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1600 DEFENSE PENTAGON
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APR 19 2002

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

The Department of Defense proposes the enclosed legislation relating to the management and operations of the Department of Defense. These proposals are part of the departmental legislative program for the Second Session of the 107th Congress, and we urge their enactment. The purpose of each proposal is stated more fully in its accompanying section-by-section analysis.

The Department proposes legislation relating to the housing of our civilian teachers at Guantanamo Bay, an expansion of our dependent summer school program, and clarification of our authority relating to United Nations' efforts to inspect and monitor Iraqi weapons systems. We propose an expansion of the Servicemembers' Group Life Insurance program to include Reserve Officer Training Corps cadets, an amendment to the Montgomery GI Bill to authorize the same period of military service to be eligible for loan repayment and tuition subsistence payments, and an income tax provision relating to the retirement programs for our nonappropriated fund employees. We propose legislation to make National driver register information available for security and background investigations; to authorize certain electronic surveillance for murder, kidnaping, and extortion under the Uniform Code of Military Justice; to increase the penalties for violation of certain security regulations; and a technical amendment relating to the interception and disclosure of wire, oral, and electronic communications. We also propose the revision of an audit requirement under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 regarding Federal inspectors general. Finally, we propose an expansion of the emergency fund under the Flood Control Act to include coverage for terrorist attacks or technological or other emergencies.

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

Sincerely,

A handwritten signature in black ink, appearing to read "WJ Haynes II".

William J. Haynes II

Enclosures
As Stated





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APR 19 2002

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

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William J. Haynes II

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**SEC. ____ . AUTHIORIZE QUARTERS ALLOWANCES FOR OVERSEAS TEACHERS
REQUIRED TO LIVE ON MILITARY INSTALLATION.**

1 Section 7(b) of the Defense Department Overseas Teachers Pay and Personnel Practices
2 Act (20 U.S.C. 905(b)) is amended by adding at the end the following new sentence:
3 "Notwithstanding any other provision of law relating to either pay or personnel program for
4 overseas teachers or military housing or that other government owned or rented quarters may be
5 available without charge, an unaccompanied teacher who is assigned to teach at Guantanamo Bay
6 Naval Station, Cuba, may receive a quarters allowance for excess family housing within such
7 station if such housing is otherwise not needed to house members of the armed forces and
8 dependents accompanying them."

Section-by-Section Analysis

This proposal would amend section 905 of title 20, United States Code, to provide a method for the Department of Defense Education Activity (DoDEA) to reimburse the Department of the Navy for its costs associated with making excess family housing available to unaccompanied DoDEA teachers assigned to Guantanamo Bay Naval Station, Cuba. Unaccompanied teachers may stay in Guantanamo Bay Naval BOQ housing without charge. However, they may not occupy family housing without payment to the Navy. By contrast, accompanied teachers are provided family housing without charge. Currently there is excess family housing at Guantanamo Bay that is available for lease from the Department of the Navy. Since DoDEA does not receive a family housing appropriation, it has no mechanism for paying the Navy for leased family housing for its unaccompanied teachers.

Guantanamo Bay is the only posting in DoDEA's worldwide school system where teachers are confined to the military installation at all times. Requiring unaccompanied teachers to stay in BOQ housing has had an adverse impact on DoDEA's efforts to recruit and retain qualified unaccompanied teachers for Guantanamo Bay. This proposal would provide a mechanism to recruit and retain qualified unaccompanied teachers by offering suitable housing more conducive to long-term teaching assignments.

DoDEA currently has 39 teachers at Guantanamo Bay, 10 of whom are on unaccompanied tours of duty. Since 1998, the number of unaccompanied teachers has consistently been 10 or fewer individuals. The estimated total cost of this proposal from Fiscal Year 2002 through Fiscal Year 2006 would range from \$476,000 to \$1.7 million, depending on the number of unaccompanied teachers stationed at Guantanamo Bay.

SEC. ____ . OPTIONS FOR FUNDING DEPENDENT SUMMER SCHOOL PROGRAMS.

