

1 **SEC. ____. PERIODIC INSPECTION OF RETIREMENT HOME FACILITIES.**

2 The Armed Forces Retirement Home Act of 1991 (24 U.S.C. 401 et seq.) is amended—

3 (1) in section 1513A(c)(2) (24 U.S.C. 413a(c)(2)), by striking “(including
4 requirements identified in applicable reports of the Inspector General of the Department
5 of Defense)”;

6 (2) in section 1516(b) (24 U.S.C. 416(b)), by striking paragraph (3);

7 (3) in section 1517(e) (24 U.S.C. 417(e)) by striking “the Inspector General of the
8 Department of Defense,” in paragraph (2); and

9 (4) in section 1518 (24 U.S.C. 418)—

10 (A) in the heading, by striking “**BY DEPARTMENT OF DEFENSE**
11 **INSPECTOR GENERAL AND OUTSIDE INSPECTORS**”; and

12 (B) by amending the text to read as follows:

13 “(a) **INSPECTIONS.**—The Chief Operating Officer shall request the inspection of each
14 facility of the Retirement Home by a nationally recognized civilian accrediting organization in
15 accordance with section 1511(g) on a frequency consistent with the standards of such
16 organization.

17 “(b) **AVAILABILITY OF STAFF AND RECORDS.**—The Chief Operating Officer and the
18 Administrator of a facility being inspected under this section shall make all staff, other
19 personnel, and records of the facility available to the civilian accrediting organization in a timely
20 manner for purposes of inspections under this subsection.

21 “(c) **REPORTS**—Not later than 60 days after receiving a report of an inspection from the
22 civilian accrediting organization under this section, the Chief Operating Officer shall submit to

23 the Secretary of Defense, the Senior Medical Advisor, and the Advisory Council a report
24 containing—
25 “(1) the results of the inspection; and
26 “(2) a plan to address any recommendations and other matters set forth in the
27 report.”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would eliminate burdensome and duplicative requirements for the Department of Defense Inspector General (DoDIG) to triennially inspect and report on all aspects of the Armed Forces Retirement Home and its facilities.

Section 1051(d)(1) of the FY18 National Defense Authorization Act has already repealed the requirement for DoDIG inspection reports on AFRH to be transmitted to Congress.

AFRH is routinely inspected by and submits reports to eight different agencies to ensure compliance with government regulations and policies, and to maintain accreditation:

- The Joint Commission (TJC) and The Commission on Accreditation of Rehabilitation Facilities (CARF). Per 24 U.S.C. 411(g), the Chief Operating Officer shall secure and maintain accreditation by a nationally recognized civilian accrediting organization for each aspect of each facility of the Retirement Home, including medical and dental care, pharmacy, independent living, and assisted living and nursing care. In order that each of these areas and all levels of senior living offered at AFRH can meet this requirement, AFRH has needed to select two different civilian accrediting organizations: The Joint Commission (TJC) and The Commission on Accreditation of Rehabilitation Facilities (CARF).

TJC inspects AFRH every three years, and includes comprehensive examination of all levels of health care provided, facilities, fire and safety, security, and human resources. The levels of care accredited by TJC include ambulatory care and the wellness center, nursing care, and home health levels. TJC does not accredit independent living or assisted living.

CARF inspects AFRH every five years and includes comprehensive examination of aging services programs that impact all residents, including those in independent living and assisted living, with emphasis on the broad and inclusive array of a full spectrum senior living community. AFRH submits annual financial reports to CARF.

- Office of Personnel Management (OPM). OPM evaluations of AFRH are conducted every three to five years to assess the effectiveness of human capital programs and human resources activities in the areas of strategic alignment, talent management, results-oriented performance culture and leadership/knowledge management. These evaluations to review HR program compliance with law, regulations and merit system principles including a thorough review of personnel transactions and associated records, published policies, and guidelines that influence the HR decisions made by managers and supervisors.
- Occupational Safety and Health Administration (OSHA). AFRH submits annual reports to OSHA and is subject to random inspections.
- Department of Interior (DOI). DOI provides AFRH support for network, data security and compliance, and web development reporting.
- National Archives and Records Administration (NARA). NARA requires an annual records management assessment detailing AFRH compliance, which includes an email records management report.
- Defense Health Agency (DHA). Per 24 U.S.C. 413a, the Deputy Director of DHA is dual-hatted as the AFRH Senior Medical Advisor (SMA), with responsibilities to:
 - Facilitate and monitor the timely availability to residents such medical, mental health, and dental care services as such residents may require at locations other than the Retirement Home
 - Monitor compliance by facilities of the Retirement Home with accreditation standards, applicable nationally recognized health care standards and requirements, or any other applicable health care standards and
 - Periodically visit each facility of the Retirement Home to review -
 - the medical facilities, medical operations, medical records and reports, and the quality of care provided to residents; and
 - inspections and audits to ensure that appropriate follow-up regarding issues and recommendations raised by such inspections and audits has occurred.
- Office of Management and Budget (OMB). AFRH is required to undergo an annual financial statement audit and comply with the audit provisions of the Chief Financial Officers Act of 1990 (CFO Act) (Pub. L. No. 101-576), as amended, the Government Management Reform Act of 1994 (GMRA) (Pub. L. No. 103-356), and the Federal Financial Management Improvement Act of 1996 (Pub. L. No. 104-208, title VIII. The financial statement audit includes a review of budgetary and restricted resources, internal control over financial reporting and risk management using the GAO's Federal Standards for Internal Control (Green Book) (financially and programmatically), transactions using Government Accounting Standards (GAS), as well as validating compliance with laws, regulations, contracts, and agreements. During the course of each year, internal audits are also conducted and targeted audits of travel and credit cards are conducted by a third party.

OMB mandates AFRH compliance with the Federal Information Security Management Act of 2002 (FISMA) which requires agencies to report the status of their information security programs and for inspectors general to conduct annual independent assessments of those programs.

AFRH is also required to comply with government performance standards for strategic planning, data-driven performance reviews, and reporting under the GPRA Modernization Act of 2010 (GPRAMA). AFRH’s annual performance and accountability report is evaluated under both the annual financial statement audit and by OMB during its annual reviews.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request. This proposal would repeal a 24 U.S.C. 418 requirement for the DoD Inspector General (IG) to conduct triennial inspections of all operations of the Armed Forces Retirement Home. Such a repeal would permit reallocation of resources, primarily personnel labor and travel, to other requirements. The last triennial inspection reports were issued by the IG in FY 2018 through its Special Plans and Operations (SPO) component; therefore the next triennial inspection reports are anticipated in FY 2021.

To estimate resource impact, FY 2020 budget materials for the IG operation and maintenance defense-wide account reported FY 2018 SPO actual funding allocation to be \$7.8 million with 49 full-time equivalent (FTE) personnel and ten reports issued. Of the ten reports issued by SPO in FY 2018, three reports fulfilled the AFRH inspection requirement: DODIG-2018-034, DODIG-2018-077, and DODIG-2018-153. Assuming even distribution of resources among the reports issued, this equates to \$780,000 and 5 FTE per report, or \$2.3 million total for three reports. Since two reports were produced consecutively and AFRH’s two facilities are domestic whereas other SPO work is conducted world-wide, potential resource savings is estimated at the midpoint, \$1.5 million and 8 FTE.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Special Plans and Operations	-1.5	0	0	-1.6	0	OMDW	01	4GTV	
Total	-1.5	0	0	-1.6	0				

PERSONNEL IMPACT (FTE)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Special Plans and Operations	-8	0	0	-8	0	OMDW	01	4GTV	
Total	-8	0	0	-8	0				

Changes to Existing Law: This proposal would make the following changes to the Armed Forces Retirement Home Act of 1991 (24 U.S.C. Chapter 10):

24 U.S.C. 413a. Oversight of health care provided to residents

...(c) Duties

In carrying out the responsibilities set forth in subsection (b), the Senior Medical Advisor shall perform the following duties:

(1) Facilitate and monitor the timely availability to residents of the Retirement Home such medical, mental health, and dental care services as such residents may require at locations other than the Retirement Home.

(2) Monitor compliance by the facilities of the Retirement Home with accreditation standards, applicable nationally recognized health care standards and requirements, or any other applicable health care standards and requirements ~~(including requirements identified in applicable reports of the Inspector General of the Department of Defense).~~

(3) Periodically visit each facility of the Retirement Home to review—

(A) the medical facilities, medical operations, medical records and reports, and the quality of care provided to residents; and

(B) inspections and audits to ensure that appropriate follow-up regarding issues and recommendations raised by such inspections and audits has occurred.

24 U.S.C. 416. Advisory Council

...(b) Duties

(1) The Advisory Council shall provide to the Chief Operating Officer and the Administrator of each facility such guidance and recommendations on the administration of the Retirement Home and the quality of care provided to residents as the Advisory Council considers appropriate.

(2) Not less often than annually, the Advisory Council shall submit to the Secretary of Defense a report summarizing its activities during the preceding year and providing such observations and recommendations with respect to the Retirement Home as the Advisory Council considers appropriate.

(3) ~~In carrying out its functions, the Advisory Council shall—~~

~~(A) provide for participation in its activities by a representative of the Resident Advisory Committee of each facility of the Retirement Home; and~~

~~(B) make recommendations to the Inspector General of the Department of Defense regarding issues that the Inspector General should investigate.~~

24 U.S.C. 417. Administrators, Ombudsmen, and staff of facilities

...(e) Duties of Ombudsman

(1) The Ombudsman of a facility shall, under the authority, direction, and control of the Administrator of the facility, serve as ombudsman for the residents and perform such other duties as the Administrator may assign.

(2) The Ombudsman may provide information to the Administrator, the Chief Operating Officer, the Senior Medical Advisor, ~~the Inspector General of the Department of Defense,~~ and the Secretary of Defense.

24 U.S.C. 418. Periodic inspection of retirement home facilities by Department of Defense Inspector General and outside inspectors

(a) Duty of Inspector General of the Department of Defense

The Inspector General of the Department of Defense shall have the duty to inspect the Retirement Home.

(b) Inspections by Inspector General

(1) Not less often than once every three years, the Inspector General of the Department of Defense shall perform a comprehensive inspection of all aspects of each facility of the Retirement Home, including independent living, assisted living, long-term care, medical and dental care, pharmacy, financial and contracting records, and any aspect of either facility on which the Advisory Council or the Resident Advisory Committee of the facility recommends inspection.

(2) The Inspector General shall be assisted in inspections under this subsection by a medical inspector general of a military department designated for purposes of this subsection by the Secretary of Defense.

(3) In conducting the inspection of a facility of the Retirement Home under this subsection, the Inspector General shall solicit concerns, observations, and recommendations from the Advisory Council, the Resident Advisory Committee of the facility, and the residents of the facility. Any concerns, observations, and recommendations solicited from residents shall be solicited on a not-for-attribution basis.

(4) The Chief Operating Officer and the Administrator of each facility of the Retirement Home shall make all staff, other personnel, and records of each facility available to the Inspector General in a timely manner for purposes of inspections under this subsection.

(c) Reports on inspections by Inspector General

(1) The Inspector General shall prepare a report describing the results of each inspection conducted of a facility of the Retirement Home under subsection (b), and include in the report such recommendations as the Inspector General considers appropriate in light of the inspection. Not later than 90 days after completing the inspection of the facility, the Inspector General shall submit the report to the Secretary of Defense, the Chief Operating Officer, the Administrator of the facility, the Senior Medical Advisor, and the Advisory Council.

(2) A report submitted under paragraph (1) shall include a plan by the Chief Operating Officer to address the recommendations and other matters contained in the report.

(d) Additional inspections

~~(1a)~~ INSPECTIONS.—The Chief Operating Officer shall request the inspection of each facility of the Retirement Home by a nationally recognized civilian accrediting organization in accordance with section 411(g) of this title on a frequency consistent with the standards of such organization.

~~(2b)~~ AVAILABILITY OF STAFF AND RECORDS.—The Chief Operating Officer and the Administrator of a facility being inspected under this subsection shall make all staff, other personnel, and records of the facility available to the civilian accrediting organization in a timely manner for purposes of inspections under this subsection.

~~(c)~~ REPORTS.—Reports on additional inspections

Not later than 60 days after receiving a report of an inspection from the civilian accrediting organization under this subsection ~~(d)~~, the Chief Operating Officer shall submit to the Secretary of Defense, the Senior Medical Advisor, and the Advisory Council a report containing—

- (1) the results of the inspection; and
- (2) a plan to address any recommendations and other matters set forth in the report.

