



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1600

GENERAL COUNSEL

MAY 28 2008

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20515

Dear Mr. President:

The Department of Defense requests that the Congress enact the enclosed legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2009.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presenting of these legislative proposals for your consideration and the consideration of the Congress.

Sincerely,

A handwritten signature in black ink that reads "Daniel J. Dell'Orto".

Daniel J. Dell'Orto
Acting

Enclosure:
As stated





GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1600

MAY 28 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515

Dear Madam Speaker:

The Department of Defense requests that the Congress enact the enclosed legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2009.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presenting of these legislative proposals for your consideration and the consideration of the Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan J. Dell'Orto".

Daniel J. Dell'Orto
Acting

Enclosure:
As stated



**SEC. ____ . FEDERAL RADIONAVIGATION PLAN AND GLOBAL POSITIONING
SYSTEM BIENNIAL REPORTS.**

1 Section 2281(d) of title 10, United States Code, is amended—
2 (1) in paragraph (1), by striking "Secretary of Defense" in the matter preceding
3 subparagraph (A) and inserting "National Positioning, Navigation and Timing
4 Coordination Office"; and
5 (2) in paragraph (2), by striking "the Secretary of Defense shall consult with the
6 Secretary of State, the Secretary of Commerce, and the Secretary of Transportation" and
7 inserting "the National Positioning, Navigation and Timing Coordination Office shall
8 consult with the Secretary of Defense, the Secretary of State, the Secretary of Commerce,
9 the Secretary of Transportation, and the Secretary of Homeland Security".

Section-by-Section Analysis

This section would require the National Positioning, Navigation and Timing Coordination Office (NCO), instead of the Secretary of Defense, to prepare the biennial report on Global Positioning Systems (GPS). NCO would be required to prepare the report in consultation with the Secretaries of Defense, State, Commerce, Transportation and Homeland Security.

The report includes a discussion of several topics: 1) the operational status of the system; 2) the capability of the system to satisfy effectively the military requirements for the system that are current as of the date of the report and the performance requirements of the Federal Radionavigation Plan; 3) the most recent determination by the President regarding the continued use of the selective availability feature of the system and the expected date of any change or elimination of the use of that feature; 4) any progress made toward protecting GPS from disruption and interference and the effects of the use of the system on national security, regional security, and the economic competitiveness of U.S. industry (including the GPS equipment and service industry and user industries); and 5) the status of cooperative activities undertaken by the U.S. with the governments of other countries concerning the capability of the system or any augmentation of the system to satisfy civil, commercial, scientific, and military requirements. The last provision includes a discussion of the status and results of activities undertaken under any regional international agreement and any progress made toward establishing GPS as an international standard for consistency of navigational service

SEC. ____ . EXCEPTION FOR FRESH FRUITS AND VEGETABLES.

1 Section 2533a(d) of title 10, United States Code, is amended by adding at the end the
2 following new paragraph:
3 "(5) Procurement of fresh fruits and vegetables."

Section-by-Section Analysis

If enacted, this section would allow the Department of Defense (DoD) to purchase fresh fruits and vegetables (FF&V) from all sources. Under 10 U.S.C. 2533a (the "Berry Amendment"), FF&V purchases must be from domestic sources unless they fall within an authorized exception, such as for simplified acquisitions or when items are not available domestically.

In the past, most FF&V purchases made by the Defense Logistics Agency have been fragmented and have fallen within the simplified acquisition exception. However, a new FF&V acquisition strategy, designed to obtain better pricing and customer support, will result in larger dollar awards, and thus will no longer be exempt from the Berry Amendment under the simplified acquisition exception.

Current FF&V production is insufficient to meet domestic consumption needs and some items, due to climate and season, are only available during limited times or in limited quantities. As a result, United States residents consume a mixture of domestic and foreign FF&V; this option must be available to military service men and women as well.

This section, if enacted, would permit the United States to save money and improve customer support, while allowing military service men and women, and other government customers, to continue to receive the same quality and types of FF&V that have been provided traditionally, allowing comparable treatment for U.S. forces and U.S. civilians. The DoD anticipates that this section would have a limited impact on the current domestic market because most FF&V purchases to date have been exempt from the Berry Amendment's limitations.