1 Section 1402(d)(2) of the Defense Dependents' Education Act of 1978 (title XIV of
2 Public Law 95-561; 20 U.S.C. 921(d)(2)) is amended to read as follows:

3 "(2) The Secretary shall provide any summer school program under this
4 subsection on the same financial basis as programs offered during the regular
5 school year, except that the Secretary may charge reasonable fees for all or
6 portions of such summer school programs to the extent the Secretary determines
7 appropriate."

Section-by-Section Analysis

This proposal would amend section 921(d) of title 20, United States Code, to authorize the Secretary of Defense to provide summer programs on a free basis (*i.e.*, at no cost to those who would normally be entitled to a free public education under the Defense Dependents' Education Act of 1978). Such programs would be funded from the annual appropriation. Those students who would normally be required to pay tuition under section 923 of title 20 would be required to do so for summer school programs as well.

Parents continue to urge Department of Defense Education Activity schools to offer no-fee summer school options for students overseas on par with what is available to students in the United States. Parents and children overseas lack the options available to families stationed in the continental United States for remedial and enrichment summer academic programs. Currently the Department of Defense Dependent School system offers summer school on a pay-as-you-go basis.

**SEC. ____ . CLARIFICATION AND EXTENSION OF AUTHORITY TO PROVIDE
ASSISTANCE TO UNITED NATIONS-SPONSORED EFFORTS TO
INSPECT AND MONITOR IRAQI WEAPONS ACTIVITIES.**

1 (a) LIMITATION ON AMOUNT OF ASSISTANCE IN FISCAL YEAR 2003.—The total amount of
2 the assistance for Fiscal Year 2003 that is provided by the Secretary of Defense under section
3 1505 of the Weapons of Mass Destruction Control Act of 1992 (22 U.S.C. 5859a) as activities of
4 the Department of Defense in support of activities under that Act may not exceed \$15,000,000.

5 (b) EXTENSION OF AUTHORITY TO PROVIDE ASSISTANCE.—Section 1505(f) of the
6 Weapons of Mass Destruction Control Act of 1992 (22 U.S.C. 5859a) is amended by striking
7 “2002” and inserting “2003”.

8 (c) REFERENCES TO UNITED NATIONS SPECIAL COMMISSION ON IRAQ.—Section 1505 of
9 the Weapons of Mass Destruction Control Act of 1992 (22 U.S.C. 5859a) is amended—

10 (1) in subsection (b)(2), by striking “the United Nations Special Commission on
11 Iraq (or any successor organization)” and inserting “United Nations Monitoring,
12 Verification and Inspection Commission”; and

13 (2) in subsection (d)(4)(A), by striking “United Nations Special Commission on
14 Iraq (or any successor organization)” and inserting “United Nations Monitoring,
15 Verification and Inspection Commission”.

Section-by-Section Analysis

This section would continue the Department of Defense’s authority to provide support for weapons inspections and monitoring in Iraq for an additional year. Moreover, this section makes necessary reference amendments, reflecting United Nations Security Council Resolution 1284 that established the United Nations Monitoring, Verification and Inspection Commission as the successor organization to the United Nations Special Commission on Iraq .

**SEC. ____ . SERVICEMEMBERS' GROUP LIFE INSURANCE COVERAGE FOR
ROTC CADETS IN INTRODUCTORY FLIGHT TRAINING.**

- 1 (a) IN GENERAL.—Section 1965 of title 38, United States Code, is amended—
2 (1) in subsection (2)(C), by inserting before the semicolon at the end "or while
3 participating in introductory flight training in a full-time or non-full-time duty status";
4 and
5 (2) in subsection (5)(D), by inserting before the period at the end the following:
6 "or while participating in introductory flight training in a full-time or non-full-time duty
7 status".
8 (b) EFFECTIVE DATE.—The amendments made by this section shall apply to all
9 introductory flight training conducted after the date of enactment of this Act.