1 **SEC. __. AMENDMENT TO DEFENSE PRODUCTION ACT OF 1950 RELATING TO**
2 **CRITICAL INDUSTRIAL RESOURCE SHORTFALLS.**

3 Section 303(a) of the Defense Production Act of 1950 (50 USC 4533(a)) is amended by
4 adding at the end the following new paragraphs:

5 “(8) EXCEPTION FOR CERTAIN SHORTFALL CATEGORIES.—

6 “(A) IN GENERAL.—

7 (i) The requirements of paragraph (6)(B) do not apply to industrial
8 resources shortfalls in the categories listed in subparagraph (B).

9 (ii) Notwithstanding the limitation under paragraph (6)(C), the
10 aggregate amount of all actions for each industrial resources shortfall in
11 the categories listed in subparagraph (B) may not exceed \$350,000,000,
12 unless such action or actions are authorized to exceed such amount by an
13 Act of Congress.

14 “(B) CATEGORIES.—The categories listed in this subparagraph are as
15 follows:

16 “(i) Light rare earth separation and processing.

17 “(ii) Heavy rare earth separation and processing.

18 “(ii) Rare earth metal and alloys production.

19 “(iv) Neodymium Iron Boron rare earth permanent magnets
20 production.

21 “(v) Samarium Cobalt rare earth permanent magnets production.

22 “(vi) Precursor materials for critical chemicals for missiles and
23 munitions.

24 “(vii) Inert materials for critical chemicals for missiles and
25 munitions.
26 “(viii) Energetic materials for critical chemicals for missiles and
27 munitions.
28 “(ix) Advanced manufacturing techniques for critical chemicals for
29 missiles and munitions.
30 “(x) Radiation-hardened electronics.
31 “(9) The requirements of paragraph (6)(B) and (6)(C) do not apply to shortfalls
32 for any industrial resources, material, or critical technology item used in furthering
33 hypersonic systems and strategic systems.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend the Defense Production Act (DPA) to ensure that the DPA Title III program is postured to successfully mitigate critical resource shortfalls in the supply chains for rare earth elements, critical chemicals for Department of Defense (DoD) missiles and munitions, hypersonic and strategic systems, and radiation hardened electronics.

Section 303 of the Defense Production Act (50 USC 4533) provides authority for the President to make provisions to create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense. That authority, however, requires that if the taking of any action under section 303 to correct a domestic industrial base shortfall would cause the aggregate outstanding amount of all such action for such shortfall to exceed \$50,000,000, the action or actions may be taken only after the 30-day period following the date on which designated Congressional committees have been notified in writing of the proposed action (section 303(a)(6)(B) (50 USC 4533(a)(6)(B))). Furthermore, it limits the aggregate outstanding amount of all action to correct an industrial resource shortfall under the section to \$50,000,000 unless such action or actions are authorized to exceed such amount by an Act of Congress (section 303(a)(6)(C) (50 USC 4533(a)(6)(C))).

(a) Rare Earths Supply Chain: The proposed modifications to add clauses (i) through (v) in new paragraph (8)(B) of section 303(a) to the Defense Production Act of 1950 will aid in more effectively addressing critical, capital-intensive industrial base shortfalls in the rare earths supply chain. As highlighted in the report on Executive (EO) 13806, *Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States*, “China represents a significant and growing risk to the supply of materials

deemed strategic and critical to U.S. national security.” China is dominating upstream sources of supply (e.g., mining) and aggressively moving up the value chain to dominate value-added materials processing and associated manufacturing supply chains. The report in response to EO 13806 emphasizes particular areas of concern to the United States industrial base in “widely used and specialized metals, alloys, and other materials, including rare earths and permanent magnets.” In response to the report, in July 2019, President Donald Trump signed five Presidential Determinations (PDs), authorizing the use of DPA Title III authorities to address resource shortfalls in the rare earth elements supply chain, including (1) light rare earth elements separation and processing, (2) heavy rare earth separation and processing, (3) production of rare earth metals and alloys, (4) production of Neodymium Iron Boron (NdFeB) rare earth permanent magnets, and (5) the production of Samarium Cobalt (SmCo) rare earth permanent magnets.

The U.S. industry for production of REEs was once robust. From the 1960s through the 1990s, the U.S. and Japan led much of the early development of rare earth applications. However, China has taken a dominant position of world markets in rare earth materials. The Chinese government further strengthened its market dominance through anticompetitive means, including quotas and regulation of the volume of domestic production. In 2015, the World Trade Organization (WTO) ruled in favor of the U.S. that Chinese quotas and other restrictive policies were in violation of WTO rules.¹ However, China’s dominant position in rare earth materials production has not significantly changed since this ruling.

The significant cost and environmental considerations placed upon U.S. domestic companies, the challenge posed by a strategic competitor using predatory economic practices, and the desire of U.S. companies to avoid risky investments make the current environment one that is nearly impossible for timely establishment of a domestic capability. To counteract this unfavorable climate, the government will need to provide expedient and sustained long-term investments in each of the five areas identified in the PDs that have been signed covering this industrial category. It is anticipated that each of these shortfalls will require multiple capital-intensive projects, and the projected investments required to establish the capabilities and increase the capacities necessary for national defense far exceed the \$50,000,000 limit for each of the identified supply chain areas. Raising the spending limits on each of the individual PDs to \$350,000,000 will allow the DPA Title III program office to expend up to \$1,750,000,000 in total to mitigate the identified rare earth elements supply chain shortfalls as have heretofore been identified. The proposed legislation would also alleviate the constraint of notifying Congress and waiting 30 days thereafter to take actions exceeding \$50,000,000, given this pre-existing approval to spend up to \$350,000,000 on each of the shortfalls already identified in PDs and appropriately reported to Congress.

(b) Critical Chemicals for DoD Missiles and Munitions: The proposed modifications to add clauses (vi) through (ix) in new paragraph (8)(B) of section 303(a) to the Defense Production Act of 1950 will aid in more effectively addressing critical, capital-intensive industrial base shortfalls for critical chemicals for DoD missiles and munitions. The report in response to EO 13806 highlights domestic industrial base shortfalls in chemical production for those chemicals critical for DoD missiles and munitions as a significant risk to the United States. The report further describes risks posed by a dependence upon foreign sources of supply and sole sources

¹ World Trade Organization. “DS431: China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum.” https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds431_e.htm

for some chemicals, with reliance upon China being a leading concern driving prioritization of projects against this line of effort. In response to the report, in January of 2019, President Donald Trump signed four PDs authorizing the use of DPA Title III authorities to address resource shortfalls in the critical chemicals for Department of Defense Missiles and Munitions, including- (1) precursor materials, (2) inert materials, (3) energetic materials, and (4) advanced manufacturing techniques for such products.

China is currently the sole source or primary supplier for many chemicals required to make ingredients in missiles and munitions end items. In many cases, there is no other source for these foreign sourced materials and no drop-in alternatives are available. A sudden and catastrophic loss of supply due to restrictions from foreign suppliers, industrial accidents, natural disasters, or wartime damages would impact critical DoD programs for many years and severely disrupt DoD munitions, satellites, space launches, and other defense manufacturing programs. Even in instances where replacements exist, the time and cost to test and qualify a new material could be prohibitive—especially for larger systems where the costs could amount to hundreds of millions of dollars for each individual component. Due to the small demand for materials used in many weapons systems compared to materials used for commercial products, domestic companies have stopped making these necessary materials in the quantities required to support the national defense and the warfighter. Unfavorable business cases to continue production for weapon systems discourage domestic investment in this sector. This lack of investment has led to many costly obsolescence issues for the DoD, increasing the risk of being unable to procure the necessary materials for the weapon systems and negatively affecting Defense readiness.

To mitigate the risks associated the above described shortfalls, the government will need to provide expedient and sustained long-term investments in the areas of the supply chain identified in the PDs. It is anticipated that each of the identified shortfalls will require multiple projects, and the projected investments required to establish the capabilities and increase the capacities necessary for national defense far exceed the \$50,000,000 limit for each area. Raising the limits on each of the individual PDs to \$350,000,000 will allow the DPA Title III program office to expend up to \$1,400,000,000 in total to mitigate the identified critical chemicals for DoD missiles and munitions shortfalls.

(c) Radiation-Hardened Electronics. The proposed modifications to add clause (x) in new paragraph (8)(B) of section 303(a) to the Defense Production Act of 1950 will aid in more effectively addressing critical, capital-intensive industrial base shortfalls for radiation-hardened electronics. In December of 2001, USD(AT&L) Edward Aldridge signed a PD for Advanced Radiation Hardened Microelectronics. At that time there was a \$50,000,000 limitation (much like that now in effect); however, in section 3 of the Defense Production Act Reauthorization of 2003 (Public Law 108-195, December 2003)² Congress permitted an aggregate amount of \$200,000,000 for the effort (increasing a previously approved exception that permitted an aggregate of \$106,000,000). To date, efforts under this PD have expended \$163,477,000 against the \$200,000,000 limitation, leaving an available amount of just \$26,523,000. Raising the limit

² PUBLIC LAW 108-195, SEC. 3. RESOURCE SHORTFALL FOR RADIATION HARDENED ELECTRONICS.

(a) IN GENERAL.—Notwithstanding the limitation contained in section 303(a)(6)(C) of the Defense Production Act of 1950 (50 U.S.C 4533(a)(6)(C)), the President may take actions under section 303 of the Defense Production Act of 1950 to correct the industrial resource shortfall for radiation-hardened electronics, to the extent that such Presidential actions do not cause the aggregate outstanding amount of all such actions to exceed \$200,000,000.

to \$350,000,000 for this industrial base shortfall will provide sufficient funds to continue mitigation efforts and address emergent requirements as DoD modernizes its strategic systems which rely upon advanced radiation-hardened electronics.

The additional funds provided by raising the spending cap will ensure the only remaining on-shore, Defense Microelectronics Activity (DMEA)-accredited trusted producer of Radiation Hardened Microelectronics components, is available for strategic nuclear weapons systems. Section 1670 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91, Dec. 12, 2017) requires: “Not later than December 31, 2020, the Secretary of Defense shall submit to the congressional defense committees a certification that an assured capability to produce or acquire strategic radiation hardened trusted microelectronics, consistent with Department of Defense Instruction 5200.44, is operational and available to supply necessary microelectronic components for necessary radiation environments involved with the acquisition of delivery systems for nuclear weapons.” The additional funding requested will aid in ensuring the expressed intent of Congress is met.

(d) Hypersonic and Strategic Systems. The proposed modifications to add new paragraph (9) to section 303(a) of the Defense Production Act of 1950 will aid in more effectively addressing critical, capital-intensive industrial base shortfalls in hypersonic and strategic systems. Hypersonic strike has been identified as a game changing capability as it enables the warfighter to prosecute high value, time critical targets from standoff ranges. The U.S. has invested in hypersonic capabilities as far back as 1961; however, investments in hypersonic systems, including materials capable of withstanding the high temperature demands of hypersonics, have been sparse and intermittent since the cancellation of the National Aero-Space Plan (NASP). This has led the hypersonic engineering and industrial base to survive by relying on minimal exploratory R&D, and, where possible, industry has attempted to sustain human capital by leveraging them against tangential markets. Many DoD senior leaders believe the U.S. has lost its pre-eminence in this critical technology capability based on observed capabilities from our potential near-peer adversaries. In response, the DoD has rapidly accelerated funding for the development of operational prototypes and manufacturing technologies across the spectrum of hypersonic systems. The unique requirements demanded by these intense missions cannot be readily met by other industries, and the current industrial base is only suited to develop prototype level production to support these systems. In some cases the industrial base is failing to even meet the demand to fulfill these prototype programs.

This demand risk is compounded as the DoD is working to recapitalize its strategic systems that rely on the same fragile industrial base. For example, the Air Force Nuclear Weapons Center (AFNWC) Ground Based Strategic Deterrence (GBSD) system requires similar materials to those required for hypersonic systems for re-entry vehicle thermal protection systems and solid rocket motor nozzle throats. In addition to these applications, DoD, NASA, and National Security customers rely on this industrial base for rocket nozzle throats and nozzle extensions. Production demand for these materials and components is expected to grow dramatically and existing domestic production capacity will be completely subscribed as early as 2021.

