Section-by-Section Analysis

Sections 101 through 106 provide procurement authorization for the Military Departments and for Defense-wide appropriations in amounts equal to the budget authority included in the President's Budget for fiscal year 2003.

Section 111 authorizes the Secretary of the Navy to enter into a multiple-year contract for the procurement of engines for F/A–18E/F aircraft.

Section 112 authorizes the Secretary of the Air Force to enter into a multiple-year contract for the procurement of C-130J aircraft.

Section 201 provides for the authorization of each of the research, development, test, and evaluation appropriations for the Military Departments and the Defense Agencies in amounts equal to the budget authority included in the President's Budget for fiscal year 2003.

Section 211. Section 217 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1660) established limitations on the total amount that could be obligated or expended for the F-22 development and production programs. Section 8125 of the Department of Defense Appropriations Act, 2001 (Public Law 106-259; 114 Stat. 692) combined the development and production caps into a single program cap. Section 219 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398; 114 Stat. 1654A-38), reestablished separate development and production cost caps.

The cost caps were established due to concerns over F-22 cost growth and the lack of maturity of planned cost savings measures. Senate Authorization Report 105-29 states: "It is imperative that the program, already suffering from an over two-billion dollar overrun, be closely monitored as it proceeds through development. Accumulated cost data during the remaining development phase and early low rate production should serve to build confidence in the Air Force's proposed initiatives."

The F-22 cost caps have been an effective tool for managing F-22 program costs; however, at this stage of program maturity the production cost cap could constrain the Department's ability to make optimum force structure decisions resulting from the Quadrennial Defense Review and Defense Strategic Review. At this point, over 90% of the aircraft development is complete with the remaining EMD work being primarily testing. In addition, the program has entered into low rate initial production (LRIP) with approval for full award of Lot 1 (10 aircraft), Lot 2 (13 aircraft) and advance buy of Lot 3 (23 aircraft). The baseline aircraft design has been finalized and near-term production costs are well understood. Cost data accumulated during development and the initial low rate production lots have served to build confidence in the Air Force's proposed cost reduction initiatives and the ability to continue to reduce future aircraft costs. Retention of the production cost cap at this stage no longer serves the original intent of controlling future costs, but instead serves as a fiscal constraint that simply caps the number of F-22's the Department can procure. This limitation significantly reduces the Department's flexibility when evaluating future force structure requirements and modernization

alternatives.

Section 301 provides for authorization of the operation and maintenance appropriations of the Military Departments and Defense-wide activities in amounts equal to the budget authority included in the President's Budget for fiscal year 2003.

Section 302 authorizes appropriations for the Working Capital Funds and the National Defense Sealift Fund in amounts equal to the budget authority included in the President's Budget for fiscal year 2003.

Section 303 authorizes appropriations for fiscal year 2003 for the Armed Forces Retirement Home Trust Fund for the Armed Forces Retirement Home, including the United States Soldiers' and Airmen's Home and the United States Naval Home in amounts equal to the budget authority included in the President's Budget for fiscal year 2003.

Section 311. Section 2474(f) of title 10, United States Code, was enacted by section 342 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1060). It excludes all work performed by non-Federal personnel at designated Centers of Industrial and Technical Excellence (certain maintenance depots) from the 50 percent limitation on contracting for depot maintenance (10 U.S.C. 2466(a)) if the personnel performing the work are employed pursuant to a public-private partnership. The exemption, however, is limited to funds made available in fiscal years 2002 through 2005. Limiting the exemption to four years has a chilling effect on establishing public-private partnerships which, by their nature, are most effective on a long-term basis. This limitation seriously impedes the ability of both public and private sector parties to achieve the benefits envisioned with the enactment of this authority. Limiting the exclusion to only four years discourages starting any efforts because of the potential adverse impact when the authority expires. Limiting the exclusion to only four years also prevents any significant and often necessary capital investments, the expense of which is normally amortized over longer periods.

Section 401 prescribes the personnel strengths for the active forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's Budget for fiscal year 2003.

Section 402 would exclude any three- or four-star officer serving as Senior Military Assistant to the Secretary of Defense from the statutory limits on the number of active duty officers above the grade of O-8. This would allow the military departments to best support the Secretary of Defense while providing stability in existing command structures. Current law has forced the Navy to downgrade the position of the Commander, Military Sealift Command to support this detail. This section would not increase general/flag officer end-strength authorizations within a military department. Instead, it temporarily would change the percentage of a military department's general/flag officers in grades above major general/vice admiral while so supporting the Secretary of Defense.

This section also would change the current percentage of the general officers of the Marine Corps on active duty authorized to be in grades above major general pursuant to section 525(b)(2)(B) of title 10 from 16.2 percent to 17.5 percent. Section 525(b)(2)(B) currently limits the number of general officers in the Marine Corps serving in grades above major general to 13. Since the Marine Corps is authorized two generals (Commandant of the Marine Corps and Assistant Commandant of the Marine Corps), the Marine Corps is limited to eleven lieutenant generals. Pursuant to section 5411 of title 10, the position of Commander, Marine Forces Reserve, is filled by a lieutenant general, leaving ten additional allocations for lieutenant generals in the Marine Corps. Internal to the Marine Corps, however, there are eleven additional positions that have been previously designated positions of importance and responsibility and, as such, coded for lieutenant generals. As a result, the Marine Corps must fill one of these eleven positions (Commanding General, II Marine Expeditionary Force (CG, II MEF)) with a major general. This statutory restriction is detrimental to the effectiveness of the general officer assigned to this position.

II MEF is a "corps-level" organization with corps-level responsibilities. All of the Commanding General's military department counterparts, as well as European and NATO counterparts, are lieutenant generals. This puts the CG, II MEF, at a great disadvantage when attending planning conferences or similar venues in which he must represent the Marine Corps and/or the United States. This is particularly true in the NATO and European environment. For our allied officers and the military officials in Europe, a third star, or lack thereof, makes a tremendous difference in how a particular officer is received and which discussions and actions he is included in, or excluded from. Additionally, with the implementation of the Department of Defense Reorganization Act of 1986 (Goldwater-Nichols) and the advent of componency in our unified commands, II MEF is further disadvantaged in this arena. II MEF is a warfighting headquarters in the operations plans of U.S. Joint Forces Command, U.S. Southern Command, and U.S. European Command. Because of current limitations on the number of Marine Corps lieutenant generals, housing the CG, II MEF, does not have grade parity with the other component warfighters. Furthermore, each combatant command commander supported by II MEF is deprived of a great deal of flexibility in the numbers and types of roles that he can assign his Marine Forces warfighter.

This section would restore equality among senior leaders and planners, component warfighters, and allied counterparts. Additionally, when called upon to represent the United States, a combatant command commander, or the Marine Corps in any venue, the CG, II MEF, will be doing so on a level playing field. This section would not increase general officer end strength authorizations within the Marine Corps; however, it would change the grade distribution. The Marine Corps would gain one lieutenant general and lose one major general.

Section 403 would extend exemptions from grade ceilings for general and flag officers serving in joint duty positions until December 31, 2004. Specifically, section 525(b)(5) of title 10, United States Code, exempts the senior joint officer positions described in section 604(b) (*e.g.,* the commander in chief of a combatant command) from the ceilings on officers serving on

active duty in grades above major general and rear admiral listed in section 525(b)(1) and (2), respectively. This exemption expires on September 30, 2003. Section 526(b) of title 10 authorizes the Chairman of the Joint Chiefs of Staff to allocate 12 active general and flag officer positions to the Services, and ten reserve general and flag officer positions to the combatant commands, for joint duty assignments without having them count against the service-specific ceilings for active duty general and flag officers in section 526(a). This exemption expires on October 1, 2002.

These extensions are essential to the Department's personnel management and support of its general and flag officers in the joint arena. The exemptions would provide personnel management flexibility so that the military departments can nominate their most-qualified candidates to compete for senior active and reserve joint positions without regard to the limitations in sections 525 and 526. Extending the exclusion of certain reserve officers from the section 526(a) active duty limitations would increase the reserve representation in joint operations at the highest levels. Without these exemptions the military departments would not be able to compete equally for joint duty assignments and might not be able to fill external general and flag officer requirements due to demanding internal priorities. A lapse in authority in this area, therefore, would be damaging. To protect against such a lapse in authority, the exemptions have been extended to better fit the legislative cycle.

Section 411 prescribes the strengths for the Selected Reserve of each reserve component of the Armed Forces in the numbers provided for by the budget authority and appropriations requested for the Department of Defense in the President's budget for fiscal year 2003.

Section 412 prescribes the end strengths for reserve component members on full-time active duty or full-time National Guard duty for the purpose of administering the reserve forces for fiscal year 2003.

Section 413 prescribes the minimum end strengths for the reserve components of the Army and Air Force for dual status military technicians for fiscal year 2003.

Section 414 prescribes the maximum end strengths for the reserve components of the Army and Air Force for non-dual status military technicians for fiscal year 2003.

Section 415 would authorize reserve component members who have been ordered to active duty under section 12301(d) of title 10, United States Code, to serve in support of a contingency operation (as defined in section 101(a)(13) of title 10), to be added to the authorized active duty end strength. It would authorize the ceiling for general and flag officers, as well as officers in grades O-4, O-5 and O-6 serving on active duty in those grades, to be increased by a number equal to the number of officers in each pay grade serving on active duty in support of a contingency operation. It also would authorize the ceiling for enlisted members in grades E-8 and E-9 serving on active duty in those grades to be increased by a number equal to the number of enlisted members in each pay grade serving on active duty in support of a contingency

operation. Order writing and accounting systems track all reserve component members who are ordered to active duty in support of a contingency operation, whether the order to active duty is under a voluntary or involuntary authority. This is critical because these members are entitled to certain benefits that are linked to serving in support of a contingency operation.

The military departments involuntarily call reserve component personnel to active duty under section 12304 of title 10 to meet the operational requirements to support a contingency. The military departments also use volunteers from their reserve components, ordered to active duty under section 12301(d), to meet the operational requirements of a contingency operation. Currently, reserve component members who are involuntarily called to active duty under section 12304 are exempt from the end strength limitations in sections 115 and 523 of title 10. However, there is no such authority under sections 517 and 526 of title 10. While there is authority to exclude officers serving in support of a Commander in Chief for a limited period, there is no exclusion from the grade ceilings. Additionally, the only mechanism to exceed end strength or grade ceilings during a time of war or national emergency is for the President to exercise his authority under section 527, which authorizes him to suspend the operation of sections 523, 525 and 526. When the President exercises this authority, the Secretary of Defense may suspend the operation of section 517.

Regardless of whether it is a voluntary or involuntary call to active duty, the additional manpower represents an unprogrammed expansion of the force to meet operational requirements. Authorizing the Secretary of Defense to increase the end strength limits and grade ceilings to the number of volunteers would authorize the military departments to meet contingency operation requirements without adversely affecting the manpower programmed for other national security objectives. Absent this change, the military departments are inclined to use the Presidential reserve call-up authority since reserve component members called-up under this authority are excluded from end strength and certain grade ceilings. This section would encourage the military departments to seek volunteers to fill validated requirements rather than relying on non-volunteers.

Section 501 would amend section 5045 of title 10, United States Code, to increase the maximum number of Deputy Commandants within the Headquarters, Marine Corps from five to six. The new Deputy Commandant billet would be for the Deputy Commandant (Marine Corps Combat Development Command), currently located at Marine Corps Base Quantico, Virginia.

The Marine Corps would fill this new Deputy Commandant billet with an existing Lieutenant General (O-09). Therefore, this section would not increase the Marine Corps' current allotment of Lieutenant General billets. Furthermore, this position would remain at Marine Corps Base Quantico, Virginia.

Under title 10, the Commandant presides over Headquarters, U.S. Marine Corps, and is responsible for preparing, recruiting, organizing, supplying, equipping (including research and development), training, servicing, mobilizing, demobilizing, administering, and maintaining the

Marine Corps. The Marine Corps Combat Development Command's (MCCDC) current mission includes the responsibility to "develop Marine Corps warfighting concepts and to determine associated required capabilities in the areas of doctrine, organization, training and education, equipment, and support facilities to enable the Marine Corps to field combat-ready forces; and to participate in and support other major processes of the Combat Development System." These functions fall within the title 10 responsibility of the Commandant. Enabling the Commandant to designate the Commanding General, MCCDC, as a Deputy Commandant would help to effectuate the Commandant's title 10 responsibilities in the areas of training and equipping by establishing clearer linkage between the Commandant and the Commanding General, MCCDC. In addition, this move would more closely align Navy and Marine Corps staff, since it would parallel recent changes in the structure of the Office of the Chief of Naval Operations (*i.e.*, in organizing the training and requirements functions of N7).

Section 511 would add new section 14519 to title 10, United States Code, to authorize the Secretary of a military department to extend the mandatory retirement or separation of reserve officers until either a Medical Evaluation Board or a Physical Evaluation Board makes a final determination in their case. This would parallel the changes that section 507 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1090) made to section 640 of title 10.

Section 640, which permits the deferment of separation or retirement for officers undergoing disability evaluation, does not apply to reserve officers unless they are on active duty in one of the categories specified in section 641(a). Consequently, the law requires immediate separation or retirement of most medically deferred reserve component officers who are subject to mandatory separation or retirement under chapter 1407 of title 10 for age, length of service, or failure of promotion, or selective early removal under chapter 1409. The only recourse a reserve member has for deferment of mandatory separation is to file a request with the Board for Correction of Military Records. This section would clarify that reserve officers who incur an injury or illness in the line of duty are entitled to deferment of retirement or separation pending disability determination.

Section 512 would allow Reserve and National Guard members, pursuant to sections 12304 and 12310 of title 10, United States Code, to respond to a weapon of mass destruction incident based on the definition of "weapon of mass destruction" used by other federal agencies and contained in the Federal Response Plan.

Any Department of Defense response to a domestic weapon of mass destruction incident would be in support of a lead federal agency. Currently, sections 12304 and 12310 use the definition for "weapon of mass destruction" provided in section 2302(1) of title 50, United States Code. That definition does not include a destructive device such as a high yield explosive. However, the Terrorism Annex to the Federal Response Plan, which implements the Stafford Act, uses the definition for "weapon of mass destruction" found in section 2332a of title 18, United States Code. The section 2332a definition includes a destructive device such as a high

yield explosive. The Department of Defense has taken the position that the definition of "weapon of mass destruction" used by the other federal agencies and contained in the Federal Response Plan should be the one used by the Department of Defense.

Section 513 would amend section 709 of title 32, United States Code, to preclude matters relating to the wear of the uniform, the quantity and kind of clothing or the amount of a uniform allowance provided to enlisted National Guard technicians from being considered conditions of employment under chapter 71 of title 5, United States Code. This amendment would apply to all matters underlying the provision of technician uniforms, including distribution methods, dress and appearance requirements, uniform replacements, attachment of accouterments, and laundry services.

Section 709(b) of title 32, United States Code, requires National Guard technicians to maintain membership in the National Guard as a condition of employment and to wear the uniform appropriate for the member's grade and component of the Armed Forces while performing technician duties.

In two recent decisions by the Federal Labor Relations Authority (FLRA), 55 FLRA No. 18 (1999) and 55 FLRA No. 70 (1999), the FLRA determined that matters relating to the attachment of emblems, name tags, and insignia and the replacement of worn, torn, or soiled uniforms were conditions of employment that fall within the agency's duty to bargain under the Federal Service Labor-Management Relations Act. In two subsequent decisions, 56 FLRA No. 33 (2000) and 56 FLRA No. 77 (2000), the FLRA determined that collectively bargained provisions allowing technicians to the wear civilian attire and not a military uniform at third party proceedings, related to the technician's government employment, are appropriate. The FLRA indicated that section 709 of title 32, United States Code, requires National Guard technicians to wear the uniform only "while performing technician duties" and the concluded that attendance at certain third party proceedings is not "performing technician duties."

The rationale used to support these decisions indicates that other matters relating to the provision and wear of uniforms for technicians may also be deemed negotiable in the collective agreement process. These decisions undermine agency efforts to establish policies for providing uniforms and regulating the wear of uniforms that are consistent among National Guard jurisdictions and equitable between technicians and National Guard members serving on Active Guard and Reserve duty. Moreover, use of collective bargaining to address these issues in each of the 54 jurisdictions that maintain a National Guard would result in case-by-case exceptions to policy causing inequities and unnecessary administrative burdens and expenses.

This amendment would preclude these matters from being considered conditions of employment under chapter 71 of title 5, United States Code, and, in doing so, would ensure that the fair and consistent application of policies and practices for providing military uniforms to members of the Armed Forces will be applied to National Guard technicians.

Section 514 would amend section 12103(d) of title 10, United States Code, to allow a member who enlists in the Reserve delayed training program to remain in that category for an additional three months before requiring the member to commence initial active duty for training.

A one-year delayed training period would align the Reserve program with the basic delay period authorized for the active duty delayed entry program under section 513 of title 10. It also would provide greater flexibility to the Reserve components when they are working the high school and college markets. In particular, the one-year delayed training period would enable increased participation by those who enter the delayed training program prior to entering their last year of high school or beginning a new year at college. Although section 513 also provides for a 365-day extension when the Secretary concerned determines it is in the best interest of the service, no similar extension appears necessary for the Reserve components.

Section 521 would prohibit a court from requiring a member to begin payments, as property, to a former spouse before actual retirement. Nothing in the Uniform Services Former Spouses' Protection Act (USFSPA) allows a State court to order a member to apply for retirement or to retire at a particular time in order to initiate payments to a former spouse. In fact, the USFSPA contains an express prohibition against such action by State courts. Yet, in some instances, State courts have required a member who chooses to remain in military service to make payments directly to the former spouse in an amount equal to what the former spouse would receive if the member retired when first eligible.

Section 522 would revoke the requirement that a former spouse who is eligible for direct payment through the Defense Finance and Accounting Service (DFAS) of an allocable share of retired pay be married to the member for 10 or more years during which the member completed 10 or more years of creditable service. No other examined public or private retirement system or plan contains such a restriction. Revocation should prevent the courts, practitioners, and parties to divorce proceedings from mistakenly interpreting this rule as a prerequisite to allocation of retired pay. Finally, revoking this requirement would allow DFAS to issue separate Federal income tax reporting documents to the parties for their respective shares of the allocations.

Section 523. No provision of the Uniformed Services Former Spouses' Protection Act (USFSPA) permits cost of living allowances for dollar amount awards. As a consequence, virtually all USFSPA awards are expressed as a percentage of retired pay. This rule limits the flexibility of the parties and the courts in negotiating property settlement agreements and causes practitioners and the courts difficulty in their efforts to draft orders. No compelling reason exists for the current statutory limitation on dollar-specific awards.