Section-by-Section Analysis

This proposal would amend section 1965 of title 38, United States Code, to make Servicemembers' Group Life Insurance coverage available to Reserve Officers Training Corps cadets while participating in introductory flight training, beginning when the authorized travel to the training begins and ending when the authorized travel from the training ends. Specifically, this proposal would revise the definitions of "active duty for training" and "member" to include Reserve Officers Training Corps cadets while participating in introductory flight training in a full-time or non-full-time duty status. Currently, section 1965 only covers ROTC cadets while attending field training or practice cruises. This new coverage would apply to all introductory flight training conducted after the date of enactment of this provision.

**SEC. ____ . ALLOW SAME PERIOD OF ACTIVE DUTY SERVICE TO ESTABLISH
ELIGIBILITY FOR LOAN REPAYMENT PROGRAMS AND
MONTGOMERY GI BILL.**

- 1 Section 3033 of title 38, United States Code, is amended—
2 (1) by striking subsection (b); and
3 (2) by redesignating subsection (c) as subsection (b).

Section-by-Section Analysis

This proposal would enable service members to use the same period of service to establish eligibility for loan repayment and the Montgomery GI Bill (MGIB). Currently, service members have the option of signing up for both MGIB benefits and college loan repayment at an early stage in their first enlistment. However, section 3303(c) of title 38, United States Code, currently allows a member's first term of enlistment to be used to qualify for only one of the programs. Once a member elects college loan repayment, for example, his entitlement to MGIB benefits is lost unless the member reenlists and uses that subsequent term of service to establish eligibility for MGIB benefits. Thus, a member could lose the initial, non-refundable cost of \$1,200 for MGIB benefits if he is unable or unwilling to reenlist. As a result, section 3303(b) has an adverse impact on the use of college loan repayment programs as an effective recruiting tool because the affected member faces the prospect of losing a substantial MGIB education benefit if he does not reenlist. In essence, a new recruit must ponder a reenlistment decision during basic military training.

This proposal would require no increased funding.

**SEC. ____ . EXEMPTION FROM GENERAL NONDISCRIMINATION AND
PARTICIPATION RULES FOR PENSIONS FOR DEPARTMENT OF
DEFENSE NONAPPROPRIATED FUND INSTRUMENTALITIES.**

1 (a) REQUIREMENTS FOR QUALIFICATION.—Section 401(a) of the Internal Revenue Code
2 is amended—

3 (1) in paragraph (5), by adding at the end the following new subparagraph:

4 “(H) Department of Defense Nonappropriated Fund Instrumentality
5 Plans.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the
6 meaning of section 414(d)) maintained by a Department of Defense or Coast Guard
7 Nonappropriated Fund Instrumentality.”; and

8 (2) in paragraph (26)—

9 (A) by redesignated subparagraph (I) as subparagraph (J); and

10 (B) by inserting after subparagraph (H) the following new subparagraph:

11 “(I) Exception for Department of Defense Nonappropriated Fund
12 Instrumentality Plans.—This paragraph shall not apply to a governmental plan (within
13 the meaning of section 414(d)) maintained by a Department of Defense or Coast Guard
14 Nonappropriated Fund Instrumentality.”.

15 (b) CASH OR DEFERRED ARRANGEMENTS.—Section 401(k)(3) of such Code is amended
16 by adding at the end the following new subparagraph:

17 “(H) Treatment of Department of Defense Nonappropriated Fund
18 Instrumentality Plans.—A governmental plan (within the meaning of section 414(d))
19 maintained by a Department of Defense or Coast Guard Nonappropriated Fund
20 Instrumentality shall be treated as meeting the requirements of this paragraph.”.

1 (c) NONDISCRIMINATION REQUIREMENTS.—Section 403(b)(12) of such Code is amended
2 by adding at the end the following new subparagraph:

3 **“(D) Department of Defense Nonappropriated Fund Instrumentality**

4 **Plans.**—For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i)
5 (other than those relating to section 401 (a)(17)) shall not apply to a Department of
6 Defense Nonappropriated Fund Instrumentality.”.