SEC. ____ . FLEXIBLE MANAGEMENT OF DEPLOYMENTS OF MEMBERS.

1 (a) IN GENERAL.—Section 991 of title 10, United States Code, is amended—

2 (1) by amending subsection (a) to read as follows:

3 "(a) MANAGEMENT RESPONSIBILITIES.—(1) The Secretary concerned shall prescribe
4 regulations to manage the deployment of a member of the armed forces in his military
5 department to ensure that the member is not deployed, or continued in a deployment, beyond
6 prescribed high-deployment thresholds for the consecutive days for which the member may be
7 deployed and the total number of days on which the member has been deployed out of the
8 preceding 730 days. The regulations shall—

9 "(A) specify the high-deployment thresholds;

10 "(B) establish procedures to ensure that members are aware of their deployment
11 days; and

12 "(C) specify the approval process which must take place before a member may be
13 deployed, or continued in a deployment, beyond the high-deployment thresholds.

14 "(2) The Secretary of Defense shall approve—

15 "(A) the high-deployment thresholds for the military departments; and

16 "(B) the procedures for the payment of hardship duty pay under section 305 of
17 title 37 for those members of the armed forces who experience hardship duty by being
18 deployed in excess of approved high-deployment thresholds.";

19 (2) in subsection (b)—

20 (A) in paragraph (1)—

21 (i) by striking "a training exercise or" and inserting "an"; and

1 (ii) by inserting "as designated by the Secretary concerned" after
2 "circumstances";

3 (B) in paragraph (3)—

4 (i) by striking "or" at the end of subparagraph (B);

5 (ii) by striking the period at the end of subparagraph (C) and
6 inserting a semicolon; and

7 (iii) by adding at the end the following new subparagraphs:

8 "(D) performing non-operational temporary duty including conferences
9 and seminars; or

10 "(E) participating in training or exercises as designated by the Secretary
11 concerned."; and

12 (C) in paragraph (4)—

13 (i) in the first sentence—

14 (I) by striking "The Secretary of Defense" and inserting
15 "The Secretary concerned"; and

16 (II) by inserting "with the approval of the Secretary of
17 Defense" after "(2)"; and

18 (ii) by striking the second sentence;

19 (3) by striking subsection (d); and

20 (4) by redesignating subsection (e) as subsection (d).

21 (b) REPEAL OF HIGH-DEPLOYMENT ALLOWANCE AND STRENGTHENING OF HARDSHIP

22 DUTY PAY.—Section 436 of title 37, United States Code, is repealed.

Section-by-Section Analysis

This proposal would provide the Department of Defense (DoD) with more flexible tools with which to manage the deployment of Service members. Specifically, this section would modify the definition of deployment and eliminate statutory thresholds and management oversight mechanisms. It also would repeal a currently-suspended requirement to pay High Deployment Allowance (HDA) (37 U.S.C. 436), which would accommodate the Department's preference to compensate members deployed above established norms using Hardship Duty Pay (HDP) (37 U.S.C. 305). These changes would allow the DoD to balance operational tempo, compensate Service members who deploy beyond their Service norms, and provide predictable allowances.

Section 991 of title 10, United States Code, currently requires the military departments to track the deployment of individuals and manage members to ensure that they do not deploy or continue to stay in a deployed status beyond set thresholds. The section defines "deployment" as any training exercise or operation that precludes a member from returning home at night. It also establishes the deployment thresholds as either 220 days or more out of the preceding 365 days or 400 days out of the preceding 730 days. The Secretary of Defense must approve the deployment of Service members beyond these thresholds, but may delegate this authority to a uniformed service general or flag officer, a Senior Executive, or a civilian officer of the Department.

This proposal would redefine "day away" by no longer counting non-operational temporary duty absences and absences for conferences, seminars, and training as being operationally deployed from station or homeport unless designated by the Secretary concerned. In the case of a Reserve component member, the DoD would continue to adhere to the definition of housing in section 991(b)(2) of title 10.

This proposal also would repeal section 436 of title 37. Section 436 currently authorizes a Service member to receive a monthly HDA if the Service member at any time during the month: (1) has been deployed for over a threshold of 191 consecutive days; (2) has been deployed for over an established threshold during the previous 730 days; or (3), in the case of a Reserve component member, is on active duty under specified conditions and periods of time. The monthly rate of this allowance cannot exceed \$1,500 and is in addition to all other pays and allowances.