This section would amend section 1408 of title 10, United States Code, to authorize the Defense Finance and Accounting Service to apply cost of living allowances to dollar-specific awards.

Section 524 would allow either members or former spouses to submit an application for

direct payment of benefits. Former spouses occasionally refuse to submit the application. As a consequence, the member will have income tax withheld on the full amount of the member's retired pay and must then make the payments provided in the divorce decree to the former spouse. Allowing the member to submit the application will equalize the parties' position in this matter. In addition, this section would allow collection of overpayments from the former spouse or his or her estate. The former spouse shall be deemed to have agreed to provide prompt notice to the Secretary if the operative court order upon which payment is based is vacated, modified, or set aside.

Section 525. The Uniformed Services Former Spouses' Protection Act requires, in part, that a member be given notice of an application for payment of retired pay and a copy of the order. Implementing regulations require that the member be given 30 days to respond to the application. Members, however, occasionally request that payments start immediately. This section would allow the member to waive the notice requirement.

In addition, this section would revoke the statutory requirement that a copy of the court order be sent to the member. The Defense Finance and Accounting Service plans to notify members that, upon request, it will send a copy of the order. A similar arrangement exists concerning copies of child support orders.

Section 526 would eliminate the jurisdictional requirement in the Uniformed Services Former Spouses' Protection Act that must be satisfied for a state court to exercise jurisdiction over the allocation of retired pay.

At the time when Congress enacted the Act, many States provided that retirement or pension benefits were not marital property. Such benefits were considered to be the separate property of the person earning them and were therefore not subject to division during a divorce. The reason for this requirement no longer exists: all States provide that retirement benefits are marital property that are subject to division. Moreover, the purpose of the requirement was to ensure due process for the member and to prevent "forum shopping" by the former spouse. Since all States now provide for the division of military retired pay, the issue of "forum shopping" is no longer a significant concern.

In addition, this requirement, which applies only to a division of military retired pay as property, creates a special jurisdictional provision that does not exist for similarly situated non-military couples in divorces. Moreover, ambiguities in the Act's jurisdiction requirement provisions have complicated the intent and interpretation of the law. Taken together, elimination of this requirement will simplify administration of the Act.

Section 531 amends title 32 to eliminate most of the provisions contained in that title addressing courts-martial for the National Guard not in Federal service. These proposed amendments were recommended by a Panel established by the Secretary of Defense, in accordance with section 574 of the National Defense Authorization Act for fiscal year 1997

(Public Law 104-201), to review and report on the authorities for court-martial and nonjudicial punishment jurisdiction for the National Guard not in Federal service. The Panel concluded that most of the title 32 provisions are not necessary, and inhibit, rather than facilitate, the use of military justice in the State National Guards.

The prescribed punishments in title 32 are extremely low, and at times conflict with more substantive punishments provided for under State Codes of Military Justice. Such conflicts raise unintended issues of Federal preemption of State codes. Additionally, the title 32 provisions cause unnecessary confusion. They purport to authorize measures properly governed by State law, such as discharges from the State National Guard, but do not in the Panel's viewpoint, grant authority to the States to discharge individuals from their status as a reserve of the Army or a reserve of the Air Force. A second Federal administrative procedure is still required to accomplish such objectives.

Although the repeal of certain sections will simplify title 32, section 326 needs to be amended and retained to provide Federal authority for a State to conduct courts-martial, while in a federally funded, title 32 duty status. This will enable the training of personnel in the military justice system, as well as the enforcement of good order and discipline in the National Guard not in Federal service, to be conducted under the auspices of title 32.

Section 327 should be amended to retain the Presidential authority to convene general courts-martial for the National Guard not in Federal service. Section 327 should also be amended to incorporate the current provisions of sections 328 and 329 designating subordinate commanders to convene special and summary courts-martial for the National Guard not in Federal service. Congress authorized the President and designated subordinate commanders as convening authorities for National Guard not in Federal service in 1916. Repeal of such convening authority is not necessary to modernize and increase uniformity among, state military justice systems for the National Guard not in Federal service.

The amendments are part of a larger effort by the Department of Defense to assist the States to modernize their military justice systems and bring them into closer conformity with one another and with the Federal Uniform Code of Military Justice. The Panel has recommended that this effort include the drafting of a model State Code of Military Justice to be voluntarily adopted by the States, as well as model Manual for Courts-Martial for the National Guard not in Federal service.

Section 541. Section 2364(b) of title 10, United States Code, allows a service member to store a privately-owned vehicle when the member is ordered to a duty station in a foreign country and the transportation of that motor vehicle is prohibited. This section would provide for storage, at government expense, of the privately-owned motor vehicle of a service member when the member is ordered to a non-foreign duty station outside the continental United States (CONUS) and the transportation of that motor vehicle is prohibited. This would alleviate the financial burden of storing the vehicle at the member's expense or selling it at a loss (*i.e.*, for less

than would be required to replace the vehicle upon return to CONUS.).

Section 542 would amend subchapter II of chapter 138 of title 10, United States Code, by adding at the end a new section 2350l to make clear that the Secretary of Defense and the Secretaries of the military department may pay for, or provide without cost, administrative services and support to foreign liaison officers performing duties.

Through the Department of Defense Foreign Liaison Officer Program, representatives of foreign governments are temporarily assigned to components or commands of U.S. Armed Forces. Unlike other defense personnel exchange programs, the Foreign Liaison Officer Program is not a "reciprocal" program, since there is no one-for-one exchange of personnel. During their tenure as a foreign liaison officer, the foreign representatives work with U.S. military personnel to develop compatible and interoperable equipment, training, and doctrine.

The Foreign Liaison Officer Program promotes regional stability and strengthens existing international agreements by encouraging peacetime engagement, cooperation, and compatibility between the U.S. and foreign military services. The Foreign Liaison Officer Program also allows participating countries to observe the tactics, techniques, and procedures of the host country military service. The increased use of multinational forces in combined-force operations makes this program an invaluable tool for maintaining readiness and building coalitions. The Foreign Liaison Officer Program promotes mutually beneficial relationships between the U.S. military and its allies in support of U.S. national interests.

The administrative services and support that could be provided under the amendment include base or installation operation support services, office space, utilities, copying services, fire and police protection, and computer support. The amendment would not authorize the United States to provide pay and allowances and other similar benefits for foreign liaison officers. The U.S. Government would not cover the costs associated with foreign liaison officers stationed in the United States. Pay and allowances; travel by the officers and their dependents; subsistence costs and expenses for the officers and their dependents; compensation for the loss of, or damage to, the personal property of the officers or their dependents; movement of the household effects of the officers or their dependents; preparation and shipment of the remains and funeral expenses associated with the death of an officer or the officer's dependents; formal and informal training of the officers; and expenses in connection with the return of an officer whose assignment has been terminated or expired, along with his dependents, would not be covered.

Section 601. The primary purpose of military compensation is to provide a force structure that can support defense manpower requirements and policies. To ensure that the uniformed services can recruit and retain a force of sufficient numbers and quality to support the military, strategic and operational plans of this nation, military compensation must be adequate. Analysis of the earnings of military members with their civilian counterparts, suggests that without some adjustment to both the level and structure of basic pay, the military will continue to

face serious difficulties in both recruiting and retention.

The results of the military and civilian earnings profile comparisons and the life-cycle earnings analysis lead to several recommendations that both raise the level of pay and alter the structure of the pay table as well. The structural modifications include targeting pay raises in the enlisted mid-grade ranks that will better match the trend of enlisted pay, over a career, with their comparably-educated civilian counterparts and provide a sufficient incentive for these members and mid-grade officers to complete a military career. Recommended adjustments are as follows:

- Provide a minimum raise of 4.1 percent (ECI + ½%) as prescribed in law.
- Target large basic pay increases for enlisted members serving in the E-5 to E-7 grades with 6-20 years of service. This would alter the pay structure and thus the shape of the earnings profile, eliminating the relatively flat portion of the pay table for mid-grade enlisted members.
- Raise basic pay for grades E-8 and E-9, to maintain incentives throughout the enlisted career and prevent pay compression.
- Raise basic pay for grades O-3 and O-to provide increased retention incentives and O-5 to prevent pay compression.
- Adjusts selected pay cells as a technical correction.

Subsection (a) waives the adjustment in basic pay that is prescribed in section 1009 of title 37, United States Code. Subsection (b) provides a pay table describing the changes in basic pay. The specific grade, years of service increases are summarized as follows:

	Years of Service								
GRADE	**<2**	**2**	**3**	**4**	**6**	**8**	**10**	**12**	**14**
Officers									
O-7	4.1%	2.0%	4.1%	5.0%	4.1%	4.1%	4.1%	4.1%	4.1%
O-6	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	6.5%
O-5	8.5%	4.1%	4.1%	4.1%	4.1%	6.5%	8.5%	6.5%	4.1%
O-4	9.5%	4.1%	4.1%	4.1%	4.1%	5.5%	5.5%	5.5%	5.5%
O-3	4.1%	4.1%	4.1%	5.0%	5.0%	5.0%	4.1%	4.1%	4.1%
Prior Enlisted									
O-3E	4.1%	4.1%	4.1%	5.0%	5.0%	5.0%	4.1%	4.1%	4.1%
O-2E	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
O-1E	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
Warrant Officers									
W-5	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
W-4	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
W-3	4.1%	0.0%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	6.0%
W-2	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	5.5%	5.5%	5.5%
W-1	4.1%	4.1%	4.1%	4.1%	6.0%	6.0%	5.5%	5.5%	4.1%

Enlisted Members									
E-9	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
E-8	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
E-7	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%	6.5%
E-6	4.1%	4.1%	4.1%	4.1%	4.1%	6.5%	6.0%	6.0%	5.5%
E-5	4.1%	4.1%	4.1%	4.1%	6.5%	6.0%	6.0%	4.1%	4.1%

Years of Service						
	16	**18**	**20**	**22**	**24**	**26**
W-5	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
W-4	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
W-3	6.0%	6.0%	6.0%	4.1%	4.1%	4.1%
W-2	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
W-1	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
E-9	4.1%	4.1%	6.0%	6.0%	6.0%	6.5%
E-8	4.1%	6.5%	6.0%	6.0%	4.1%	4.1%
E-7	6.0%	5.5%	4.1%	4.1%	4.1%	4.1%
E-6	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%
E-5	4.1%	4.1%	4.1%	4.1%	4.1%	4.1%

Section 602. Although this section would affect only a few people, it is important and necessary. Those service members who have no ability to store or cook food in their quarters, and who also have no access to a government dining facility, are disadvantaged by receiving only the regular Basic Allowance for Subsistence (BAS) amount. Members who find themselves in these rare set of circumstances, through no fault of their own, are forced to purchase prepared meals at all times. This section would provide relief to members currently in this situation by allowing them to receive double the regular BAS amount.

In 2002, the regular BAS rate (converted from a monthly to a daily rate) will be approximately $8.05 per day. Doubled, this would be $16.10 per day. Therefore, members with no access to dining facilities, and who also have no ability to cook or store food, would receive $16.10 per day to offset the cost of having to purchase three meals daily outside the messing facility.

Section 603 would amend section 403 of title 37, United States Code, to specify that the housing allowance based on a no-cost or low-cost move can be paid at locations outside the United States. Currently, section 403(b)(7) limits the payment of this type of housing allowance to assignments inside the United States. There is no valid reason for not paying the housing allowance to personnel assigned to no-cost or low-cost moves who locate outside the United States.

This item requests authority for a member to retain his old housing allowance under circumstances of a no cost/low cost move. For example, a member who is stationed in Ramstein, Germany, receives housing allowance based upon his housing costs in the area. After the member's tour of duty ends he is transferred to Rheinmain, Germany, which is about one hour away. The member's military department will not pay the member's moving expenses since the move is considered to be a low cost/no cost move, and member elects not to relocate his family. The member's housing costs will not have changed but the member currently has no option to retain his former housing allowance. This provision will allow him the same option that is available to members in the U.S.

In the United States, when an individual makes a permanent change of station (PCS) move within 50 miles of his former duty station, he is not paid moving costs as this is considered a low cost or no cost move. For example, a member who lives in Woodbridge, VA, and is stationed at the Pentagon, receives Washington, D.C. basic allowance for housing rates, and is then transferred to Fort Meade under a permanent change of station move. Because Fort Meade is within 50 miles of the Pentagon, no moving allowance is paid, even though Woodbridge may be more than 50 miles from Fort Meade and a commute would be expensive in terms of time and money. In such a case, the Secretary concerned under similar law to what is proposed for overseas members may continue to pay the military person the higher Washington area basic allowance for housing rate. The rationale is the Department saves moving expenses, so this partially defrays the cost of the move.

The Department would pay for this section out of existing funds.

Section 611 would extend the authority to employ accession and retention bonuses for military personnel, continuation pay for aviators, and accession and retention pay and bonuses for nuclear officers, ensuring that adequate staffing is provided for hard-to-retain and critical skills, including occupations that are arduous or that feature extremely high training and replacement costs. Experience shows that retention in those skills would be unacceptably low without these incentives, which in turn would generate the substantially greater costs associated with recruiting and developing a replacement. The Department and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in critical military skills.

Section 612 would extend the authority to employ accession and retention incentives to support staffing for nurse and dentist billets which have been chronically undersubscribed. Experience shows that manning levels in the nursing and dental fields would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing a replacement. The Department and Congress have long recognized the cost-effectiveness of these incentives in supporting effective personnel levels within these fields.

Section 613 would extend certain bonus and special pay authorities for the Reserve forces through December 31, 2003, or, in the case of repayment of education loans for certain health professionals, through January 1, 2004.

Enlistment bonuses and special pay provide a robust array of incentives that are necessary for meeting the manning requirements of the Reserve components. For example:

- Historically, meeting the required manning in the health care professions has been a challenge for the Reserve components. The special pay incentive, which targets certain healthcare professionals who possess skills that have been identified as critically short, has been and will continue to be essential to the efforts of the Reserve components to meet required manning levels in these skill areas.

- Selected Reserve re-enlistment bonus—which, last year, was increased from $5,000 to $8,000—ensures that the Reserve components are able to transition individuals with prior military service to the Selected Reserve components, thereby reducing training costs and retaining a valuable military asset. Similarly, special pay for enlisted members assigned to certain high priority units provides the Reserve components with an incentive designed to reduce manning shortfalls in critical undermanned units.

- The expanded role of the Reserve components requires not only a robust Selected Reserve force, but a robust manpower pool—the Individual Ready Reserve. The Individual Ready Reserve bonus allows the Reserve components to target individuals who possess skills that are under-subscribed, but are critical in the event of mobilization.

- Educational benefits have proven to be a powerful incentive to join the military. Extension of the Montgomery GI Bill for the Selected Reserve—the premier educational assistance program within the Reserve components—preserves an incentive that has proven to be a valuable recruiting tool routinely used by recruiters.

The one-year extension would bolster the recruiting and retention programs of the Reserve components. Absent such incentives, however, the reserve components may experience difficulty in meeting skilled manning and strength requirements.

Section 614 would amend Section 308i of title 37, United States Code, to authorize the Secretaries of the Military Departments to pay a prior service member who enlists in a critically-undermanned career field in the Selected Reserve the same bonus available to an individual with no prior service who enlists in a critically-undermanned career field. This section also would authorize a proportional increase in the maximum bonus, from $2,500 to $4,000, for a prior

service member who enlists for three years. The bonus for a member who previously received a three-year bonus under this section would increase from $2,000 to $3,500.

Under section 308c of title 37, individuals with no prior service who enlist in a critically-under-manned career field may be paid a bonus of up to $8,000 for a six-year enlistment. By contrast, section 308i currently authorizes a bonus of only up to $5,000 for prior service members for the same six-year enlistment. Authorizing the same maximum bonus amount for both groups would increase overall accessions and improve retention, as well as decrease training costs and improve readiness.

The priority for reserve component recruiting is prior service members. Recruiting such members enables the military to continue to benefit from the military training these members have already received, thus reducing initial and follow-on training costs and improving readiness. There was a significant pool of recently-released prior service personnel during the drawdown of active duty personnel; that market is now smaller. This has forced the Reserve components to shift the emphasis of their recruiting to the non-prior service market. This section would enable the components to offer the same maximum bonus to a prior service member (a significantly more valuable human resource to the military) that is currently authorized for an individual with no military training and experience.

The Army expects this section to cost an additional $7.5M from FY03 to FY07. The Army plans to offer the $8,000 limit to all prior service members who enlist in a critical skill area, or just under one percent of the Army's annual prior service goal of approximately 51,000. The other services seek the authority to pay a larger bonus to some members, but plan to offset any increases by paying other members less.

Section 621 would ensure equitable compensation and treatment between retirees and other providers and simplify the accounting process. In the process, the section would increase retiree participation in performing military funeral honors, establish a flat rate stipend that is equitable for all eligible providers who augment a military funeral honors detail, reduce the administrative burden associated with liquidating multiple reimbursement claims of varied amounts, and simplify the budgeting process for the Armed Forces.

This section would amend section 1491 of title 10, United States Code, to include retirees as additional authorized providers to assist in performing military funeral honors. In the process, it would amend the language added to section 1491(b)(2) by section 561(a)(1) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1119). That section specifically excludes military retirees from the required two-member detail. This is contrary to current Department of Defense policy to include retirees in this total force mission.

This section also would replace the requirement to reimburse authorized providers for specific travel and other miscellaneous expenses with a requirement that the Secretary of Defense establish annually a stipend amount payable to military retirees and other authorized providers of

military funeral honors. This would ensure that retirees and other authorized providers would be treated equally while also encouraging participation in performing military funeral honors and simplifying the accounting and budgeting process for paying authorized providers.

Furthermore, this section would ensure that, notwithstanding any other provision of law, the stipend paid to a retired member of the Armed Forces under this section would be in addition to any other compensation authorized to which the retired member may be entitled. Finally, this section would specifically authorize military retirees to receive the materiel, equipment, and training the Department is already providing them.

Assuming all authorized providers are reimbursed at a flat rate of $50, the daily allowance authorized for reserve participants under section 435 of title 37, this section would cost a total of approximately $8 million from Fiscal Year 2003 through Fiscal Year 2007. The Department does not require additional funds to pay for this section.