7 (d) AMENDMENT TO THE TREATMENT OF GOVERNMENTAL PLANS FOR TAXABLE YEARS
8 BEGINNING BEFORE THE EFFECTIVE DATE OF THE TAXPAYER RELIEF ACT OF 1997.—Section
9 1505(d)(2) of the Taxpayer Relief Act of 1997 (Public Law 105-34; 111 Stat. 1064) is amended
10 by inserting “or a Department of Defense or Coast Guard Nonappropriated Fund
11 Instrumentality” after “(or agency or instrumentality thereof)”.

Section-by-Section Analysis

This section would exempt Department of Defense nonappropriated fund retirement plans from general nondiscrimination and participation rules. The Taxpayer Relief Act of 1997 granted permanent exemption to state and local governmental pension plans from nondiscrimination standards and required tests under section 401 of the Internal Revenue Code. This exclusion, however, was not granted to federal plans or instrumentalities of the Federal government. For years, the Internal Revenue Service excluded Federal plans alongside state and local plans from application of nondiscrimination standards. This moratorium is currently set to expire January 1, 2003. This section would extend the permanent exemption to Department of Defense nonappropriated fund retirement plans and eliminate unnecessary testing requirements for nonappropriated fund Federal employers.

If enacted, this section would not increase the budgetary requirements of the Department of Defense.

**SEC. ____ . USE OF THE NATIONAL DRIVER REGISTER FOR PERSONNEL
SECURITY INVESTIGATIONS AND DETERMINATIONS.**

1 (a) IN GENERAL.—Chapter 303 of title 49, United States Code, is amended by inserting
2 after section 30305 the following new section:

3 **“§ 30305a. National driver register information for use in personnel security investigations**
4 **and determinations and personnel investigations with regard to Federal**
5 **employment security checks for Federal employment**

6 “An individual who has or who seeks access to national security information for purposes
7 of Executive Order 12968, or successor Executive orders, or an individual who is being
8 investigated for Federal employment under authority of Executive Order 10450, or successor
9 Executive orders, may request that the chief driver licensing official of a State provide
10 information about the individual pursuant to section 30305(a) of this title to a Federal department
11 or agency that is authorized to investigate the individual for the purpose of assisting in the
12 determination of the eligibility of the individual for access to national security information or for
13 Federal employment, as the case may be. The Federal Department or agency that receives such
14 information may use it in accordance with applicable law.”.

15 (b) CLERICAL AMENDMENT.—The table of sections for such chapter 303 of title 49 is
16 amended by inserting after the item relating to section 30305 the following new item:

“30305a. National driver register information for use in in personnel security investigations and determinations and
personnel investigations with regard to Federal employment security checks fo Federal
employment.”.

Section-by-Section Analysis

This amendment authorizes access to the National Driver Register by Federal agencies for use in personnel security investigations and determinations under Executive Order 12968, "Access to Classified Information," August 2, 1995, and for use in personnel investigations and determinations with regard to Federal employment under Executive Order 10450, "Security

requirements for Government employment," April 27, 1953, as amended.

The National Driver Register, authorized by 49 U.S.C. 30305, is a cooperative system managed by the Secretary of Transportation under which the chief driver licensing officials of the States provide information concerning the contents of driver licensing records. Access to the information contained in this system is currently authorized for the chief driver licensing officials of other states to carry out duties related to driver licensing, driver improvement, or transportation safety programs (49 U.S.C. 30305(a)); the Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration to obtain information about an individual who is the subject of an accident investigation conducted by the Board or the Administrator (49 U.S.C. 30305(b)(1)); employers or prospective employers, at the request of an individual employed, or seeking employment, as a driver of a motor vehicle (49 U.S.C. 30305(b)(2)); the Administrator of the Federal Aviation Administration, at the request of the individual concerned, for individuals who have received, or are applying for, an airman's certificate, (49 U.S.C. 30305(b)(3)); employers or prospective employers, at the request of an individual employed, or seeking employment, by a rail carrier as an operator of a locomotive (49 U.S.C. 30305(b)(4)); the Secretary of the department in which the Coast Guard is operating, at the request of an individual who holds, or is applying for, a license or certificate of registry as a merchant mariner (49 U.S.C. 30305(b)(5)); the heads of Federal departments or agencies, for individuals applying for a motor vehicle operator's license from such department or agency (49 U.S.C. 30305(b)(6)); the Commandant of the Coast Guard, at the request of an individual concerned, for applicants or members of the Coast Guard (49 U.S.C. 30305(b)(7)); and prospective employers or the Secretary of Transportation, at the request of the individual concerned, for applicants seeking employment by an air carrier as a pilot (49 U.S.C. 30305(b)(8)).

