

(b) In time of emergency—

(1) no unit in the Standby Reserve organized to serve as a unit or any member thereof may be ordered to active duty [(other than for training)] *as provided in section 12301(a) of this title*, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough of the required kinds of units in the Ready Reserve that are readily available; and

(2) no other member in the Standby Reserve may be ordered to active duty [(other than for training)] *as provided in section 12301(a) of this title* as an individual without his consent, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.

\* \* \* \* \*

**CHAPTER 1221—SEPARATION**

\* \* \* \* \*

**§ 12686. Reserves on active duty within two years of retirement eligibility: limitation on release from active duty**

(a) LIMITATION.—Under regulations to be prescribed by the Secretary concerned, which shall be as uniform as practicable, a member of a reserve component who is on active duty (other than for training) and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system (*other than the retirement system under chapter 1223 of this title*), may not be involuntarily released from that duty before he becomes eligible for that pay, unless the release is approved by the Secretary.

\* \* \* \* \*

**CHAPTER 1223—RETIRED PAY FOR NON-REGULAR SERVICE**

\* \* \* \* \*



**§ 12731. Age and service requirements**

(a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—

(1) \* \* \*

\* \* \* \* \*

(3) *in the case of a person who completed the service requirements of paragraph (2) before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005, performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed the service requirements of paragraph (2) before October 5, 1994, the number of years of such qualifying service under this paragraph shall be eight; and*

\* \* \* \* \*

**PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS**

\* \* \* \* \*

**CHAPTER 1609—EDUCATION LOAN REPAYMENT PROGRAMS**

\* \* \* \* \*

**§ 16301. Education loan repayment program: enlisted members of Selected Reserve with critical specialties**

(a)(1) \* \* \*

(2) **[The Secretary]** *Except as provided in paragraph (3), the Secretary of Defense may repay loans described in paragraph (1) in the case of any person for service performed as an enlisted member of the Selected Reserve of the Ready Reserve of an armed force in a reserve component and military specialty specified by the Secretary of Defense. The Secretary may repay such a loan only if the person to whom the loan was made performed such service after the loan was made.*

(3) *In the case of a commitment made by the Secretary of Defense after the date of the enactment of this paragraph to repay a loan under paragraph (1) conditioned upon the performance by the borrower of service as an enlisted member under paragraph (2), the Secretary shall repay the loan for service performed by the borrower as an officer (rather than as an enlisted member) in the case of a borrower who, after such commitment is entered into and while performing service as an enlisted member, accepts an appointment or commission as a warrant officer or commissioned officer of the Selected Reserve.*

\* \* \* \* \*

**§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages**

(a) Under regulations prescribed by the Secretary of Defense and subject to the other provisions of this section, the Secretary concerned may repay—

(1) \* \* \*

\* \* \* \* \*

(5) a loan made, insured, or guaranteed through a recognized financial or educational institution if that loan was used to finance education regarding a *basic professional qualifying degree (as determined under regulations prescribed by the Secretary of Defense) or graduate education in a health profession* that the Secretary of Defense determines to be critically needed in order to meet identified wartime combat medical skill shortages.

\* \* \* \* \*

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before **[January 1, 2005]** *January 1, 2006*.

\* \* \* \* \*

**PART V—SERVICE, SUPPLY, AND PROCUREMENT**

\* \* \* \* \*

**CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS**

\* \* \* \* \*

**§ 18233. Acquisition**

(a) \* \* \*

\* \* \* \* \*

(g)(1) *The Secretary of Defense may convey, by exchange or sale, an existing facility of a reserve component of the armed forces for the purpose of acquiring a replacement facility under this section or using the proceeds from the sale to acquire a replacement facility under this section, if the Secretary determines it is in the best interests of the United States to acquire the replacement facility by such exchange or sale. The United States shall receive funds or a replacement facility, or a combination of both, having a total value at least equal to the fair market value of the conveyed facility.*

(2) *Acquisition of a replacement facility under this subsection may be accomplished by construction, expansion, rehabilitation, or conversion and must result in a fully equipped and operational replacement facility. Nothing in this subsection prohibits the Secretary of Defense from contributing additional funds, in accordance with this section, to obtain a fully equipped and operational replacement facility.*

(3) *Funds received under this subsection shall be deposited in a separate account and remain available to the Secretary of Defense,*

*without appropriation, for use in accordance with this subsection. Any funds received under this subsection in connection with a conveyance in excess of the funds required to obtain a fully equipped and operational replacement facility for the conveyed facility may be used by the Secretary for the purposes of subsection (a).*

\* \* \* \* \*

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

\* \* \* \* \*

**TITLE X—GENERAL PROVISIONS**

**Subtitle A—Financial Matters**

\* \* \* \* \*

**[SEC. 1004. DEVELOPMENT AND IMPLEMENTATION OF FINANCIAL  
MANAGEMENT ENTERPRISE ARCHITECTURE.**

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

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

**[(2) a transition plan for implementing that financial man-  
agement enterprise architecture.**

**[(b) COMPOSITION OF ENTERPRISE ARCHITECTURE.—**(1) The fi-  
nancial management enterprise architecture developed under sub-  
section (a)(1) shall describe an information infrastructure that, at  
a minimum, would enable the Department of Defense to—

**[(A) comply with all Federal accounting, financial manage-  
ment, and reporting requirements;**

**[(B) routinely produce timely, accurate, and reliable finan-  
cial information for management purposes;**

**[(C) integrate budget, accounting, and program informa-  
tion and systems; and**

**[(D) provide for the systematic measurement of perform-  
ance, including the ability to produce timely, relevant, and reli-  
able cost information.**

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

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

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

**[(2) A listing of the mission critical or mission essential  
operational and developmental financial and nonfinancial man-  
agement systems of the Department of Defense, as defined by**

the Under Secretary of Defense (Comptroller), consistent with budget justification documentation, together with—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(g) DEFINITIONS.—In this section:

[(1) The term “defense financial system improvement” means the acquisition of a new budgetary, accounting, finance, enterprise resource planning, or mixed information system for the Department of Defense or a modification of an existing budgetary, accounting, finance, enterprise resource planning, or mixed information system of the Department of Defense. Such term does not include routine maintenance and operation of any such system.

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

[(h) REPEAL.—(1) Section 2222 of title 10, United States Code, is repealed. The table of sections at the beginning of chapter 131 of such title is amended by striking the item relating to such section.

[(2) Section 185(d) of such title is amended by striking “has the meaning given that term in section 2222(c)(2) of this title” and inserting “means an automated or manual system from which information is derived for a financial management system or an accounting system”.]

\* \* \* \* \*

## Subtitle F—Other Matters

\* \* \* \* \*

### SEC. 1064. ENHANCED AUTHORITY TO OBTAIN FOREIGN LANGUAGE SERVICES DURING PERIODS OF EMERGENCY.

(a) NATIONAL FOREIGN LANGUAGE SKILLS REGISTRY.—(1) \* \* \*

(2) The table of sections at the beginning of such chapter is amended by inserting after *the item relating to* section 1596a the following new item:

“1596b. Foreign language proficiency: National Foreign Language Skills Registry.”.

\* \* \* \* \*

## DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

### SEC. 2001. SHORT TITLE.

This division may be cited as the “Military Construction Authorization Act for Fiscal Year 2003”.

**TITLE XXI—ARMY****SEC. 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.**

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(1), the Secretary of the Army may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Army: Inside the United States

State	Installation or location	Amount
Alabama	Anniston Army Depot	\$1,900,000
	Fort Rucker	\$15,808,000
Alaska	Redstone Arsenal	\$1,950,000
	Fort Greely	\$2,700,000
Arizona	Fort Richardson	\$20,011,000
	Fort Wainwright	\$139,906,000
	Fort Huachuca	\$10,400,000
California	Yuma Proving Ground	\$4,500,000
	Fort Irwin	\$2,522,000
Colorado	Fort Carson	\$9,698,000
District of Columbia	Walter Reed Army Medical Center	\$13,794,000
Georgia	Fort Benning	\$86,250,000
	Fort Stewart/Hunter Army Air Field	\$26,000,000
Hawaii	Schofield Barracks	\$191,000,000
Kansas	Fort Leavenworth	\$7,979,000
	Fort Riley	\$81,095,000
Kentucky	Blue Grass Army Depot	\$5,500,000
	Fort Campbell	\$106,300,000
	Fort Knox	\$5,873,000
Louisiana	Fort Polk	\$37,620,000
Maryland	Fort Detrick	\$22,500,000
Massachusetts	Natick Research, Development, and Engineering Center	\$4,100,000
Missouri	Fort Leonard Wood	\$24,993,000
New Jersey	Picatinny Arsenal	\$7,500,000
New York	Fort Drum	\$18,300,000
	United States Military Academy, West Point	\$4,991,000
North Carolina	Fort Bragg	\$99,632,000
Oklahoma	Fort Sill	\$40,752,000
Pennsylvania	Letterkenny Army Depot	\$1,550,000
		<b>[\$39,652,000]</b>

**Army: Inside the United States—Continued**

State	Installation or location	Amount
South Carolina .....	Fort Jackson .....	\$3,051,000
Texas .....	Fort Bliss .....	\$5,200,000
	Fort Hood .....	\$83,061,000
Virginia .....	Fort Eustis .....	\$4,133,000
	Fort Lee .....	\$7,103,000
Washington .....	Fort Lewis .....	\$56,195,000
	Yakima Training Center .....	\$3,000,000
	<b>Total .....</b>	<b>【\$1,155,767,000】 \$1,157,267,000</b>



\* \* \* \* \*

**SEC. 2104. AUTHORIZATION OF APPROPRIATIONS, ARMY.**

(a) \* \* \*

\* \* \* \* \*

(b) **LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.**—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2101 of this Act may not exceed—

(1) \* \* \*

\* \* \* \* \*

(6) **[\$25,000,000] \$26,100,000** (the balance of the amount authorized under section 2101(a) for construction of a consolidated maintenance complex at Fort Sill, Oklahoma).

\* \* \* \* \*

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**FLOYD D. SPENCE NATIONAL DEFENSE  
AUTHORIZATION ACT FOR FISCAL YEAR 2001**

\* \* \* \* \*

**TITLE III—OPERATION AND MAINTENANCE**

\* \* \* \* \*

**Subtitle D—Department of Defense  
Industrial Facilities**

\* \* \* \* \*

**SEC. 343. ARSENAL SUPPORT PROGRAM INITIATIVE.**

(a) **DEMONSTRATION PROGRAM REQUIRED.**—To help maintain the viability of the Army manufacturing arsenals and the unique capabilities of these arsenals to support the national security interests of the United States, the Secretary of the Army shall carry out a demonstration program under this section during fiscal years 2001 through **[2004] 2008** at each manufacturing arsenal of the Department of the Army.