Section 622 would amend section 705(b)(2) of title 10, United States Code, to authorize personnel to receive transportation to an alternate destination of leave travel other than the nearest port in the 48 contiguous States when they are rewarded with leave travel in conjunction with agreements to extend their overseas assignments. Many members would rather use the cost of travel to the nearest continental United States port as a cost basis to reimburse travel to an alternate location. This section would be consistent with existing government travel rewards for consecutive overseas tours (37 U.S.C. 411b) and Funded Environmental and Morale Leave (37 U.S.C. 411c). Special pay and travel benefits currently authorized for extending duty at overseas locations save the Department millions of dollars in permanent change of station travel costs each year, and contribute to readiness through reduced personnel turnover at overseas locations. This section would increase the incentive for members to extend their overseas tour without increasing the cost to the government.

Section 623 would modify section 411b of title 37, United States Code, to allow members ordered to serve a consecutive overseas tour of duty to use their leave travel anytime during the consecutive tour rather than during the one-year window currently mandated.

According to current uniformed services policy, Consecutive Overseas Tour leave and travel is a benefit provided to members who elect to serve a second overseas tour immediately following their first overseas tour. Current policy requires that Consecutive Overseas Tour leave and travel should occur between the overseas tours, in conjunction with Permanent Change of Station travel, if any. The member may elect to defer Consecutive Overseas Tour leave travel. This program saves the Department millions of dollars in Permanent Change of Station travel costs each year.

Section 411b(a) currently requires that the deferred Consecutive Overseas Tour leave travel begin within one year after the member either begins the consecutive tour at the old overseas permanent duty station or reports to the new overseas permanent duty station. If a

member is unable to travel within one year because of duty in connection with a contingency operation, the member may defer travel for an additional year after that duty ends. Members not involved with a contingency operation are not given the one-year extension.

Members often lose this benefit because of non-contingency duty requirements that extend beyond the period of one year into their consecutive tour. This section would eliminate the one-year timeframe for members to take their Consecutive Overseas Tour leave travel entitlement and would authorize members to travel anytime during their consecutive tour. This section would greatly increase morale and provide members with greater flexibility in determining when to take their Consecutive Overseas Tour leave entitlement. It also would make Consecutive Overseas Tour leave a greater incentive to overseas members because it would provide them more opportunities for them to reap the rewards of funded travel.

Section 631 would amend section 1212 of title 10, United States Code, to clarify the authority to use a service member's promotion list grade in computing disability severance pay.

Section 1212 of title 10, United States Code, provides various methods of computing disability severance pay. Specifically, section 1212 (a)(2)(C) authorizes payment based on the permanent regular or reserve grade to which a service member would have been promoted had it not been for the physical disability for which he is separated. Section 1212(a)(2)(D) contains a similar provision relating to temporary promotion. Both sections 1212 (a)(2)(C) and 1212(a)(2)(D) currently state that the physical disability must be found to exist as a result of a physical examination "for promotion." Section 1372 of title 10, United States Code, establishes the member's grade on retirement for physical disability. Specifically, sections 1372(3) and 1372(4), which relate to permanent and temporary promotions, respectively, authorize disability retirement at the member's promotion list grade and generally mirror the corresponding provisions in section 1212 of title 10, United States Code. The National Defense Authorization Act for 1997, however, struck the words "for promotion" from sections 1372(3) and 1372(4), so that these sections now merely state that the physical disability must be found to exist as a result of a physical examination. The legislative history of this amendment reveals that their purpose was to "permit disability retirements for service members at the grade to which they would have been promoted had it not been for an intervening physical disability" without regard to which physical examination actually discovered the disability.

No corresponding amendments were made to section 1212. Neither case law nor the legislative histories of the relevant sections of title 10, United States Code, indicate a reason for inconsistent standards applicable to members on a promotion list who retire for physical disability and those, also on a promotion list, who instead receive disability severance pay.

This section would bring section 1212 into accord with the current language of section 1372; correct an apparent oversight; and forestall potential disparate treatment of disabled service members based upon which physical examination discovered their disability. The enactment of

these amendments would result in negligible costs and would not increase budgetary requirements.

Section 632 would amend section 12739 of title 10, United States Code, to authorize a ten percent increase in the retired pay of reserve component enlisted personnel who are decorated for extraordinary heroism. Sections 1402, 1402a, and 8991 of title 10 authorize enlisted personnel who have been determined by the Secretary of a military department concerned to have performed acts of extraordinary heroism in the line of duty a ten percent increase in their regular retired pay, not to exceed 75 percent of total retired pay. Section 357 of title 14 provides the same for enlisted personnel of the Coast Guard. However, an enlisted member who is similarly recognized for extraordinary heroism and retires with a non-regular retirement is not entitled to the same increase in retired pay.

This section would correct that inequity by authorizing enlisted members retired under chapter 1223 of title 10 to receive the additional retired pay in recognition of their extraordinary heroism. The process used by the Secretary concerned to determine which enlisted members to cite for extraordinary heroism in the line of duty would be the same for both regular retirees and reserve retirees. Although it is highly unlikely that an enlisted member retiring under chapter 1223 would approach a retirement level of 75 percent of their retired pay, this section specifies that the 75 percent ceiling includes any increase because of extraordinary heroism.

Because this section would be effective upon the date of enactment, the award of the increase in retired pay would be prospective and would apply only after the member applies for retired pay after attaining the age of 60. It is estimated that the maximum cost for authorizing the additional retired pay would be $4.6M per year if there are an equal number of enlisted members retired with a non-regular retirement who have been cited for extraordinary heroism as there are regular enlisted retirees cited for extraordinary heroism.

Section 633. Current Survivor Benefit Plan laws provide that a member can designate only one Survivor Benefit Plan beneficiary. The limit on Survivor Benefit Plan beneficiaries inappropriately deprives the surviving current spouse of an interest in the Survivor Benefit Plan and overcompensates the surviving former spouse. As a result, Survivor Benefit Plan annuity payments should be divisible or assignable among multiple beneficiaries.

This section would amend the provisions of the laws that relate to Survivor Benefit Plans to authorize the designation of multiple Survivor Benefit Plan beneficiaries. It also would authorize the courts (or the parties) to establish and designate responsibility for payment of premiums related to Survivor Benefit Plan coverage (at present, the law requires them to be deducted from disposable retired pay).

Under this section, the Government will not incur any additional cost, other than administrative expenses, as a result of implementing these recommendations. Former members and their former spouses will pay any additional insurance costs.

Section 634. Under current law, a member may designate only one Survivor Benefit Plan beneficiary. This limit on Survivor Benefit Plan beneficiaries inappropriately deprives the surviving current spouse of an interest in the Survivor Benefit Plan and overcompensates the surviving former spouse.

This section would establish a presumption that, unless otherwise agreed to by the parties or ordered by a court, multiple beneficiary designations and related allocations of Survivor Benefit Plan benefits must be proportionate to the allocation of retired pay.

Under this section, the Government will not incur any additional cost, other than administrative expenses, as a result of implementing these recommendations. Former members and their former spouses will pay any additional insurance costs.

Section 635 would amend section 1452 of title 10, United States Code, to permit the courts (or the parties) to establish and designate responsibility for payment of premiums related to Survivor Benefit Plan coverage. At present, the law requires premiums to be deducted from disposable retired pay.

Section 641 would repeal section 542 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 106 Stat. 2413). Section 542 contains a limited exemption from the ban on receipt of honoraria by military and civilian faculty members and students at the three military academies and the Department of Defense professional schools designated by the Chairman of the Joint Chiefs of Staff imposed by section 501(b) of the Ethics in Government Act, 5 U.S.C. App. § 501 (b). However, the section 542 exemption limits acceptance of honoraria to $2000.00.

Repeal of section 542 is warranted by the decision of the U.S. Supreme Court in United States v. National Treasury Employees Union, 115 S.Ct. 1003 (1995). In that case, the Court held that the ban imposed by Section 501(b) of the Ethics in Government Act, 5 U.S.C. App. § 501(b), violated the First Amendment rights of the plaintiff-Executive Branch employees. In a February 26, 1996 memo to the Attorney General, the Office of Legal Counsel, Department of Justice, determined that the Court's decision "effectively eviscerated" 5 U.S.C. App. § 501(b) and, moreover, concluded that Section 501(b) does not survive the Court's ruling.

Section 542 itself was passed as partial relief from 5 U.S.C. App. § 501 (b) and currently imposes a limit on honoraria that applies to one subset of Department of Defense employees, military school faculty members and students, that otherwise should be unencumbered as are all other agency employees. H.R. Rep. No. 102-527, at 238-39 (1992), *reprinted in* 1992 U.S.C.C.A.N. 1636, 1662.

Enactment of the bill has no affect on those applicable laws and regulations related to ethical conduct of employees of the executive branch, to include the Ethics in Government Act, Office of Government Ethics regulations promulgated pursuant to Executive Order 12674 of

April 12, 1989, as modified by E.O. 12731, and Department of Defense Directive 5700.7-M, which, in part, govern the receipt of compensation attributable to outside activities.

Section 701 would provide the Department of Defense with the flexibility authorized under acquisition laws and regulations when contracting for the delivery of health care to military families, both active duty and retired.

The financial underwriting features in current TRICARE contracts are very complex to administer. This has resulted in frequent, large-price adjustments and often the need for significant budget reprogramming or supplemental appropriations. The Department is now developing the next generation of TRICARE contracts. DoD's objective in this effort, which continues to include input from all interested parties and consultations with Congressional Committees, is to achieve the best possible contract model that will improve budget predictability, create effective incentives for efficiency, simplify administration, enhance competition, and promote quality of care and customer satisfaction. To the extent that the "financial underwriting" language might be construed to require fixed price contracts, that may not the best possible model to achieve the Department's objectives. For example, a cost reimbursement model incorporating incentive fees for efficiency is an alternative that should be carefully considered. Although such a model also could incorporate "financial underwriting" features, confusion and uncertainty about the impact of the "financial underwriting" requirement in section 1072 of title 10, United States Code, may disrupt and complicate the acquisition program. This section would eliminate this confusion and enable the Department to select the most appropriate type of contract model in accordance with the Federal Acquisition Regulation for the TRICARE program.

Section 702. Subsection (a) would amend section 1076a(k)(2) of title 10, United States Code, to permit a dependent of a member of the Armed Forces who dies while on active duty for a period of more than 30 days to enroll in the dependents' dental plan under that section regardless of the dependent's dental plan enrollment status on the date of the member's death.

Outside the continental United States, many dependents receive their dental care in dental treatment facilities of the Department of Defense, making it unnecessary for them to participate in the premium sharing dental plan under section 1076a. Under these circumstances, many members of the Armed Forces temporarily discontinue participation for their dependents in the dental plan, as authorized in section 1076a(f). Yet, if these members die while assigned overseas, their dependents are at a disadvantage. This section would authorize these dependents to participate in the dental plan in the same manner as other dependents of members who die while on active duty.

Subsection (b) would allow the Secretary of Defense to authorize the limited treatment of TRICARE Family Member Dental Plan (TFMDP)-enrolled family members properly to train specialists and advanced general dentists in DoD graduate dental education programs. Section 1077(c) of title 10 was intended to prevent the expenditure of federal funds to provide dental

treatment already "paid for" in the form of subsidized dental insurance for enrolled, active duty family members (TFMDP). The consequence of section 1077(c) is that beneficiaries enrolled in the TFMDP are ineligible for treatment at military facilities. As a result, the ability of DoD properly to train specialists and advanced general dentists in DoD graduate dental education programs could be seriously compromised. This subsection would allow the Secretary of Defense to authorize the limited treatment of TFMDP-enrolled family members for these purposes.

Section 711 would align the normal cost contribution funding for the Department of Defense (DoD) Medicare-Eligible Retiree Health Care Fund with the military/uniformed personnel accounts. Post-retirement health benefits are related to military service, and these changes would make the accrual funding of health benefits for Medicare-eligible beneficiaries consistent with the accrual funding for retirement pension costs under chapter 74 of title 10, United States Code. This section also would mandate the participation in the Fund of the non-DoD uniformed services. Finally, this section would exclude cadets and midshipmen from the Fund so that personnel coverage of the Fund is consistent with that of the DoD Military Retirement Fund.

Section 721 is necessary to enable the President to respond effectively in crisis situations that may require prompt, effective and large-scale action to prevent or manage the consequences of mass casualties from bioterrorism.

This provision allows the President, when he determines that the public health so requires, to authorize the Secretary of Defense to employ the U.S. Armed Forces in support of the Secretary of Health and Human Services (HHS), in the HHS Secretary's roles under sections 361, 362, and 364 of the Public Health Service Act ("the Act") (42 U.S.C. 264, 265, and 267).

Section 361 of the Act authorizes the Surgeon General, with the approval of Secretary of HHS, to make and enforce such regulations as in his judgment are necessary to: (1) prevent the introduction, transmission, or spread of communicable diseases; (2) apprehend, detain, or conditionally release individuals arriving from abroad, to prevent the introduction, transmission or spread of communicable diseases, when the President provides for such action by Executive order; and (3) apprehend and examine any individual reasonably believed to be infected with a communicable disease in a communicable stage who is a probable source of infection that will move interstate, and, if the individual is found to be infected, detain the person for a reasonably necessary period of time.

Section 362 of the Act authorizes the Surgeon General, in the interest of public health, to prohibit the introduction of persons and property from countries or places when he determines that there is a serious danger of the introduction of a communicable disease from that country or place.

Section 364 of the Act authorizes the Surgeon General to control direct, and manage all U.S. quarantine facilities and to place quarantine officers in charge of them.

If a crisis situation arises requiring the prevention or management of the consequences of bioterrorism involving mass casualties, the public health infrastructure of the United States or a portion thereof may suddenly be overwhelmed. In such a situation, the President may need the ability to deploy promptly the Armed Forces in support of the Secretary of HHS, both to assist in meeting public health needs and to help keep order.

This section constitutes a specific authorization to use the Armed Forces to execute sections 361, 362, and 364 of the Public Health Service Act, displacing any limitation under section 1385 of title 18 of the United States Code on the use of the Army or the Air Force for such action.

Section 801. Current law gives the Secretary of Defense the authority to waive the full-up application of the survivability and lethality tests of section 2366 if the Secretary certifies to Congress, prior to entry into systems development and demonstration, that live-fire testing of such system or program would be unreasonably expensive and impractical. The statute does not provide for waiver-authority after entry into systems development and demonstration. Waivers after entry require specific individual statutory authority. This authority has been requested five times in the least 10 years (Public Law 106-398, MH-47E helicopter modifications; Pub L. 106-398, MH-60K helicopter modifications; Public Law 104-201, V-22; Public Law 104-201, F-22; and Public Law 102-484, C-17).

The proposed amendment would provide the Secretary of Defense with the authority to waive full-up live fire testing after entry into system development and demonstration with notification to Congress. This authority may be delegated only to the Under Secretary of Defense (Acquisition, Technology and Logistics) or military department Secretaries. With the new DoD 5000, systems may now enter the acquisition cycle at Milestone B, system development and demonstration, or after Milestone B depending on the maturity of the program's technology. In those special cases where a program did not exist before Milestone B, it would not be possible to ask to for waiver authority before Milestone B. This authority would allow for a more efficient acquisition process and allow reduced cycle time by not having to ask Congress to write specific law each time this occurs. This section does not change the waiver process.

Section 2366(c) was amended by section 821(a) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1181) on an unrelated matter.

Section 802 would amend section 2306b(I) of title 10, United States Code, to remove the statutory requirement that the Secretary of Defense certify to Congress that the current Future Years Defense Program fully funds support costs associated with multiyear programs. This currently is required before a multiyear contract may be entered into for any fiscal year for a

defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority.

It is inconsistent, in light of recent streamlining efforts by Congress and the Department, to require such a high level of oversight on the program manager and staff. This cause a significant administrative burden. Additionally, support costs often are programmed in years beyond the Future Years Defense Program, which replaced the five-year defense program. This program is consistent with ensuring that streamlining efforts result in necessary program efficiency and effectiveness.

Section 803 would provide authority, with some exceptions, for the Department of Defense to waive, for individual or class procurements, the application of statutory domestic source requirements and domestic content requirements. Application of this authority would be limited to certain foreign countries. There would be two conditions. Application of the requirement would impede the reciprocal procurement of defense items under an MOU between another country and the U.S. providing for such reciprocal procurement and the country must not discriminate against items produced in the U.S. to a greater degree than the U.S. discriminates against items produced in that country.

This section would prohibit delegation of waiver authority below the Under Secretary of Defense for Acquisition, Technology and Logistics. It also would require consultation with other Federal agencies to ascertain whether the approval conditions are met.

Section 804 would add a new section to title 10, United States Code, that would give the Department of Defense the authority to award contracts for periods of up to 10 years for dinitrogen tetroxide, hydrazine, and hydrazine-related products if the contracts are in support of either United States national security programs or the United States Space Program. The section also would permit contracts awarded under the authority of the section to include options covering a period of not more than ten additional years. Currently, contracts may only be awarded for a period of five years.

The United States Government needs a reliable, domestic industrial base for dinitrogen textroxide, hydrazine, and hydrazine-related fuels. Since expendable launch vehicles, Space Shuttle, and satellites use dinitrogen textroxide and/or hydrazine products, a reliable industrial base for these fuels is a pre-requisite for assured access to space.

The Department of Defense procures dinitrogen tetroxide and hydrazine to meet federal needs. However, for each fuel, there is currently only a single, domestic, proven source that can provide the quality/grade of fuel required. Due to the associated start-up costs for new production facilities; the limited sales opportunities outside the federal government; the toxicity of these products; and the environmental and liability issues associated with storage, production and transport; interest from other suppliers has been limited. The ability to issue long-term contracts would assure the continued availability of these fuels.

In addition, a ten year contract with options could encourage current and new suppliers to invest in the infrastructure necessary to maintain or lower unit production costs and thereby reduce costs to the government. This is particularly critical for hydrazine, where existing, aging facilities are sized to produce the large amounts of hydrazine required by some legacy expendable launch vehicles, such as Titan IV. (Titan IV will be out of service by mid-decade). It would be much less cost effective to use these facilities to produce the reduced, but still vital, amounts of hydrazine required by future systems.

Section 811 would expand the list of entities eligible to participate as proteges in the DoD Mentor-Protégé Program to include small business concerns owned and controlled by Service-disabled veterans and qualified HUBZone small business concerns. The Department has found the DoD Mentor-Protégé Program to be a valuable tool in expanding the number of qualified small disadvantaged business firms and, in so doing, enabling the Department to achieve the statutory 5% small disadvantaged business goal.