Proactively eliminating the spending limit on hypersonic-related investments of section 303(a)(6) (C) and removing the 30-day notification requirement of 303(a)(6)(B) will greatly improve the ability of the DPA Title III program to assist the transition of technologies from research and development prototypes to the production capacities required to meet the DoD’s

needs. It is anticipated that PDs to address shortfalls in the hypersonic and strategic systems industrial base will be executed soon, including ultra-high and high temperature composites (U/HTC) which are used for leading edges, aeroshells, and windows, as well as critical components for the strategic systems that are being concurrently recapitalized. For this one industrial base shortfall alone, it is highly likely that multiple projects will be required to ensure there is not a shortage of the various parts that all require U/HTC materials. Investment costs will be driven by the need to directly scale all of these components from prototype volumes to full rate production in short periods of time to meet their schedule targets.

Budget Implications: The proposal is a proactive measure to remove the spending limits as the program anticipates needing to expend more than \$50M in each of the identified areas in upcoming years. The table below is illustrative in nature, and the numbers provided depict the funds obligated and/or planned utilizing fiscal year 2020 and prior year funds, as well as estimated funding requirements for continued mitigation efforts in industrial resource shortfalls.

RESOURCE IMPACT (\$MILLIONS)										
Program	FY 2020 & Prior Years	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
DPA Title III Rare Earth Elements	125.00	37.00	37.00	10.00	18.00	30.00	Defense Production Act Purchases	01	Title III	0902199D8Z
DPA Title III Critical Chemicals	5.50	39.30	31.42	44.08	21.53	14.56	Defense Production Act Purchases	01	Title III	0902199D8Z
DPA Title III Radiation Hardened Electronics	200.00	20.68	20.68	20.69	20.69	20.69	Defense Production Act Purchases	01	Title III	0902199D8Z
DPA Title III Hypersonics	-	40.00	50.00	40.00	60.00	50.00	Defense Production Act Purchases	01	Title III	0902199D8Z
Total	255.50	136.98	139.10	114.77	120.22	115.25				

Changes to Existing Law: This proposal would make the following changes to section 303 of the Defense Production Act (10 U.S.C. 4533):

§4533. Other presidential action authorized

(a) In general

(1) In general

To create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense, the President may make provision-

(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale;

(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials;

(C) for the development of production capabilities; and

(D) for the increased use of emerging technologies in security program applications and the rapid transition of emerging technologies-

(i) from Government-sponsored research and development to commercial applications;
and

(ii) from commercial research and development to national defense applications.

(2) Treatment of certain agricultural commodities

A purchase for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced, except to the extent that such domestically produced supply may be purchased for resale for industrial use or stockpiling.

(3) Terms of sales

No commodity purchased under this subsection shall be sold at less than-

(A) the established ceiling price for such commodity, except that minerals, metals, and materials shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower; or

(B) if no ceiling price has been established, the higher of-

(i) the current domestic market price for such commodity; or

(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation, as provided in section 1427 of title 7.

(4) Delivery dates

No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than 1 year after the date of termination of this section.

(5) Presidential determinations

Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President, on a non-delegable basis, determines, with appropriate explanatory material and in writing, that-

(A) the industrial resource, material, or critical technology item is essential to the national defense;

(B) without Presidential action under this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and

(C) purchases, purchase commitments, or other action pursuant to this section are the most cost effective, expedient, and practical alternative method for meeting the need.

(6) Notification to Congress of shortfall

(A) In general

Except as provided in paragraph (7), the President shall provide written notice to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of a domestic industrial base shortfall prior to taking action under this subsection to remedy the shortfall. The notice shall include the determinations made by the President under paragraph (5).

(B) Aggregate amounts

If the taking of any action under this subsection to correct a domestic industrial base shortfall would cause the aggregate outstanding amount of all such actions for such shortfall to exceed \$50,000,000, the action or actions may be taken only after the 30-day period following the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives have been notified in writing of the proposed action.

(C) Limitation

If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed \$50,000,000, no such action or actions may be taken, unless such action or actions are authorized to exceed such amount by an Act of Congress.

(7) Waivers authorized

The requirements of paragraphs (1) through (6) may be waived-

- (A) during a period of national emergency declared by the Congress or the President; or
- (B) upon a determination by the President, on a nondelegable basis, that action is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability.

(8) Exception for certain shortfall categories.—

(A) In general.—

(i) The requirements of paragraph (6)(B) do not apply industrial resources shortfalls in the categories listed in subparagraph (B).

(ii) Notwithstanding the limitation under paragraph (6)(C), the aggregate amount of all actions for each industrial resources shortfall in the categories listed in subparagraph (B) may not exceed \$350,000,000, unless such action or actions are authorized to exceed such amount by an Act of Congress.

(B) Categories.—The categories listed in this subparagraph are as follows:

- (i) Light rare earth separation and processing.
- (ii) Heavy rare earth separation and processing.
- (ii) Rare earth metal and alloys production.
- (iv) Neodymium Iron Boron rare earth permanent magnets production.
- (v) Samarium Cobalt rare earth permanent magnets production.
- (vi) Precursor materials for critical chemicals for missiles and munitions.
- (vii) Inert materials for critical chemicals for missiles and munitions.
- (viii) Energetic materials for critical chemicals for missiles and munitions.
- (ix) Advanced manufacturing techniques for critical chemicals for missiles and munitions.
- (x) Radiation-hardened electronics.

(9) The requirements of paragraph (6)(B) and (6)(C) do not apply to shortfalls for any industrial resources, material, or critical technology item used in furthering hypersonic systems and strategic systems.

(b) Exemption for certain limitations

Subject to the limitations in subsection (a), purchases and commitments to purchase and sales under subsection (a) may be made without regard to the limitations of existing law (other than section 1341 of title 31), for such quantities, and on such terms and conditions, including advance payments, and for such periods, but not extending beyond a date that is not more than 10 years from the date on which such purchase, purchase commitment, or sale was initially made, as the President deems necessary, except that purchases or commitments to purchase involving higher than established ceiling prices (or if no such established ceiling prices exist, currently prevailing market prices) or anticipated loss on resale shall not be made, unless it is

determined that supply of the materials could not be effectively increased at lower prices or on terms more favorable to the Government, or that such purchases are necessary to assure the availability to the United States of overseas supplies.

(c) Presidential findings

(1) In general

The President may take the actions described in paragraph (2), if the President finds that-

(A) under generally fair and equitable ceiling prices, for any raw or nonprocessed material, there will result a decrease in supplies from high-cost sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of this subchapter; or

(B) an increase in cost of transportation is temporary in character and threatens to impair maximum production or supply in any area at stable prices of any materials.

(2) Subsidy payments authorized

Upon a finding under paragraph (1), the President may make provision for subsidy payments on any such domestically produced material, other than an agricultural commodity, in such amounts and in such manner (including purchases of such material and its resale at a loss), and on such terms and conditions, as the President determines to be necessary to ensure that supplies from such high-cost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained, as the case may be.

(d) Incidental authority

The procurement power granted to the President by this section shall include the power to transport and store and have processed and refined any materials procured under this section.

(e) Installation of equipment in industrial facilities

(1) Installation authorized

If the President determines that such action will aid the national defense, the President is authorized-

(A) to procure and install additional equipment, facilities, processes or improvements to plants, factories, and other industrial facilities owned by the Federal Government;

(B) to procure and install equipment owned by the Federal Government in plants, factories, and other industrial facilities owned by private persons;

(C) to provide for the modification or expansion of privately owned facilities, including the modification or improvement of production processes, when taking actions under section 4531 of this title, 4532 of this title, or this section; and

(D) to sell or otherwise transfer equipment owned by the Federal Government and installed under this subsection to the owners of such plants, factories, or other industrial facilities.

(2) Indemnification

The owner of any plant, factory, or other industrial facility that receives equipment owned by the Federal Government under this section shall agree-

(A) to waive any claim against the United States under section 9607 or 9613 of title 42; and

(B) to indemnify the United States against any claim described in paragraph (1) made by a third party that arises out of the presence or use of equipment owned by the Federal Government.

(f) Excess metals, minerals, and materials

(1) In general

Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to this section which, in the judgment of the President, are excess to the needs of programs under this chapter, shall be transferred to the National Defense Stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), when the President deems such action to be in the public interest.

(2) Transfers at no charge

Transfers made pursuant to this subsection shall be made without charge against or reimbursement from funds appropriated for the purposes of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), except that costs incident to such transfer, other than acquisition costs, shall be paid or reimbursed from such funds.

(g) Substitutes

When, in the judgement of the President, it will aid the national defense, the President may make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources.

1 **SEC. __. SECURITY VETTING FOR RISKS ASSOCIATED WITH ALLEGIANCE,**
2 **FOREIGN INFLUENCE, AND FOREIGN PREFERENCE.**

3 (a) IN GENERAL.—Section 1564b of title 10, United States Code, is amended—

4 (1) in the heading, by striking “**foreign nationals**” and inserting “**risks associated**
5 **with allegiance, foreign influence, and foreign preference**”;

6 (2) in subsection (a)—

7 (A) in paragraph (1)—

8 (i) by striking “, in coordination” and all that follows through
9 “note,”; and

10 (ii) by striking “covered foreign individuals” and all that follows
11 and inserting “covered individuals for risks associated with allegiance,
12 foreign influence, or foreign preference.”;

13 (B) by striking paragraph (2);

14 (C) by redesignating paragraph (3) as paragraph (2); and

15 (D) in paragraph (2), as redesignated by subparagraph (C) of this
16 paragraph, by striking “an official” and inserting “officials”; and

17 (3) by striking subsections (b) and (c) and inserting the following new
18 subsections:

19 “(b) OTHER USES.—In addition to using the centralized process developed under
20 subsection (a)(1) for covered individuals, the Secretary, in coordination with the Security
21 Executive Agent and the Suitability and Credentialing Executive Agent established pursuant to
22 Executive Order 13467 (73 Fed. Reg. 38103; 50 U.S.C. 3161 note), may use the centralized
23 process to support determinations for initial or continued eligibility for a national security

1 position, or to inform a suitability, fitness, or credentialing decision, for any individual with
2 allegiance, foreign influence, or foreign preference risks.

3 “(c) COVERED INDIVIDUAL DEFINED.—In this section, the term ‘covered individual’
4 means an individual who—

5 “(1) is not subject to vetting required under Executive Orders 12968, 13467, or
6 12829, part 731 of title 5, Code of Federal Regulations, or Homeland Security
7 Presidential Directive 12; and

8 “(2)(A) has, or is seeking, physical or logical access to data or information in
9 support of research funded by the Department of Defense; or

10 “(B) has, or is seeking, access to Department of Defense systems, facilities,
11 personnel, information, or operations.”.

12 (b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of chapter
13 80 of title 10, United States Code, is amended by striking the item relating to section 1564b and
14 inserting the following new item:

“1564b. Security vetting for risks associated with allegiance, foreign influence, and foreign preference.”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how
the legislative text would amend existing law.]**

Section-by-Section Analysis

This proposal would clarify populations for which the Department has authority to use the centralized screening process established under section 1564b of chapter 80 of title 10, United States Code. This proposal would provide the authority required for the Secretary of Defense to screen lawfully obtained personally identifiable information of all individuals participating in Department of Defense (DoD) funded research to determine whether such individuals pose a threat to critical technologies relevant to national security, by screening for undue foreign influence, participation in foreign talent programs, and other personnel security concerns. Currently, the Department lacks authority to screen non-DoD affiliated individuals who are participating in DoD funded research.

Budget Implications: This proposal is clarifying who, not changing who (thereby not increasing or decreasing the population); therefore the proposal has no anticipated budgetary impact.