\* \* \* \* \*

(g) **REPORTING REQUIREMENTS.**—(1) Not later than July 1 of each year in which a guarantee issued under subsection (d) is in effect, the Secretary of the Army shall submit to Congress a report specifying the amounts of loans guaranteed under such subsection during the preceding calendar year. No report is required after fiscal year **[2004] 2008**.

(2) Not later than July 1, **[2003] 2007**, the Secretary of the Army shall submit to the congressional defense committees a report on the results of the demonstration program since its implementation, including the Secretary's views regarding the benefits of the program for Army manufacturing arsenals and the Department of the Army and the success of the program in achieving the purposes specified in subsection (b). The report shall contain a com-

prehensive review of contracting at the Army manufacturing arsenals covered by the program and such recommendations as the Secretary considers appropriate regarding changes to the program.

\* \* \* \* \*

**TITLE XII—MATTERS RELATING TO OTHER NATIONS**

\* \* \* \* \*

**Subtitle D—Other Matters**

\* \* \* \* \*

**SEC. 1238. UNITED STATES-CHINA SECURITY REVIEW COMMISSION.**

(a) \* \* \*

\* \* \* \* \*

(c) DUTIES.—

(1) ANNUAL REPORT.—Not later than March 1 each year [(beginning in 2002)], the Commission shall submit to Congress a report, in both unclassified and classified form, regarding the national security implications and impact of the bilateral trade and economic relationship between the United States and the People’s Republic of China. The report shall include a full analysis, along with conclusions and recommendations for legislative and administrative actions, if any, of the national security implications for the United States of the trade and current balances with the People’s Republic of China in goods and services, financial transactions, and technology transfers. The Commission shall also take into account patterns of trade and transfers through third countries to the extent practicable. *The report shall include a full discussion of the activities of the Commission under each of the subparagraphs of paragraph (2).*

[(2) CONTENTS OF REPORT.—Each report under paragraph (1) shall include, at a minimum, a full discussion of the following:]

[(A) The portion of trade in goods and services with the United States that the People’s Republic of China dedicates to military systems or systems of a dual nature that could be used for military purposes.

[(B) The acquisition by the People’s Republic of China of advanced military or dual-use technologies from the United States by trade (including procurement) and other technology transfers, especially those transfers, if any, that contribute to the proliferation of weapons of mass destruction or their delivery systems, or that undermine international agreements or United States laws with respect to nonproliferation.

[(C) Any transfers, other than those identified under subparagraph (B), to the military systems of the People’s Republic of China made by United States firms and United States-based multinational corporations.

【(D) An analysis of the statements and writing of the People's Republic of China officials and officially-sanctioned writings that bear on the intentions, if any, of the Government of the People's Republic of China regarding the pursuit of military competition with, and leverage over, or cooperation with, the United States and the Asian allies of the United States.

【(E) The military actions taken by the Government of the People's Republic of China during the preceding year that bear on the national security of the United States and the regional stability of the Asian allies of the United States.

【(F) The effects, if any, on the national security interests of the United States of the use by the People's Republic of China of financial transactions and capital flow and currency manipulations.

【(G) Any action taken by the Government of the People's Republic of China in the context of the World Trade Organization that is adverse or favorable to the United States national security interests.

【(H) Patterns of trade and investment between the People's Republic of China and its major trading partners, other than the United States, that appear to be substantively different from trade and investment patterns with the United States and whether the differences have any national security implications for the United States.

【(I) The extent to which the trade surplus of the People's Republic of China with the United States enhances the military budget of the People's Republic of China.

【(J) An overall assessment of the state of the security challenges presented by the People's Republic of China to the United States and whether the security challenges are increasing or decreasing from previous years.】

(2) *AREAS OF FOCUS.*—*The Commission shall focus, in lieu of any other area of work or study, on the following:*

(A) *PROLIFERATION PRACTICES.*—*The Commission shall analyze and assess the Chinese role in the proliferation of weapons of mass destruction and other weapons (including dual use technologies) to terrorist-sponsoring states, and suggest possible steps which the United States might take, including economic sanctions, to encourage the Chinese to stop such practices.*

(B) *ECONOMIC REFORMS AND UNITED STATES ECONOMIC TRANSFERS.*—*The Commission shall analyze and assess the qualitative and quantitative nature of the shift of United States production activities to China, including the relocation of high-technology, manufacturing, and R&D facilities; the impact of these transfers on United States national security, including political influence by the Chinese Government over American firms, dependence of the United States national security industrial base on Chinese imports, the adequacy of United States export control laws, and the effect of these transfers on United States economic security, employment, and the standard of living of the American people; analyze China's national budget and assess China's*

*fiscal strength to address internal instability problems and assess the likelihood of externalization of such problems.*

(C) *ENERGY.*—The Commission shall evaluate and assess how China's large and growing economy will impact upon world energy supplies and the role the United States can play, including joint R&D efforts and technological assistance, in influencing China's energy policy.

(D) *UNITED STATES CAPITAL MARKETS.*—The Commission shall evaluate the extent of Chinese access to, and use of United States capital markets, and whether the existing disclosure and transparency rules are adequate to identify Chinese companies which are active in United States markets and are also engaged in proliferation activities or other activities harmful to United States security interests.

(E) *CORPORATE REPORTING.*—The Commission shall assess United States trade and investment relationship with China, including the need for corporate reporting on United States investments in China and incentives that China may be offering to United States corporations to relocate production and R&D to China.

(F) *REGIONAL ECONOMIC AND SECURITY IMPACTS.*—The Commission shall assess the extent of China's "hollowing-out" of Asian manufacturing economies, and the impact on United States economic and security interests in the region; review the triangular economic and security relationship among the United States, Taipei and Beijing, including Beijing's military modernization and force deployments aimed at Taipei, and the adequacy of United States executive branch coordination and consultation with Congress on United States arms sales and defense relationship with Taipei.

(G) *UNITED STATES-CHINA BILATERAL PROGRAMS.*—The Commission shall assess science and technology programs to evaluate if the United States is developing an adequate coordinating mechanism with appropriate review by the intelligence community with Congress; assess the degree of non-compliance by China and United States-China agreements on prison labor imports and intellectual property rights; evaluate United States enforcement policies; and recommend what new measures the United States Government might take to strengthen our laws and enforcement activities and to encourage compliance by the Chinese.

(H) *WORLD TRADE ORGANIZATION COMPLIANCE.*—The Commission shall review China's record of compliance to date with its accession agreement to the WTO, and explore what incentives and policy initiatives should be pursued to promote further compliance by China.

(I) *MEDIA CONTROL.*—The Commission shall evaluate Chinese government efforts to influence and control perceptions of the United States and its policies through the internet, the Chinese print and electronic media, and Chinese internal propaganda.

\* \* \* \* \*

**SECTION 901 OF THE NATIONAL DEFENSE  
AUTHORIZATION ACT FOR FISCAL YEAR 1998**

**[(SEC. 901. ASSISTANTS TO THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF FOR NATIONAL GUARD MATTERS AND FOR RESERVE MATTERS.**

**[(a) ESTABLISHMENT OF POSITIONS.—**The Secretary of Defense shall establish the following positions within the Joint Staff:

**[(1) Assistant to the Chairman of the Joint Chiefs of Staff for National Guard Matters.**

**[(2) Assistant to the Chairman of the Joint Chiefs of Staff for Reserve Matters.**

**[(b) SELECTION.—(1)** The Assistant to the Chairman of the Joint Chiefs of Staff for National Guard Matters shall be selected by the Chairman from officers of the Army National Guard of the United States or the Air Guard of the United States who—

**[(A)** are recommended for such selection by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

**[(B)** have had at least 10 years of federally recognized commissioned service in the National Guard; and

**[(C)** are in a grade above the grade of colonel.

**[(2)** The Assistant to the Chairman of the Joint Chiefs of Staff for Reserve Matters shall be selected by the Chairman from officers of the Army Reserve, the Naval Reserve, the Marine Corps Reserve, or the Air Force Reserve who—

**[(A)** are recommended for such selection by the Secretary of the military department concerned;

**[(B)** have had at least 10 years of commissioned service in their reserve component; and

**[(C)** are in a grade above the grade of colonel or, in the case of the Naval Reserve, captain.

**[(c) TERM OF OFFICE.—**Each Assistant to the Chairman under subsection (a) serves at the pleasure of the Chairman for a term of two years and may be continued in that assignment in the same manner for one additional term. However, in time of war there is no limit on the number of terms.

**[(d) GRADE.—**Each Assistant to the Chairman, while so serving, holds the grade of major general or, in the case of the Naval Reserve, rear admiral. Each such officer shall be considered to be serving in a position external to that officer's Armed Force for purposes of section 721 of title 10, United States Code, as added by section 501(a).

**[(e) DUTIES.—**The Assistant to the Chairman for National Guard Matters is an adviser to the Chairman on matters relating to the National Guard and performs the duties prescribed for that position by the Chairman. The Assistant to the Chairman for Reserve Matters is an adviser to the Chairman on matters relating to the reserves and performs the duties prescribed for that position by the Chairman.

**[(f) OTHER RESERVE COMPONENT REPRESENTATION ON JOINT STAFF.—(1)** The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs, shall develop appropriate policy guidance to ensure that, to the maximum extent practicable, the level of reserve component officer representation within the Joint

Staff is commensurate with the significant role of the reserve components within the Total Force.

[(2) Not later than March 1, 1998, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report describing the steps taken and being taken to implement this subsection.

[(g) EFFECTIVE DATE.—The positions specified in subsection (a) shall be established by the Secretary of Defense not later than 60 days after the date of the enactment of this Act.]

\* \* \* \* \*

**SECTION 1123 OF THE NATIONAL DEFENSE  
AUTHORIZATION ACT FOR FISCAL YEARS 1990 AND 1991**

**SEC. 1123. PROFESSIONAL MILITARY EDUCATION IN JOINT MATTERS**

(a) \* \* \*

[(b) STATEMENT OF CONGRESSIONAL POLICY.—As part of the efforts of the Secretary of Defense to improve professional military education, Congress urges, as a matter of policy, and fully expects the Secretary to establish the following:

[(1) A coherent and comprehensive framework for the education of officers, including officers nominated for the joint specialty.

[(2) A two-phase approach to strengthening the focus on joint matters, as follows:

[(A) Phase I instruction consisting of a joint curriculum, in addition to the principal curriculum taught to all officers at service-operated professional military education schools.

[(B) Phase II instruction consisting of a follow-on, solely joint curriculum taught at the Armed Forces Staff College to officers who are expected to be selected for the joint specialty. The curriculum should emphasize multiple “hands on” exercises and must adequately prepare students to perform effectively from the outset in what will probably be their first exposure to a totally new environment, an assignment to a joint, multiservice organization. Phase II instruction should be structured so that students progress from a basic knowledge of joint matters learned in Phase I to the level of expertise necessary for successful performance in the joint arena.