In recent years Congress has established two new small business program goals—HUBZone small business concerns and Service-disabled veteran owned small business concerns. This section would afford DoD prime contractors (known as mentors in this program) the flexibility of choosing among the various targeted small business concerns and developing the technical and business capabilities of these entities via the Mentor-Protégé Program. The resultant technically capable HUBZone and Service-disabled veteran owned small businesses will be better positioned to compete successfully for Department of Defense prime contract and subcontract awards, and the Mentor-Protégé Program will contribute substantially to the Department's future progress in meeting statutory goals.

Section 821. Section 2465 of title 10, United States Code, effectively prohibits any new contracts for security guard service at military installations in the continental United States. This limits flexibility for small DoD installations, such as agencies, field operating agencies, and direct reporting units with security requirements. When a heightened security posture is needed based on terrorist threat or similar exigencies, current Federal employee staffing for security guards are inadequate to meet and sustain the standards and protection measures required by DoD and the Military Departments on a site-specific basis.

Although Section 1010 of the Patriot Act allows for entering into contracts or other agreements with local or State governments for security, it does not offer flexibility for meeting the long-term security needs of small DoD installations during peace or increased threats. The proposed revision will permit the hiring of security personnel to augment or replace existing Federal employee security guards by utilizing contracts to meet and sustain to a level of applicable Force Protection Condition requirements expeditiously, commensurate with compliance with the Directives.

As part of the overall management for DoD force protection, it may be prudent and cost effective to provide contracted security at smaller installations like recruiting stations, finance

offices, contract management offices, audit agency offices, research offices, etc. The intent is to use this provision to provide flexible security options only at these smaller DoD installations.

Section 822 is similar to section 2306b of title 10, United States Code, that currently authorizes multi-year contracts for the acquisition of property. In the event funds are not made available for the continuation of a multi year contract under the demonstration project into a subsequent fiscal year, the contract could be canceled or terminated. When it is in the interests of the United States, a multi-year contract under the demonstration project could include cancellation provisions, including provisions to consider both recurring and nonrecurring costs. The costs of cancellation or termination could be paid from appropriations originally available for the performance of the contract, if available; appropriations currently available for the procurement of environmental remediation services, and not otherwise obligated; or funds appropriated for the payment of costs of cancellation or termination.

This section would authorize the Secretaries of the military departments to each conduct a demonstration project to test the feasibility of using fixed-price multi-year contracts with incremental funding to obtain environmental remediation services or facilities. Payments under the contracts could be made with funds appropriated for the fiscal year during which the services or facilities will be provided.

Multi-year contracts under the demonstration project would be limited to environmental remediation services or facilities for active military installations, military installations being realigned or closed, or formerly used defense sites. Each demonstration project would be limited to four installations or sites with varied size and contaminant complexity. Contracts under the project could not exceed five years.

We anticipate that the projects will demonstrate there is a substantial benefit in using multi-year fixed-price contracts that encompass all environmental restoration activities at an installation. Such contracts will enable the military departments to obtain a full spectrum of restoration action, from the initial phases of remediation through completed cleanup of an entire installation, from one contractor for a fixed price with underwriter protection. The military departments will conduct a measurable and substantial benefits analysis, as required by FAR 7.107, to determine if the anticipated consolidation would result in savings to the government. This process could result in lower costs and faster remediation. The use of incremental funding would remove a substantial disincentive to the Services' use of fixed-price contracts to address multi-year remediation projects.

Section 823 would create a micro-purchase exception for the purchase of ball and roller bearings, notwithstanding the fact that the manufacturer may be located in another country. For the Defense Logistics Agency, approximately 60 percent of the non-domestic ball and roller bearing procurements are below the micro-purchase threshold and have an annual aggregate value of under $100,000. Current restrictions require the processing of waivers, often for only a

few items and often of limited value. Creation of a micro-purchase exception would create efficiencies in the procurement process for a limited group of items.

Section 901. The Department of Defense has been criticized for a lack of qualified professional financial managers. While there are various professional credentials available for financial managers, both in the private and public sectors, the Department lacks the authority effectively to impose specific professional credential requirements on its accountants. Attainment of credentials demonstrates one's technical capabilities and an understanding of sound financial management principles. The required professional certifications impose minimum educational requirements and are test-based. Retention of such certifications, once obtained, requires a specified level of continuing education/training.

While widely accepted professional credentials such as the Certified Public Accountant, the Certified Government Financial Manager and the Certified Defense Financial Manager currently exist, personnel rules often effectively preclude the Department from requiring its professional accounting personnel to possess such credentials. As a result, this section would explicitly authorize the Secretary of Defense to establish professional certification standards for the Department's professional accountant positions. This section would allow the Secretary, without regard to the competitive service provisions in title 5, United States Code, to require all professional accounting personnel appointed at least 120 days after enactment of this Act to possess certain certifications and credentials before they can be hired, promoted or otherwise permanently assigned into the specified positions. Personnel currently occupying positions designated as professional accounting positions must become either a Certified Public Accountant or a Certified Government Financial Manager as covered in implementing regulations.

Providing the Secretary with sufficient authority to establish appropriate professional certification/credential requirements would improve the overall qualifications of the Department's accounting personnel.

Section 902 would make a conforming amendment to reflect the Deputy Secretary of Defense's February 14, 2001, action disestablishing the Department of Defense Consequence Management Program Integration Office and directing that its functions be integrated into existing Department of Defense organizations and processes to ensure greater effectiveness and oversight of programs.

Section 911. Currently, only military members and civilian employees of the Departments of the Army and the Air Force are subject to pecuniary liability for government property that is lost, damaged, or destroyed. Subsection (a) of this section would extend authority for imposition of pecuniary liability to military members of the Navy and Marine Corps and all civilian employees currently not subject to such liability.

In addition, section 1007(e) of title 37, United States Code, makes only members of the Army and the Air Force liable for any damage or cost of repairs to arms or equipment caused by such members who had care of, or were using, the property when it was damaged. Subsection (b) of this section would extend the provisions of section 1007(e) to military members of the Navy and Marine Corps.

Section 912. Currently, it is the policy of the Department of Defense that all officials involved in authorizing a payment should be held accountable and be pecuniarily liable for erroneous payments resulting from the negligent performance of their duties. Within the Department, primarily three separate individuals may be responsible for a payment—disbursing officers, certifying officials, and accountable officials. Disbursing officers and certifying officials currently are pecuniarily liable; however, accountable officials are not. This section would extend statutory authority on the imposition of pecuniary liability to accountable officials of the Department of Defense.

The centralization of disbursing processes and the increased use of automated systems, coupled with the volume and complexity of business processes, reduces the ability of the Department's officials to exercise direct personal control over all aspects of each business transaction. Accordingly, it is extremely difficult for any single departmental official to personally ensure the accuracy, propriety, and legality of every payment. Consequently, the certifying and disbursing officers increasingly must depend on accountable officials involved in the payment authorization process to provide accurate and timely data and quality service. For example, a certifying officer for payroll must depend on information provided by the personnel office. To ensure that a payment is correct, personnel who provide information to disbursing officers and certifying officers must provide accurate information.

This section would authorize the Department to impose pecuniary liability on those individuals who provide information upon which a disbursing officer or certifying official relies when exercising his or her responsibility to make a payment or certify the appropriateness of making a payment. Disbursing officers and certifying officials already are held to a strict performance standard. Others that participate in the process also should be held to the same standard.

Section 913 would amend section 16135 of title 10, United States Code, to authorize the Secretary concerned to collect amounts repayable to the Government when a member of a Selected Reserve fails to fulfill the obligation to participate satisfactorily in the Selected Reserve for the specified period as a condition of receiving educational assistance under the Montgomery GI Bill for the Selected Reserve. In addition, this section would allow the Secretary concerned to undertake any available means authorized by law for collecting the amounts due, including referring the matter to the Attorney General. This section would require no increased funding.

Section 1001 would repeal the requirement for a separate budget request for procurement of reserve equipment by repealing section 114(e) of title 10, United States Code.

Section 1002 would authorize the Secretary of Defense to provide for more timely correction of specific acquisition funding problems that occur during program execution. This additional flexibility would be primarily used during the transition phase of an acquisition program from development to procurement. Because DOD acquisition programs must be developed and procured in separate appropriations, there currently is no management flexibility to quickly resolve last minute development problems before a program transitions into production. The added flexibility of this proposed amendment would allow the Department to transfer funding to the appropriate appropriation (subject to limitations) to solve acquisition problems in a more business like manner.

The limit of $20.0 million per acquisition program per year is a compromise between the status quo which gives the Department no flexibility to solve arising problems and having such a large limit that there could be more severe program risk. The $250 million total annual limit is a reasonable limit given the size of the procurement line items involved and would have a negligible impact on outlays.

All actions taken under this authority will be limited to acquisition category (ACAT) I and II programs and comply with Congressional guidance to include strict adherence to meeting test and evaluation criteria before entering production. It will not move funds between the Services or between programs, and it will not seek to change procurement quantities without prior Congressional approval. Further, this is not a request to create a single acquisition appropriation. As well, this authority prohibits the use of transferred amounts for new starts.

All transfers proposed by program managers must be approved by the designated financial manager. These transfers must be centrally managed in order to ensure accurate fund balances in DoD financial systems.

The authority would address Congressional concerns on the orderly and responsible transition from development into production. For example, the transition from RDT&E to procurement is difficult and under tighter budget constraints than at any other time in a major program's progression. This authority would provide for a funding bridge to support last-minute, unexpected needs of the program.

Section 1003 would authorize the Secretary of Defense or the Secretary concerned to reimburse a Reserve or National Guard unit or organization for the expenses incurred when Reserve or National Guard personnel provide intelligence and counterintelligence support.

Reserve intelligence personnel make unique contributions to the intelligence and counterintelligence programs of active Department of Defense units and organizations, as well as provide invaluable surge capability to help respond to unforeseen contingencies. Currently, the Joint Reserve Intelligence Program (JRIP) engages reserve component intelligence assets during periods of active and inactive duty to support the Department's intelligence requirements across the entire engagement spectrum from peacetime through full mobilization, coincident with

wartime readiness training. Reimbursement of the affected reserve units is a cornerstone of this arrangement, and such reimbursement is absolutely essential to success of the JRIP.

Reserve or National Guard units program funds for reserve training, but should not have to budget or expend funds for the support of active Department of Defense units and organizations. Likewise, statutory authority is required because such reimbursement would otherwise contravene the fiscal law principle prohibiting augmentation of one appropriation with funds from another. For these reasons, Congress has authorized such reimbursement in the annual defense appropriations act for the past six years. The Department now proposes to establish permanent authority for such reimbursement.

Section 1004. The Asia-Pacific Center for Security Studies (CENTER) mission is to enhance cooperation and build relationships through mutual understanding and the study of comprehensive security issues among military and civilian representatives of the United States and other Asia-Pacific nations. The CENTER was established per DoD Directive 5200.38 dated January 22, 1996, under the authority of the Secretary of Defense. The CENTER is an element of the United States Pacific Command and is authorized personnel, facilities, funds, and other resources necessary to carry out its mission.

The waiver of charges provision within this section would allow the Secretary of Defense, on behalf of the CENTER, to waive reimbursement of costs incurred in paying for the participation of countries that would not be able to attend if they had to pay their own way. CENTER conferences and College of Security Studies programs permit senior government leaders to come together to discuss and develop a common understanding of important issues within their respective regions, and each provides a forum to expand and enhance multilateral relations and promote peace, prosperity, and democracy in their respective regions. This provision would expand section 1051 of title 10, United States Code, to include courses of instruction, thereby authorizing reimbursement of attendance costs to be waived for participants of approved developing countries. It also would permit waiving reimbursement of overhead, or "platform," costs for all countries, providing an incentive for countries to participate that otherwise would not be able to attend. Waived overhead would be used to attract participants that would be unable or unwilling to pay overhead costs to attend a non-degree-granting program. The success of this critical engagement tool hinges on representation by all countries in the region--most particularly the developed countries--to ensure the multilateral dialogue on regional security reflects the complete picture.

This same authority has been approved for the George C. Marshall European Center for Security Studies (See section 1306 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337)). Under current law, there is no specific authority that would allow the CENTER to accomplish the above. Waiver of costs for the CENTER under provisions identical to those applicable to the Marshall Center has been provided for under a general provision enacted in each of the Defense Appropriations Acts for Fiscal Years 1997 through

2002. As this annual authority is due to expire 30 September 2002, the Department of Defense is seeking permanent authorization.

Section 1005 would authorize the Secretary of Defense to enter into, and from funds current at the time an agreement is entered into, fully fund cooperative agreements with Federal, State, and local agencies, as well as Indian tribes, to obtain services to assist the Secretary in carrying out the Defense environmental restoration program.

To promote program stability, it has been the Department's practice to negotiate cooperative agreements with the states covering two state fiscal years. Recently, that practice has been questioned because some of the services provided may be severable in nature (requiring funding with dollars available for obligation on the date the state performs the service). If, as a result, the Department must resort to one-year cooperative agreements with the states that coincide with the Federal fiscal year, it will make it extremely difficult for the states to hire and retain the qualified personnel necessary to perform these services, and could result in a funding delay at the beginning of each fiscal year that the States would find unacceptable.

This section would empower the Secretary to enter into cooperative agreements that cross fiscal years notwithstanding the nature of the services to be provided. In effect, this section would extend the statutory exception in 10 U.S.C. §2410a (which is believed to be limited to contracts) to cooperative agreements entered into under 10 U.S.C. §2701(d) and amends §2703(c)(1) to authorize funds in environmental restoration accounts to be used for services provided under those cooperative agreements.

Section 1011. This provision repeals various recurring reporting requirements of the Department of Defense as well as some reporting requirements that are required prior to performing a management function. The provisions being amended are listed in numerical order as they appear in title 10. The reference throughout subsection (a) of this section is to title 10, United States Code. Subsections (b) through (e) refer to various uncodified statutory provisions that are found at various provisions of title 10 as notes. In the case of the notes, for ease of reference, the full statutory citation is provided for each provision of law being amended with the exception of subsection (b), relating to a reporting requirement in the Defense Acquisition Improvement Act of 1986. That provision was enacted three times in 1986. In 1987, section 6 of the Defense Technical Corrections Act of 1987 (Public Law 100-26; 101 Stat. 274) stated that such identical provisions must be treated as having been enacted only one time. The reference in the case of subsection (b) of this provision, accordingly, is to the note citation only.

(a) *Title 10 Provisions*:

(1) Report Title: **Joint Readiness Reviews**

Code Provision: 10 U.S.C. §117(e)

The Secretary must 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 a report in writing containing the results of the most recent joint readiness review, including the current information derived from the readiness reporting system.

Reason the Report Should be Repealed: Instead of a monthly readiness report to Congress, we are proposing all readiness information be delivered to the Congressional Defense Committees through a classified web readiness portal. This section eliminates the formal requirement, and provides for electronic access to the products of the Department of Defense readiness system. In short, this section allows for more timely and focused readiness information to Congress.

(2) Report Title: **Prohibition of Certain Civilian Personnel Management Constraints**

Code Provision: 10 U.S.C. §129(f)

Not later than February 1 of each year, the Secretary of each military department and the head of each defense agency must 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 management of the civilian workforce under the jurisdiction of that official. Each report must contain the official's certification that the civilian workforce under the jurisdiction of the official is not subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees; and that, during the 12 months preceding the date on which the report is due, such workforce has not been subject to any such constraint or limitation. It also must include a description of how the civilian workforce is managed and a detailed description of the analytical tools used to determine civilian workforce requirements.

Reason the Report Should be Repealed: This provision requires certification that defense components are not managing to an end strength target and/or managing on the basis of civilian end strength constraints. This certification has no value added since as a matter of policy defense components operate under a working capital fund concept where workforce levels are contingent upon workload. Annual certification that a component has implemented the policy is an unnecessary administrative reporting burden.

(3) Report Title: **Advisory Committees of the Department of Defense: Annual Report**

Code Provision: 10 U.S.C. §183

The Secretary of Defense must include in his report to Congress under section 113(c) a specific report on advisory committees in the Department. The report includes the justification for each such committee, its cost, and the purposes the committee is designed to serve.

Reason the Report Should be Repealed: All the information contained in this annual report is available on the General Services Administration's Federal Advisory Committee Act Database at http://www. facadatabase.gov/. The Administrator of the General Services Administration is the President's Executive Agent for ensuring that Executive branch agencies comply with the Federal Advisory Committee Act, and a continuously updated database is available to the general public at this site. All DoD federal advisory committees are listed by year and the database contains extensive information on each committee such as its purpose, membership, annual cost, projected end date, and meeting and report histories. To comply with section 183, the Department recasts the same data already contained in the General Services Administration database to a different format.

(4) *Chapter 9–Two Repeals in this chapter of title 10*

Report Title: **(A) Scoring of Outlays**

Code Provision: 10 U.S.C. §226

Section 226 requires that not later than December 15 of each year the Director of the Office of Management and Budget and the Director of the Congressional Budget Office submit to Congress a joint report containing an agreed resolution of all differences between – the technical assumptions to be used by OMB and CBO in preparing the estimates with respect to all accounts in function 050 (national defense). If the two Directors are unable to agree upon any technical assumption, the report shall reflect the use of averages of the relevant account rates used by the two offices.

Reason the Report Should be Repealed: This reporting requirement largely duplicates information that can be obtained from the President's Budget. The original goal of the report -- OMB is to work with CBO in preparing outlay estimates -- has been met. Both agencies discuss their planned outlay estimates while the budget is being prepared and work towards achieving common outlay estimates. The report does not provide useful information to make appropriations decisions and has limited utility and information on estimating differences between OMB and CBO. Further, it singles out the National Defense function from all other budget functions for a report based on decisions on final budget estimates that have not been completed by the report due date.

Report Title: **(B) Amounts for Declassification of Records**

Code Provision: 10 U.S.C. §230

The Secretary of Defense must include in the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the President's budget under section 1105(a) of title 31) specific identification of the amounts required to carry out programmed activities during that fiscal year to declassify records pursuant

to Executive Order No. 12958 (50 U.S.C. 435 note) or any successor Executive order or to comply with any statutory requirement, or any request to declassify government records. Identification of such amounts in such budget justification materials must be in a single display that shows the total amount for the Department of Defense and the amount for each military department and defense agency.