Changes to Existing Law: This proposal would make the following changes to section 1564b of title 10, United States Code:

§1564b. Security vetting for foreign nationals risks associated with Allegiance, Foreign Influence, and Foreign Preference

(a) ~~STANDARDS AND PROCESS.—(1) The Secretary of Defense, in coordination with the Security Executive Agent established pursuant to Executive Order 13467 (73 Fed. Reg. 38103; 50 U.S.C. 3161 note), shall develop uniform and consistent standards and a centralized process for the screening and vetting of covered foreign individuals for risks associated with allegiance, foreign influence, or foreign preference. requiring access to systems, facilities, personnel, information, or operations, of the Department of Defense, including with respect to the background investigations of covered foreign individuals requiring access to classified information.~~

~~(2) The Secretary shall ensure that the standards developed under paragraph (1) are consistent with relevant directives of the Security Executive Agent.~~

~~(3) The Secretary shall designate an official officials of the Department of Defense to be responsible for executing the centralized process developed under paragraph (1) and adjudicating any information discovered pursuant to such process.~~

(b) ~~OTHER USES.—In addition to using the centralized process developed under subsection (a)(1) for covered foreign individuals, the Secretary, in coordination with the Security Executive Agent and Suitability and Credentialing Executive Agent established pursuant to Executive Order 13467 (73 Fed. Reg. 38103; 50 U.S.C. 3161 note), may use the centralized process to support determinations in determining whether grant a security clearance for initial or continued eligibility for a national security position, or to inform a suitability, fitness, or credentialing decision, for to any individual with allegiance, foreign influence, or foreign preference risks. significant foreign influence or foreign preference issues, in accordance with the adjudicative guidelines under part 147 of title 32, Code of Federal Regulations, or such successor regulation.~~

~~(c) COVERED FOREIGN INDIVIDUAL DEFINED.—In this section, the term “covered foreign individual” means an individual who meets the following criteria:~~

~~(1) The individual is —~~

~~(A) a national of a foreign state;~~

~~(B) a national of the United States (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)) and also a national of a foreign state; or~~

~~(C) an alien who is lawfully admitted for permanent residence (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).~~

~~(2) The individual is either —~~

~~(A) a civilian employee of the Department of Defense or a contractor of the Department; or~~

~~(B) a member of the armed forces.~~

(c) COVERED INDIVIDUAL DEFINED.—In this section, the term “covered individual” means an individual who—

(1) is not subject to vetting required under Executive Orders 12968, 13467, or 12829, part 731 of title 5, Code of Federal Regulations, or Homeland Security Presidential Directive 12; and

(2)(A) has, or is seeking, physical or logical access to data or information in support of research funded by the Department of Defense; or

(B) has, or is seeking, access to Department of Defense systems, facilities, personnel, information, or operations.

1 **SEC. ____. COMMERCIAL PRODUCT OR COMMERCIAL SERVICE**

2 **DETERMINATIONS**

3 (a) IN GENERAL.—Section 2306a(b) of title 10, United States Code, is amended—

4 (1) by striking paragraph (4); and

5 (2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5),

6 respectively.

7 (b) CONFORMING AMENDMENT.—Section 2380(b)(2)(B) of such title is amended by

8 striking “following—” and all that follows through “(ii) a written” and inserting “following a

9 written”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal is a top Acquisition and Sustainment efficiency initiative to ensure that the Department has the authority and flexibility to make appropriate commercial product and commercial service determinations, based on the unique circumstances of individual procurements, and obtain the necessary cost or pricing information in order to negotiate fair and reasonable prices and prevent excessive pricing practices. The definition of commercial products or commercial services can be applied in a very broad manner and requires judgment on the part of individual contracting officers. However, once one individual contracting officer makes a determination of commerciality, this has broad implications for every subsequent contracting officer who may be under a different set of circumstances but who no longer has discretion to make a determination in the best interest of the Department. Furthermore, once the decision has been made to determine commerciality, this decision has additional implications with respect to the Truth in Negotiations Act. Even though previous buys may have been subject to the requirement for certified cost or pricing data, once an item is converted to a commercial product or commercial service, it is no longer subject to the requirements for certified cost or pricing data. As illustrated by the TransDigm Group, Inc’s pricing practices, generally once a conversion to a commercial product or commercial service is made, it is common for prices to increase and subsequent contracting officers find it difficult to obtain data necessary to determine price reasonableness and negotiate fair and reasonable prices on behalf of the taxpayer.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President’s Budget Request.

Changes to Existing Law: This proposal would make the following changes to sections 2306a and 2380 of title 10, United States Code (as amended by Public Law 115–232):

§2306a. Cost or pricing data: truth in negotiations

(a) Required Cost or Pricing Data and Certification.-(1) The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(A) An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures that is only expected to receive one bid shall be required to submit cost or pricing data before the award of a contract if-

(i) in the case of a prime contract entered into after June 30, 2018, the price of the contract to the United States is expected to exceed \$2,000,000; and

(ii) in the case of a prime contract entered into on or before June 30, 2018, the price of the contract to the United States is expected to exceed \$750,000.

(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if-

(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i), the price adjustment is expected to exceed \$2,000,000;

(ii) in the case of a change or modification made after July 1, 2018, to a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed \$750,000; and

(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed \$750,000.

(C) An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and-

(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i), the price of the subcontract is expected to exceed \$2,000,000;

(ii) in the case of a subcontract entered into after July 1, 2018, under a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed \$2,000,000; and

(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed \$750,000.

(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if-

(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii), the price adjustment is expected to exceed \$2,000,000; and

(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed \$750,000.

(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the head of the agency concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted-

(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(4) Except as provided under subsection (b), this section applies to contracts entered into by the head of an agency on behalf of a foreign government.

(5) A waiver of requirements for submission of certified cost or pricing data that is granted under subsection (b)(1)(C) in the case of a contract or subcontract does not waive the requirement under paragraph (1)(C) for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under that paragraph should be waived in the case of such subcontracts and justifies in writing the reasons for the determination.

(6) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before June 30, 2018, the head of the agency that entered into such contract shall modify the contract to reflect subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.

(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted in accordance with [section 1908 of title 41](#).

(b) Exceptions.-

(1) In general .-Submission of certified cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract-

(A) for which the price agreed upon is based on-

(i) adequate competition that results in at least two or more responsive and viable competing bids; or

(ii) prices set by law or regulation;

(B) for the acquisition of a commercial product or a commercial service;

(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination; or

(D) to the extent such data-

(i) relates to an offset agreement in connection with a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm; and

(ii) does not relate to a contract or subcontract under the offset agreement for work performed in such foreign country or by such foreign firm that is directly related to the weapon system or defense-related item being purchased under the contract.

(2) Modifications of contracts and subcontracts for commercial products or commercial services .-In the case of a modification of a contract or subcontract for a commercial product or commercial services that is not covered by the exception to the

submission of certified cost or pricing data in paragraph (1)(A) or (1)(B), submission of certified cost or pricing data shall not be required under subsection (a) if-

(A) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial product or commercial services to a contract or subcontract for the acquisition of an item other than a commercial product or commercial services.

(3) Noncommercial modifications of commercial products .-(A) The exception in paragraph (1)(B) does not apply to cost or pricing data on noncommercial modifications of a commercial product that are expected to cost, in the aggregate, more than the amount specified in subsection (a)(1)(A)(i), as adjusted from time to time under subsection (a)(7), or 5 percent of the total price of the contract (at the time of contract award), whichever is greater.

(B) In this paragraph, the term "noncommercial modification", with respect to a commercial product, means a modification of such product that is not a modification described in [section 103\(3\)\(A\) of title 41](#).

(C) Nothing in subparagraph (A) shall be construed-

(i) to limit the applicability of the exception in subparagraph (A) or (C) of paragraph (1) to cost or pricing data on a noncommercial modification of a commercial product; or

(ii) to require the submission of cost or pricing data on any aspect of an acquisition of a commercial product other than the cost and pricing of noncommercial modifications of such product.

~~(4) Commercial product or commercial service determination .-(A) For purposes of applying the exception under paragraph (1)(B) to the required submission of certified cost or pricing data, the contracting officer may presume that a prior commercial product or commercial service determination made by a military department, a Defense Agency, or another component of the Department of Defense shall serve as a determination for subsequent procurements of such product or service.~~

~~(B) If the contracting officer does not make the presumption described in subparagraph (A) and instead chooses to proceed with a procurement of a product or service previously determined to be a commercial product or a commercial service using procedures other than the procedures authorized for the procurement of a commercial product or a commercial service, as the case may be, the contracting officer shall request a review of the commercial item determination by the head of the contracting activity.~~

~~(C) Not later than 30 days after receiving a request for review of a determination under subparagraph (B), the head of a contracting activity shall-~~

~~(i) confirm that the prior determination was appropriate and still applicable; or~~

~~(ii) issue a revised determination with a written explanation of the basis for the revision.~~

(54) A contracting officer shall consider evidence provided by an offeror of recent purchase prices paid by the Government for the same or similar commercial products or commercial services in establishing price reasonableness on a subsequent purchase

if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison after considering the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased or applicable terms and conditions.

(65) Determination by prime contractor .-A prime contractor required to submit certified cost or pricing data under subsection (a) with respect to a prime contract shall be responsible for determining whether a subcontract under such contract qualifies for an exception under paragraph (1)(A) from such requirement.

(c) Cost or Pricing Data on Below-Threshold Contracts.-

(1) Authority to require submission.-Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

(2) Exception.-The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

(3) Delegation of authority prohibited.-The head of a procuring activity may not delegate functions under this paragraph.

(d) Submission of Other Information.-

(1) Authority to require submission .-When certified cost or pricing data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the offeror shall be required to submit to the contracting officer data other than certified cost or pricing data (if requested by the contracting officer), to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in subsection (b)(1)(A), the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement. If the contracting officer determines that the offeror does not have access to and cannot provide sufficient information on prices for the same or similar items to determine the reasonableness of price, the contracting officer shall require the submission of information on prices for similar levels of work or effort on related products or services, prices for alternative solutions or approaches, and other information that is relevant to the determination of a fair and reasonable price.

(2) Limitations on authority .-The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under paragraph (1):

(A) Reasonable limitations on requests for sales data relating to commercial products or commercial services.

(B) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial products or commercial services from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(C) A statement that any information received relating to commercial products or commercial services that is exempt from disclosure under [section 552\(b\) of title 5](#) shall not be disclosed by the Federal Government.

(e) Price Reductions for Defective Cost or Pricing Data.-(1)(A) A prime contract (or change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the agency that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

(B) For the purposes of this section, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(2) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

(3) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that-

(A) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor-

(i) was the sole source of the property or services procured; or

(ii) otherwise was in a superior bargaining position with respect to the property or services procured;

(B) the contracting officer should have known that the cost and pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(D) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under subsection (a)(2).

(4)(A) A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by paragraph (1) if-

(i) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(ii) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, and that the data were not submitted as specified in subsection (a)(3) before such date.

(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph (A) if-

(i) the certification under subsection (a)(2) with respect to the cost or pricing data involved was known to be false when signed; or

(ii) the United States proves that, had the cost or pricing data referred to in subparagraph (A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

(f) Interest and Penalties for Certain Overpayments.- (1) If the United States makes an overpayment to a contractor under a contract subject to this section and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States-

(A) for interest on the amount of such overpayment, to be computed-

(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and

(ii) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986; and

(B) if the submission of such defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

(2) Any liability under this subsection of a contractor that submits cost or pricing data but refuses to submit the certification required by subsection (a)(2) with respect to the cost or pricing data shall not be affected by the refusal to submit such certification.

(g) Right of United States To Examine Contractor Records.- For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the authority provided by section 2313(a)(2) of this title.

(h) Definitions .- In this section:

(1) Cost or pricing data .- The term "cost or pricing data" means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), or, if applicable consistent with subsection (e)(1)(B), another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is

judgmental, but does include the factual information from which a judgment was derived.

(2) Subcontract .-The term "subcontract" includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

* * * * *

§2380. Commercial product and commercial service determinations by Department of Defense

(a) In General.-The Secretary of Defense shall-

(1) establish and maintain a centralized capability with necessary expertise and resources to provide assistance to the military departments and Defense Agencies in making commercial product and commercial service determinations, conducting market research, and performing analysis of price reasonableness for the purposes of procurements by the Department of Defense; and

(2) provide to officials of the Department of Defense access to previous Department of Defense commercial product and commercial service determinations, market research, and analysis used to determine the reasonableness of price for the purposes of procurements by the Department of Defense.

(b) Items Previously Acquired Using Commercial Acquisition Procedures.-

(1) Determinations.-A contract for a product or service acquired using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation shall serve as a prior commercial product or service determination with respect to such product or service for purposes of this chapter unless the senior procurement executive of the military department or the Department of Defense as designated for purposes of [section 1702\(c\) of title 41](#) determines in writing that it is no longer appropriate to acquire the product or service using commercial acquisition procedures.

(2) Limitation.-**(A)** Except as provided under subparagraph **(B)**, funds appropriated or otherwise made available to the Department of Defense may not be used for the procurement under part 15 of the Federal Acquisition Regulation of a product or service that was previously acquired under a contract using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation.