[(3) A sequenced approach to joint education in which the norm would require an officer to complete Phase I instruction before proceeding to Phase II instruction. An exception to the normal sequence should be granted by the Chairman of the Joint Chiefs of Staff only on a case-by-case basis for compelling cause. Officers selected to receive such an exception should be required to demonstrate a basic knowledge of joint matters and other aspects of the Phase I curriculum that qualifies them to meet the minimum requirements established for entry into Phase II instruction without first completing Phase I instruction. The number of officers selected to attend an offering of the principal course of instruction at the Armed Forces Staff

College who have not completed Phase I instruction should comprise only a small portion of the total number of officers selected.]

\* \* \* \* \*

**TITLE 5, UNITED STATES CODE**

\* \* \* \* \*

**PART III—EMPLOYEES**

\* \* \* \* \*

**Subpart B—Employment and Retention**

\* \* \* \* \*

**CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT**

\* \* \* \* \*

**SUBCHAPTER III—DETAILS, VACANCIES, AND APPOINTMENTS**

\* \* \* \* \*

**§ 3341. Details; within Executive or military departments**

(a) \* \* \*

\* \* \* \* \*

[(c) For purposes of this section—

[(1) the term “base closure law” means—

[(A) section 2687 of title 10;

[(B) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note); and

[(C) the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); and

[(2) the term “military installation”—

[(A) in the case of an installation covered by section 2687 of title 10, has the meaning given such term in subsection (e)(1) of such section;

[(B) in the case of an installation covered by the Act referred to in subparagraph (B) of paragraph (1), has the meaning given such term in section 209(6) of such Act; and

[(C) in the case of an installation covered by the Act referred to in subparagraph (C) of that paragraph, has the meaning given such term in section 2910(4) of such Act.]

(c) For purposes of this section, the term “base closure law” has the meaning given such term in section 101(a)(17) of title 10.

\* \* \* \* \*

**Subpart D—Pay and Allowances**

\* \* \* \* \*

**§ 5102. Definitions; application**

(a) \* \* \*

\* \* \* \* \*

(c) This chapter does not apply to—

(2) \* \* \*

\* \* \* \* \*

(10) civilian professors, instructors, and lecturers at a professional military education school (and, in the case of the George C. Marshall European Center for Security Studies, the Director and the Deputy Director) whose pay is fixed under section 1595, 4021, 7478, or 9081 of title 10; civilian professors, lecturers, and instructors at the Military Academy, the Naval Academy, and the Air Force Academy whose pay is fixed under sections 4338, 6952, and 9338, respectively, of title 10; senior professors, professors, associate and assistant professors, and instructors at the Naval Postgraduate School whose pay is fixed under section 7044 of title 10; the **Academic Dean** *Provost and Academic Dean* of the Postgraduate School of the Naval Academy whose pay is fixed under section 7043 of title 10; civilian professors, instructors, and lecturers in the defense acquisition university structure (including the Defense Systems Management College) whose pay is fixed under section 1746(b) of title 10;

\* \* \* \* \*

**Subpart E—Attendance and Leave**

\* \* \* \* \*

**CHAPTER 63—LEAVE**

\* \* \* \* \*

**SUBCHAPTER II—OTHER PAID LEAVE**

\* \* \* \* \*

**§ 6323. Military leave; Reserves and National Guardsmen**

(a)(1) \* \* \*

\* \* \* \* \*

(d)(1) A military reserve technician described in section 8401(30) is entitled at such person’s request to leave without loss of, or reduction in, pay, leave to which such person is otherwise entitled, credit for time or service, or performance or efficiency rating for each day, not to exceed 44 workdays in a calendar year, in which such person is on active duty without pay, as authorized pursuant to section 12315 of title 10, under section 12301(b) or 12301(d) of title 10 [(other than active duty during a war or national emergency declared by the President or Congress)] for par-



ticipation in operations outside the United States, its territories and possessions.

\* \* \* \* \*

**CHAPTER 89—HEALTH INSURANCE**

**§ 8905a. Continued coverage**

(a) Any individual described in [paragraph (1) or (2) of] subsection (b) may elect to continue coverage under this chapter in accordance with the provisions of this section.

(b) This section applies with respect to—

(1) any employee who—

(A) \* \* \*

(B) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract); [and]

(2) any individual who—

(A) \* \* \*

\* \* \* \* \*

(C) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract)[.]; and

(3) any employee who—

(A) *is enrolled in a health benefits plan under this chapter;*

(B) *is a member of a Reserve component of the armed forces;*

(C) *is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);*

(D) *is placed on leave without pay or separated from service to perform active duty; and*

(E) *serves on active duty for a period of more than 30 consecutive days.*

\* \* \* \* \*

(e)(1) Continued coverage under this section may not extend beyond—

(A) in the case of an individual whose continued coverage is based on separation from service, the date which is 18 months after the effective date of the separation; [or]

(B) in the case of an individual whose continued coverage is based on ceasing to meet the requirements for being considered an unmarried dependent child, the date which is 36 months after the date on which the individual first ceases to meet those requirements, subject to paragraph (2)[.]; or

(C) *in the case of an employee described in subsection (b)(3), the date which is 24 months after the employee is placed on leave without pay or separated from service to perform active duty.*

\* \* \* \* \*

**§ 8906. Contributions**

(a) \* \* \*

\* \* \* \* \*

(e)(1) \* \* \*

\* \* \* \* \*

(3)(A) \* \* \*

\* \* \* \* \*

(C) Notwithstanding the one-year limitation on coverage described in paragraph (1)(A), payment may be made under this paragraph for a period not to exceed **[18]** 24 months.

\* \* \* \* \*

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**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002**

\* \* \* \* \*

**TITLE XVI—UNIFORMED SERVICES VOTING**

\* \* \* \* \*

**[SEC. 1604. ELECTRONIC VOTING DEMONSTRATION PROJECT.**

**[(a) ESTABLISHMENT OF DEMONSTRATION PROJECT.—**

**[(1) IN GENERAL.—**Subject to paragraph (2), the Secretary of Defense shall carry out a demonstration project under which absent uniformed services voters are permitted to cast ballots in the regularly scheduled general election for Federal office for November 2002 through an electronic voting system. The project shall be carried out with participation of sufficient numbers of absent uniformed services voters so that the results are statistically relevant.

**[(2) AUTHORITY TO DELAY IMPLEMENTATION.—**If the Secretary of Defense determines that the implementation of the demonstration project under paragraph (1) with respect to the regularly scheduled general election for Federal office for November 2002 may adversely affect the national security of the United States, the Secretary may delay the implementation of such demonstration project until the regularly scheduled general election for Federal office for November 2004. The Secretary shall notify the Committee on Armed Services and the Committee on Rules and Administration of the Senate and the Committee on Armed Services and the Committee on House Administration of the House of Representatives of any decision to delay implementation of the demonstration project.

**[(b) COORDINATION WITH STATE ELECTION OFFICIALS.—**The Secretary shall carry out the demonstration project under this section through cooperative agreements with State election officials of States that agree to participate in the project.

**[(c) REPORT TO CONGRESS.—**Not later than June 1 of the year following the year in which the demonstration project is conducted

under this section, the Secretary of Defense shall submit to Congress a report analyzing the demonstration project. The Secretary shall include in the report any recommendations the Secretary considers appropriate for continuing the project on an expanded basis for absent uniformed services voters during the next regularly scheduled general election for Federal office.

[(d) DEFINITIONS.—In this section:

[(1) ABSENT UNIFORMED SERVICES VOTER.—The term “absent uniformed services voter” has the meaning given that term in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–6(1)).

[(2) STATE.—The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.]

\* \* \* \* \*

**TITLE XXVIII—GENERAL PROVISIONS**

\* \* \* \* \*

**Subtitle B—Real Property and Facilities Administration**

\* \* \* \* \*

**SEC. 2814. DEMONSTRATION PROGRAM ON REDUCTION IN LONG-TERM FACILITY MAINTENANCE COSTS.**

(a) **AUTHORITY TO CARRY OUT PROGRAM.**—The Secretary of Defense [or the Secretary of a military department] *and the Secretaries of the military departments* may conduct a demonstration program to assess the feasibility and desirability of including facility maintenance requirements in construction contracts for military construction projects for the purpose of determining whether such requirements facilitate reductions in the long-term facility maintenance costs of the military departments.

(b) **CONTRACTS.**—(1) Not more than [12 contracts per military department] *36 contracts* may contain requirements referred to in subsection (a) for the purpose of the demonstration program.

(2) The demonstration program may only cover contracts entered into on or after [the date of the enactment of the Bob Stump National Defense Authorization Act for Fiscal Year 2003] *December 2, 2002*, except that the Secretary of the Army shall treat any contract containing requirements referred to in subsection (a) that was entered into under the authority in such subsection between that date and December 28, 2001, as a contract for the purpose of the demonstration program.

\* \* \* \* \*

**TITLE XXXIII—NATIONAL DEFENSE STOCKPILE**

\* \* \* \* \*

**SEC. 3306. RESTRICTION ON DISPOSAL OF MANGANESE FERRO.**

(a) TEMPORARY QUANTITY RESTRICTIONS.—During fiscal years 2002 through 2005, the disposal of manganese ferro in the National Defense Stockpile may not exceed the following quantities:

(1) \* \* \*

\* \* \* \* \*

(3) During [each of the fiscal years 2004 and 2005] *fiscal year 2004*, 50,000 short tons of high carbon manganese ferro of the highest grade.

(4) *During fiscal year 2005, 100,000 short tons of high carbon manganese ferro of the highest grade.*

\* \* \* \* \*

**SECTION 128 OF THE MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2004**

\* \* \* \* \*

**GENERAL PROVISIONS**

\* \* \* \* \*

【SEC. 128. (a) COMMISSION ON REVIEW OF OVERSEAS MILITARY FACILITY STRUCTURE OF THE UNITED STATES.—(1) There is established the Commission on the Review of the Overseas Military Facility Structure of the United States (in this section referred to as the “Commission”).

【(2)(A) The Commission shall be composed of eight members of whom—

【(i) two shall be appointed by the Majority Leader of the Senate;

【(ii) two shall be appointed by the Minority Leader of the Senate;

【(iii) two shall be appointed by the Speaker of the House of Representatives; and

【(iv) two shall be appointed by the Minority Leader of the House of Representatives.

【(B) Individuals appointed to the Commission shall have significant experience in the national security or foreign policy of the United States.

【(C) Appointments of the members of the Commission shall be made not later than 45 days after the date of the enactment of this Act.