Reason the Report Should be Repealed: This requirement was enacted in 1999 at a time when the congressional defense committees and the Department were concerned that the cumulative effect of recent statutes, Executive orders, and pending legislation requiring increased levels of effort to declassify DoD records could result in an unwarranted financial burden on the Department. Congress enacted annual expenditure caps for declassification activities in the fiscal year 2000 and 2001 authorization acts. Since that time, improved accounting practices have provided a better insight into the Department's declassification expenses. We also now have the benefit of several years of additional experience in this activity. Both DoD and the Congress now understand that the concerns that resulted in section 230 of title 10 did not materialize. Congress reflected this in not enacting a cap on declassification expenses in the National Defense Authorization Act for Fiscal Year 2002. Since this issue is resolved, the provision serves no further purpose and is unnecessary.

(5) *Chapter 23 (Miscellaneous Studies and Reports) of title 10 repeals:*

Report Title: **Personnel and Unit Readiness Quarterly Reports**

Code Provision: 10 U.S.C. §482

Not later than 45 days after the end of each calendar-year quarter, the Secretary of Defense must submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on military readiness.

Reason the Report Should be Repealed: Instead of quarterly readiness reporting, we are proposing all readiness information be delivered to the congressional defense committees through a classified web readiness portal. This section eliminates the formal quarterly readiness reporting requirement, and provides for electronic access to the products of the DoD readiness system. In short, this section allows for more timely and focused readiness information to Congress.

Report Title: **Reports on Transfers from High-Priority Readiness Appropriations**

Code Provision: 10 U.S.C. §483

Not later than the date on which the President submits the budget for the fiscal year to Congress pursuant to section 1105 of title 31, the Secretary of Defense must submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the

Committee on Armed Services of the House of Representatives a report on transfers during the preceding fiscal year from funds available for each covered budget activity. Also, not later than the date on which the President submits the budget for the fiscal year to Congress pursuant to section 1105 of title 31, the Secretary of Defense must submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services of the House of Representatives a report on transfers during the preceding fiscal year from funds available for each covered budget activity.

Reason the Report Should be Repealed: The Department already provides various detailed reports to the Congress such as the rebaseline report, which provides the execution track requested by the Congress; the DD 1415 reprogramming request, which provides detailed movement of funds prior to execution; and the DD 1002 execution status report, which provides detailed execution on a monthly basis. These reports have been tailored to provide useful and meaningful data requested by the Congress. Accordingly, this reporting requirement is redundant.

Report Title: **Annual Report on Aircraft Inventory**

Code Provision: 10 U.S.C. §484

The Under Secretary of Defense (Comptroller) is required to report to Congress each year on the aircraft in the inventory of the Department of Defense. The report is required when the President submits the budget to Congress under section 1105(a) of title 31. It must specify the inventory for the active and reserve components and categorize the aircraft in four major areas each with multiple subcategories.

Reason the Report Should be Repealed: This report is unnecessary because the data is readily available through other sources.

Report Title: **Unit Operations Tempo and Personnel Tempo: Annual Report**

Code Provision: 10 U.S.C. §487

The Secretary of Defense must include in the annual report to Congress required by section 113(c) a description of the operations tempo and personnel tempo of the Armed Forces.

Reason the Report Should be Repealed: This report has become irrelevant due to the implementation by the Office of the Secretary of Defense and the services of new personnel tempo standards and accounting procedures. These standards have created a uniform approach to personnel tempo management throughout DOD. Personnel tempo information is available in a number of fora and would appear on the readiness portal proposed for all readiness data.

(6) Report Title: **Authorized Strength: General and Flag Officers on Active Duty**

Code Provision: 10 U.S.C. §526(c)

Not later than 60 days before various personnel actions regarding general or flag officers may become effective, the Secretary of Defense must submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing notice of the intended action and an analytically based justification for the intended action.

Reason the Report Should be Repealed: There are numerous sections in title 10 that require specific grades for statutory positions with a requirement for notification if a change is made. The report is not necessary. If the Secretary wants to change the grade of any of the specified positions, he must request a waiver or a change in the law governing that position.

(7) Report Title: **General and Flag Officers - Limitation on Appointments, Assignments, Details and Duties Outside an Officer's Own Service**

Code Provision: 10 U.S.C. §721(d)

The Secretary of Defense must submit to Congress an annual report on the number of officers holding multiple positions during the year covered by the report. The report must set forth the determination made by the Secretary under that paragraph in each such case.

Reason the Report Should be Repealed: No more than 26.5 percent of the number of general or flag officers on active duty may serve in positions external to the officer's armed force. Since February, 1986, the Department has maintained a no-growth policy on the number of general and flag officers in the joint arena. The Secretary of Defense is the approval authority for all exceptions to this policy. The Department maintains that the number of general and flag officers serving in external positions must be tightly controlled. The 26.5 percent limitation sufficiently controls the number of general and flag officers who may be assigned to external positions. Accordingly, the instant report is unnecessary.

(8) Report Title: **Security Clearances: Limitations**

Code Provision: 10 U.S.C. §986(e)

Not later than February 1 of each year, the Secretary of Defense must submit to the Committees on Armed Services of the Senate and the House of Representatives a report identifying each security clearance waiver granted during the preceding year with an explanation for each case of the disqualifying factor regarding the person being granted the security clearance, and the reason for the waiver of the disqualification.

Reason the Report Should be Repealed: The report never has been submitted because no waivers have been granted.

(9) Report Title: **Health Care Services Incurred on Behalf of Covered Beneficiaries: Collection from Third-party Payers**

Code Provision: 10 U.S.C. §1095(g)

Amounts collected under this section from a third-party payer or under any other provision of law from any other payer for the costs of health care services provided at or through a facility of the uniformed services must be credited to the appropriation supporting the maintenance and operation of the facility and must not be taken into consideration in establishing the operating budget of the facility. Not later than February 15 of each year, the Secretary of Defense must submit to Congress a report specifying for each facility of the uniformed services the amount credited to the facility under this subsection during the preceding fiscal year.

Reason the Report Should be Repealed: The initial third-party collection report to Congress satisfied this requirement because it fully set forth all collection procedures and policies at DOD military treatment facilities. As there have been no further Congressional inquiries about the program or data, the Department considers that the resources expended in complying with this reporting requirement far outweigh its usefulness.

(10) Report Title: **Timeliness Standards for Disposition of Applications Before Correction Boards**

Code Provision: 10 U.S.C. §1557(e)

The Secretary of the military department concerned must submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report not later than June 1 following any fiscal year during which the Corrections Board of that Secretary's military department was unable to meet the applicable timeliness standard for that fiscal year. The report must specify the reasons why the standard could not be met and the corrective actions initiated to ensure compliance in the future. The report also must specify the number of waivers granted during the fiscal year.

Reason the Report Should be Repealed: The current reporting requirement creates an undue administrative burden on the agency. DoD corrections boards work diligently to meet current requirements for disposing of claims and this reporting requirement only serves to impede the boards' ability to respond to claims in a timely manner.

(11) Report Title: **Consideration of Proposals for Posthumous and Honorary Promotions and Appointments: Committee Report**

Code Provision: 10 U.S.C. §1563

Upon request of a Member of Congress, the Secretary concerned must review a proposal for the posthumous or honorary promotion or appointment of a member or former member of the Armed Forces, or any other person considered qualified, that is not otherwise authorized by law. Upon making such a determination as to the merits of approving the posthumous or honorary promotion or appointment, the Secretary concerned must submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress notice in writing.

Reason the Report Should be Repealed: Members of Congress have not challenged the merits of a posthumous or honorary appointment or promotion to date, so the report has never been prepared. This reporting requirement would take one hour, one day each month from personnel in five separate offices to prepare.

(12) Report Title: **Civilian Employment Master Plan: Including Exceptions to Guidelines for Reduction and Involuntary Reductions of Civilian Positions**

Code Provision: 10 U.S.C. §1597

The Secretary of Defense must include for each fiscal year a civilian employment master plan for the Department of Defense as a whole and for each military department, defense agency and other principal component of the Department of Defense. The master plan must include a profile of the levels of civilian positions sufficient to establish and maintain a baseline for tracking annual accessions and losses of civilian positions and to provide for the analysis of trends in the levels of civilian positions within the Department of Defense as a whole and for each military department, major subordinate command of each military department, defense agency, and other principal component of the Department of Defense and other information. The Secretary of Defense cannot implement any involuntary reduction or furlough of civilian positions in a military department, defense agency, or other component of the Department of Defense until the expiration of the 45-day period beginning on the date on which the Secretary submits to Congress a report setting forth the reasons why such reductions or furloughs are required and a description of any change in workload or position requirements that will result from such reductions or furloughs.

Reason the Report Should be Repealed: This type of static "master plan" which Congress requested in 1990 legislation, has been superceded by organic and dynamic strategic human resources planning. Tracking data for the civilian workforce is available in the Defense Manpower Data Center. With regard to subsection (d), it is Defense policy to report to Congress any proposed reduction in force of substantial numbers of employees or where there is a special interests to one or more members of Congress.

(13) Report Title: **Child Care Services and Youth Program Services for Dependents: Financial Assistance for Providers**

Code Provision: 10 U.S.C. §1798(d)

Every two years, the Secretary of Defense must submit to Congress a report on child care services and youth program services for dependents of members of the armed services. The report must include an evaluation of the effectiveness of the programs and can include recommendations for legislation that the Secretary considers appropriate to enhance the capability of the Department of Defense to attain the objectives.

Reason the Report Should be Repealed: The requirement to report every two years is burdensome and redundant. The military child and youth services program is under constant scrutiny and highly responsive to specific Congressional interest in policies, procedures and programs. Data for answers to focused inquiries is available in the military departments' annual reports.

(14) Report Title: **Child Care Services and Youth Program Services for Dependents: Participation by Children and Youth Otherwise Ineligible**

Code Provision: 10 U.S.C. §1799(d)

The Secretary of Defense may authorize participation in child care or youth programs of the Department of Defense, to the extent of the availability of space and services, by children and youth under the age of 19 who are not dependents of members of the Armed Forces or of employees of the Department of Defense and are not otherwise eligible for participation in those programs. Every two years the Secretary of Defense must submit to Congress a report on the exercise of such authority.

Reason the Report Should be Repealed: The requirement to report every two years is burdensome and redundant. The military child and youth services program is under constant scrutiny and highly responsive to specific Congressional interest in policies, procedures and programs. Data for answers to focused inquiries is readily accessed in the military departments' annual reports.

(15) Report Title: **Participation of Developing Countries in Combined Exercises: Payment of Incremental Expenses**

Code Provision: 10 U.S.C. §2010

The Secretary of Defense must submit to Congress a report each year, not later than March 1, containing a list of the developing countries for which payment of incremental

expenses have been paid by the United States during the preceding year; and the amounts expended on behalf of each government.

Reason the Report Should be Repealed: This report is unnecessary. There is no record of this report ever being submitted. Although required, the data has never been requested by the Congress or any staffers and is, therefore, not useful or meaningful.

(16) Report Title: **Special Operations Forces: Training with Friendly Foreign Forces**

Code Provision: 10 U.S.C. §2011

Not later than April 1 of each year, the Secretary of Defense must submit to Congress a report regarding special forces training with friendly foreign forces during the preceding fiscal year for which expenses were paid by the U.S. Each report must specify all countries in which that training was conducted; the type of training conducted, including whether such training was related to counter-narcotics or counter-terrorism activities, the duration of that training, the number of the Armed Forces involved, and expenses paid; the extent of participation by foreign military forces, including the number and service affiliation of foreign military personnel involved and physical and financial contribution of each host nation to the training effort; the relationship of that training to other overseas training programs conducted by the Armed Forces, a summary of the expenditures under this section resulting from the training for which expenses were paid under this section; and a discussion of the unique military training benefit to United States Special Operations Forces derived from the training activities for which expenses were paid under this section.

Reason the Report Should be Repealed: This report has been submitted as required for the past four fiscal years. It is overly burdensome. The expenses of foreign countries participating in training, especially developing countries, are extremely difficult to identify accurately. As a result, the report contains estimates which cannot be verified and are of limited usefulness. The Department has received no queries from the Congress concerning the contents of the reports submitted to date. The report is overly time-consuming as evidenced by the estimate that a total of two manyears are expended in the collection and verification of the required data.

(17) Report Title: **Sales of Articles and Services of Defense Industrial Facilities to Purchasers Outside the Department of Defense**

Code Provision: 10 U.S.C. §2208(j)(2)

The Secretary of Defense may waive the conditions regarding a working capital funded industrial facility to sell articles to persons outside the Department of Defense if the Secretary determines that such a waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

Reason the Report Should be Repealed: The report is unnecessary and overly burdensome.

(18) Report Title: **Performance Based Management: Acquisition Programs**

Code Provision: 10 U.S.C. §2220

The Secretary of Defense must include in the annual report submitted to Congress pursuant to section 113(c) of title 10 an assessment of whether major acquisition programs of the Department of Defense are achieving on average, 90 percent of cost performance.

Reason the Report Should be Repealed: This report is redundant. Cost, schedule, and performance breaches of major acquisition program baselines are reported in the selected acquisition reports (10 U.S.C. 2432), and tracking acquisition cycle time is included as a perennial metric in the Government Performance Results Act report.

(19) Report Title: **Aircraft Accident Investigation Boards: Composition Requirements - Waiver**

Code Provision: 10 U.S.C. §2255(b)

The Secretary of the military department concerned can waive the membership of boards requirement in the case of an aircraft accident if the Secretary determines that it is not practicable to meet the requirement because of the remote location of the aircraft accident; an urgent need to promptly begin the investigation; or a lack of available persons outside the mishap unit who have adequate knowledge and expertise regarding the type of aircraft involved in the accident. The Secretary must notify Congress of a waiver and the reasons for it. Air Force and Navy regulations on aircraft missile, nuclear, and space accident investigations already require the majority of accident board members to be from outside the existing chain of command, a higher standard than the statute requires.

Reason the Report Should be Repealed: The Air Force has never requested a waiver to the statutory requirement, and given the higher regulatory standards, such requests are not anticipated. The report is unnecessary because any such waiver requests are unlikely in the future given the higher standard already enforced by regulation.

(20) Report Title: **Annual Report on B-2 Bomber**

Code Provision: 10 U.S.C. §2282

Section 2282 of title 10, United States Code, enacted by section 131(a) of the National Defense Authorization Act for Fiscal Year 2001, requires the Secretary of Defense to submit an annual report to the Senate Armed Services Committee and the House National Security

Committee on the B-2 bomber program. Specifically, the Act requires the Secretary to provide a report each year to identify the average full-mission capable rate of B-2 aircraft for the previous fiscal year and determine whether the rate is adequate for accomplishing the B-2's missions; to provide an assessment of B-2 technical capabilities and whether these capabilities are adequate for missions assigned to the aircraft; to identify all ongoing and planned aircraft capability enhancements; to identify and assess additional capabilities that make the aircraft more survivable and effective against known and evolving threats; and to provide a fiscally phased program for new initiatives to include the President's current budget, the current DoD unfunded priority list, and the maximum executable funding for B-2 aircraft given the requirement to maintain sufficient operational ready aircraft for assigned missions.

Reason the Report Should be Repealed: This report is no longer necessary. The B-2 bomber has been operational for years and has demonstrated repeatedly its ability to accomplish assigned missions. The B-2 bomber was successfully used in conflict as part of Operation Allied Force, and when combined with the Joint Direct Attack Munition, demonstrated the highest rate of target destruction of any aircraft/weapon combination. Although the mission capable rate has averaged slightly above 37% for FY 2000, the 509th Bomb Wing demonstrated the ability to surge during Allied Force. While flying 30-hour missions from Whiteman AFB, the B-2 mission capable rate averaged more than 50%, which exceeds Air Combat Command's standard for the B-2. During peacetime operations, a B-2 that is not mission capable due to a low observable maintenance problem is fully capable of flying training sorties to maintain aircrew proficiency and readiness and therefore the low observable maintenance problem does not significantly affect the B-2's ability to perform assigned missions.

(21) Report Title: **Contracts: Consideration of National Security Objectives.**

Code Provision: 10 U.S.C. §2327(c)(1)

If the Secretary of Defense determines that entering into a contract with a firm or a subsidiary of a firm is not inconsistent with the national security of the U.S., the head of an agency may enter into a contract with such firm or subsidiary after the date on which such head of an agency submits to Congress a report on the contract. The report must include the identity of the foreign government concerned; the nature of the contract; the extent of ownership or control of the firm or subsidiary concerned or, if appropriate in the case of a subsidiary, by the foreign government concerned or the agency or instrumentality of such foreign government; and the reasons for entering into the contract.

Reason the Report Should be Repealed: The benefit of submitting this report prior to contract award, if any, is outweighed by the burden and costs of preparing the report and associated delay. Also, should a procurement arise where the Secretary of Defense determines that entering into a contract with a firm owned or controlled by a foreign government that supports international terrorism is consistent with the national security objectives of the United

States, the delay caused by submitting the report to Congress before contract award may adversely impact defense operations. No waivers have been requested in the past 3 years.

(22) Report Title: **Cooperative Research and Development Projects**

Code Provision: 10 U.S.C. 2350a:

Subsection (f)—Not later than March 1 of each year, the Under Secretary of Defense for Acquisition, Technology and Logistics must submit to the Speaker of the House of Representatives and the Committees on Armed Services and Appropriations of the Senate a report on cooperative research and development projects. Each report must include a description of the status, funding, and schedule of existing projects carried out for which memoranda of understanding (or other formal agreements) have been entered into; and a description of the purpose, funding, and schedule of any new projects proposed to be carried out (including those projects for which memoranda of understanding (or other formal agreements) have not yet been entered into) for which funds have been included in the budget submitted to Congress.

Reason the Report Should be Repealed: The low dollar amounts and the types of technologies involved in the vast majority of the cooperative programs detailed in this report do not rise to the level of congressional interest items. The report further is unnecessary because the Congress can obtain relevant information on high-cost cooperative programs, such as the Joint Strike Fighter, through other congressional filings and reports.

Subsection (g)—The Secretary of Defense must submit to Congress each year, no later than March 1, a report containing information on the equipment, munitions and technologies manufactured and developed by major allies of the United States and other friendly foreign countries that were evaluated during the previous fiscal year; the obligation of any funds during the previous fiscal year; and the equipment, munitions, and technologies that were tested and procured during the previous fiscal year.

Reason the Report Should be Repealed: The report summarizes Department of Defense test and evaluation of foreign non-developmental items for use by U.S. military forces. It is unnecessary because it is of limited use to Congress, since individual members generally express interest only in particular projects, and not in the program in its entirety. The Department has demonstrated it consistently meets its goal of qualifying foreign items quickly and cost effectively.