(B) The limitation under subparagraph **(A)** does not apply to the procurement of a product or service that was previously acquired using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation ~~following-~~

~~(i) a written determination by the head of contracting activity pursuant to [section 2306a\(b\)\(4\)\(B\) of this title](#) that the use of such procedures was improper; or~~

~~(ii) a written following a written determination by the senior procurement executive of the military department or the Department of Defense as designated for purposes of [section 1702\(c\) of title 41](#) that it is no longer appropriate to acquire the product or service using such procedures.~~

1 **SEC. 2512. QATAR FUNDED CONSTRUCTION PROJECTS.**

2 Pursuant to agreement with the Government of the State of Qatar for required in-kind
 3 contributions, the Secretary of Defense may accept military construction projects for the
 4 installation in the State of Qatar, and in the amounts, set forth in the following table:

State of Qatar Funded Construction Projects

Component	Installation	Project	Amount
Air Force	Al Udeid	Billet (A12)	\$63,000,000
Air Force	Al Udeid	Billet (BI2)	\$63,000,000
Air Force	Al Udeid	Billet (D 1 0)	\$77,000,000
Air Force	Al Udeid	Billet 009)	\$77,000,000
Air Force	Al Udeid	Billet (007)	\$77,000,000
Air Force	Al Udeid	Armory/Mount	\$ 7,200,000
Air Force	Al Udeid	Billet (A06)	\$77,000,000
Air Force	Al Udeid	Dining Facility	\$14,600,000
Air Force	Al Udeid	Billet (BOS)	\$77,000,000
Air Force	Al Udeid	Billet (B04)	\$77,000,000
Air Force	Al Udeid	Billet (A04)	\$77,000,000
Air Force	Al Udeid	Billet (AOS)	\$77,000,000
Air Force	Al Udeid	Dining Facility	\$14,600,000
Air Force	Al Udeid	MSG (Base Operations Support Facility)	\$9,300,000
Air Force	Al Udeid	ITN (Communications Facility)	\$3,500,000

1 **SEC. ____. GROUND-BASED STRATEGIC DETERRENT LAUNCH FACILITY AND**
2 **LAUNCH CENTER CONSTRUCTION.**

3 (a) **AUTHORITY TO UNDERTAKE MILITARY CONSTRUCTION.**—The Secretary of the Air
4 Force may carry out military construction projects not otherwise authorized by law that the
5 Secretary determines are necessary to convert Minuteman III launch facilities and launch centers
6 to ground-based strategic deterrent configurations.

7 (b) **FUNDING.**—The Secretary of the Air Force may use funds authorized to be
8 appropriated by this Act or otherwise made available for ground-based strategic deterrent
9 research, development, test, and evaluation and missile procurement for the Air Force to carry
10 out military construction projects authorized by subsection (a).

11 (c) **SUPERVISION OF MILITARY CONSTRUCTION.**—Notwithstanding section 2851 of title
12 10, United States Code, military construction projects authorized by subsection (a) may be
13 carried out under the direction and supervision of the Secretary of the Air Force.

Section-by-Section Analysis

The ground-based strategic deterrent (GBSD) acquisition program is a full recapitalization for the Minuteman III (MM III) Intercontinental Ballistic Missile (ICBM) that will convert 450 existing MM III launch facility (LF) sites and up to 45 launch center (LC) sites across three operational wings spanning 31,500 square miles in five states.

ICBMs provide the President with the ability to respond to a nuclear attack from an adversary. ICBMs have three key characteristics that provide this capability. First, ICBMs are survivable; an adversary must target each LF and LC individually, which absorbs nuclear weapons in the event of an attack. Second, ICBMs must meet stringent physical security requirements to prevent adversaries from gaining access to our Nation’s nuclear weapons. Third, ICBMs have special design elements known as nuclear surety that ensure the weapon always operates safely, securely, and effectively. When GBSD is deployed, the system will undergo a complex and rigorous process known as nuclear certification to ensure it meets all these requirements.

The MM III-to-GBSD conversion must occur on a precise timeline to maintain the operational readiness of ICBMs and deliver full operational capability (FOC) to the warfighter by 2036. The GBSD program management office (PMO) anticipates that this conversion will

affect both real property (e.g., the topside building at the LC and LF staging areas) and weapon system components (e.g., the launcher closure door and missile suspension system). The real property at the LFs and LCs provides critical functionality for both the existing MM III and future GBSD, and the conversion activities involving real property are essential to ensuring successful nuclear certification of the converted GBSD facilities. This certification will verify that GBSD weapon system and real property elements meet survivability, physical security, and nuclear surety requirements.

Under current law, the Air Force is required to use multiple contractors to convert the LFs and LCs to the GBSD configuration. Absent specific statutory authority, real property construction projects exceeding \$2M must be financed with military construction (MILCON) appropriations pursuant to 10 USC 2802 and 10 USC 2805 and performed by a United States Army Corps of Engineers-designated design and construction agent per 10 USC 2851 and DoDI 4270.5 para. 4.3.3. Thus, the successful offeror for GBSD's Engineering and Manufacturing Development (EMD) phase would be responsible for the weapon system components, and the United States Army Corps of Engineers (USACE) would designate individual design and construction agents based on the impacted geographic region (up to five), which would be responsible for the real property at the LFs and LCs (as awarded by each USACE region). The EMD contractor would be funded with research, development, test & evaluation (RDT&E) for design work and missile procurement for the conversions. The design and construction agents would be separately funded with MILCON appropriations for both the design work and conversions.

The MM III-to-GBSD transition is one of the most complex elements of the program as the Air Force must ensure that 400 missiles are always on alert to meet warfighter requirements, deter our adversaries and assure our allies. During the transition, the 400 missiles will be a combination of the current MM III and replacement GBSD. The Air Force must ensure the time-certain delivery of GBSD; the capability must be deployed prior to MM III age out and attrition. The Air Force must seek every opportunity to perform the transition efficiently and avoid unnecessary integration among multiple contractors to deliver GBSD on time. At any point, GBSD will be modifying up to 26 different LF/LC sites concurrently. In order to meet the required FOC date of 2036, the Air Force will be required to convert one LF per week for nine years, requiring a level of synchronization not possible if authorities and responsibilities for the conversion effort are split over multiple contractors, as required by current law. Separating: a) GBSD design authority; b) GBSD conversion responsibilities; and c) funding for the LFs and LCs, significantly increases complexity, cost, and risk. The Air Force estimates that using different contractors for the conversion of weapon system components and real property components of the LC and LF sites will require an additional three years to complete the MM III-to-GBSD transition, delaying FOC to 2039, and would increase the budgeted program costs by \$0.7B-\$1B.

This legislative proposal provides the best and only realistic path to meet warfighter requirements and deliver GBSD on schedule. The provision would ensure that no part of the LF and LC conversions would be treated as military construction, which reduces transition risk by limiting the Government's role on the program's critical path. The proposal also enables the Government to hold a single contractor, the EMD prime, accountable for the entirety of the

LC/LF design and conversion to the GBSD configuration, including both the weapon system and real property components of those sites. The proposal also enables the Government to work with a single contractor to ensure the design and conversion activities meet all nuclear certification requirements.

This proposal does not exempt the entire GBSD program from the standard MILCON authorization and appropriation process, just the MILCON necessary to convert existing Minuteman III launch facilities and launch centers to ground-based strategic deterrent configurations. Even without including the 495 LC and LF sites, the GBSD program will still have a significant MILCON footprint including approximately 140 other support, storage, training, and maintenance facilities. In accordance with current law, each of these 140 facilities will be authorized and appropriated pursuant to the existing military construction processes as part of the GBSD program.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
GBSD	0	0	0	-2.34	0	Military Construction, Air Force		TBD	0101233F
GBSD	0	0	0	1.41	0.93	Research, Development, Test, and Evaluation, Air Force	04	R-1# 49	0605230F
Total	0	0	0	-0.93	0.93				

Changes to Existing Law: Not applicable.

1 **SEC. __. AVAILABILITY OF HEALTHCARE BENEFITS FOR RESIDENTS AT THE**
2 **ARMED FORCES RETIREMENT HOME.**

3 Section 1513 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 413) is
4 amended by adding at the end the following new subsection:

5 “(e) AVAILABILITY OF BENEFITS.—(1) Notwithstanding any other provision of law, for
6 care provided to residents by the Armed Forces Retirement Home, a covered Secretary shall
7 transfer to the Armed Forces Retirement Home Trust Fund amounts from trust or other funds
8 administered by the covered Secretary and available for the purpose of providing medical and
9 other care or related benefits for which residents are eligible.

10 “(2)(A) Amounts transferred under paragraph (1) shall be calculated based on a
11 methodology determined to be acceptable to the covered Secretary.

12 “(B) In determining such methodology, the covered Secretary shall ensure that any
13 additional administrative burden required of the Retirement Home is reasonable and compatible
14 with its systems.

15 “(C) By June 30, 2021, and by March 31 thereafter if a change in calculation
16 methodology is proposed for the succeeding fiscal year, the covered Secretary shall submit to
17 Congress and the Chief Operating Officer a report detailing the methodology determined to be
18 acceptable, a summary of any additional administrative burden required of the Retirement Home
19 to comply with the methodology, an estimate of transfers for three years, and a summary of
20 legislative or administrative changes necessary to carry out this subsection or which, if enacted,
21 would increase the amount of such transfers.

22 “(3) The Chief Operating Officer shall include in each annual report required by section
23 3516 of title 31 a summary of amounts transferred from each covered Secretary for the year

24 covered by the report and information furnished by the Retirement Home to calculate such
25 amounts.

26 “(4)(A) Initial transfers in accordance with this subsection shall be made by not later than
27 September 30, 2021, and not less often than annually thereafter.

28 “(B) Nothing in this subsection shall be construed to require a transfer if a covered
29 Secretary has not received timely and adequate information from the Retirement Home in
30 accordance with the calculation methodology determined under paragraph (2). Upon receipt of
31 such information, a covered Secretary shall ensure transfers are executed without undue delay.

32 “(5) In this subsection, the term ‘covered Secretary’ means each of the following:

33 “(1) The Secretary of Defense.

34 “(2) The Secretary of Veterans Affairs.”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would add a subsection to section 1513 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 413) to better integrate Armed Forces Retirement Home (AFRH) resident access to earned health benefits, including TRICARE and Veterans Health Administration benefits, and address the AFRH’s financial solvency by facilitating payment for health services that residents could otherwise obtain through these benefit programs.

The proposal would establish transfers of funds, not less than annually, from the Departments of Defense and Veterans Affairs to the AFRH Trust Fund from available trust or other funds administered by the respective Secretaries.

Amounts would be determined based on a calculation methodology acceptable to each Secretary, provided that any additional administrative burden required by AFRH to comply would be minimal. A report on the initial methodology determination, administrative burden, 3-year estimate of transfers, and a summary of legislative or administrative changes necessary to carry out the provision or which, if enacted, would increase the amount of such transfers, would be due to Congress and the AFRH Chief Operating Officer by June 30, 2021, and by March 30 whenever a change in methodology is proposed for the succeeding fiscal year.

The AFRH Chief Operating Officer would be directed to include in annual performance and accountability reports a summary of transfers received from each Department for that year and totals furnished to calculate the transfers.

The first transfers would be required by the end of FY 2021 (September 30, 2021) and not less often than annually thereafter.

Budget Implications: The resources impacted are reflected in the table below and are included within the (FY) 2021 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Defense Health Program	4.0	4.0	4.0	4.0	4.0	DHP-CHS (0130D 030)	01		
Total	4.0	4.0	4.0	4.0	4.0				

Changes to Existing Law: This proposal would make the following changes to section 1513 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 413):

§413. Services provided to residents

(a) Services provided.—Except as provided in subsections (b), (c), and (d), a resident of the Retirement Home shall receive the services authorized by the Chief Operating Officer.

(b) Medical and dental care.—The Retirement Home shall provide for the overall health care needs of residents in a high quality and cost-effective manner, including on site primary care, medical care, and a continuum of long-term care services. The services provided residents of the Retirement Home shall include appropriate nonacute medical and dental services, pharmaceutical services, and transportation of residents, which shall be provided at no cost to residents. Secondary and tertiary hospital care for residents that is not available at a facility of the Retirement Home shall, to the extent available, be obtained by agreement with the Secretary of Veterans Affairs or the Secretary of Defense in a facility administered by such Secretary. Except as provided in subsection (d), the Retirement Home shall not be responsible for the costs incurred for such care by a resident of the Retirement Home who uses a private medical facility for such care. The Retirement Home may not construct an acute care facility.

(c) Availability of physicians and dentists.—

(1) In providing for the health care needs of residents at a facility of the Retirement Home under subsection (b), the Retirement Home shall have a physician and a dentist-

(A) available at the facility during the daily business hours of the facility; and

(B) available on an on-call basis at other times.