【(3) Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

【(4) Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

【(5) The Commission shall meet at the call of the Chairman.

【(6) A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

【(7) The Commission shall select a Chairman and Vice Chairman from among its members.

[(b) DUTIES.—(1) The Commission shall conduct a thorough study of matters relating to the military facility structure of the United States overseas.

[(2) In conducting the study, the Commission shall—

[(A) assess the number of forces required to be forward based outside the United States;

[(B) examine the current state of the military facilities and training ranges of the United States overseas for all permanent stations and deployed locations, including the condition of land and improvements at such facilities and ranges and the availability of additional land, if required, for such facilities and ranges;

[(C) identify the amounts received by the United States, whether in direct payments, in-kind contributions, or otherwise, from foreign countries by reason of military facilities of the United States overseas;

[(D) assess whether or not the current military basing and training range structure of the United States overseas is adequate to meet the current and future mission of the Department of Defense, including contingency, mobilization, and future force requirements;

[(E) assess the feasibility and advisability of the closure or realignment of military facilities of the United States overseas, or of the establishment of new military facilities of the United States overseas; and

[(F) consider or assess any other issue relating to military facilities of the United States overseas that the Commission considers appropriate.

[(3)(A) Not later than December 31, 2004, the Commission shall submit to the President and Congress a report which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

[(B) In addition to the matters specified in subparagraph (A), the report shall also include a proposal by the Commission for an overseas basing strategy for the Department of Defense in order to meet the current and future mission of the Department.

[(c) POWERS.—(1) The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section.

[(2) The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

[(3) Upon request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support necessary for the Commission to carry out its duties under this section.

[(4) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

[(5) The Commission may accept, use, and dispose of gifts or donations of services or property.

[(d) PERSONNEL MATTERS.—(1) Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission under this section. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

[(2)(A) Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission under this section.

[(B) Members and staff of the Commission may receive transportation on military aircraft to and from the United States, and overseas, for purposes of the performance of the duties of the Commission to the extent that such transportation will not interfere with the requirements of military operations.

[(3)(A) The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties under this section. The employment of an executive director shall be subject to confirmation by the Commission.

[(B) The Commission may employ a staff to assist the Commission in carrying out its duties. The total number of the staff of the Commission, including an executive director under subparagraph (A), may not exceed 12.

[(C) The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

[(4) Any employee of the Department of Defense, the Department of State, or the General Accounting Office may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

[(5) The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

[(e) SECURITY.—(1) Members and staff of the Commission, and any experts and consultants to the Commission, shall possess security clearances appropriate for their duties with the Commission under this section.

[(2) The Secretary of Defense shall assume responsibility for the handling and disposition of any information relating to the na-

tional security of the United States that is received, considered, or used by the Commission under this section.

[(f) TERMINATION.—The Commission shall terminate 45 days after the date on which the Commission submits its report under subsection (b).

[(g) FUNDING.—(1) Of the amount appropriated by this Act, \$3,000,000 shall be available to the Commission to carry out this section.

[(2) The amount made available by paragraph (1) shall remain available, without fiscal year limitation, until September 2005.]

**TITLE 32, UNITED STATES CODE**

**CHAPTER 1—ORGANIZATION**

Chap.		Sec.
	1. Organization .....	101
	* * * * *	
	9. <i>Operations of a National or Federal Interest</i> .....	901
	* * * * *	

**CHAPTER 1—ORGANIZATION**

\* \* \* \* \*

**§ 112. Drug interdiction and counter-drug activities**

(a) \* \* \*

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

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

(1) \* \* \*

\* \* \* \* \*

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

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

(1) \* \* \*

\* \* \* \* \*

**CHAPTER 3—PERSONNEL**

\* \* \* \* \*

**§ 305. Federal recognition of commissioned officers: persons eligible**

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

- (1) Members of the National Guard.
- (2) Members of the [Army, Navy, Air Force, or Marine Corps] *armed forces*.
- (3) Former officers of the [Army, Navy, Air Force, or Marine Corps] *armed forces*.
- (4) Former enlisted members of the [Army, Navy, Air Force, or Marine Corps] *armed forces* who were discharged honorably or under honorable conditions.
- (5) Graduates of the United States Military Academy, the United States Naval Academy, [or the United States Air Force Academy] *the United States Air Force Academy, or the United States Coast Guard Academy*.

\* \* \* \* \*

**CHAPTER 9—OPERATIONS OF A NATIONAL OR FEDERAL INTEREST**

- Sec.
- 901. *Operational activities.*
- 902. *Operational duty.*
- 903. *Funding assistance.*
- 904. *Operations requests.*

**§ 901. Operational activities**

*The Secretary of Defense may provide funds in advance or on a reimbursable basis to a Governor to employ National Guard units and individuals to conduct operational activities that the Secretary determines to be in the national interest. The Secretary of Defense shall prescribe regulations to implement this chapter.*

**§ 902. Operational duty**

*All duty performed under this chapter shall be considered to be full-time National Guard duty under section 502(f) of this title. Members of the National Guard performing full-time National Guard duty in the Active Guard and Reserve Program may support*



or execute operational activities performed by the National Guard under this chapter.

**§903. Funding assistance**

When the Secretary of Defense determines that certain operational activities of the National Guard are in the national interest under section 901 of this title, the Secretary shall provide funds to a State in an amount that the Secretary determines is appropriate for the following costs of the operational activities from funds available to the Department for related purposes:

- (1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses of personnel of the National Guard of that State.
- (2) The operation and maintenance of the equipment and facilities of the National Guard of that State.
- (3) The procurement of services and equipment, and the leasing of equipment, for the National Guard of that State.

**§904. Operations requests**

(a) *REQUESTS.*—A Governor of a State may request funding assistance for the operational activities of the National Guard of that State from the Secretary of Defense. Any such request shall include the following:

- (1) The specific intended operational activities of the National Guard of that State.
- (2) An explanation of why the operational activities are in the national interest.
- (3) A certification that operational activities are to be conducted at a time when the personnel involved are not in Federal service.
- (4) A certification that participation by National Guard personnel in the operational activities is service in addition to training required under section 502 of this title.

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL  
YEAR 2000**

\* \* \* \* \*

**TITLE V—MILITARY PERSONNEL  
POLICY**

\* \* \* \* \*

**Subtitle H—Matters Related to Recruiting**

\* \* \* \* \*

**[SEC. 573. ARMY COLLEGE FIRST PILOT PROGRAM.**

[(a) *PROGRAM REQUIRED.*—The Secretary of the Army shall establish a pilot program (to be known as the “Army College First” program) to assess whether the Army could increase the number of, and the level of the qualifications of, persons entering the Army as enlisted members by encouraging recruits to pursue higher edu-

cation or vocational or technical training before entry into active service in the Army.

[(b) DELAYED ENTRY WITH ALLOWANCE FOR HIGHER EDUCATION.—Under the pilot program, the Secretary may—

[(1) exercise the authority under section 513 of title 10, United States Code—

[(A) to accept the enlistment of a person as a Reserve for service in the Selected Reserve or Individual Ready Reserve of the Army Reserve or, notwithstanding the scope of the authority under subsection (a) of that section, in the Army National Guard of the United States; and

[(B) to authorize, notwithstanding the period limitation in subsection (b) of that section, a delay of the enlistment of any such person in a regular component under that subsection for the period during which the person is enrolled in, and pursuing a program of education at, an institution of higher education, or a program of vocational or technical training, on a full-time basis that is to be completed within the maximum period of delay determined for that person under subsection (c); and

[(2) subject to paragraph (2) of subsection (d) and except as provided in paragraph (3) of that subsection, pay an allowance to a person accepted for enlistment under paragraph (1)(A) for each month of the period during which that person is enrolled in and pursuing a program described in paragraph (1)(B).

[(c) MAXIMUM PERIOD OF DELAY.—The period of delay authorized a person under paragraph (1)(B) of subsection (b) may not exceed the 30-month period beginning on the date of the person's enlistment accepted under paragraph (1)(A) of such subsection.

[(d) ALLOWANCE.—(1) The monthly allowance paid under subsection (b)(2) shall be equal to the amount of the subsistence allowance provided for certain members of the Senior Reserve Officers' Training Corps with the corresponding number of years of participation under section 209(a) of title 37, United States Code.

[(2) An allowance may not be paid to a person under this section for more than 24 months.

[(3) A member of the Selected Reserve of a reserve component may be paid an allowance under this section only for months during which the member performs satisfactorily as a member of a unit of the reserve component that trains as prescribed in section 10147(a)(1) of title 10, United States Code, or section 502(a) of title 32, United States Code. Satisfactory performance shall be determined under regulations prescribed by the Secretary.

[(4) An allowance under this section is in addition to any other pay or allowance to which a member of a reserve component is entitled by reason of participation in the Ready Reserve of that component.

[(f) RECOUPMENT OF ALLOWANCE.—(1) A person who, after receiving an allowance under this section, fails to complete the total period of service required of that person in connection with delayed entry authorized for the person under section 513 of title 10, United States Code, shall repay the United States the amount which bears the same ratio to the total amount of that allowance

paid to the person as the unserved part of the total required period of service bears to the total period.

[(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

[(3) A discharge of a person in bankruptcy under title 11, United States Code, that is entered less than five years after the date on which the person was, or was to be, enlisted in the regular Army pursuant to the delayed entry authority under section 513 of title 10, United States Code, does not discharge that person from a debt arising under paragraph (1).

[(4) The Secretary of the Army may waive, in whole or in part, a debt arising under paragraph (1) in any case for which the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

[(g) COMPARISON GROUP.—To perform the assessment under subsection (a), the Secretary may define and study any group not including persons receiving a benefit under subsection (b) and compare that group with any group or groups of persons who receive such benefits under the pilot program.

[(h) DURATION OF PILOT PROGRAM.—The pilot program shall be in effect during the period beginning on October 1, 1999, and ending on September 30, 2004.

[(i) REPORT.—Not later than February 1, 2004, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program. The report shall include the following:

[(1) The assessment of the Secretary regarding the value of the authority under this section for achieving the objectives of increasing the number of, and the level of the qualifications of, persons entering the Army as enlisted members.

[(2) Any recommendation for legislation or other action that the Secretary considers appropriate to achieve those objectives through grants of entry delays and financial benefits for advanced education and training of recruits.]

\* \* \* \* \*

**TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT**

\* \* \* \* \*

**Subtitle B—Department of Defense Organization**

\* \* \* \* \*

**SEC. 914. CENTER FOR THE STUDY OF CHINESE MILITARY AFFAIRS.**

[(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Center for the Study of Chinese Military Affairs as part of the National Defense University. The Center shall be organized under the Institute for National Strategic Studies of the University.]