(23) Report Title: **Procurement of Communications Support and Related Supplies and Services**

Code Provision: 10 U.S.C. §2350f(c)

As an alternative means of obtaining communications support and related supplies and services, the Secretary of Defense, subject to approval by the Secretary of State, may enter into a bilateral arrangement with any allied country or allied international organization or may enter into a multilateral arrangement with allied countries and allied international organizations, under which, in return for being provided communication support and related supplies and services, the United States would agree to provide to the allied country or countries or allied organization or organizations, as the case may be, an equivalent value of communications support and related supplies and services. The term of the arrangement may not exceed five years. The Secretary of Defense must submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of all documents evidencing such an arrangement not later than 45 days after entering into the arrangement.

Reason the Report Should be Repealed: The report is unnecessary. These agreements are routinely reported to Congress under the Case-Zablocki Act (1 U.S.C. 112b), so the requirement to submit such agreements separately to Congress is redundant. Furthermore, we have had 18 years of experience with these agreements since the authority for them was enacted by Congress in 1984, and this established record should demonstrate that continuing agreement-by-agreement oversight is unnecessary.

(24) Report Title: **Armed Forces Relocation in Foreign Nation Report**

Code Provision: 10 U.S.C. §2350k(d)

Not later than 30 days after the end of each fiscal year, the Secretary must submit to Congress a report specifying the amount of the contributions accepted by the Secretary from any nation because of relocation of U.S. Armed Forces within that nation during the preceding fiscal year and the purposes for which the contributions were made; and the amount of the contributions expended by the Secretary during the preceding fiscal year and the purposes for which the contributions were expended.

Reason the Report Should be Repealed: This report is unnecessary. The information it imparts may be obtained through other means. Further, section 2350k provides very specific requirements for the use of the contributions. Further reporting on such use is redundant.

(25) Report Title: **Federally Funded Research and Development Center Workload Effort**

Code Provision: 10 U.S.C. §2367(d)

In the documents provided to Congress by the Secretary of Defense in support of the budget submitted by the President, the Secretary must set forth the proposed amount of man-years of effort to be funded by the Department of Defense for each federally funded research and development center for the fiscal year covered by that budget. After the close of a fiscal year,

and not later than January 1 of the next year, the Secretary of Defense must submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services of the House of Representatives a report setting forth the actual obligations and the actual man-years of effort expended at each federally funded research and development center during that fiscal year. It is a requirement for man-hours in the budget year.

Reason the Report Should be Repealed: The report is unnecessary because the Department closely manages its Federally Funded Research and Development Centers and needs management flexibility to use resources in support of such Centers to satisfy Defense requirements. Congress will continue to receive an annual DoD report of actual Federally Funded Research and Development Center usage making the instant report redundant.

(26) Report Title: **Military Base Reuse Studies and Community Planning Assistance**

Code Provision: 10 U.S.C. §2391(c)

The Secretary of Defense must submit a report not later than December 1 of each year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives concerning military base reuse studies and community planning assistance during the preceding fiscal year. Each such report must identify each state, unit of local government, and regional organization that received a grant under this section during the fiscal year and the total amount granted during such year to each state, unit of local government and regional organization.

Reason the Report Should be Repealed: The report is redundant because the information readily is available through the base closure and realignment process.

(27) Report Title: **Operational Test and Evaluation: Director's Annual Report (Inclusion of Waivers Granted under Section 2399(e)(2))**

Code Provision: 10 U.S.C. §2399(g)

As part of the annual report of the Director of Operational Test and Evaluation under section 139 of title 10, the Director must describe for each program covered in the report the status of test and evaluation activities in comparison with the test and evaluation master plan for that program, as approved by the Director. The Director must include in the annual report a description of each waiver granted since the last such report.

Reason the Report Should be Repealed: In the eight years since the provision was enacted, there has never been a waiver by the Director of Operational Test and Evaluation to allow a contractor that participated in development or production of a weapon system to perform test and evaluation. This semiannual report is unnecessary.

(28) Report Title: **Requirement for Authorization by Law of Certain Contracts Relating to Vessels and Aircraft**

Code Provision: 10 U.S.C. §2401

The Secretary must notify the Committees on Armed Services and the Committees on Appropriations of the Congress of his intention to issue a solicitation and contract to lease or charter in which the terms of the contract provide for a substantial termination liability on the part of the U.S. The Secretary must provide a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than providing for the lease, charter, or services involved through purchase of a vessel or aircraft to be used under the contract. The Secretary must then wait for a period of 30 days of continuous session of Congress following the date on which notice was received.

Reason the Report Should be Repealed: The reporting requirement in section 2401 is unnecessary because to enter into the leases authorized, the Secretary already must request an authorization of funds for that purpose. The reporting requirement therefore is redundant.

(29) Report Title: **Waiver on Prohibition on Contracting with Entities That Comply with the Secondary Arab Boycott of Israel.**

Code Provision: 10 U.S.C. §2410i(c)

It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any other United States person. Consistent with the policy, DoD may not award a contract for an amount in excess of the small purchase threshold to a foreign entity unless that entity certifies to the Secretary of Defense that it does not comply with the secondary Arab boycott of Israel. The Secretary may waive the prohibition in specific instances when he determines that it is necessary to our national security interests. Within 15 days after the end of each fiscal year, the Secretary of Defense must submit to Congress a report identifying each contract for which a waiver was granted during that fiscal year.

Reason the Report Should be Repealed: The report is unnecessary because the reports that the Department has submitted to Congress have only included waivers for contracts funded by other nations under the foreign military sales program. The benefits these reports provide, if any, are outweighed by the burden and costs of preparing them. Waivers to this law become part of the permanent contract file and are available upon request. Responding to a specific Congressional request for information would be more responsive and cost effective than automatically submitting standard annual reports. No waivers have been processed since 1995.

(30) Report Title: **Standardization of Equipment with North Atlantic Treaty Organization Members**

Code Provision: 10 U.S.C. §2457(d)

It is the policy of the U.S. to standardize equipment, including weapons systems, ammunition, and fuel, procured for the use of U.S. Armed Forces stationed in Europe under the North Atlantic Treaty or at least to make that equipment interoperable with equipment of other members of NATO. Before February 1, 1989, and biennially thereafter, the Secretary of Defense must submit a report to Congress that includes each specific assessment and evaluation made and the results of each assessment and evaluation as well as the results achieved with the members of NATO; procurement action initiated on each new major system not complying with that policy; procurement action initiated on each new major system that is not standardized or interoperable with equipment of other members of NATO, including a description of the system chosen and the reason for choosing that system; the identity of each program of research and development for U.S. Armed Forces stationed in Europe; action of the alliance toward common NATO requirements if none exists; efforts to establish a regular procedure and mechanism in NATO to determine common military requirements; a description of each existing and planned program of the Department of Defense that supports the development or procurement of a weapon system or other military equipment originally developed or procured by members of the organization other than the United States and for which funds have been authorized to be appropriated for the fiscal year in which the report is submitted, including a summary listing of the amount of funds and a description of each weapon system or other military equipment originally developed or procured in the United States and that is being developed or procured by members of the organization other than the United States during the fiscal year for which the report is submitted.

Reason the Report Should be Repealed: This reporting requirement was initiated in 1989. Since then standardization within NATO has been for the most part realized. This requirement is outdated and unnecessary.

(31) Report Title: **Core Logistics Functions - Waiver**

Code Provision: 10 U.S.C. §2464(b)(3)

The Secretary of Defense may waive requirements for performance workload needed to maintain a logistics capability provided such waiver is made under regulations prescribed by the Secretary and is based on a determination by the Secretary that government performance of the activity or function is no longer required for national defense reasons. Such regulations must include criteria for determining whether government performance of any such activity or function is no longer required for national defense reasons. A waiver may not take effect until the expiration of the first period of 30 days of continuous session of Congress that begins on or after the date on which the Secretary submits a report on the waiver 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.

Reason the Report Should be Repealed: This reporting requirement concerns notification of waiver for OMB Circular A-76 action on workloads no longer required to be performed by the government to support core logistics capabilities for national defense reasons. The waiver has never been used, and this reporting requirement duplicates other A-76 information provided to the Congress.

(32) Report Title: **Authorized Commissary Merchandise Categories**

Code Provision: 10 U.S.C. §2486(b)

The Secretary must submit to Congress, not later than March 1 of each year, a report describing any addition of, or change in, a merchandise category proposed to be made for sale in commissaries during the one-year period beginning on that date; and those additions and changes in merchandise categories actually made during the preceding one-year period.

Reason the Report Should be Repealed: A report is required whether or not any changes have been made or are being proposed. Reporting should be required only on the occasion that changes have actually been made or proposed, and not on an annual basis.

(33) Report Title: **Overseas Commissary Stores: Access and Purchase Restrictions**

Code Provision: 10 U.S.C. §2492(c)

The Secretary of Defense must submit to Congress an annual report describing the host nation laws and the treaty obligations of the United States, and the conditions within host nations, that necessitate the use of quantity or other restrictions on purchases in commissary and exchange stores located outside the United States.

Reason the Report Should be Repealed: Reporting should be required only on the occasion that changes have actually been made or proposed, and not on an annual basis. This reporting requirement was established on December 1, 1999, and there have been no changes to the report since that first reporting year. In fact, the 2000 and 2001 reports were identical except for minor variations in the report format.

(34) Report Title: **Fisher House: Administration as Nonappropriated Fund Instrumentality**

Code Provision: 10 U.S.C. §2493(g)

Not later than January 15 of each year the Secretary of each military department must submit to Congress a report describing the operation of Fisher Houses and Fisher Suites associated with health care facilities of that military department.

Reason the Report Should be Repealed: This has been an established, successful program for many years and an operational report is unnecessary.

(35) Report Title: **Department of Defense Technology and Industrial Base Policy Guidance: Annual Report to Congress**

Code Provision: 10 U.S.C. §2504

Section 2504 requires that the Secretary of Defense submit an annual report to the Committees on Armed Services of the Senate and the House of Representatives by March 1st. The report must include descriptions of Department of Defense industrial and technological guidance issued to facilitate the attainment of national security objectives, including any guidance providing for the integration of industrial and technological capabilities considerations into its budget allocation, weapons acquisition, and logistics support decision processes; methods and analyses undertaken by the Department, alone or in cooperation with other Federal agencies, to identify and address industrial and technological capabilities concerns; industrial and technological capabilities assessments prepared pursuant to section 2505 of title 10; other analyses used in developing the Department's budget submission for the next fiscal year, including a determination as to whether identified instances of foreign dependency adversely impact warfighting superiority; and finally, the Department's programs and actions designed to sustain specific essential technological and industrial capabilities.

Reason the Report Should be Repealed: The report no longer is necessary. Congress established this reporting requirement to ensure that the Department prescribed policies and procedures, performed analyses, and took actions necessary to sustain the industrial and technological capabilities needed to meet projected defense requirements in an era of sharp reductions in defense spending and a rapidly consolidating defense industry.

Today, the defense budget has stabilized and is increasing. The U.S. defense industrial base no longer is shrinking. The Department has submitted the required report annually since 1997 and demonstrated that it is meeting its responsibilities in a timely and effective manner. The report is a summary of DoD industrial capabilities-related activities completed during the previous calendar year. It contains no original information and is of limited utility to the Congress.

The Department will continue to analyze important elements of the national technology and industrial base in accordance with the requirements of section 2503 of title 10, perform periodic defense capability assessments in accordance with section 2505, and prescribe appropriate departmental guidance in accordance with section 2506.

(36) Report Title: **Improved National Defense Control of Technology Diversions Overseas.**

Code Provision: 10 U.S.C. §2537(b)

The Secretary of Defense and the Secretary of Energy each must collect and maintain a data base containing a list and other information on contractors with the Department of Defense and the Department of Energy, respectively, that are controlled by foreign persons. The data base must contain information on such contractors since 1988 if awarded contracts exceeding $100,000 in any single year by DoD or the Department of Energy. The Secretary of Defense, the Secretary of Energy, and the Secretary of Commerce must submit to the Congress, by March 31 of each year, a report containing a summary and analysis of the information collected for the year covered by the report. The report also must include an analysis of accumulated foreign ownership of U.S. firms engaged in the development of defense critical technologies.

Reason the Report Should be Repealed: There are no existing data bases to identify which contractors are foreign controlled. This report places additional and undue burdens on contractors, the Department of Defense, and the Department of Energy.

(37) Report Title: **Articles and Services of Industrial Facilities: Sale to Persons Outside the Department of Defense**

Code Provision: 10 U.S.C. §2563(c)

The Secretary of Defense can waive the condition that an article or service must not be available from a United States commercial source in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

Reason the Report Should be Repealed: The report is an intrusion into the Secretary's authority. For a report to be made, the Secretary would have made a decision that a waiver from the requirement that an article is not available from a commercial source is based on national security. Such determinations are not made lightly. Statutory oversight in this regard is unnecessary.

(38) Report Title: **Asia-Pacific Center for Security Studies: Acceptance of Foreign Gifts and Donations**

Code Provision: 10 U.S.C. §2611

The Secretary of Defense can accept, on behalf of the Asia-Pacific center, foreign gifts or donations in order to defray the costs of, or enhance the operation of, the Asia-Pacific Center. If the total amount of funds accepted in any fiscal year exceeds $2,000,000, for that fiscal year, the Secretary must notify Congress of the amount of the donations. The notice must list each of the contributors and the amount of each contribution in that fiscal year.

Reason the Report Should be Repealed: This report is unnecessary because the Asia-Pacific Center has not received any foreign gifts or donations totaling over $2m in any fiscal year.

(39) Report Title: **Supplies: Preference to United States Vessels**

Code Provision: 10 U.S.C. §2631(b)

The Secretary of Defense can waive the requirement regarding work on certain vessels being performed in the United States if the Secretary determines the waiver is critical to the national security of the United States. The Secretary must immediately notify the Congress of any such waiver and the reasons for the waiver.

Reason the Report Should be Repealed: The report is unnecessary. It has never been submitted and work outside the United States that would generate such a report is not anticipated.

(40) Report Title: **Real Property Transactions - Lease of Rental Property by GSA for DoD in Excess of $500,000**

Code Provision: 10 U.S.C. §2662(e)

No element of the Department of Defense can occupy any general purpose space leased for it by the General Services Administration at an annual rental in excess of $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 expiration of 30 days from the date upon which a report of the facts concerning the proposed occupancy is submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

Reason the Report Should be Repealed: This report is unnecessary because appropriations committee report language directs the Services to report on leases exceeding this threshold prior to execution. There may be some redundancy in these reporting requirements.

(41) Report Title: **Leases: Non-excess Property of Military Departments.**

Code Provision: 10 U.S.C. §2667(d)(3)

As part of the request for authorizations of appropriations submitted to the Committee on Armed Services of the Senate and Committee on Armed Services of the House of Representatives for each fiscal year, the Secretary of Defense must include an accounting of the receipt and use of all money rentals that were deposited and expended during the fiscal year preceding the fiscal year in which the request is made; and a detailed explanation of each lease entered into, and of each amendment made to existing leases, during the preceding year.

Reason the Report Should be Repealed: Now that the Department of Defense has had several years of experience with this program, the original purpose of the report has been amply fulfilled and it should be eliminated. Overall program levels, which will continue to be reported in the budget, remain very stable from year to year. Because the program consists of hundreds of relatively small leases all of which are at fair market value, the Congress has not indicated any interest. The report, however, is expensive to compile. It does not have sufficient value to justify its continuing expense.

(42) Report Title: **Acquisition: Limitation on Real Property Not Owned by the United States**

Code Provision: 10 U.S.C. §2676(d):

No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. Limitations on reduction in scope or the increase in cost of a land acquisition do not apply if the reduction in scope or increase in cost, as the case may be, is approved by the Secretary concerned and a written notification of the facts is submitted by the Secretary to the appropriate committees of Congress. 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.

Reason the Report Should be Repealed: The Department of the Army keeps track of costs and seeks supplemental appropriations without using this authority and report. The Department of the Navy has not needed to submit the report for over five years.

(43) Report Title: **Utility Systems: Conveyance Authority: Notice-and-Wait Requirement**

Code Provision: 10 U.S.C. §2688(e)

The Secretary concerned may not make a conveyance for a utility system until the Secretary submits 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 an economic analysis (based upon accepted life-cycle costing procedures approved by the Secretary of Defense) demonstrating that (a) the long-term economic benefit of the conveyance to the United States exceeds the long-term economic cost of the conveyance to the United States; and the conveyance will reduce the long-term costs of the United States for utility services provided by the utility system concerned. The Department must wait for a period of 21 days to elapse after the date on which the economic analysis is received by the committees.

Reason the Report Should be Repealed: The provisions of section 2688 are sufficient to protect congressional interests in this area. Section 2688 is very specific concerning the

requirements for any such conveyance. A further notice and wait provision is unnecessary to ensure an appropriate management decision.

(44) Report Title: **Screening of Real Property for Further Federal Use Before Conveyance**

Code Provision: 10 U.S.C. §2696

If the Administrator of General Services notifies the Secretary concerned that further Federal use of a parcel of real property authorized or required to be conveyed by any provision of law is requested by a Federal agency, the Secretary concerned must submit a copy of the notice to Congress. The Secretary concerned submits the notice with regard to a parcel of real property and may not proceed with the conveyance of the real property if the Congress enacts a law rescinding the conveyance authority or requirement before the end of the 180-day period beginning on the date on which the notice was received by Congress.

Reason the Report Should be Repealed: The report is unnecessary. The Administration has sufficient processes in place to determine the need for actions such as the disposal of property. The current notification procedures in section 2696, which are not being changed, are sufficient to place the Administration on notice of a further need for property should that have escaped the comment processes on the legislation that initiated the transfer or prior departmental action. Additional Congressional intervention into a uniquely Administration action is an example of the inappropriate uses of Congressional reporting requirements. If there is a provision of law requiring the transfer of the property, the President, under his authority in section 3 of article 2 of the Constitution can recommend its repeal. Should there be a Federal action to transfer the property, the Administration is the appropriate body to determine the issue.

(45) Report Title: **Unspecified Minor Construction**

Code Provision: 10 U.S.C. §2805(b)

An unspecified minor military construction project costing more than $500,000 may not be carried out unless approved in advance by the Secretary concerned. When a decision is made to carry out an unspecified minor military construction project which requires advance approval the Secretary concerned must notify the appropriate Committees of Congress of that decision and 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.