(2) The physicians and dentists required by this subsection shall have the skills and experience suited to residents of the facility served by the physicians and dentists.

(3) To ensure the availability of health care services for residents of a facility of the Retirement Home, the Chief Operating Officer, in consultation with the Medical Director, shall establish uniform standards, appropriate to the medical needs of the residents, for access to health care services during and after the daily business hours of the facility.

(d) Transportation to medical care outside Retirement Home facilities.—

(1) With respect to each facility of the Retirement Home, the Retirement Home shall provide daily scheduled transportation to nearby medical facilities used by residents of the facility. The Retirement Home may provide, based on a determination of medical need, unscheduled transportation for a resident of the facility to any medical facility located not more than 30 miles from the facility for the provision of necessary and urgent medical care for the resident.

(2) The Retirement Home may not collect a fee from a resident for transportation provided under this subsection.

(e) AVAILABILITY OF BENEFITS.—(1) Notwithstanding any other provision of law, for care provided to residents by the Armed Forces Retirement Home, a covered Secretary shall transfer to the Armed Forces Retirement Home Trust Fund amounts from trust or other funds administered by the covered Secretary and available for the purpose of providing medical and other care or related benefits for which residents are eligible.

(2)(A) Amounts transferred under paragraph (1) shall be calculated based on a methodology determined to be acceptable to the covered Secretary.

(B) In determining such methodology, the covered Secretary shall ensure that any additional administrative burden required of the Retirement Home is reasonable and compatible with its systems.

(C) By June 30, 2021, and by March 31 thereafter if a change in calculation methodology is proposed for the succeeding fiscal year, the covered Secretary shall submit to Congress and the Chief Operating Officer a report detailing the methodology determined to be acceptable, a summary of any additional administrative burden required of the Retirement Home to comply with the methodology, an estimate of transfers for three years, and a summary of legislative or administrative changes necessary to carry out this subsection or which, if enacted, would increase the amount of such transfers.

(3) The Chief Operating Officer shall include in each annual report required by section 3516 of title 31 a summary of amounts transferred from each covered Secretary for the year covered by the report and information furnished by the Retirement Home to calculate such amounts.

(4)(A) Initial transfers in accordance with this subsection shall be made by not later than September 30, 2021, and not less often than annually thereafter.

(B) Nothing in this subsection shall be construed to require a transfer if a covered Secretary has not received timely and adequate information from the Retirement Home in accordance with the calculation methodology determined under paragraph (2). Upon receipt of such information, a covered Secretary shall ensure transfers are executed without undue delay.

(5) In this subsection, the term “covered Secretary” means each of the following:

(1) The Secretary of Defense.

(2) The Secretary of Veterans Affairs.

1 **SEC. ____. INCLUSION OF SOFTWARE IN GOVERNMENT PERFORMANCE OF**
2 **ACQUISITION FUNCTIONS.**

3 (a) INCLUSION OF SOFTWARE.—Section 1706(a) of title 10, United States Code, is
4 amended by adding at the end the following new paragraph:

5 “(14) Program lead software.”.

6 (b) TECHNICAL AMENDMENTS.—Section 1706 of such title is further amended—

7 (1) in subsection (a), by striking “and each major automated information
8 system program”; and

9 (2) by amending subsection (c) to read as follows:

10 “(c) DEFINITION.—In this section, the term “major defense acquisition program” has
11 the meaning given such term in section 2430(a) of this title.”.

Section-by-Section Analysis

The proposal adds “software” to the list of government performance of acquisition positions to ensure that each major defense acquisition program has a software program lead position that is performed by a properly qualified member of the armed forces or full-time employee of the Department of Defense. As noted in the February 2018 Defense Science Board report, “Design and Acquisition of Software for Defense Systems”, software is a crucial and growing part of weapons systems and the Department needs to be able to sustain immortal software indefinitely. The Task Force concluded that the Department of Defense would benefit from the implementation of continuous iterative development best practices as software becomes an increasingly important part of defense systems. DoD lacks modern software development expertise in its program offices or the broader functional acquisition workforce. DoD needs to ensure software management and expertise is developed and established as core to major programs. As part of implementing the Department's high priority on software acquisition DoD must ensure properly qualified professionals are available for key leadership positions responsible for software. Additionally, the proposal removes the statutory reference to the category of Major Automated Information System (MAIS). Section 2445a of title 10 was repealed by Pub. L. 114-328, section 846, effective 30 September 2017.

Budget Implications: No budgetary impact.

Changes to Existing Law: This proposal would amend section 1706 of title 10, United States Code, as follows:

§1706. Government performance of certain acquisition functions

(a) Goal.-It shall be the goal of the Department of Defense and each of the military departments to ensure that, for each major defense acquisition program ~~and each major automated information system program~~, each of the following positions is performed by a properly qualified member of the armed forces or full-time employee of the Department of Defense:

- (1) Program executive officer.
- (2) Deputy program executive officer.
- (3) Program manager.
- (4) Deputy program manager.
- (5) Senior contracting official.
- (6) Chief developmental tester.
- (7) Program lead product support manager.
- (8) Program lead systems engineer.
- (9) Program lead cost estimator.
- (10) Program lead contracting officer.
- (11) Program lead business financial manager.
- (12) Program lead production, quality, and manufacturing.
- (13) Program lead information technology.
- (14) Program lead software.

(b) Plan of Action.-The Secretary of Defense shall develop and implement a plan of action for recruiting, training, and ensuring appropriate career development of military and civilian personnel to achieve the objective established in subsection (a).

(c) Definitions.-In this section:

~~(1) The~~ the term "major defense acquisition program" has the meaning given such term in section 2430(a) of this title.

~~(2) The term "major automated information system program" has the meaning given such term in section 2445a(a)~~⁺ of this title.

1 **SEC. __. INCREASE IN ARMY AUTHORIZATION FOR GENERAL OFFICERS**
2 **SERVING IN THE GRADE OF O-10.**

3 Section 525(a)(1)(A) of title 10, United States Code, is amended by striking “7” and
4 inserting “8”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This legislative proposal would amend section 525 of title 10, United States Code, to increase the number of Army general officers authorized to serve in the grade of general from seven to eight. This increase will allow the Army to upgrade the position of Commanding General, United States Army Europe from lieutenant general to general.

The United States does not have an appropriate senior-level Army counterpart for continuous engagement and relationship building both within the North Atlantic Treaty Organization and with armies in the region. In light of Russian aggression and the increased economic investment interest in Africa by other nations, the United States must reassure its allies and partners.

Additionally, the United States European Command currently has no designated capability to establish a theater joint force land component command. This proposal, if approved, would provide an Army senior leader to transition United States Army Europe to the role of a theater joint force land component command when directed by Commander, United States European Command.

Finally, the Army intends to unite the Army forces (United States Army Europe and United States Army Africa) stationed in Europe under a single commander with a proposed duty title of Commanding General, United States Army Europe – Africa. An increase in grade emphasizes the Army's commitment to Africa and Europe and is consistent with the National Security Strategy in regions where military leadership and structure is mainly land-centric. The presence of a four-star Army service component commander in the region emphasizes our national interests in Africa and Europe and provides valuable engagement opportunities while reinforcing training and readiness initiatives.

If this proposal is enacted, the Army Commanding General would be the only 4-star Army commanding general responsible for all Army forces in two major theaters of operation, and would be commensurate with the current Air Force and Navy Commanders in those theaters. Furthermore, the overall authorization for officers above the grade of major general will not change because it is capped in law at 46 (7 generals and 39 lieutenant generals). If this proposal is enacted, the Army would be authorized to allocate the overall authorization to 8 generals and 38 lieutenant generals.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President’s Budget Request. This proposal would not increase pay because monthly basic pay for general officers is limited to Level II of the Executive Schedule.

PERSONNEL AFFECTED					
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Army	1	1	1	1	1
Total	1	1	1	1	1

Changes to Existing Law: This proposal would make the following change to section 525 of title 10, United States Code:

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

(a) For purposes of the applicable limitation in section 526(a) of this title on general and flag officers on active duty, no appointment of an officer on the active duty list may be made as follows:

- (1) in the Army, if that appointment would result in more than—
 - (A) ~~78~~ officers in the grade of general;
 - (B) 46 officers in a grade above the grade of major general; or
 - (C) 90 officers in the grade of major general;

* * * * *

1 **SEC. __. MILITARY LAND WITHDRAWAL FOR FALLON RANGE TRAINING**
2 **COMPLEX.**

3 The Military Land Withdrawals Act of 2013 (title XXIX of division B of Public Law
4 113–66) is amended by adding at the end the following new subtitle:

5 **“Subtitle G – Fallon Range Training Complex, Nevada**

6 **“SEC. 2981. WITHDRAWAL AND RESERVATION OF PUBLIC LAND.**

7 “(a) WITHDRAWAL.—Subject to valid existing rights and except as otherwise provided in
8 this subtitle, the lands established at the B–16, B–17, B–19, and B–20 Ranges, as referred to in
9 subsection (b), and all other areas within the boundary of such lands as depicted on the map
10 referred to in such paragraph, which may become subject to the operation of the public land
11 laws, are hereby withdrawn from all forms of appropriation under the public land laws, including
12 the mining laws and the mineral leasing and geothermal leasing laws. The lands and interests in
13 lands within the boundaries established at the Dixie Valley Training Area, as referred to in
14 subsection (b), are hereby withdrawn from all forms of appropriation under the public land laws,
15 including the mining laws, but not the geothermal and mineral leasing laws.

16 “(b) DESCRIPTION OF LAND.—The public lands and interests in lands withdrawn and
17 reserved by this subsection comprise of approximately 802,326 acres of land in Churchill
18 County, Lyon County, Mineral County, Pershing County, and Nye County, Nevada, as generally
19 depicted as “Proposed Withdrawal Land” and “Existing Withdrawals” on the map entitled
20 “Naval Air Station Fallon Ranges—Proposed Withdrawal of Public Lands for Range Safety and
21 Training Purposes”, dated March 22, 2019, and filed in accordance with section 2912. The
22 ranges in the Fallon Range Training Complex described in this subsection are identified as B-16,
23 B-17, B-19, B-20, Dixie Valley Training Area and the Shoal Site.

1 “(c) PURPOSE OF WITHDRAWAL AND RESERVATION.—The land withdrawn by subsections
2 (a) and (b) are reserved for use by the Secretary of the Navy for—

3 “(1) aerial testing and training, bombing, missile firing, electronic warfare, and
4 tactical combat maneuvering and air support;

5 “(2) ground combat tactical maneuvering and firing; and

6 “(3) other defense-related purposes that are—

7 “(A) consistent with the purposes specified in the preceding paragraphs;

8 and

9 “(B) authorized under section 2914.

10 **“SEC. 2982. MANAGEMENT OF WITHDRAWN AND RESERVED LANDS.**

11 “(a) MANAGEMENT BY THE SECRETARY OF THE NAVY.—During the duration of this
12 withdrawal, the Secretary of the Navy shall manage the land withdrawn and reserved comprising
13 the B-16, B-17, B-19 and B-20 ranges for the purposes described in section 2981(c) in
14 accordance with—

15 “(1) an Integrated Natural Resources Management Plan prepared and implemented
16 under title I of the Sikes Act (16 U.S.C. 670a et seq.);

17 “(2) to the extent possible, an agreement between the Secretary of the Navy and
18 the Governor of Nevada to accommodate hunting on portions of B-17 consistent with
19 military training requirements;

20 “(3) to the extent possible, a programmatic agreement between the Navy and the
21 Nevada State Historic Preservation Officer regarding management of historic properties
22 as they relate to operation, maintenance, training, and construction at the Fallon Range
23 Training Complex; and

1 “(4) any other applicable law.

2 “(b) MANAGEMENT BY THE SECRETARY OF THE INTERIOR.—

3 “(1) IN GENERAL.—During the duration of this withdrawal, the Secretary of the
4 Interior shall manage the land withdrawn and reserved comprising the Dixie Valley
5 Training Area and the Shoal Site for the purposes described in section 2981(c) in
6 accordance with—

7 “(A) the Federal Land Policy and Management Act of 1976 (43 U.S.C.
8 1701 et seq.); and

9 “(B) any other applicable law.