(a) *ESTABLISHMENT.*—*There shall be a Center for the Study of Chinese Military Affairs organized under the United States-China Economic and Security Review Commission established by section 1238 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (22 U.S.C. 7002).*

\* \* \* \* \*

[(d) *STARTUP OF CENTER.*—The Secretary of Defense shall establish the Center for the Study of Chinese Military Affairs not later than March 1, 2000. The first Director of the Center shall be appointed not later than June 1, 2000. The Center should be fully operational not later than June 1, 2001.

[(e) *IMPLEMENTATION REPORT.*—(1) Not later than January 1, 2001, the President of the National Defense University shall submit to the Secretary of Defense a report setting forth the President’s organizational plan for the Center for the Study of Chinese Military Affairs, the proposed budget for the Center, and the timetable for initial and full operations of the Center. The President of the National Defense University shall prepare that report in consultation with the Director of the Center and the Director of the Institute for National Strategic Studies of the University.

[(2) The Secretary of Defense shall transmit the report under paragraph (1), together with whatever comments the Secretary considers appropriate, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than February 1, 2001.]

\* \* \* \* \*

**CHAPTER 9 OF TITLE 14, UNITED STATES CODE**

**CHAPTER 9—COAST GUARD ACADEMY**

Sec.	
181.	Administration of Academy.
	* * * * *
197.	<i>Cadets: charges and fees for attendance; limitation.</i>
	* * * * *

**§ 197. Cadets: charges and fees for attendance; limitation**

(a) *PROHIBITION.*—*Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.*

(b) *EXCEPTION.*—*The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Homeland Security shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.*

**MERCHANT MARINE ACT, 1936**

\* \* \* \* \*

TITLE XII—WAR RISK INSURANCE

\* \* \* \* \*

SEC. 1208. (a) The Secretary shall create an insurance fund in the Treasury to enable him to carry out the provisions of this title. Moneys appropriated by Congress to carry out the provisions of this title and all moneys received from premiums, salvage, or other recoveries and all receipts in connection with this title shall be deposited in the Treasury to the credit of such fund. [Payments of return premiums, losses, settlements, judgments, and all liabilities incurred by the United States under this title shall be made from such fund through the Division of Disbursement, Treasury Department.] *The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the Fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.* Upon the request of the Secretary of Transportation, the Secretary of the Treasury may invest or reinvest all or any part of the fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and benefits accruing from such securities shall be deposited to the credit of the fund.

\* \* \* \* \*

SEC. 1214. The authority of the Secretary to provide insurance and reinsurance under this title shall expire [June 30, 2005] *December 31, 2010.*

TITLE XIII—MARITIME EDUCATION AND TRAINING

\* \* \* \* \*

SEC. 1303. (a) \* \* \*

\* \* \* \* \*

(j) *LIMITATION ON CHARGES AND FEES FOR ATTENDANCE.—*

*(1) Except as provided in paragraph (2), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.*

*(2) The prohibition specified in paragraph (1) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Transportation shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this paragraph.*

\* \* \* \* \*

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**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL  
YEAR 1995**

\* \* \* \* \*

**TITLE III—OPERATION AND MAINTENANCE**

\* \* \* \* \*

**Subtitle E—Civilian Employees**

\* \* \* \* \*

**SEC. 349. UNIFORM HEALTH BENEFITS PROGRAM FOR EMPLOYEES OF THE DEPARTMENT OF DEFENSE ASSIGNED TO NON-APPROPRIATED FUND INSTRUMENTALITIES.**

(a) \* \* \*

\* \* \* \* \*

(c) *TREATMENT OF PROGRAM AS FEDERAL HEALTH BENEFIT PROGRAM.—(1) No State tax, fee, other monetary payment, or State health plan requirement, may be imposed, directly or indirectly, on the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense, or on a carrier or an underwriting or plan administration contractor of the Program, to the same extent as such prohibition applies to the health insurance program authorized by chapter 89 of title 5, United States Code, under section 8909(f) of such title.*

*(2) Paragraph (1) shall not be construed to exempt the Non-appropriated Fund Uniform Health Benefits Program of the Department of Defense, or any carrier or underwriting or plan administration contractor of the Program from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to, or realized by, the Program or by such carrier or contractor from business conducted under the Program, so long as the tax, fee, or payment is applicable to a broad range of business activity.*

*(3) In this section, the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any political subdivision or other non-Federal authority thereof.*

\* \* \* \* \*

**TITLE V—MILITARY PERSONNEL POLICY**

\* \* \* \* \*

**Subtitle E—Other Matters**

\* \* \* \* \*

**[SEC. 553. PROHIBITION ON IMPOSITION OF ADDITIONAL CHARGES OR FEES FOR ATTENDANCE AT CERTAIN ACADEMIES.**

**[(a) PROHIBITION.—**Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at an academy named in subsection (c) may be imposed unless the charge or

fee is specifically authorized by a law enacted after the date of the enactment of this Act.

[(b) EXCEPTION.—The prohibition specified in subsection (a) shall not apply with respect to any item or service provided to cadets or midshipmen at an academy named in subsection (c) for which a charge or fee is imposed as of the date of the enactment of this Act.

[(c) COVERED ACADEMIES.—This section applies to the following:

- [(1) The United States Military Academy.
- [(2) The United States Naval Academy.
- [(3) The United States Air Force Academy.
- [(4) The United States Coast Guard Academy.
- [(5) The United States Merchant Marine Academy.]

\* \* \* \* \*

### TITLE XV—ARMS CONTROL MATTERS

\* \* \* \* \*

#### SEC. 1504. AMOUNTS FOR COUNTERPROLIFERATION ACTIVITIES.

(a) \* \* \*

\* \* \* \* \*

(e) USE OF FUNDS FOR TECHNOLOGY DEVELOPMENT.—(1) \* \* \*

\* \* \* \* \*

(3)(A) [The training program referred to in paragraph (1)(B) is a] *The Secretary of Defense may participate in a training program carried out jointly by the Secretary of Defense and the Director of the Federal Bureau of Investigation in order to expand and improve United States efforts to deter the possible proliferation and acquisition of weapons of mass destruction by organized crime organizations in Eastern Europe, the Baltic countries, and states of the former Soviet Union, and in other countries in which, as determined by the Secretary of Defense, there exists a significant threat of such proliferation and acquisition.*

\* \* \* \* \*

### TITLE XXVIII—GENERAL PROVISIONS

\* \* \* \* \*

#### Subtitle B—Defense Base Closure and Realignment

\* \* \* \* \*

#### SEC. 2814. GOVERNMENT RENTAL OF FACILITIES LOCATED ON CLOSED MILITARY INSTALLATIONS.

(a) \* \* \*

[(b) BASE CLOSURE LAW DEFINED.—For purposes of this section, the term “base closure law” means each of the following:

[(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

[(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).]

(b) *BASE CLOSURE LAW DEFINED.*—*In this section, the term “base closure law” has the meaning given such term in section 101(a)(17) of title 10, United States Code.*

\* \* \* \* \*

**STROM THURMOND NATIONAL DEFENSE  
AUTHORIZATION ACT FOR FISCAL YEAR 1999**

\* \* \* \* \*

**DIVISION A—DEPARTMENT OF  
DEFENSE AUTHORIZATIONS**

**TITLE I—PROCUREMENT**

\* \* \* \* \*

**Subtitle E—Other Matters**

\* \* \* \* \*

**SEC. 142. ALTERNATIVE TECHNOLOGIES FOR DESTRUCTION OF ASSEMBLED CHEMICAL WEAPONS.**

[(a) PROGRAM MANAGEMENT.—The program manager for the Assembled Chemical Weapons Assessment shall continue to manage the development and testing (including demonstration and pilot-scale testing) of technologies for the destruction of lethal chemical munitions that are potential or demonstrated alternatives to the baseline incineration program. In performing such management, the program manager shall act independently of the program manager for Chemical Demilitarization and shall report to the Under Secretary of Defense for Acquisition and Technology.

[(b) POST-DEMONSTRATION ACTIVITIES.—(1) The program manager for the Assembled Chemical Weapons Assessment may carry out those activities necessary to ensure that an alternative technology for the destruction of lethal chemical munitions can be implemented immediately after—

[(A) the technology has been demonstrated to be successful; and

[(B) the Under Secretary of Defense for Acquisition and Technology has submitted a report on the demonstration to Congress that includes a decision to proceed with the pilot-scale facility phase for an alternative technology.

[(2) To prepare for the immediate implementation of any such technology, the program manager may, during fiscal years 1998 and 1999, take the following actions:

[(A) Establish program requirements.



[(B) Prepare procurement documentation.

[(C) Develop environmental documentation.

[(D) Identify and prepare to meet public outreach and public participation requirements.

[(E) Prepare to award a contract for the design, construction, and operation of a pilot facility for the technology to the provider team for the technology not later than December 30, 1999.

[(c) INDEPENDENT EVALUATION.—The Under Secretary of Defense for Acquisition and Technology shall provide for an independent evaluation of the cost and schedule of the Assembled Chemical Weapons Assessment, which shall be performed and submitted to the Under Secretary not later than September 30, 1999. The evaluation shall be performed by a nongovernmental organization qualified to make such an evaluation.

[(d) PILOT FACILITIES CONTRACTS.—(1) The Under Secretary of Defense for Acquisition and Technology shall determine whether to proceed with pilot-scale testing of a technology referred to in paragraph (2) in time to award a contract for the design, construction, and operation of a pilot facility for the technology to the provider team for the technology not later than December 30, 1999. If the Under Secretary determines to proceed with such testing, the Under Secretary shall (exercising the acquisition authority of the Secretary of Defense) so award a contract not later than such date.

[(2) Paragraph (1) applies to an alternative technology for the destruction of lethal chemical munitions, other than incineration, that the Under Secretary—

[(A) certifies in writing to Congress is—

[(i) as safe and cost effective for disposing of assembled chemical munitions as is incineration of such munitions; and

[(ii) is capable of completing the destruction of such munitions on or before the later of the date by which the destruction of the munitions would be completed if incineration were used or the deadline date for completing the destruction of the munitions under the Chemical Weapons Convention; and

[(B) determines as satisfying the Federal and State environmental and safety laws that are applicable to the use of the technology and to the design, construction, and operation of a pilot facility for use of the technology.

[(3) The Under Secretary shall consult with the National Research Council in making determinations and certifications for the purpose of paragraph (2).

[(4) In this subsection, the term “Chemical Weapons Convention” means the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, opened for signature on January 13, 1993, together with related annexes and associated documents.

[(e) PLAN FOR PILOT PROGRAM.—If the Secretary of Defense proceeds with a pilot program under section 152(f) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 214; 50 U.S.C. 1521 note), the Secretary shall prepare a plan for the pilot program and shall submit to Congress a

report on such plan (including information on the cost of, and schedule for, implementing the pilot program).