Reason the Report Should be Repealed: The report is unnecessary because our military departments have developed adequate internal controls for unspecified minor construction projects.

(46) Report Title: **Architectural and Engineering Services and Construction Design**

Code Provision: 10 U.S.C. §2807(b)

Within amounts appropriated for military construction and military family housing, the Secretary concerned may obtain architectural and engineering services and may carry out construction design in connection with military construction projects not otherwise authorized by law. Amounts available for such purposes may be used for construction management of projects that are funded by foreign governments directly or through international organizations and for which elements of the Armed Forces of the United States are the primary user. In the case of architectural and engineering services and construction design to be undertaken for which the estimated cost exceeds $500,000, the Secretary concerned must notify the appropriate Committees of Congress of the scope of the proposed project and the estimated cost of such services not less than 21 days before the initial obligation of funds for such services.

Reason the Report Should be Repealed: The report is unnecessary because notifications do not give a complete picture of all designs ongoing at an installation and are unnecessary for the design of congressionally added projects.

(47) Report Title: **Long-term Facilities Contracts for Certain Activities and Services**

Code Provision: 10 U.S.C. §2809(f)

A contract may not be entered into under this section until the Secretary concerned submits to the appropriate committees of Congress, 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) that demonstrates the proposed contract is cost effective when compared with alternative means of furnishing the same facility; and a period of 21 calendar days has expired following the date on which the justification and the economic analysis are received by the Committees.

Reason the Report Should be Repealed: This report is unnecessary because annual budget requests provide the same information.

(48) Report Title: **Lease-purchase of Facilities**

Code Provision: 10 U.S.C. §2812(c)

The Secretary concerned may not enter into a lease under this section until the Secretary submits to the appropriate committees of Congress 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 a period of 21 days has expired following the date on which the justification and economic analysis are received by the committees.

Reason the Report Should be Repealed: This report is unnecessary. Due to scoring under the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act, the lease purchase authorized under section 2812 is rare. Other controls already are in place in section 2812 including provisions governing what can be leased and the number of leases that are authorized each year.

(49) Report Title: **Acquisition of Existing Facilities in Lieu of Authorized Construction - Notice**

Code Provision: 10 U.S.C. §2813(c)

A contract may not be entered into for the acquisition of a facility until the end of the 30-day period beginning on the date the Secretary concerned transmits to Congress a written notification of the determination to acquire an existing facility instead of carrying out an authorized military construction project. The notification must include the reasons for acquiring the facility.

Reason the Report Should be Repealed: This report is unnecessary. That the Secretary determines to use existing facilities to meet agency needs rather than to proceed with an authorized construction project is a management decision within the parameters of the Secretary's responsibilities. The authorization and appropriations process demonstrates the requirement and departmental needs. Section 2813 provides the authority for the Secretary to act and specific requirements for such unusual circumstances. Further reporting will delay the project and undercut the efficiencies section 2813 is designed to accomplish.

(50) Report Title: **Relocation of Military Family Housing Units**

Code Provision: 10 U.S.C. §2827(b)

The Secretary concerned may relocate existing military family housing units from any location where the number of such units exceeds requirements for military family housing to any military installation where there is a shortage. A contract to carry out a relocation of military family housing units may not be awarded until the Secretary concerned notifies Congress of the proposed new locations of the housing units and the estimated cost of and source of funds for the relocation, and a period of 21 days has elapsed after the notification has been received by those Committees.

Reason the Report Should be Repealed: The report is unnecessary. It is redundant with other reporting requirements and the authority to relocate units is, at best, infrequently used. Should the need arise, the likely funding source for relocation would either be the improvements or maintenance accounts of the family housing appropriation. Both are subject to reporting requirements if costs are in excess of certain thresholds.

(51) Report Title: **Leasing of Military Family Housing**

Code Provision: 10 U.S.C. §2828(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 the Secretary concerned provides to the appropriate Committees of Congress written notification of the facts concerning the proposed lease, and a period of 21 days elapses after the notification is received by those committees.

Reason the Report Should be Repealed: The report is unnecessary. Appropriations committee report language directs the Services to report on leases exceeding this threshold prior to execution. This reporting requirement is redundant to the appropriations process.

(52) Report Title: **Long-term Leasing of Military Family Housing to Be Constructed**

Code Provision: 10 U.S.C. §2835(b)

The Secretary of a military department may enter into a contract for the lease of family housing units to be constructed or rehabilitated to residential use near a military installation within the United States under the Secretary's jurisdiction at which there is a shortage of family housing.

Reason the Report Should be Repealed: The report is unnecessary. The budget material submitted to Congress by the Secretary of Defense includes materials that identify the military housing projects for which lease contracts are proposed to be entered in each fiscal year.

(53) Report Title: **Military Housing Rental Guarantee Program**

Code Provision: 10 U.S.C. §2836(b)

The Secretary of a military department, or the Secretary of Transportation, with respect to the Coast Guard, may enter into agreements for military housing rental guarantee projects. The budget material submitted to Congress by the Secretary of Defense must include materials that identify the military housing rental guarantee projects for which agreements are proposed to be entered in that fiscal year.

Reason the Report Should be Repealed: This requirement is unnecessary. The authority for guarantees under section 2836 is very specific. Currently, it requires the Secretary to include notice of such guarantees in the submitted budget. The budget submissions in this area are sufficiently precise to put the Congress on notice of a proposed housing rental guarantee program.

(54) Report Title: **Limited Partnerships with Private Developers of Housing - Selection of Investment Opportunities**

Code Provision: 10 U.S.C. §2837(c)(2) and (f)

Section 2837(c)(2) -- The Secretary concerned must use publicly advertised, competitively negotiated, contracting procedures, as provided in chapter 137 of title 10, to enter into limited partnerships for housing. When a decision is made to enter into a housing limited partnership, the Secretary concerned must submit a report in writing to the appropriate committees of Congress. Each report must include the justification for the limited partnership, and a description of the share of such costs to be incurred by the Secretary concerned. The Secretary concerned can then enter into the limited partnership but only after the end of the 21-day period beginning on the date the report is received by those committees.

Section 2837(f) -- This requires an annual report on the Defense Housing Investment Account to be transmitted by the Secretaries concerned specifying the amount and nature of all deposits into the account. The report also requires an accounting of expenditures out of the account.

Reason the Report Should be Repealed: The reports are unnecessary. Such limited partnerships are very rare and most housing privatization is carried out under the authority of sections 2871-2885 of title 10. Section 2837(d) limits expenditures in the account to "such amounts as are provided in advance in appropriation Acts." Accordingly, the Department must seek the authority to expend and the information for such authority is the same as in the required report under subsection (f).

(55) Report Title: **Sale of Electricity from Alternate Energy and Cogeneration Production Facilities**

Code Provision: 10 U.S.C. §2867(c)

Before carrying out a military construction project using proceeds from sales of electric energy, the Secretary concerned must notify Congress in writing of the project, the justification for the project, and the estimated cost of the project. The project may be carried out only after the end of the 21-day period beginning on the date the notification is received by Congress.

Reason the Report Should be Repealed: This report is no longer necessary. It was initially required in 1984. Since that time military construction authorization and appropriations requirements obviate the need for further congressional management on the issue.

(56) Report Title: **Academy of Health Sciences: Admission of Civilians in Physician Assistant Training Program**

Code Provision: 10 U.S.C. §4416(f)

Each year, the Secretary of the Army must submit to Congress a report on the exchange of physician assistant services under this section. The report must contain the number of civilian students who receive instruction at the academy under this section, and an assessment of the benefits derived by the United States.

Reason the Report Should be Repealed: This report is unnecessary. It relates to a minor exchange program within the Army. This reporting requirement is a Congressional intrusion into a basically ministerial program that enhances our overall training at the Army's Academy of Health Sciences.

(57) Report Title: **Temporary Promotions of Certain Navy Lieutenants; Limitation on Number of Eligible Positions**

Code Provision: 10 U.S.C. §5721(f)

Whenever the Secretary of the Navy makes a change to the positions that hold temporary promotions above lieutenants based on a skill with a critical shortage of personnel, the Secretary must submit notice of the change in writing to Congress**.**

Reason the Report Should be Repealed: This report is unnecessary. The number of positions is capped and there is very little value in providing minute details of billet descriptions for congressional oversight. Removing this requirement further permits the Navy to be more flexible and efficient in making billet/position changes in response to new missions and requirements.

(58) Report Title: **Acceptance of Guarantees in Connection with Gifts to Military Service Academies (Air Force)**

Code Provision: 10 U.S.C. §9356:

The Secretary of the Air Force may not accept a qualified guarantee for a gift to the Air Force Academy for the completion of a major project until after the expiration of 30 days following the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress.

Reason the Report Should be Repealed: This report is unnecessary. Donations under this authority will be examined carefully by legal counsel. The qualified guarantee is a standard banking practice that is used throughout the United States for substantial donations to universities and colleges. The banking industry will not provide the guarantee without careful consideration of the plans.

(59) Report Title: **Ready Reserve Order to Active Duty in Time of National Emergency**

Code Provision: 10 U.S.C. §12302(b)

In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, 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. The Secretary of Defense shall prescribe policies and procedures as he considers necessary to carry out this provision. He must report on those policies and procedures at least once a year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

Reason the Report Should be Repealed: The language in subsections (b) and (d) are from the original language in the 1950's when the reserve component was different from the active component. The need to make sure the reserve component was treated fairly was a valid concern due to WWII and Korea experiences. With the advent of the all volunteer force; total force policy; significantly increased integration; and standardization of training, equipment, and deployment methods, the reserve component is now very similar to the active component. The requirement in subsection (b) to report on fair treatment of the Ready Reserve only serves to distinguish the reserve components unnecessarily.

The reporting requirement in paragraph (d) is superfluous and of little value. We currently inform the committees and each member of Congress when a reserve component unit or reservists in the relevant Congress person's district are ordered to active duty. Typically, the Congress person is given more information than provided in the required report. Today, whole units are seldom ordered to active duty so basing the report on a unit metric is of no consequence. For the most part, the Department now is mixing and matching units with reserve component and active component personnel to form multi-component units or "rainbow units." We provide the location of the unit by area of responsibility of the unified combatant command to which it is assigned. To give exact locations would classify the report. Many units, both active and reserve, serve in split locations and move frequently, so the information is quickly out-of-date.

(b) Section 908 of the Defense Acquisition Improvement Act of 1986 (10 U.S.C. 2326 note):

Report Title: **Audits of Undefinitized Contractual Actions**

The DoD Inspector General periodically must conduct an audit of contractual actions under the jurisdiction of the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretaries of the military departments. After each such audit, the Secretary must submit to Congress a report on the management of undefinitized contractual actions by each Secretary,

including the amount of contractual actions under the jurisdiction of each Secretary that is represented by undefinitized contractual actions.

Reason the Report Should be Repealed: The current statute requires periodic audits of undefinitized contractual actions by the DoD Inspector General. The number of statutorily required audits has increased the past few years, while resources have declined. Since this audit requirement was enacted a decade ago, oversight has increased for undefinitized contractual actions and related financial management, resulting in diminished need for a special audit emphasis by the Inspector General. The Inspector General needs more flexibility to plan audits based on greatest program risk or highest potential return.

(c) Section 542 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 107 Stat. 1659; 10 U.S.C. 113 note):

Report Title: **Proposed Changes in Policies Regarding Combat Assignments of Female Members**

Whenever the Secretary of Defense proposes to change military personnel policies in order to make available to female Members of the Armed Forces assignment to any type of combat unit, class of combat vessel, or type of combat platform that is not open to such assignments, the Secretary must, not less than 30 days before such change is implemented, transmit to the Committees on Armed Services of the Senate and the House of Representatives notice of the proposed change in personnel policy.

Reason the Report Should be Repealed: The Department of Defense policy for the assignment and utilization of women in the Armed Forces provides definitive guidelines and has been followed since its promulgation in 1994. Congressional notification of any changes to the policy is unnecessary and detracts from the personnel readiness of our Armed Forces.

(d) Section 553(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2772; 10 U.S.C. 6951 note):

Report Title: **Prohibition on Imposition of Additional Charges or Fees for Attendance at Certain Academies**

No charge or fee for tuition, room, or board for attendance at a military academy may be imposed unless the charge or fee is specifically authorized. The Secretary of Defense must notify Congress of any change made by an academy in the amount of such a charge or authorized fee.

Reason the Report Should be Repealed: This report is unnecessary. The Service Academies have no authority to impose charges for tuition, room, and board for midshipmen and cadets. Reimbursement to the Government for tuition expenses is authorized by 10 U.S.C. 2005, but only after a midshipman or cadet breeches their agreement to serve and the Secretary

concerned determines that involuntary separation and disenrollment are appropriate. Superintendents of the Service Academies have no independent authority to direct financial recoupment.

(e) Section 234 of the Ballistic Missile Defense Act of 1995 (Public Law 104-106; 110 Stat. 229, 231; 10 U.S.C. 2431 note):

Report Title: **Weapons Development and Procurement Schedules**

Whenever, after January 1, 1993, the Secretary of Defense issues a certification with respect to the compliance of a particular theater missile defense system with the Anti-Ballistic Missile Treaty, the Secretary must transmit to the Committees on Armed Services of the Senate and the House of Representatives a copy of such certification. The certification must be transmitted not later than 30 days after the date on which the certification is issued.

Reason the Report Should be Repealed: The reporting requirement is unnecessary. The December 13, 2001 announcement of the U.S. withdrawal from the Anti-Ballistic Missile Treaty makes certification of theater missile defense system limitations under such treaty no longer relevant.

(g) Section 1006 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398 Appendix; 114 Stat. 1654A-247; 10 U.S.C. 2226 note):

Report Title: **Contracted Property and Services: Prompt Payment of Vouchers**

If for any month of the noncompliance reporting period the requirement in section 2226 of title 10, United States Code, regarding the prompt payment of vouchers, is not met, the Secretary of Defense must submit to the Committees on Armed Services a report on the magnitude of such unpaid contract vouchers. The report for any month must be submitted no later than 30 days after the end of that month.

Reason the Report Should be Repealed: The report is unnecessary because to date, the Department has never exceeded the 5% threshold. The reporting requirement was to monitor Defense Finance and Accounting Service's progress to reduce over-aged invoices. The Defense Finance and Accounting Service has successfully demonstrated an ability to maintain less than 5% overage.

(h) Section 8019 of the Department of Defense Appropriations Act, 2001 (Public Law 106-259; 114 Stat. 678; 10 U.S.C. 2687 note):

Report Title: **Executive Agreements with NATO Members**

During any fiscal year, the Secretary of Defense may, by executive agreement, establish with host nation governments in NATO member States a separate account into which residual value amounts negotiated in the return of United States military installations in NATO member States may be deposited, in the currency of the host nation, in lieu of direct monetary transfers to the United States Treasury. Each such executive agreement with a NATO member host nation must be reported to the Congressional Defense Committees, the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate 30 days prior to the conclusion and endorsement of the agreement.

Reason the Report Should be Repealed: This report is unnecessary because it is redundant. The Department provides an annual report to Congress on the status of the DoD's residual value negotiations. The report provides the status of on-going negotiations with foreign governments and lists the installations under negotiation along with the summary of payments received from concluded negotiations.

Section 1012 would amend section 481 of title 10, United States Code, to change the frequency of the surveys. The surveys would be administered not less than once every four years.

These surveys should not be conducted annually. Both the race/ethnic and the gender/sexual harassment surveys were designed to benchmark behavioral changes. However, behavioral change is incremental, so attitudinal changes from year to year are usually small. Whatever change occurs is subject to over-interpretation. Therefore, shifts in these behaviors are best tracked through surveys conducted periodically, so trends can be monitored. For example, the U. S. Merit Systems Protection Board, responsible for tracking Federal civilian sexual harassment incidence rates, administered its survey in 1980, 1987, and 1994. This section would change the frequency of the Department of Defense surveys from annually to once every four years.

Section 1013. The Quadrennial Defense Review (QDR) is an important planning tool for the Department of Defense. The concept of reviewing those items required by the QDR early in a new Administration is sound public policy. Subsequent core documents, including the annual Defense Planning Guidance, contingency planning guidance, and other important Department statements, flow from the work of the QDR. Important decisions that may extend beyond the life of the QDR are made in the course of formulating it.

The most recent QDR, for example, focused in large part on shifting the basis of defense planning from a "threat-based" model to a "capabilities-based" model for the future, that is, it sought to transform America's defense for the 21st century. It was also the source of a fundamental shift in the Department's force sizing construct away from the nearly decade old two major regional contingency approach to a more flexible model structured on the nature of 21st century conflict as envisioned by the Defense Department senior leaders.

Because of the fundamental importance of the QDR, crafting it involves hundreds of man-hours of work by the Department's senior civilian and military leadership. Experience shows, though, that during the first year of an administration, a substantial number of the key decision makers are not in position until well into the year. This makes it difficult to ensure senior civilian leaders within the Department have the time they need to devote to such a worthy effort as the QDR during their first year in office.

It appears that the obvious intent of the Congress in requiring the QDR following a presidential election year is to permit a new administration to lay out a blueprint for its future defense activities. That goal must be balanced against the lengthy confirmation process for Presidential appointees. Until such time as the latter process can be significantly abbreviated, moving the QDR to the second year after a year divisible by four will avoid the difficulties inherent in simultaneously conducting the QDR and a Presidential transition. This, in turn, will give the senior civilian leadership more time to conduct the type of critical review of all aspects of the Department's operations, as envisioned by the statute.

Section 1021. Current language in section 172 of title 10, United States Code, could allow other regulatory agencies to regulate DoD operations, with operations on military ranges being most significantly at risk. In the past few years, the Environmental Protection Agency (EPA) has questioned the DoD Explosive Safety Board's (DDESB's) authority to regulate explosives safety beyond the authority granted in the Congressional language. In particular, EPA questions DDESB's authority on military ranges. This section will clarify the authority of DDESB to establish minimum explosives safety standards for all DoD facilities without limiting these to storage, and include the explosives safety aspects of, among other things, clearance of unexploded ordnance (UXO) at current DoD facilities and also at formerly used Defense sites (FUDS). This section does not conflict with EPA's authority for cleanup of environmental contamination.

Section 1022. Originally, section 2493 of title 10, United States Code, required all three military departments to use only nonappropriated funds to fund their Fisher Houses. Section 914 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398) amended section 2493 to authorize the Navy to use appropriated funds as well. Specifically, section 2493(f) currently authorizes the Navy to provide their Fisher Houses with base operating support equivalent to the support the Navy provides for morale, welfare, and recreation category B community activities, thus ensuring that Navy Fisher Houses are adequately funded. This section would amend section 2493(f) to extend this authority to all military departments.