10 “(2) CONSULTATION WITH SECRETARY OF THE NAVY.—Prior to taking any Federal
11 action approving any use within the land withdrawn, the Secretary of the Interior shall
12 consult with the Secretary of the Navy. Such consultation shall include—

13 “(A) informing the Secretary of the Navy of the pending authorization
14 request so the Secretary of the Navy may work with the Secretary of the Interior
15 to preserve the training environment.

16 “(B) prior to authorizing approval of any installation or use of mobile or
17 stationary equipment used to transmit and receive radio signals in the land
18 withdrawn, obtaining permission from the Secretary of the Navy for the use of
19 such equipment.

20 “(3) AGREEMENT.—The Secretary of the Navy and the Secretary of the Interior
21 shall enter into an agreement governing the roles and responsibilities for reviewing and
22 approving Federal actions to be granted by the Secretary of the Interior in the Dixie
23 Valley Training Area and Shoal Site.

1 **“SEC. 2983. RELATIONSHIP TO OTHER RESERVATIONS.**

2 “(a) B-16 RANGE.—To the extent the withdrawal and reservation made by section 2981
3 for the B-16 Range withdraws lands currently withdrawn and reserved for use by the Bureau of
4 Reclamation, the reservation made by such section shall be the primary reservation for public
5 safety management actions only, and the existing Bureau of Reclamation reservation shall be the
6 primary reservation for all other management actions. The Secretary of the Navy shall enter into
7 an agreement with the Secretary of the Interior to ensure continued access to the B-16 Range by
8 the Bureau of Reclamation to conduct management activities consistent with the purposes for
9 which the Bureau of Reclamation withdrawal was established.

10 “(b) B-20 RANGE.—

11 “(1) EXISTING WITHDRAWAL FOR UNITED STATES FISH AND WILDLIFE SERVICE
12 USE.—To the extent the withdrawal and reservation made by section 2981 for the B-20
13 Range withdraws land currently withdrawn and reserved for use by the United States Fish
14 and Wildlife Service as part of the Fallon National Wildlife Refuge, the reservation made
15 by such section shall be the primary reservation for public safety management actions
16 only, and the existing United States Fish and Wildlife reservation shall be the primary
17 reservation for all other management actions. Notwithstanding the National Wildlife
18 Refuge System Administration Act of 1966 (16 U.S.C. 668dd et. seq.), the Secretary of
19 the Navy shall enter into an agreement with the Secretary of the Interior for the
20 establishment and operation of a weapons danger zone that overlays a portion of the
21 Fallon National Wildlife Refuge and to ensure continued access to the B-20 Range by the
22 United States Fish and Wildlife Service to conduct land management activities consistent
23 with the purposes for which the Fallon National Wildlife Refuge was established.

1 “(2) EXISTING WITHDRAWAL FOR BUREAU OF RECLAMATION USE.—To the extent
2 the withdrawal and reservation made by section 2981 for the B–20 Range withdraws
3 lands currently withdrawn and reserved for use by the Bureau of Reclamation, the
4 reservation made by such section shall be the primary reservation for public safety
5 management actions only, and the existing Bureau of Reclamation reservation shall be
6 the primary reservation for all other management actions. The Secretary of the Navy
7 shall enter into an agreement with the Secretary of the Interior to ensure continued access
8 to the B-20 Range by the Bureau of Reclamation to conduct management activities
9 consistent with the purposes for which the Bureau of Reclamation withdrawal was
10 established.

11 “(c) SHOAL SITE.—The Secretary of Energy shall remain responsible and liable for the
12 subsurface estate and all its activities at the ‘Shoal Site’ withdrawn and reserved by Public Land
13 Order Number 2771, as amended by Public Land Order Number 2834. The Secretary of the
14 Navy shall be responsible for the use of the surface estate at the ‘Shoal Site’ pursuant to the
15 withdrawal and reservation made by section 2981.

16 **“SEC. 2984. RELEASE OF WILDERNESS STUDY AREAS.**

17 “(a) COMPLETION OF STUDY.—For the purposes of section 603(c) of the Federal Land
18 Policy and Management Act of 1976 (43 U.S.C. 1782(c)), the public land in Churchill County
19 identified as the Stillwater Wilderness Study Area, the Job Peak Wilderness Study Area, and
20 approximately 127,670 acres of the Clan Alpine Mountain Wilderness Study Area on the map
21 entitled ‘Naval Air Station Fallon Ranges.—Proposed Withdrawal of Public Lands for Range
22 Safety and Training Purposes’, dated March 22, 2019, and filed in accordance with section 2912,

1 was inventoried in accordance with section 201(a) of the Federal Land Policy and Management
2 Act of 1976 (43 U.S.C. 1711(a)), and has been adequately studied for wilderness designation.

3 “(b) RELEASE OF LANDS NOT RESERVED FOR NAVY USE. —Any public land referred to in
4 subsection (a) that is not reserved for use by the Secretary of the Navy under section 2981 is no
5 longer—

6 “(1) subject to section 603(c) of the Federal Land Policy and Management Act of
7 1976 (43 U.S.C. 1782(c)); and

8 “(2) withdrawn from appropriation under the public land laws, including the
9 mining laws and mineral leasing and geothermal leasing laws.

10 “(c) MEMORANDUM OF UNDERSTANDING. —Not later than 90 days after the date of the
11 enactment of the National Defense Authorization Act for Fiscal Year 2021, the Secretary of the
12 Interior and Secretary of the Navy shall enter into a memorandum of understanding concerning
13 the management of lands under this section and the approximately 78,478 acres as generally
14 depicted on the map entitled ‘Naval Air Station Fallon Ranges – Proposed Withdrawal of Public
15 Lands for Range Safety and Training Purposes’, dated March 22, 2019, and filed in accordance
16 with Section 2912 that addresses—

17 “(1) location of floodlights and unshaded or unfocused nighttime lighting;

18 “(2) placement of head frames or any structures taller than 50 feet above the
19 surface; and

20 “(3) any electromagnetic emissions.

21 **“SEC. 2985. CLAN ALPINE MOUNTAINS WILDERNESS.**

22 “(a) DESIGNATION. —In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.),
23 approximately 68,458 acres of the land identified as the Clan Alpine Mountains Wilderness

1 Study Area is designated as a wilderness area and as a component of the National Wilderness
2 Preservation System.

3 “(b) LOW-LEVEL OVERFLIGHTS.—Nothing in this section shall be construed to restrict or
4 preclude low-level overflights of military aircraft, flight testing and evaluation, or the
5 designation or creation of new units of special use airspace or the establishment of military
6 training routes over the wilderness area designated under subsection (a).

7 **“SEC. 2986. TRANSFER OF LANDS UNDER THE ADMINISTRATIVE**
8 **JURISDICTION OF THE DEPARTMENT OF THE NAVY.**

9 “(a) AUTHORITY.—The Secretary of the Navy may transfer to the Secretary of the
10 Interior, at no cost, administrative jurisdiction of—

11 “(1) approximately 86 acres of a non-contiguous parcel of land acquired by the
12 Department of the Navy in Churchill County, Nevada, for inclusion into the Sand
13 Mountain Recreation Area; and

14 “(2) approximately 2,200 acres of non-contiguous parcels of land acquired by the
15 Department of the Navy in Churchill County, Nevada, for inclusion into the Stillwater
16 National Wildlife Refuge Complex.

17 “(b) CONDITIONS.—Any transfer of land under this section is subject to the Secretary of
18 the Interior and the Secretary of the Navy each making a determination that such transfer is to
19 the benefit of their respective departments and in the public interest.

20 **“SEC. 2987. USE OF MINERAL MATERIALS**

21 “Notwithstanding any other provision of this subtitle or of the Act of July 31, 1947
22 (commonly known as the Materials Act of 1947; 30 U.S.C. 601 et seq.), the Secretary of the
23 Navy may use sand, gravel, or similar mineral materials resources of the type subject to

1 disposition under that Act from lands withdrawn and reserved by this subtitle if use of such
2 resources is required for construction needs on such lands.

3 **“SEC. 2988. TERMINATION OF PRIOR WITHDRAWAL.**

4 “(a) TERMINATION.—Subject to subsection (b), the withdrawal and reservation under
5 subsection 3011(a) of the Military Lands Withdrawal Act of 1999 (Public Law 106-65; 113 Stat.
6 512) is terminated.

7 “(b) LIMITATION.—Notwithstanding subsection (a), all rules, regulations, orders, permits,
8 and other privileges issued or granted by the Secretary of the Interior or the Secretary of the
9 Navy with respect to the land withdrawn and reserved under section 3011 of the Military Lands
10 Withdrawal Act of 1999, unless inconsistent with the provisions of this subtitle, shall remain in
11 force until modified, suspended, overruled, or otherwise changed by—

12 “(1) the Secretary of the Interior or the Secretary of the Navy, as applicable;

13 “(2) a court of competent jurisdiction; or

14 “(3) operation of law.

15 **“SEC. 2989. DURATION OF WITHDRAWAL AND RESERVATION.**

16 “(a) IN GENERAL.—Subject to subsection (b), the withdrawal and reservation of public
17 land made by section 2981 shall terminate on March 31, 2047.

18 “(b) EXTENSION.—

19 “(1) AGREEMENT.—The withdrawal and reservation of public land made by
20 section 2981 may be extended to March 31, 2072, by mutual agreement of the Secretary
21 of the Navy and Secretary of the Interior.

22 “(2) NOTICE.—The Secretary of the Navy shall provide notice to Congress of an
23 extension under paragraph (1).”.

Section-by-Section Analysis

The National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65) withdrew and reserved approximately 204,953 acres of public land in Churchill County, Nevada, for defense related uses as a range complex associated with Naval Air Station Fallon, Nevada. This withdrawal and reservation expires on 5 November 2021. Subsequent refinement of real property descriptions revealed the actual withdrawal area to be 202,864 acres. The range complex is used to support naval aviation aerial combat maneuvering training and weapons deployment and is used by naval aviators to meet basic, intermediate and advanced tactics, techniques, and procedures training requirements. It is also used by special operations forces for ground vehicle tactical maneuvering and live-fire training.

The current FRTC is comprised of withdrawn and fee-owned land in and around Fallon, Nevada. The land withdrawal expires on 4 November 2021 and the withdrawn land will return to the Department of the Interior (DOI) and will be unavailable for readiness training unless extended. Though essential to continued naval readiness, FRTC is too small for today's tactics, techniques and procedures. The range complex must be expanded by withdrawing an additional 602,216 acres to accommodate precision-guided munitions and SEAL ground mobility training in a tactical environment. DON determined that 1,079 acres of B-16 are not required and are being relinquished. The total withdrawal request is for 802,326 acres.

This proposal would modernize the Fallon Range Training Complex (FRTC) by adding a Subtitle to the Military Land Withdrawals Act of 2013, Title XXIX of Pub. L. 113-66. Section 2901 and 2902 and Subtitle A – General Provisions are common to all withdrawals under Title XXIX. This proposal would create a new Subtitle dedicated specifically to the unique aspects of the FRTC withdrawal. The specific sections to be added are listed below.

Section 2981 identifies the land to be withdrawn and reserved from public use.

Section 2982 provides for management of FRTC withdrawn lands. DON would be responsible for managing the land within the ordnance ranges (B-16, B-17, B-19 and B-20) under the Sikes Act. Bureau of Land Management would be responsible for managing the land within the Dixie Valley Training Area and Shoal Site under the Federal Land Policy and Management Act consistent with the purposes of the military land withdrawal. This section also requires DON and Department of the Interior to enter into an agreement for review of federal actions prior to approval by the Department of the Interior.

Section 2983 establishes the relationship between the proposed FRTC land withdrawal and reservation to other reservations currently existing over portions of B-16 and B-20 held by the Bureau of Reclamation and U.S. Fish and Wildlife Service. With regard to Bureau of Reclamation withdrawals on B-16 and B-20, the section requires DON to enter into an agreement with Department of the Interior to afford Bureau of Reclamation access to the ranges to operate and maintain its water management facilities consistent with DON range and public safety requirements. With regard to U.S. Fish and Wildlife Service withdrawal on B-20, the section requires DON to enter into an agreement with the Department of the Interior to afford U.S. Fish and Wildlife access to the range to conduct refuge management operations consistent

with DON range and public safety requirements. This section indicates that the military use of the withdrawn area is consistent with the purposes for which the Fallon National Wildlife Refuge was established.

Section 2984 provides for release from Wilderness Study Area designation over the areas known as the Job Peak Wilderness Study Area and the Stillwater Range Wilderness Study Area, and the portion of the Clan Alpine Mountains Wilderness Study Area, comprising approximately 127,670 acres, that is unsuitable for wilderness designation, and requires a Memorandum of Understanding between the Secretary of the Interior and the Secretary of the Navy concerning the management of lands under this section and approximately 78,478 acres adjacent to B-17.