The National Driver Register draws information from all fifty States and provides records of convictions of individuals for seven driving-related types of conduct: (1) driving under the influence of alcohol; (2) reckless driving; (3) racing on the highways; (4) vehicular homicide; (5) driving license suspensions; (6) failure to provide identification when involved in an accident; and (7) perjury or knowingly making a false affidavit or statement. Information about these types of conduct is highly relevant to determinations about the trustworthiness of individuals holding or seeking access to classified information.

Such information is currently obtained on a sporadic basis by personnel security investigators. For several years Federal agencies' personnel security clearance programs have been burdened by a considerable backlog, and in many cases investigators have elected not to prolong initial background investigations or periodic reinvestigations to review State driver records when they have no indication that the subject has been convicted of an offense that is normally recorded in the States' driver records, and when review of the State's driver records would generate excessive delays because the State requires investigators to travel to a dedicated computer terminal or when investigators would have to review manual data entries. Convictions for more serious offenses such as driving under the influence of alcohol may appear in State criminal history records, which are routinely reviewed by personnel security investigators, but convictions for less serious types of conduct recorded in the National Driver Register are often

not reflected in criminal history records. Enactment of this provision would provide personnel security investigators the same expedited access to information available through the National Driver Register that is provided for the other purposes set out in current law. For the increasing number of States that provide electronic access to driver records through the National Driver Register, obtaining such information would be especially quick and easy. Most importantly, access by personnel security investigators to the information available through the National Driver Register would make it much more likely that information important to security clearance determinations will be discovered.

**SEC. ____ . AUTHORIZE INTERCEPTION UNDER CHAPTER 119 OF TITLE 18 FOR
MURDER, KIDNAPPING, ROBBERY, OR EXTORTION UNDER TITLE
10.**

1 Section 2516(1)(b) of title 18, United States Code, is amended by striking “under this
2 title” and inserting “under Federal law”.

Section-by-Section Analysis

Chapter 119 of title 18, United States Code, permits effective electronic surveillance by law enforcement subject to constitutionally mandated restrictions. Section 2516(1) of title 18 sets out those intrinsically serious offenses which may be investigated using electronic surveillance techniques. These offenses include those involving murder, kidnapping, robbery, or extortion which are punishable under title 18. However, electronic surveillance is not available for the investigation of similar offenses punishable under the Uniform Code of Military Justice (UCMJ) (10 U.S.C. §§ 877-934). This proposal would enable military law enforcement to use electronic surveillance during investigations of similar serious crimes punishable under the Uniform Code of Military Justice.

In two recent investigations, the Air Force Office of Special Investigations was unable to obtain the authorization to conduct electronic surveillance of two military members suspected of committing two separate murders. In each case, local authorities declined to seek such authorization under section 2516(2) of title 18. The U.S. Attorney also was unable to obtain such authorization because the offenses were committed on property where the United States only exercised proprietary jurisdiction. Since these locations were not within the "special maritime jurisdiction of the United States" (*see* 18 U.S.C. § 1111) and did not involve a special circumstance required to state an offense under one of the various title 18 murder statutes (*see e.g.* 18 U.S.C. §§ 113, 115, 1113, 1114, 1117-1121, 1153, 3242), there was no legal basis upon which to authorize an interception under section 2516(1)(b). In both instances the military had jurisdiction over the person (10 U.S.C. § 802) and the offense (*Solario v. United States*, 483 U.S. 435 (1987)). However, in each case military law enforcement authorities were unable to conduct electronic surveillance simply because section 2516(1)(b) does not specifically authorize surveillance for murder punishable under title 10.