[(f) FUNDING.—(1) Of the amount authorized to be appropriated under section 107, funds shall be available for the program manager for the Assembled Chemical Weapons Assessment for the following:

[(A) Demonstrations of alternative technologies under the Assembled Chemical Weapons Assessment.

[(B) Planning and preparation to proceed from demonstration of an alternative technology immediately into the development of a pilot-scale facility for the technology, including planning and preparation for—

[(i) continued development of the technology leading to deployment of the technology for use;

[(ii) satisfaction of requirements for environmental permits;

[(iii) demonstration, testing, and evaluation;

[(iv) initiation of actions to design a pilot plant;

[(v) provision of support at the field office or depot level for deployment of the technology for use; and

[(vi) educational outreach to the public to engender support for the deployment.

[(C) The independent evaluation of cost and schedule required under subsection (c).

[(2) Funds authorized to be appropriated under section 107(1) are authorized to be used for awarding contracts in accordance with subsection (d) and for taking any other action authorized in this section.

[(g) ASSEMBLED CHEMICAL WEAPONS ASSESSMENT DEFINED.—In this section, the term “Assembled Chemical Weapons Assessment” means the pilot program carried out under section 8065 of the Department of Defense Appropriations Act, 1997 (section 101(b) of Public Law 104–208; 110 Stat. 3009–101; 50 U.S.C. 1521 note).]

(a) PROGRAM MANAGEMENT.—(1) *The program manager for the Assembled Chemical Weapons Alternatives program shall report to the Secretary of the Army.*

(2) *The Secretary of the Army shall provide for that program to be managed as part of the management organization within the Department of the Army specified in section 1412(e) of Public Law 99–145 (50 U.S.C. 1521(e)).*

(b) CONTINUED IMPLEMENTATION OF PREVIOUSLY SELECTED ALTERNATIVE TECHNOLOGIES.—(1) *In carrying out the destruction of lethal chemical munitions at Pueblo Chemical Depot, Colorado, the Secretary of the Army shall continue to implement fully the alternative technology for such destruction at that depot selected by the Under Secretary of Defense for Acquisition, Technology, and Logistics on July 16, 2002.*

(2) *In carrying out the destruction of lethal chemical munitions at Blue Grass Army Depot, Kentucky, the Secretary of the Army shall continue to implement fully the alternative technology for such destruction at that depot selected by the Under Secretary of Defense for Acquisition, Technology, and Logistics on February 3, 2003.*

\* \* \* \* \*

**TITLE III—OPERATION AND  
MAINTENANCE**

\* \* \* \* \*

**Subtitle F—Commissaries and  
Nonappropriated Fund Instrumentalities**

\* \* \* \* \*

**[(SEC. 367. PROHIBITION ON CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEPARTMENT OF DEFENSE RETAIL SYSTEMS.**

**[(a) DEFENSE RETAIL SYSTEMS DEFINED.—**For purposes of this section, the term “defense retail systems” means the defense commissary system and exchange stores and other revenue-generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the Armed Forces.

**[(b) PROHIBITION.—**The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by a law enacted after the date of the enactment of this Act.

**[(c) EFFECT ON EXISTING STUDY.—**Nothing in this section shall be construed to prohibit the study of defense retail systems, known as the “Joint Exchange Due Diligence Study”, which is underway on the date of the enactment of this Act pursuant to a contract awarded by the Department of the Navy on April 21, 1998, except that any recommendation contained in the completed study regarding the operation or administration of the defense retail systems may not be implemented unless implementation of the recommendation is specifically authorized by a law enacted after the date of the enactment of this Act.]

\* \* \* \* \*

**TITLE V—MILITARY PERSONNEL  
POLICY**

\* \* \* \* \*

**Subtitle G—Other Matters**

\* \* \* \* \*

**SEC. 571. PILOT PROGRAM FOR TREATING GED AND HOME SCHOOL DIPLOMA RECIPIENTS AS HIGH SCHOOL GRADUATES FOR DETERMINATIONS OF ELIGIBILITY FOR ENLISTMENT IN THE ARMED FORCES.**

(a) \* \* \*

\* \* \* \* \*

**[(e) DURATION OF PILOT PROGRAM.—**The pilot program shall be in effect during the period beginning on October 1, 1998, and ending on September 30, 2003.]

(e) DURATION OF PILOT PROGRAM.—The pilot program shall be in effect during the period beginning on October 1, 2004, and ending on September 30, 2005.

\* \* \* \* \*

**TITLE XII—MATTERS RELATING TO OTHER NATIONS**

\* \* \* \* \*

**Subtitle D—Other Matters**

\* \* \* \* \*

**SEC. 1237. APPLICATION OF AUTHORITIES UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT TO COMMUNIST CHINESE MILITARY COMPANIES.**

(a) \* \* \*

(b) DETERMINATION AND REPORTING OF COMMUNIST CHINESE MILITARY COMPANIES OPERATING IN UNITED STATES.—

(1) \* \* \*

\* \* \* \* \*

(4) COMMUNIST CHINESE MILITARY COMPANY.—For purposes of making the determination required by paragraph (1) and of carrying out paragraph (2), the term “Communist Chinese military company” means—

(A) \* \* \*

(B) any other person that—

(i) is owned or controlled by the People’s Liberation Army, by a ministry of the government of the People’s Republic of China, or by an entity affiliated with the defense industrial base of the People’s Republic of China; and

\* \* \* \* \*

**TITLE XXXIII—NATIONAL DEFENSE STOCKPILE**

\* \* \* \* \*

**SEC. 3303. AUTHORITY TO DISPOSE OF CERTAIN MATERIALS IN NATIONAL DEFENSE STOCKPILE.**

(a) DISPOSAL REQUIRED.—Subject to subsection (c), the President shall dispose of materials contained in the National Defense Stockpile and specified in the table in subsection (b) so as to result in receipts to the United States in total amounts not less than—

(1) \* \* \*

\* \* \* \* \*

[(4) \$760,000,000 by the end of fiscal year 2005; and

[(5) \$770,000,000 by the end of fiscal year 2011.]

(4) \$785,000,000 by the end of fiscal year 2005; and

(5) \$870,000,000 by the end of fiscal year 2009.

\* \* \* \* \*

**SECTION 8120 OF THE DEPARTMENT OF DEFENSE  
APPROPRIATIONS ACT, 2000**

【SEC. 8120. During the current fiscal year and hereafter, any Federal grant of funds to an institution of higher education to be available solely for student financial assistance or related administrative costs may be used for the purpose for which the grant is made without regard to any provision to the contrary in section 514 of the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 1997 (10 U.S.C. 503 note), or section 983 of title 10, United States Code.】

**DEFENSE BASE CLOSURE AND REALIGNMENT ACT OF  
1990**

\* \* \* \* \*

**TITLE XXIX—DEFENSE BASE CLOSURES AND  
REALIGNMENTS**

**PART A—DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION**

**SEC. 2901. SHORT TITLE AND PURPOSE**

(a) **SHORT TITLE.**—This part may be cited as the “Defense Base Closure and Realignment Act of 1990”.

\* \* \* \* \*

**SEC. 2902. THE COMMISSION**

(a) \* \* \*

\* \* \* \* \*

(e) **MEETINGS.**—(1) \* \* \*

(2)(A) \* \* \*

(B) All the proceedings, information, and deliberations of the Commission shall be open, upon request, to the following:

(i) The Chairman and the ranking minority party member of the **【Subcommittee on Readiness, Sustainability, and Support】** *Subcommittee on Readiness and Management Support* of the Committee on Armed Services of the Senate, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

(ii) The Chairman and the ranking minority party member of the **【Subcommittee on Military Installations and Facilities】** *Subcommittee on Readiness* of the Committee on Armed Services of the House of Representatives, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

\* \* \* \* \*

**SEC. 2904. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS**

(a) **IN GENERAL.**—Subject to subsection (b), the Secretary shall—

(1) \* \* \*

\* \* \* \* \*

(3) carry out the privatization in place of a military installation recommended for closure or realignment by the Commission **[in the 2005 report]** *in a report submitted after 2001* only if privatization in place is a method of closure or realignment of the military installation specified in the recommendations of the Commission in such report and is determined by the Commission to be the most cost-effective method of implementation of the recommendation;

\* \* \* \* \*

**SEC. 2906. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990**

(a) \* \* \*

\* \* \* \* \*

(e) ACCOUNT EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.—Except as provided in section 2906A(e) with respect to funds in the Department of Defense Base Closure Account **[2005]** *2007* under section 2906A and except for funds deposited into the Account under subsection (a), funds appropriated to the Department of Defense may not be used for purposes described in section 2905(a)(1)(C). The prohibition in this subsection shall expire upon the closure of the Account under subsection (a)(3).

**SEC. 2906A. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT **[2005]** *2007*.**

(a) IN GENERAL.—(1) If the Secretary makes the certifications required under section 2912(b), there shall be established on the books of the Treasury an account to be known as the “Department of Defense Base Closure Account **[2005]** *2007*” (in this section referred to as the “Account”). The Account shall be administered by the Secretary as a single account.

(2) There shall be deposited into the Account—

(A) \* \* \*

\* \* \* \* \*

(C) except as provided in subsection (d), proceeds received from the lease, transfer, or disposal of any property at a military installation that is closed or realigned under this part pursuant to a closure or realignment the date of approval of which is after January 1, **[2005]** *2007*.

\* \* \* \* \*

(b) USE OF FUNDS.—(1) The Secretary may use the funds in the Account only for the purposes described in section 2905 with respect to military installations the date of approval of closure or realignment of which is after January 1, **[2005]** *2007*.

\* \* \* \* \*

(c) REPORTS.—(1) \* \* \*

(2) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part with respect to military installations the date of approval of closure or realignment of which is after January 1, **[2005]** *2007*, and no later than 60 days after the closure of the Account under subsection (a)(3), the Secretary shall transmit to the congressional defense committees a report containing an accounting of—

(A) \* \* \*

\* \* \* \* \*

(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—(1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part the date of approval of closure or realignment of which is after January 1, [2005] 2007, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

\* \* \* \* \*

**SEC. 2909. RESTRICTION ON OTHER BASE CLOSURE AUTHORITY**

(a) IN GENERAL.—Except as provided in subsection (c), during the period beginning on November 5, 1990, and ending on April 15, [2006] 2008, this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

\* \* \* \* \*

**SEC. 2912. [2005] 2007 ROUND OF REALIGNMENTS AND CLOSURES OF MILITARY INSTALLATIONS.**

(a) FORCE-STRUCTURE PLAN AND INFRASTRUCTURE INVENTORY.—

(1) PREPARATION AND SUBMISSION.—As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for fiscal year [2005] 2007, the Secretary shall include the following:

(A) A force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the 20-year period beginning with fiscal year [2005] 2007, the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet these threats, and the anticipated levels of funding that will be available for national defense purposes during such period.