Section 436 became law before September 11, 2001, and does not allow the flexibility that the DoD needs to compensate, establish deployment expectations, and influence retention behavior for Service members who experience hardship duty by being deployed in excess of approved high-deployment thresholds. Section 436 is more appropriately constructed for forces operating normally in a low operational tempo environment, as opposed to a protracted global war on terror. In addition, section 436 mandates that HDA be paid from Operation and Maintenance (O&M) funds for the military department in which the member serves. HDA as authorized would be a huge expense that could potentially depreciate the military department's O&M accounts. Although HDA is currently suspended, continuing to deploy Service members

without some consideration of tempo and compensation cannot continue indefinitely, as it may adversely affect retention.

Instead, the DoD seeks to utilize the flexible HDP authority in title 37 to ensure that compensation to recognize tempo is predictable and fairly compensates members within the respective military department. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 increased the maximum monthly amount payable in HDP (37 U.S.C. 305) from \$750 to \$1,500, and provided authority for payment on a lump sum or monthly basis. This would provide the military departments with the authority and the flexibility they need to implement fully their "tempo pay" programs.

The Department believes that military department-specific levels of payment for exceeding thresholds would better accomplish their individual goals, such as encouraging volunteerism and growing skills unique to the deployed environment.

Cost Implications: If the current HDA suspension under 10 U.S.C. 991(d) was lifted and payments resumed without restarting personnel tempo counters, it could potentially create a significant bill for the Department.

If the HDA provision in 37 U.S.C. 436 is rescinded, the Department then would establish a tempo pay program under the increased statutory HDP (37 U.S.C. 305) cap enacted in the FY 2008 NDAA. Any tempo pay program created under that expanded HDP authority would take into consideration military department-specific deployment cycles, the numbers of days members are deployed in terms of consecutive days and for a total number of days deployed within a rolling 730-day period, and would be accommodated with available resources.

**SEC. ____ . REVISIONS TO PREVIOUSLY AUTHORIZED DISPOSALS FROM THE
NATIONAL DEFENSE STOCKPILE.**

1 (a) FISCAL YEAR 1998 DISPOSAL AUTHORITY.—Paragraph (5) of section 3305(a) of the
2 National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 50 U.S.C 98d
3 note), as amended by section 3302(b) of the John Warner National Defense Authorization Act
4 for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2513), is amended by striking "2008" and
5 inserting "2009".

6 (b) FISCAL YEAR 1999 DISPOSAL AUTHORITY.—Paragraph (7) of section 3303(a) of the
7 Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-
8 261; 50 U.S.C. 98d note), as amended by section 1412(b) of the National Defense Authorization
9 Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 418), is amended by striking
10 "1,066,000,000" and inserting "1,141,000,000".

Section-by-Section Analysis

If enacted, this section would extend the Defense National Stockpile Center (DNSC) authority to sell cobalt by one year. The cobalt market tends to be volatile. Low demand and unexpectedly low prices in fiscal year (FY) 2006 and early FY 2007 adversely affected DNSC sales, resulting in carry-over of substantial inventory into FY 2008. Although market demand and prices have increased appreciably this fiscal year, and are expected to remain high for the short term, DNSC must abide by the statutory mandate to prevent undue market disruption in its sales program, and so sales quantities will be insufficient to deplete the inventory until the end of 2009.

This section also would raise the ceiling on revenue DNSC could collect from the sale of commodities in the program, as established in section 3303(a) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. The National Defense Stockpile anticipates that under current market conditions, it will exceed its current sales authority under this program before the end of FY 2008. When this statutory limit is met, DNSC would be required to cease sales, and no further revenue will be generated. This section would raise the statutory limit and allow commodity sales to continue.

Cost Implications: This section would allow cobalt sales to continue beyond FY 2008, thereby permitting the Government to collect additional revenues of approximately \$17.1 million from

the sale of this commodity. This section also would raise the statutory cap on proceeds from sales of DNSC materials under a separate program, allowing additional revenues of \$75 million.