The military and civilian criminal justice systems are separate as a matter of law and the provisions of title 18 do not automatically apply to proceedings under the Uniform Code of Military Justice. Those provisions may be applied when they have been specifically incorporated into military law by Congress or by the President. Pursuant to his authority in section 936 of title 10, the President promulgated Military Rule of Evidence 317(b) in 1980. This rule expressly adopts section 2516(1) of title 18 and makes those procedures applicable in the military "to the extent [the offenses listed in section 2516(1)] are punishable under the Uniform Code of Military

Justice." The President's rule, however, cannot broaden the scope of a statute enacted by Congress. Since Congress expressly limited section 2516(1)(b) to offenses involving murder, kidnapping, and extortion punishable under title 18, only Congress can expand the provision to include similar offenses punishable under title 10 that are not otherwise punishable under title 18.

This proposal would close a gap the President was unable to address with Military Rule of Evidence 317(b) and would ensure that investigators of serious crimes under military jurisdiction are not denied the use of valuable investigative tools available to Federal civilian law enforcement authorities.

**SEC. ____ . PROTECTION OF MILITARY FACILITIES; PENALTY ENHANCEMENTS
FOR VIOLATION OF SECURITY REGULATIONS.**

Section 21(a) of the Internal Security Act of 1950 (50 U.S.C. 797) is amended—

- (1) by striking "misdemeanor" and inserting "felony";
- (2) by striking "\$5,000" and inserting "\$10,000"; and
- (3) by striking "one year" and inserting "ten years".

Section-by-Section Analysis

Section 797 of title 50, United States Code, punishes the willful violation of security regulations or orders issued by the Secretary of Defense, or by any military commander designated by the Secretary, for the protection or security of a military facility, waterfront facility, aircraft or vessel. Recent experiences with trespassers on military property have demonstrated that the current misdemeanor criminal penalties are inadequate to prevent violations of security regulations. Enactment of this proposal would enhance the future security of military facilities by creating a greater deterrent to the willful violation of these lawful security regulations.

Specifically, this proposal would provide a more effective legislative scheme to hold offenders accountable and to provide the military adequate statutory authority for the enhanced protection of military facilities. First, the proposal would amend section 797 to increase the penalties for violating security orders that protect military property. The maximum fine would be increased from \$5,000 to \$10,000, and the maximum term of imprisonment would be increased from one year to ten years. This proposal also would extend the protection of section 797 to military ranges.

This proposal would provide a stronger deterrent against the unlawful intrusion upon military property, interference with the security and operations of military facilities, and violation of safety regulations for the protection of navigable waters used by the Armed Forces. Those who intentionally violate these regulations jeopardize their own safety and the safety of the men and women of the Armed Forces. To the extent that their activities impair training opportunities, such people also diminish our military readiness and, therefore, our national security.

Primary enforcement authority and responsibility for base security reside with the Department of Defense. Congress provided the means to achieve that security with the Internal Security Act and establishment of danger zones and restricted areas pursuant to the authority derived from sections 1 and 3 of title 33. This proposal purposefully addresses enforcement as a function of national defense, rather than as a generic simple trespass to federal property under 18 U.S.C. 1382. Increasing the punishment for title 18 trespass is simply inadequate to address the Navy's real security concerns.