\* \* \* \* \*

(4) REVISION.—The Secretary may revise the force-structure plan and infrastructure inventory. If the Secretary makes such a revision, the Secretary shall submit the revised plan or inventory to Congress as part of the budget justification documents submitted to Congress for fiscal year 2006.

(b) CERTIFICATION OF NEED FOR FURTHER CLOSURES AND REALIGNMENTS.—

(1) CERTIFICATION REQUIRED.—On the basis of the force-structure plan and infrastructure inventory prepared under subsection (a) for fiscal year 2007 and the descriptions and economic analysis prepared under such subsection, the Secretary

shall include as part of the submission of the plan and inventory—

(A) \* \* \*

\* \* \* \* \*

(2) EFFECT OF FAILURE TO CERTIFY.—If the Secretary does not include the certifications referred to in paragraph (1), the process by which military installations may be selected for closure or realignment under this part [in 2005] *under section 2914* shall be terminated.

(c) COMPTROLLER GENERAL EVALUATION.—

(1) EVALUATION REQUIRED.—If the certification is provided under subsection (b), the Comptroller General shall prepare an evaluation of the following:

(A) The force-structure plan and infrastructure inventory prepared under subsection (a) and the final selection [criteria prepared under section 2913] *criteria specified in section 2913*, including an evaluation of the accuracy and analytical sufficiency of such plan, inventory, and criteria.

\* \* \* \* \*

(d) AUTHORIZATION OF ADDITIONAL ROUND; COMMISSION.—

(1) APPOINTMENT OF COMMISSION.—Subject to the certifications required under subsection (b), the President may commence an additional round for the selection of military installations for closure and realignment under this part [in 2005] *under section 2914* by transmitting to the Senate, not later than March 15, [2005] *2007*, nominations pursuant to section 2902(c) for the appointment of new members to the Defense Base Closure and Realignment Commission.

(2) EFFECT OF FAILURE TO NOMINATE.—If the President does not transmit to the Senate the nominations for the Commission by March 15, [2005] *2007*, the process by which military installations may be selected for closure or realignment under this part [in 2005] *under section 2914* shall be terminated.

\* \* \* \* \*

(4) TERMS; MEETINGS; TERMINATION.—Notwithstanding subsections (d), (e)(1), and (l) of section 2902, the Commission appointed under the authority of this subsection shall meet during [calendar year 2005 and shall terminate on April 15, 2006] *calendar year 2007 and shall terminate on April 15, 2008*.

(5) FUNDING.—If no funds are appropriated to the Commission by the end of the [second session of the 108th Congress for the activities of the Commission in 2005] *second session of the 109th Congress for the activities of the Commission under section 2914*, the Secretary may transfer to the Commission for purposes of its activities under this part in that year such funds as the Commission may require to carry out such activities. The Secretary may transfer funds under the preceding sentence from any funds available to the Secretary. Funds so transferred shall remain available to the Commission for such purposes until expended.

(e) INFRASTRUCTURE-RELATED REPORTS.—



(1) *REQUIRED REPORTS.*—The Secretary shall prepare the following reports related to infrastructure requirements for the Armed Forces:

(A) A report containing the Integrated Global Presence and Basing Strategy of the Department of Defense, including the location of long-term overseas installations, installations to be used for rotational purposes, and forward operating locations, anticipated rotational plans and policies, and domestic and overseas infrastructure requirements associated with the strategy.

(B) A report describing the anticipated infrastructure requirements associated with the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) for each of the Armed Forces resulting from force transformation.

(C) A report describing the anticipated infrastructure requirements related to expected changes in the active component versus reserve component personnel mix of the Armed Forces.

(D) A report describing the anticipated infrastructure requirements associated with the so-called “10–30–30 objective” of the Secretary to ensure that military forces are capable of deployment overseas within 10 days in sufficient strength to defeat an enemy within 30 days and be ready for redeployment within 30 days after the end of combat operations.

(E) A report containing the results of a complete reassessment of the infrastructure necessary to support the force structure described in the force-structure plan prepared under paragraph (1) of subsection (a) and describing any resulting excess infrastructure and infrastructure capacity, which were previously required by paragraph (2) of such subsection. The reassessment shall be based on actual infrastructure, facility, and space requirements for the Armed Forces rather than a comparative study between 1989 and 2003.

(F) A report describing the anticipated infrastructure requirements associated with the assessment prepared by the Secretary pursuant to section 2822 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1726), in which Congress required the Secretary to assess the probable threats to national security and determine the potential, prudent, surge requirements for the Armed Forces and military installations to meet those threats.

(2) *TIME FOR SUBMISSION OF REPORTS.*—The reports required by paragraph (1) shall be submitted to the congressional defense committees only during the period beginning on January 1, 2006, and ending on March 15, 2006.

(3) *TERMINATION OF ROUND FOR FAILURE TO SUBMIT REPORTS AS REQUIRED.*—If the reports required by paragraph (1) are not submitted during the period specified in paragraph (2), the process for the making of recommendations to the Congress for the closure or realignment of military installations and the

*selection of installations for closure or realignment under this part in 2007 shall be terminated.*

**[SEC. 2913. SELECTION CRITERIA FOR 2005 ROUND.**

**[(a) PREPARATION OF PROPOSED SELECTION CRITERIA.—**

**[(1) IN GENERAL.—**Not later than December 31, 2003, the Secretary shall publish in the Federal Register and transmit to the congressional defense committees the criteria proposed to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005.

**[(2) PUBLIC COMMENT.—**The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under this subsection.

**[(b) MILITARY VALUE AS PRIMARY CONSIDERATION.—**The selection criteria prepared by the Secretary shall ensure that military value is the primary consideration in the making of recommendations for the closure or realignment of military installations under this part in 2005. Military value shall include at a minimum the following:

**[(1)** Preservation of training areas suitable for maneuver by ground, naval, or air forces to guarantee future availability of such areas to ensure the readiness of the Armed Forces.

**[(2)** Preservation of military installations in the United States as staging areas for the use of the Armed Forces in homeland defense missions.

**[(3)** Preservation of military installations throughout a diversity of climate and terrain areas in the United States for training purposes.

**[(4)** The impact on joint warfighting, training, and readiness.

**[(5)** Contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations and training.

**[(c) SPECIAL CONSIDERATIONS.—**The selection criteria for military installations shall also address at a minimum the following:

**[(1)** The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

**[(2)** The economic impact on existing communities in the vicinity of military installations.

**[(3)** The ability of both existing and potential receiving communities' infrastructure to support forces, missions, and personnel.

**[(4)** The impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

**[(d) EFFECT ON DEPARTMENT AND OTHER AGENCY COSTS.—**Any selection criteria proposed by the Secretary relating to the cost savings or return on investment from the proposed closure or realignment of military installations shall take into account the effect of the proposed closure or realignment on the costs of any other activity of the Department of Defense or any other Federal agency that

may be required to assume responsibility for activities at the military installations.

[(e) FINAL SELECTION CRITERIA.—Not later than February 16, 2004, the Secretary shall publish in the Federal Register and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005. Such criteria shall be the final criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making such recommendations unless disapproved by an Act of Congress enacted on or before March 15, 2004.]

[(f) RELATION TO CRITERIA FOR EARLIER ROUNDS.—Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations in 2005.]

**SEC. 2913. FINAL SELECTION CRITERIA FOR ADDITIONAL ROUND OF BASE CLOSURES AND REALIGNMENTS.**

(a) *FINAL SELECTION CRITERIA.—The final criteria to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States under this part in any additional round of base closures and realignments are as follows:*

(1) *The current and future mission requirements and the impact on operational readiness of the total force of the Department of Defense, including the impact on joint warfighting, training, readiness, and research, development, test, and evaluation of weapons systems and equipment.*

(2) *The availability and condition of land, facilities, infrastructure, and associated air and water space (including preservation of training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas, the preservation of testing ranges able to accommodate current or future military weapons systems and equipment, and the preservation of staging areas for the use of the Armed Forces in homeland defense missions) at both existing and potential receiving locations.*

(3) *The ability to accommodate contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations, training, maintenance, and repair.*

(4) *Preservation of land, air, and water space, facilities, and infrastructure necessary to support training and operations of military forces determined to be surge requirements by the Secretary of Defense, as required by section 2822 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1726).*

(5) *The extent and timing of potential costs and savings of base realignment and closure actions on the entire Federal budget, as well as the Department of Defense, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs. Costs shall include those costs related to potential environmental res-*

*toration, waste management, and environmental compliance activities.*

*(6) The economic impact on existing communities in the vicinity of military installations.*

*(7) The ability of the infrastructure of both the existing and potential receiving communities to support forces, missions, and personnel, including quality of living standards for members of the Armed Forces and their dependents.*

*(8) The environmental impact on receiving locations.*

*(b) PRIORITY GIVEN TO MILITARY VALUE.—In recommending military installations for closure or realignment, the Secretary shall give priority consideration to the first four criteria specified in subsection (a).*

*(c) RELATION TO OTHER MATERIALS.—The final selection criteria specified in subsection (a) shall be the only criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making recommendations for the closure or realignment of military installations inside the United States under this part after December 31, 2003.*

*(d) RELATION TO CRITERIA FOR EARLIER ROUNDS.—Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations after December 31, 2003.*

**SEC. 2914. SPECIAL PROCEDURES FOR MAKING RECOMMENDATIONS FOR REALIGNMENTS AND CLOSURES FOR [2005] 2007 ROUND; COMMISSION CONSIDERATION OF RECOMMENDATIONS.**

**(a) RECOMMENDATIONS REGARDING CLOSURE OR REALIGNMENT OF MILITARY INSTALLATIONS.—**If the Secretary makes the certifications required under section 2912(b), the Secretary shall publish in the Federal Register and transmit to the congressional defense committees and the Commission, not later than May 16, [2005] 2007, a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and infrastructure inventory prepared by the Secretary under section 2912 and the final selection [criteria prepared by the Secretary under section 2913] *criteria specified in section 2913.*

\* \* \* \* \*

**(d) COMMISSION REVIEW AND RECOMMENDATIONS.—**

**(1) IN GENERAL.—**Except as provided in this subsection, section 2903(d) shall apply to the consideration by the Commission of the recommendations transmitted by the Secretary in 2005. The Commission's report containing its findings and conclusions, based on a review and analysis of the Secretary's recommendations, shall be transmitted to the President not later than September 8, [2005] 2007.