The additional cost of this section to the appropriated funds is less than $1 million per year each for the Army and Air Force. This cost will be absorbed in current O&M funding.

Section 1023 would make Intelligence Senior Level employees eligible for Presidential Rank Awards, as are senior career employees under section 4507a of title 5, United States Code.

Section 4507 of title 5, United States Code, authorizes the President to award the rank of either Meritorious Executive or Distinguished Executive career appointee. Similarly, section 1606 of title 10, United States Code, which provides for the establishment of a Defense Intelligence Senior Executive Service, authorizes the President to award these ranks to members of the Defense Intelligence Senior Executive Service. Such awards are an important means of recognizing sustained extraordinary accomplishment, and they represent a valuable management tool for motivating and recognizing truly exceptional performers among senior career employees.

Public Law 107-67 makes senior career employees, including Senior Level employees, eligible for these rank awards. Given that Congress has extended eligibility to senior career employees, the same should be extended to Intelligence senior-level employees and managers. This section makes Intelligence Senior Level employees and managers eligible for Presidential Rank Awards, similar to that which was recently done for senior career employees.

Section 1024. The purpose of this section is to enhance the security of certain Department of Defense operations that use commercial modes of transportation.

Subsection (a) would amend chapter 157 of title 10, United States Code, by adding a new section addressing arms and munitions shipments within the United States. This amendment would make the Secretary of Defense primarily responsible for protection of shipments of Department of Defense (DoD) arms, ammunition, and explosives within the United States, its territories, and possessions, to ensure they are reasonably secure from pilferage, theft or hostile action. The Secretary is authorized to establish a security program utilizing armed escorts for such shipments, including those conducted by commercial means. The vast majority of goods owned by, or being shipped to, the Department of Defense are transported by commercial entities under contract to DoD or another DoD contractor. This includes arms, ammunition, and explosives, some of which are considered hazardous materials by virtue of their explosive or chemical properties. It also includes shipments of weapons or weapons system components that, while not themselves hazardous, are attractive targets for pilferage, theft, or other hostile action. Security measures currently applicable to such shipments are focused primarily on motor carriers and are imposed via contract. Most involve positive tracking of certain shipments and minimizing the amount of time in transit during which those shipments are not physically moving.

The section will provide the Department of Defense the flexibility to use other than military personnel to escort these shipments. The Department of Defense currently performs this function using Reserve Forces that have been called to active duty. The Department of Transportation is responsible under current law for the transportation of hazardous materials, however, their regulations address only safety and packaging issues. Department of Transportation regulations do not address the security of arms, ammunition and explosives or the use of armed escorts for this type of shipment. The proposed amendment exempts armed escorts of DoD shipments from state and local weapons laws that might impinge upon their ability to perform the escort function. The escorts would be authorized to carry firearms, arrest individuals

committing federal crimes in their presence, and have some limited law enforcement authority while on duty. The section requires the Secretary of Defense to prescribe regulations governing the selection, training, use and oversight of armed escorts. The Department of Defense regulations must be approved by the U.S. Attorney General prior to any exercise of this new authority.

Subsection (b) would amend section 132 of the Aviation and Transportation Security Act (Public Law 107-71). The proposed subsection addresses the operation of, and passengers, baggage, and cargo carried by, aircraft chartered to provide transportation to the Armed Forces and would exempt such aircraft from the provisions of the Act. These flights are performed by certificated air carriers operating in full compliance with applicable Federal Aviation Regulations. However, Armed Forces operational and readiness needs have required development of procedures that vary from those used in the commercial context. The movement of large numbers of armed passengers, for example, is both common and necessary to meet mission requirements. In addition, the Armed Forces charter flights frequently originate at general aviation or military airfields that lack the passenger, baggage, and cargo-handling infrastructure found at commercial airports. Passenger, baggage, and cargo processing in such instances are significantly different than that used in commercial operations, and must often be performed by military personnel. Passenger manifests are compiled by the Armed Forces branch concerned rather than the air carrier, and may be accomplished in environments that do not lend themselves to automation or the collection of extensive passenger data. As many of the operations will involve classified missions, procedures applicable to the commercial sector are not appropriate for use with DoD missions.

Unless amended as proposed to exempt Armed Forces charter flights from its coverage, the Act will have a direct and significant adverse impact on military readiness by limiting the airfields available for Armed Forces charter operations to those where Transportation Security Administration personnel are available; by delaying deployments as a result of applying screening standards designed for commercial operations to Armed Forces passengers and cargo; and by requiring manifest data in circumstances in which practical and operational reasons may preclude compliance. Some provisions of the Act may also conflict with the proposed responsibilities and authorities of the Secretary of Defense to safeguard Department of Defense arms and ammunition shipments utilizing chartered commercial aircraft operating from military airfields. Under this section, the Secretary of Defense will be required to prescribe security procedures for charter operations, permitting such procedures to be tailored to the operational environment.

Section 1025. The Asia-Pacific Center for Security Studies (CENTER) mission is to enhance cooperation and build relationships through mutual understanding and the study of comprehensive security issues among military and civilian representatives of the United States and other Asia-Pacific nations. The CENTER was established per DoD Directive 5200.38 dated 29 Jan 96, under the authority of the Secretary of Defense. The CENTER is an element of the

United States Pacific Command and is authorized personnel, facilities, funds, and other resources necessary to carry out its mission.

Authority for the CENTER to accept foreign gifts and donations was previously enacted by the FY00 Defense Authorization Act, which amended Chapter 155 of title 10, United States Code, by adding new section 2611. This proposed provision would amend the previously-approved authority to accept foreign donations by expanding the potential donors to include domestic as well as foreign sources, similar to that already provided to the Center of Excellence in Disaster Management and Humanitarian Assistance under section 182 of title 10, and the George C. Marshall European Center for Security Studies under section 1065 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201). Such authority is crucial to enable accepting anticipated funds from various domestic organizations interested in supporting the Center's efforts. The additional income so obtained would be used to help defray costs and enhance operations, permitting acceptance of donations in the form of funds, materials, property, or services from domestic sources, within ethical guidelines to be developed by the Secretary of Defense. Funds would be merged with other Operations and Maintenance funds available to the CENTER.

Section 1101. In 1995, the government of Norway approached the U.S. Department of Defense to request the United States join a military collaboration to address military environmental problems in Northwest Russia. The collaboration included the militaries of the U.S., Norway and the Russian Federation. The urgency of the Norwegian request was fueled by the potential of cross-border pollution from the Russian military activities, particularly nuclear submarine dismantlement. The United States agreed in principle to support Norway, a valuable NATO ally, and helped to form the Arctic Military Environmental Cooperation Program. This program not only supports a valuable NATO ally, but it has also been identified in the report to Congress required by Public Law 106-255 as one of the key U.S. programs that addresses environmental concerns with serious cross-border implications in Northwest Russia. It is also one of the few programs that successfully involves the Russian military in addressing environmental issues.

This request would expand the authority contained in section 327 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-261; 112 Stat. 1965) and make it permanent as a provision in title 10 resulting in a broader area of interest as opposed to the currently restricted Arctic regional emphasis of the current program. This program is strongly supported by United States' allies in NATO. It is important to build on the success of the program by expanding the geographic area and by allowing cooperation with militaries in both the Arctic and Western Pacific. Implementation of the program is subject, however, to the conclusion of an agreement with Russia and Norway providing the same rights, privileges, immunities and exemptions that U.S. personnel and U.S. activities enjoy under other assistance programs with Russia. The proposed legislation enables DOD to continue and expand a valuable program for cooperation with other military forces in a venue that is constructive, non-threatening, and uncontroversial.

Section 1102. Section 1051 of title 10, United States Code, authorizes United States funding to support Partnership for Peace travel only within the theater commander's area of responsibility (AOR). This precludes the use of Warsaw Initiative funds to support the travel of officials from countries in the European Command's (EUCOM) AOR (who receive Warsaw Initiative funding) to any country outside Europe, the Middle East, or North Africa. For example, if an individual from one of the Partner countries, such as Moldova, wanted to participate in a conference hosted in Uzbekistan, current authorities would prohibit Warsaw Initiative funds being used to pay for that travel. This is due to the fact that the Moldovan would be traveling outside of the EUCOM AOR to a Central Command (CENTCOM)-hosted conference. The same issue applies to Partners in the CENTCOM AOR who wish to travel to European countries. Current legislative authority in section 1051 prohibits this.

Finally, unlike CENTCOM, where Partners in that AOR may travel to the U.S. due to the fact that Commander-in-Chief's headquarters is in the U.S., EUCOM Partners are currently prohibited from traveling to the U.S. for a conference using Warsaw Initiative funding. This is due to the fact that the Unified Command resides in Germany and not the U.S., making travel to the U.S. by a EUCOM Partner outside the Commander-in-Chief's AOR.

Inasmuch as the focus of the Warsaw Initiative program is to enhance our defense reform and interoperability goals with Partnership for Peace countries and transition them away from Soviet-style ideals and methodology, we have sought to increase our contacts with Partner militaries via conferences, seminars, exchanges. Unfortunately, section 1051 impedes our ability to reach out to more then one Partner, a fundamental goal, when providing a conference or seminar that will impact and potentially benefit more than one region. It additionally precludes more "lessons learned" type of exposure that seminars, conferences, and exchanges would foster.

Section 1103. The proposed changes would enable the Department of Transportation to support shared logistics operations with an organization established by a mutual defense treaty to which the United States is a party, a state-party to such a treaty, an international organization of which the United States is a member by treaty or otherwise, or a country with respect to which the President determines cooperation under this subsection is important to the national security of the United States. The ability to issue insurance for vessels pursuant to an agreement with these organizations would allow the sharing of risk of loss between multiple countries. Such a provision would allow greater use of foreign vessels and distribute the risk of loss of a ship during a contingency to these carriers. Currently there is a disproportionate reliance, and thus an increased risk of loss, to U.S. flag carriers.

The section would authorize the receipt of contributions from other countries to offset losses sustained by United States flag shippers participating in shared logistics operations and insured pursuant to this program. These contributions would be deposited in the fund and would relieve the Department of Defense or other United States Departments or agencies, acting as an indemnifying agency, of the obligation to reimburse the fund to the extent of any contributions received.

The changes further would authorize the Secretary of Transportation to utilize borrowing authority to obtain sufficient funds to cover liabilities incurred in support of war risk insurance coverage.

If enacted, this section could increase the budgetary requirements of the United States Government.

Section 1201. This provision would be codified under title 10 of the United States Code, Armed Forces. It is designed to ensure that the Armed Forces of the United States are ready for the first day of combat while defining some of the environmental stewardship responsibilities of the military departments.

Military readiness is essential to the security of the United States, to the protection of the lives and well-being of our citizens, and to the preservation of our freedoms, economic prosperity, and our environmental heritage. A well-trained and well-equipped military is a principal component of military readiness, and to be well-trained and prepared, soldiers, sailors, Marines, and airmen must train in the same manner as they fight. Testing of military equipment, vehicles, weaponry, and sensors is also a principal component of military readiness. In this regard, live-fire testing and training are an integral and necessary part of realistic military operations, testing, and training. Military lands and test and training ranges (including land, sea and air training, testing, and operating areas) exist to ensure military preparedness by providing realistic test and training opportunities.

The shield of military readiness protects our Nation's environment—our land, air, and water, as well as the fish, wildlife, and plant species that inhabit them. In addition to defending against foreign threats, the military acts as trustee, helping to protect the environment by its prudent and conscientious management of the natural resources of our military lands. Largely as a result of this stewardship, military lands present acceptable habitat for plants and wildlife, including protected species.

The Defense Department is proud of its record of environmental stewardship and is committed to maintaining and improving its stewardship in future. Our successful stewardship reflects not only the conscientious efforts of the men and women of the Armed Forces but also the overall compatibility of the Department's mission with environmental protection.

In recent years, however, novel interpretations and extensions of environmental laws and regulations, along with such factors as population growth and economic development, have significantly restricted the military's access to and use of military lands and test and training ranges, and limited its ability to engage in live-fire testing and training. This phenomenon—known as "encroachment"—has markedly restricted the military's ability to test and train realistically and, unless checked, promises to produce further restrictions in the future. Encroachment has already negatively affected military readiness and will continue to erode it

unless this trend is halted. In some cases, environmental litigation threatens to thwart the primary mission of key military facilities.

National security requires that the military be able to train effectively, adequately test systems realistically before fielding, and conduct military operations. Environmental litigation seeking to extend existing laws and regulations into contexts for which they were not designed, and which frustrate the use of military lands and test and training ranges for their intended purposes, requires focused legislation to ensure that military readiness receives appropriate consideration.

This legislation is narrowly tailored to protect military readiness activities, not the whole scope of Defense Department activities. The thrust of the legislation is to prevent further extension of regulation rather than to roll back existing regulation. It also includes a number of provisions designed to enhance the synergy between military readiness and environmental protection, including provisions encouraging creation of environmental buffer zones around military facilities.

Section 2015. Purposes.

This section sets out the purposes of this chapter and directs the Secretary of Defense to implement the chapter consistent with those purposes. The chapter promotes military readiness by addressing problems created by encroachment on military lands, airspace, and training and testing while ensuring that the Department of Defense remains mindful of its stewardship responsibilities. It reaffirms the principle that military lands and airspace exist to ensure military preparedness. Finally, it establishes the appropriate balance between military readiness and environmental regulation and establishes a framework to ensure the long-term sustainability of military test and training ranges.

Section 2016. Definitions.

This section provides definitions for the terms "military readiness activities," "combat" and "combat use," and the "Department," as they are used in the statute. Through the definition of "Department," military readiness activities of the Coast Guard are covered, both when it operates as a service in the Department of the Navy and when it operates as a component of the Department of Transportation.

Section 2017. Military readiness and the conservation of protected species.

This section clarifies the relationship between military training and a number of provisions in various conservation statutes, including the Sikes Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the Marine Mammal Protection Act.

Subsection (a) provides that Integrated Natural Resources Management Plans under the Sikes Act provide the special management considerations or protection required under the Endangered Species Act and obviate the requirement for designation of critical habitat on military lands for which such Plans have been completed. The Sikes Act requires military installations to prepare plans that integrate the protection of natural resources on military lands with the use of military lands for military training. The U.S. Fish and Wildlife Service and a concerned State wildlife agency are consulted in the preparation of such plans and their concurrence, as well as public comment, is sought on the final plan. Thus, the planning process offers adequate opportunity for consideration of the use of such lands for species conservation.

Subsection (b) clarifies that takes of migratory birds by the Armed Forces in connection with military readiness activities are permitted by Congress under the Migratory Bird Treaty Act. The Department of Defense does not intentionally take migratory birds during its military readiness activities, but in some situations some harm is foreseeable despite mitigation. This section makes it clear that the Migratory Bird Treaty Act permits such military readiness activities. This provision requires the Department to minimize taking of migratory birds to the extent practical and necessary without diminishment of military training or other capabilities, as determined by the Department. In addition, the Department of Defense remains subject to the same permitting requirements as any governmental entity for takes of migratory birds with respect to activities other than military readiness activities.

Subsection (c) clarifies the definition of "harassment" under the Marine Mammal Protection Act as it applies to military readiness activities. To be considered "harassment," an action must injure or have the significant potential to injure a marine mammal; disturb or likely disturb a marine mammal, causing a disruption of natural, behavioral patterns to the point of abandonment or significant alternation; or be directed toward a specific individual, group, or stock of marine mammals, causing a disruption of natural, behavioral patterns.

Section 2018. Conformity with State Implementation Plans for air quality.

This section clarifies the application of the conformity provisions of the Clean Air Act to make them more cooperative and not prohibitory when an activity is undertaken. The section maintains the Department's obligation to conform its military readiness activities to applicable State Implementation Plans but will give the Department of Defense three years to demonstrate conformity. Under the requirements of current law, it is becoming increasingly difficult to base military aircraft near developed areas.

Section 2019. Range management and restoration.

Subsection (a) defines the circumstances in which explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof are included in the definition of "solid waste" under the Solid Waste Disposal Act, and excludes explosives, munitions, munitions fragments, or constituents thereof from the definition of "solid waste" under the Act when such

items are deposited on an operational military range incidental to normal use. Explosives, munitions, or munitions fragments that are removed from a range for reasons other than disposal, such as fragments removed for testing to determine weapon function, are similarly excluded. This provision clarifies and confirms the Environmental Protection Agency's (EPA) Military Munitions Rule.

Subsection (b) provides that the presence of explosives, unexploded ordnance, munitions, munitions fragments, or constituents thereof off an operational range, or the migration off an operational range of such items, constitutes a "release" under the Comprehensive Environmental Restoration, Compensation, and Liability Act (CERCLA), and excludes from the definition of "release" under the Act the presence of explosives, munitions, munitions fragments, or the constituents thereof that have been deposited incidental to normal use on a military range. The provision explicitly preserves the President's authority to address an imminent and substantial endangerment to the public health, welfare, or the environment under section 106(a) of CERCLA, and the Department's authority to protect the environment, safety, and health on operational ranges.

The effect of these two provisions is to establish the governing authorities under which the Department of Defense will manage its operational ranges, including the cleanup thereof. Explosives, munitions, munition fragments, or their constituents that land on and remain on an operational range, or land off range but are promptly rendered safe or retrieved, will be regulated exclusively under the Military Munitions Rule promulgated by EPA. Those that migrate off the range will be addressed under CERCLA. If, however, the Department of Defense does not address explosives, munitions, munition fragments, or their constituents that migrate off range under CERCLA, States may assert Resource Conservation and Recovery Act authority over them.

Section 2020. Agreements with private organizations to address encroachment and other constraints on military training, testing, and operations.

This provision authorizes the Military Departments to enter into agreements with private conservation organizations concerning lands in the vicinity of military installations to limit incompatible uses or preserve habitat so as to eliminate or relieve environmental restrictions on the neighboring installations that could interfere with their military activities. Such agreements can provide for the private organizations to acquire, on a cost-shared basis, interests in such properties.

Such partnerships with private conservation organizations provide the Department with a cost-effective way to protect both military readiness and the environment.

Section 2021. Conveyance of surplus real property for natural resource conservation purposes.

This provision authorizes the Military Departments to convey their surplus real property with natural resource value to state and local governments or nonprofit conservation organizations. It requires the grantee to maintain the property for conservation purposes in perpetuity. This authority would be applicable to property that has become surplus at both closing and operating installations.