This proposal would provide consistency while rounding out a comprehensive legislative scheme for dealing with violations of regulations designed to protect military facilities. For trespasses on land and at military ranges, harbors and waterfront facilities, prosecutors may pursue misdemeanor prosecutions under 18 U.S.C. 1382 or felony prosecutions under 50 U.S.C. 797 (as amended by this proposal). Likewise, misdemeanor prosecutions for unlawful entry into the restricted water areas and danger zones surrounding installations and training ranges may be pursued under 33 U.S.C. 1 and 3, while felony-level prosecutions are appropriate where Magnuson Act Zones have been created pursuant to 50 U.S.C. 191. Finally, 14 U.S.C. 91 provides for felony prosecution of trespasses into naval vessel protection zones (created pursuant to section 91) for vessels that are underway.

Putting some real teeth in these regulations is critical because, in some ways, our installations and the vessels moored at these installations are more vulnerable than the forces garrisoned inland. For land security, a commanding officer can rely upon hard, fixed barriers to protect the installation and provide insulation from a terrorist attack. For waterborne security, a commanding officer does not have that same luxury and must increasingly rely upon the coercive effect of waterborne interceptions. The greatest challenge facing our security forces is determining whether an approaching vessel is a terrorist threat. Any reduction in the number of unauthorized entries into these zones would contribute immensely to the safety and security of the military installation and boaters in the area. This proposal would provide a meaningful deterrent to unlawfully entering these restricted areas, thus reducing the number of contacts a watch stander must track. Our military forces are devoting enormous resources and training to developing effective waterborne security. These efforts would be severely hampered if the steepest punishment available is a misdemeanor conviction. Greater deterrents, in the form of enhanced criminal penalties, are necessary.

**SEC. ____ . CLARIFICATION OF INTELLIGENCE EXCEPTIONS FROM
SUNSET LIMITATIONS ON INTERCEPTION AND DISCLOSURE
OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS.**

1 Section 224 (a) of the Uniting and Strengthening America by Providing
2 Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT)
3 Act of 2001 (Public Law 107-56, 115 Stat. 272), is amended by striking "the
4 amendments made by this title (other than sections 203(a), 203(c), 205" and inserting
5 "the amendments made by this title (other than sections 203(a), 203(c), 204, 205".

Section-by-Section Analysis

Section 204 of the PATRIOT Act, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, 115 Stat. 272), was included in that Act because it clarified that intelligence exceptions from the limitations on interception and disclosure of wire, oral, and electronic communications continue to apply, notwithstanding section 216 of that Act (modification of authorities relating to use of pen registers and trap and trace devices). Section 224 of the Act sunsetted several provisions of the Act on December 31, 2005, but in so doing, it created an anomaly.

The anomaly is that the clarification provision (section 204) was sunsetted, but the section it was intended to clarify (section 216) was not. This means that if not corrected, valuable and necessary intelligence exemptions to the pen register and trap provision would be lost after December 31, 2005. The amendment made by this bill corrects this anomaly by treating the duration of section 204 the same as section 216.

This provision will not entail any costs.

SEC. ____ . REVISION OF AUDIT REQUIREMENT.

1 Section 111(k) of the Comprehensive Environmental Response, Compensation, and
2 Liability Act of 1980 (42 U.S.C. 9611(k)) is amended to read as follows:

3 "(k) The Inspector General of each department or agency to which responsibility to
4 obligate money in the Fund is delegated shall conduct a periodic audit of all payments,
5 obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly
6 administered and that claims are being appropriately and expeditiously considered. Each
7 Inspector General shall submit to the Congress a report of the audit. Each Inspector General
8 shall provide such auditing of the Fund as is appropriate to minimize the risk of mismanagement.
9 Each Federal agency shall cooperate with the Inspector General in carrying out this subsection."

Section-by-Section Analysis

Section 111(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. 9601 et seq.), currently imposes a separate requirement on all Inspectors General to conduct annual audits of all payments, obligations, reimbursements, and other uses of the Superfund, to ensure that the Fund is being properly administered.

This requirement in CERCLA substantially duplicates current audits performed by or under the auspices of the Inspector General, Department of Defense, of the Department's financial statements as required by the Chief Financial Officers (CFO) Act of 1990 (Public Law 101-576; 104 Stat. 2838), as amended. The Office of Management and Budget has additionally imposed a specific requirement on the Corps of Engineers (Civil Works) to provide a separate financial statement, which is audited annually pursuant to the CFO Act. The CFO Act audit generally would include a review of some Superfund transactions and the systems used to process those transactions. Therefore, the separate requirement in CERCLA for performing and reporting Superfund audits should be revised.