**(2) AVAILABILITY OF RECOMMENDATIONS TO CONGRESS.—**After September 8, [2005] 2007, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

**(3) LIMITATIONS ON AUTHORITY [TO ADD] TO CONSIDER ADDITIONS** to closure or realignment lists.—The Commission may not consider making a change in the recommendations of the

Secretary that would add a military installation to the Secretary's list of installations recommended for closure or realignment unless, in addition to the requirements of section 2903(d)(2)(C)—

(A) \* \* \*

\* \* \* \* \*

[(5) SITE VISIT.—In the report required under section 2903(d)(2)(A) that is to be transmitted under paragraph (1), the Commission may not recommend the closure of a military installation not recommended for closure by the Secretary under subsection (a) unless at least two members of the Commission visit the installation before the date of the transmittal of the report.]

(5) *REQUIREMENTS TO EXPAND CLOSURE OR REALIGNMENT RECOMMENDATIONS.*—*In the report required under section 2903(d)(2)(A) that is to be transmitted under paragraph (1), the Commission may not make a change in the recommendations of the Secretary that would close a military installation not recommended for closure by the Secretary, would realign a military installation not recommended for closure or realignment by the Secretary, or would expand the extent of the realignment of a military installation recommended for realignment by the Secretary unless—*

(A) *at least two members of the Commission visit the military installation before the date of the transmittal of the report; and*

(B) *the decision of the Commission to make the change to recommend the closure of the military installation, the realignment of the installation, or the expanded realignment of the installation is unanimous.*

(6) *COMPTROLLER GENERAL REPORT.*—The Comptroller General report required by section 2903(d)(5)(B) analyzing the recommendations of the Secretary and the selection process [in 2005] *under this section* shall be transmitted to the congressional defense committees not later than July 1, [2005] 2007.

(e) *REVIEW BY THE PRESIDENT.*—

(1) *IN GENERAL.*—Except as provided in this subsection, section 2903(e) shall apply to the review by the President of the recommendations of the Commission under this section, and the actions, if any, of the Commission in response to such review, [in 2005] *under this section*. The President shall review the recommendations of the Secretary and the recommendations contained in the report of the Commission under subsection (d) and prepare a report, not later than September 23, [2005] 2007, containing the President's approval or disapproval of the Commission's recommendations.

(2) *COMMISSION RECONSIDERATION.*—If the Commission prepares a revised list of recommendations under section 2903(e)(3) in 2005 in response to the review of the President in that year under paragraph (1), the Commission shall transmit the revised list to the President not later than October 20, [2005] 2007.

(3) *EFFECT OF FAILURE TO TRANSMIT.*—If the President does not transmit to Congress an approval and certification described in paragraph (2) or (4) of section 2903(e) by November

7, [2005] 2007, the process by which military installations may be selected for closure or realignment under this part in [2005] 2007 shall be terminated.

\* \* \* \* \*

**SEC. 2915. ADHERENCE TO CERTAIN AUTHORITIES ON PRESERVATION OF MILITARY DEPOT CAPABILITIES DURING ANY SUBSEQUENT ROUND OF BASE CLOSURES AND REALIGNMENTS.**

(a) *ADHERENCE REQUIRED.*—(1) Any base closure and realignment actions under section 2914 or subsequent round of base closure and realignment, and any actions to carry out the closure or realignment of military installations as a result of such actions, shall reflect a strict adherence to the provisions of title 10, United States Code, for the maintenance of government-owned, government-operated depot-level maintenance, repair, and logistics capabilities within the Department of Defense, including the provisions of chapter 146 of such title and other applicable provisions.

(2) No action to carry out the closure or realignment of military installations in any base closures and realignments under this part after the date of the enactment of this section may include a waiver authorized by paragraph (2) or (3) of section 2464(b) or section 2466(b) of title 10, United States Code.

(b) *BASE CLOSURE AND REALIGNMENT ACTIONS DEFINED.*—In this section, the term “base closure and realignment actions” means the following:

(1) The preparation by the Secretary of Defense of recommendations on installations for closure or realignment under this part or any subsequent base closure law.

(2) The review by the Commission of the recommendations referred to in paragraph (1).

(3) The review by the President of the recommendations referred to in paragraphs (1) and (2).

\* \* \* \* \*

**NATIONAL SECURITY ACT OF 1947**

\* \* \* \* \*

**TITLE VII—PROTECTION OF OPERATIONAL FILES**

\* \* \* \* \*

**OPERATIONAL FILES OF THE NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY**

**SEC. 702. (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) \* \* \***

\* \* \* \* \*

(6)(A) \* \* \*

(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

(i) \* \* \*

\* \* \* \* \*

(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of

operational files, NGA shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain [responsible records] responsive records currently perform the functions set forth in paragraph (2).

\* \* \* \* \*

OPERATIONAL FILES OF THE NATIONAL RECONNAISSANCE OFFICE

SEC. 703. (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) \* \* \*

\* \* \* \* \*

(6)(A) \* \* \*

(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

(i) \* \* \*

\* \* \* \* \*

(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NRO shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain [responsible records] responsive records currently perform the functions set forth in paragraph (2).

\* \* \* \* \*

OPERATIONAL FILES OF THE NATIONAL SECURITY AGENCY

SEC. 704. (a) \* \* \*

\* \* \* \* \*

(f) ALLEGATION; IMPROPER WITHHOLDING OF RECORDS; JUDICIAL REVIEW.—(1) \* \* \*

(2) Judicial review shall not be available in the manner provided for under paragraph (1) as follows:

(A) \* \* \*

\* \* \* \* \*

(D)(i) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the National Security Agency shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain [responsible records] responsive records currently perform the functions set forth in subsection (b).

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ARMS EXPORT CONTROL ACT

\* \* \* \* \*

**Chapter 2.—FOREIGN MILITARY SALES  
AUTHORIZATIONS**

\* \* \* \* \*  
SEC. 27. AUTHORITY OF PRESIDENT TO ENTER INTO COOPERATIVE PROJECTS WITH FRIENDLY FOREIGN COUNTRIES.—(a) \* \* \*

\* \* \* \* \*

[(g) In the case of a cooperative project with a North Atlantic Treaty Organization country, section 36(b) of this Act shall not apply to sales made under section 21 or 22 of this Act and to production and exports made pursuant to cooperative projects under this section, and section 36(c) of this Act shall not apply to the issuance of licenses or other approvals under section 38 of this Act, if such sales are made, such production and exports ensue, or such licenses or approvals are issued, as part of a cooperative project.]

(g) *Unless the President states in his certification that an emergency exists which requires the immediate approval of the cooperative agreement in the national security interests of the United States (in which case the President shall set forth in the certification a justification for this determination), an agreement shall not be signed if, within the 30-day period specified in subsection (f), a joint resolution prohibiting the agreement is enacted into law.*

\* \* \* \* \*

(h) *A license shall be required for the export of defense articles or defense services relating to a cooperative project by any person required to be registered under section 38(b)(1)(A)(i) whenever such export is made pursuant to, or in furtherance of, a private contract, purchase order, or similar commercial arrangement with a foreign corporation.*

\* \* \* \* \*

**Chapter 3.—MILITARY EXPORT CONTROLS**

\* \* \* \* \*

SEC. 38. CONTROL OF ARMS EXPORTS AND IMPORTS.—(a) \* \* \*  
(b)(1) \* \* \*

[(2) Except] (2)(A) *Except as otherwise specifically provided in regulations issued under subsection (a)(1), no defense articles or defense services designated by the President under subsection (a)(1) may be exported or imported without a license for such export or import, issued in accordance with this Act and regulations issued under this Act, except that no license shall be required for exports or imports made by or for an agency of the United States Government [(A) for official] (i) for official use by a department or agency of the United States Government, or [(B) for carrying out] (ii) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.*

(B) *The President may not establish an exemption in regulation or otherwise from the license requirements of this section for the export of a defense article that is significant military equipment (other than a firearm that is intended for personal use).*

\* \* \* \* \*



**Chapter 4.—GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS**

\* \* \* \* \*  
SEC. 47. DEFINITIONS.—For purposes of this Act, the term—  
(1) \* \* \*

\* \* \* \* \*  
(10) “weapons of mass destruction” has the meaning provided by section 1403(1) of the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104–201; 110 Stat. 2717; 50 U.S.C. 2302(1)); [and]

(11) “Sales territory” means a country or group of countries to which a defense article or defense service is authorized to be reexported[.];

(12) “license” means a document bearing the word license issued by the United States Government agency charged with implementing section 38 of this Act, which permits the export or import of a defense article or defense service;

(13) “agent” means a representative or emissary of a government other than an officer or employee of the government; and

(14) “exporting agent” means a freight forwarder or other consignee designated on a license application who is authorized to act on behalf of and the control of the license applicant.

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**SECTION 1424 OF THE DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION ACT OF 1996**

**SEC. 1424. INTERNATIONAL BORDER SECURITY.**

(a) \* \* \*

[(b) FUNDING.—Of the total amount authorized to be appropriated by section 301, \$15,000,000 is available for carrying out the programs referred to in subsection (a).]

(b) OTHER COUNTRIES.—*The Secretary of Defense may carry out programs under subsection (a) in a country other than a country specified in that subsection if the Secretary determines that there exists in that country a significant threat of the unauthorized transfer and transportation of nuclear, biological, or chemical weapons or related materials.*

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**SECTION 4601 OF THE ATOMIC ENERGY DEFENSE ACT**

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

(a) \* \* \*

\* \* \* \* \*

(c) TERMINATION.—(1) The authority provided under subsection (a)(1) shall terminate on September 30, [2004] 2006.

\* \* \* \* \*

**SECTION 2710 OF THE EMERGENCY WARTIME  
SUPPLEMENTAL APPROPRIATIONS ACT, 2003**

SEC. 2710. None of the funds in this Act or any other Act may be obligated or expended to pay for transportation described in section 41106 of title 49, United States Code, to be performed by any air carrier that is not effectively controlled by citizens of the United States: *Provided*, That for purposes of implementing section 41106, an air carrier shall not be considered to be effectively controlled by citizens of the United States if the air carrier receives 50 percent or more of its operating revenue over the most recent 3-year period from a person not a citizen of the United States and such person, directly or indirectly, either owns a voting interest in the air carrier or is owned by an agency or instrumentality of a foreign state: *Provided further*, That this prohibition applies to transportation performed under any contract awarded or re-awarded after the date of enactment of this Act: *Provided further*, That when the Secretary of Defense decides that no air carrier holding a certificate under section 41102 is capable of providing, and willing to provide, such transportation, the Secretary of Defense may make a contract to provide the transportation with an air carrier not having a certificate: *Provided further*, That the Secretary of Transportation is directed to use an Administrative Law Judge in a formal proceeding to resolve docket number OST-2002-13089. *Any determination for purposes of this section of whether (in accordance with the first proviso of this section) an air carrier is effectively controlled by citizens of the United States shall be made by, or shall be based on determinations made by, the Secretary of Transportation.*

○