The Inspector General's recent annual audits have concluded that the Corps of Engineers has properly administered its portion of the Superfund and that management controls over Superfund monies for which DoD is responsible are adequate. The Superfund financial transactions were 99.7 percent accurate in FY 2000 (Report No. D-2001-174), 99.94 percent

audits of these highly controlled transactions, in which no material or systemic problems have been discovered, is unnecessary and not cost efficient at this time. This revision would allow Inspectors General the discretion to audit Superfund financial transactions on a periodic basis, using their professional judgement of risk and other factors considered in audit planning.

**SEC. ____ . AVAILABILITY OF EMERGENCY FUND FOR TERRORIST ATTACK,
TECHNOLOGICAL EMERGENCY, OR OTHER EMERGENCY.**

1 Section 5(a) of the Act entitled "An Act authorizing the construction of certain public
2 works on rivers and harbors for flood control, and for other purposes", approved August 18, 1941
3 (33 U.S.C. 701n(a)), is further amended—

4 (1) in the first sentence, by inserting "terrorist attack, technological
5 emergency, or other emergency," after "in preparation for emergency response
6 to any natural disaster,"; and

7 (2) by striking the third sentence and inserting "For a period of up to ten days following
8 a request by the Governor of an affected State for an assessment of whether an incident may
9 warrant a major disaster or emergency declaration pursuant to the Robert T. Stafford Disaster
10 Relief and Emergency Assistance Act or until the President declares a major disaster or
11 emergency pursuant to that Act, whichever occurs first, the Chief of Engineers is further
12 authorized to initiate on public and private lands and waters in the area covered by the request
13 any emergency work made necessary by such incident which is essential for the preservation of
14 life and property, including, but not limited to, channel clearance, emergency shore protection,
15 clearance and removal of debris and wreckage endangering public health and safety, and
16 temporary restoration of essential public facilities and services."

Section-by-Section Analysis

This section would amend section 5(a) of the Flood Control Act of August 18, 1941, as amended (33 U.S.C. 701n(a)), to expand the purposes for which an emergency fund established under the Act may be used. The fund, administered by the U.S. Army Corps of Engineers, is currently available to be expended in preparation for emergency response to any natural disaster; in flood fighting and rescue operations; in the repair or restoration of any flood control work threatened or destroyed by flood; in the emergency protection of federally

authorized hurricane or shore protection being threatened; in the provision of emergency supplies of clean water; and for other emergency purposes.

This section would expand authorize uses of the emergency fund to include preparation for emergency response to any "terrorist attack, technological emergency, or other emergency." Currently, the law limits use of the emergency fund to preparation for emergency response to natural disasters. The Corps undertakes limited preparation for response for emergencies other than natural disasters using funding provided for the National Emergency Preparedness Program. This section would allow use of the emergency fund for preparation for emergency response to any type of emergency.

Currently, under the law, only when the Corps of Engineers is flood fighting in an area may it also perform emergency work which is essential to the preservation of life or property, including the temporary restoration of essential public facilities and services, for a ten-day period following a request by the Governor of an affected state for an assessment of whether an incident may warrant a major disaster or emergency declaration pursuant to Robert T. Stafford Disaster Relief and Emergency Assistance Act. This section would allow the Corps of Engineers to initiate essential emergency work in response to any natural disaster, terrorist attack, technological emergency, or other emergency for a limited period of up to ten days following the Governor's request for the assessment or until the President declares a major disaster or emergency.

This section would allow consolidation of planning, response, and recovery operations for all types of emergencies under the emergency fund, creating economies of scale by leveraging similar resources and promoting overall efficiencies in operations. The consolidation would more closely align Corps of Engineers emergency operations with the Federal Response Plan.