Section 2985 designates as wilderness that portion, comprising approximately 68,458 acres, of the Clan Alpine Mountains Wilderness Study Area that contains wilderness characteristics as determined by the Bureau of Land Management in 2000 as a Wilderness Area while preserving the ability to conduct low-level military overflight of this area.

Section 2986 allows the Secretary of the Navy to transfer administrative jurisdiction of one parcel of land consisting of 86 acres to the Secretary of the Interior in Churchill County for the purpose of incorporating the parcel into the Sand Mountain Recreation Area, which is managed by the Bureau of Land Management. The 86-acre parcel fronts U.S. Route 50 and was purchased in 1986 as part of a larger acquisition of property in Dixie Valley. This parcel is of limited value to DON, but of great value to Department of the Interior for meeting its requirements associated with the Sand Mountain Recreation Area. This section also allows the Secretary of the Navy to transfer administrative jurisdiction of several parcels of land consisting of 2,200 acres to the Secretary of the Interior in Churchill County for the purpose of incorporating these parcels into the Stillwater National Wildlife Refuge Complex. These parcels are north of the existing and proposed expansion of the Dixie Valley Training Area and were purchased in 1986 as part of a larger acquisition of property in Dixie Valley. These parcels are of limited value to DON, but of great value to the Department of Interior for meeting its requirements associated with the Fallon and Stillwater National Wildlife Refuges. Inclusion of these parcels into the Sand Mountain Recreation Area and Stillwater National Wildlife Refuge Complex is consistent with DON readiness requirements and beneficial to DON as it reduces management costs by transferring the cost of parcel management to the Department of the Interior. DON is currently spending \$50,000 per year to manage these parcels.

Section 2987 provides authorization to the Department of the Navy to extract sand and gravel from the withdrawn area for its use on the withdrawn lands.

Section 2988 terminates the prior withdrawal for FRTC in the event that it is still in existence at the time this withdrawal is enacted, prior to 5 November 2021.

Section 2989 provides a termination date for the withdrawal and reservation. The date is approximately 25 years after the expected date of enactment, in the middle of the fiscal year. This firm date makes it easier to manage and plan for renewals. This section also authorizes an

extension of the withdrawal and reservation by mutual agreement of the Secretaries of the Navy and Interior.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget Request. While acquisition of 802,326 acres of public land via land withdrawal has no budget implications, modernization of the Fallon Range Training Complex requires the acquisition of approximately 66,551 acres of non-federal land, relocation of approximately 10 miles of Nevada State Route 361 and relocation of approximately 20 miles of the Paiute Pipeline Company six-inch natural gas pipeline. In addition, expansion of the Range Complex from its current 231,069 acres to 898,758 thousand acres (an additional 667,689 acres of mostly withdrawn land but also purchased land) will result in increased management costs that will require six additional full time equivalent civilian employees, increased range operating support (e.g., electrical power, maintenance of range buildings, fencing and roads; preparation and implementation of a new Integrated Natural Resources Management Plan and Integrated Cultural Resources Management Plan; restoration of burned areas). Finally, modernization requires installation and maintenance of new target arrays, sensors and scoring systems.

RESOURCE IMPACTS (\$MILLIONS)									
	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element
Phase 1 FRTC Modernization – Land Acquisition	\$ 29.04					Military Construction	01	160495442	N/A
Phase 2 FRTC Modernization – Land Acquisition		\$ 48.25				Military Construction	01	160495444	N/A
Phase 3 FRTC Modernization – fencing, utilities, range support structures					\$ 71.34	Military Construction	01	160495446	N/A
B-17 Range JDAM Capability – relocation of NV State Route 361 and natural gas pipeline				\$ 110.80		Military Construction	01	160495444	N/A

Civilian Personnel (6 additional FTEs)	\$ 0.90	\$ 0.90	\$ 0.91	\$ 0.91	\$ 0.91	Operations and Maintenance, Navy	01	BSS1	N/A
Range Facilities Maintenance (Base Operating Support) – maintenance of range facilities and restoration of burned areas	\$ 2.25	\$ 1.30	\$ 1.34	\$ 1.38	\$ 1.42	Operations and Maintenance, Navy	01	BSM1	N/A
Total	\$ 32.19	\$ 50.45	\$ 2.25	\$ 113.09	\$ 73.67				

PERSONNEL IMPACTS (END STRENGTH OR FTEs)

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	Appropriation	Budget Activity	BLI/SAG	Program Element
Navy	6	6	6	6	6	Operation and Maintenance, Navy	01	BSS1	N/A
Total	6	6	6	6	6				

Changes to Existing Law: This proposal would add a new subtitle H to the Military Land Withdrawals Act of 2013, the full text of which is shown in the legislative text above.

1 **SEC. __. DURATION OF WITHDRAWAL AND RESERVATION OF PUBLIC LAND**
2 **AT EL CENTRO TRAINING RANGES COMPLEX, CALIFORNIA.**

3 Section 2925 of the El Centro Naval Air Facility Ranges Withdrawal Act (subtitle B of
4 title XXIX of division B of Public Law 104–201; 110 Stat. 2816) is amended by striking “25
5 years after the date of the enactment of this subtitle” and inserting “on March 31, 2047”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how
the legislative text would amend existing law.]**

Section-by-Section Analysis

The National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201) withdrew and reserved approximately 46,600 acres of public land in Imperial County, California, for defense related uses as a range complex associated with Naval Air Facility El Centro, California. This withdrawal and reservation expires on 22 September 2021. The range complex is used to support naval aviation aerial combat maneuvering training and weapons deployment and is used by naval aviators to meet basic and intermediate tactics, techniques and procedures training requirements.

On 1 June 2016, per requirements of section 2927 of Pub. L. 104-201, ASN EI&E notified the Secretary of the Interior of the DON requirement to extend the withdrawal and reservation of these lands; on 19 September 2017 the Navy submitted an application to the Bureau of Land Management for continued withdrawal and reservation of these lands. As stated in the withdrawal application, DON merely seeks an extension of the withdrawal and reservation and does not seek a change in withdrawal and reservation purpose or area.

The current withdrawal and reservation has a duration of 25 years. This proposal would extend the withdrawal and reservation duration another 25 years with expiration occurring in the middle of the fiscal year for any subsequent Congressional action vice the beginning. It would also retain all other provisions in Pub. L. 104-201 associated with this withdrawal and reservation. One such provision is the requirement that Navy, Bureau of Land Management and Bureau of Reclamation execute a Memorandum of Understanding governing management of the land. This agreement was signed on 5 February 1997 and remains in full force and effect. Under this agreement, the Department of the Interior is responsible for managing the natural and cultural resources on the withdrawn land consistent with readiness requirements.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2021 President’s Budget Request. While acquisition of 46,600 acres of public land via land withdrawal has no budget implications, retention of the El Centro Ranges Training Complex results in custody of the land being retained by DON under the requirements of Pub. L. 104-201. Accordingly, the costs to continue management of the Complex are depicted in the table below.

RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	Appropriation From	Budget Activity	Dash-1 Line Item	Program Element
Withdrawal Extension for El Centro Training Ranges Complex	\$0.05	\$0.05	\$0.06	\$0.06	\$0.06	Operation and Maintenance, Navy	01	BSM1	N/A
Total	\$0.05	\$0.05	\$0.06	\$0.06	\$0.06				

Changes to Existing Law: This proposal would make the following changes to section 2925 of the El Centro Naval Air Facility Ranges Withdrawal Act (subtitle B of title XXIX of division B of Public Law 104–201; 110 Stat. 2816):

SEC. 2925. DURATION OF WITHDRAWAL AND RESERVATION.

The withdrawal and reservation made under this subtitle shall terminate ~~25 years after the date of the enactment of this subtitle~~ on March 31, 2047.

1 **SEC. __. SUBMISSION OF UNCERTIFIED COST INFORMATION.**

2 Section 2306a(d)(1) of title 10, United States Code, is amended—

3 (1) by inserting “or contractor” after “the offeror” both places it appears; and

4 (2) by inserting after “a fair and reasonable price.” the following: “If the

5 contracting officer determines that the price information submitted by the offeror or

6 contractor is not adequate for evaluating the reasonableness of the price of the contract,

7 subcontract, or modification of the contract or subcontract, the offeror or contractor shall

8 be required to submit to the contracting officer uncertified cost information to the extent

9 necessary to determine the reasonableness of such price.”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal is a top Acquisition and Sustainment efficiency initiative to ensure that the Department has insight into the costs of sole source items, and is in a more favorable position to negotiate with sole source companies to prevent excessive pricing practices. In light of the recent congressional hearings surrounding the TransDigm Group Inc. excessive pricing practices, it is evident that providing the Department with the statutory authority to obtain uncertified cost or pricing data to the extent necessary to determine price reasonableness is paramount in ensuring that such excessive pricing practices are curtailed.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President’s Budget request.

Changes to Existing Law: This proposal would amend section 2306a of title 10, United States Code (as amended by Public Law 115–232), as follows:

§2306a. Cost or pricing data: truth in negotiations

(a) Required Cost or Pricing Data and Certification.-(1) The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(A) An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures that is only expected to receive one bid shall be required to submit cost or pricing data before the award of a contract if-

(i) in the case of a prime contract entered into after June 30, 2018, the price of the contract to the United States is expected to exceed \$2,000,000; and

(ii) in the case of a prime contract entered into on or before June 30, 2018, the price of the contract to the United States is expected to exceed \$750,000.

(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if-

(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i), the price adjustment is expected to exceed \$2,000,000;

(ii) in the case of a change or modification made after July 1, 2018, to a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed \$750,000; and

(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed \$750,000.

(C) An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and-

(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i), the price of the subcontract is expected to exceed \$2,000,000;

(ii) in the case of a subcontract entered into after July 1, 2018, under a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed \$2,000,000; and

(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed \$750,000.

(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if-

(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii), the price adjustment is expected to exceed \$2,000,000; and

(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed \$750,000.

(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the head of the agency concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted-

(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(4) Except as provided under subsection (b), this section applies to contracts entered into by the head of an agency on behalf of a foreign government.

(5) A waiver of requirements for submission of certified cost or pricing data that is granted under subsection (b)(1)(C) in the case of a contract or subcontract does not waive the requirement under paragraph (1)(C) for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under that paragraph should be waived in the case of such subcontracts and justifies in writing the reasons for the determination.

(6) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before June 30, 2018, the head of the agency that entered into such contract shall modify the contract to reflect subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.

(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted in accordance with [section 1908 of title 41](#).

(b) Exceptions.-

(1) In general .-Submission of certified cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract-

(A) for which the price agreed upon is based on-

(i) adequate competition that results in at least two or more responsive and viable competing bids; or

(ii) prices set by law or regulation;

(B) for the acquisition of a commercial product or a commercial service;

(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination; or

(D) to the extent such data-

(i) relates to an offset agreement in connection with a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm; and

(ii) does not relate to a contract or subcontract under the offset agreement for work performed in such foreign country or by such foreign firm that is directly related to the weapon system or defense-related item being purchased under the contract.

(2) Modifications of contracts and subcontracts for commercial products or commercial services .-In the case of a modification of a contract or subcontract for a commercial product or commercial services that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1)(A) or (1)(B), submission of certified cost or pricing data shall not be required under subsection (a) if-

(A) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial product or commercial services to a contract or subcontract for the acquisition of an item other than a commercial product or commercial services.

(3) Noncommercial modifications of commercial products .-(A) The exception in paragraph (1)(B) does not apply to cost or pricing data on noncommercial modifications of a commercial product that are expected to cost, in the aggregate, more than the amount specified in subsection (a)(1)(A)(i), as adjusted from time to time under subsection (a)(7), or 5 percent of the total price of the contract (at the time of contract award), whichever is greater.

(B) In this paragraph, the term "noncommercial modification", with respect to a commercial product, means a modification of such product that is not a modification described in [section 103\(3\)\(A\) of title 41](#).

(C) Nothing in subparagraph (A) shall be construed-

(i) to limit the applicability of the exception in subparagraph (A) or (C) of paragraph (1) to cost or pricing data on a noncommercial modification of a commercial product; or

(ii) to require the submission of cost or pricing data on any aspect of an acquisition of a commercial product other than the cost and pricing of noncommercial modifications of such product.

(4) Commercial product or commercial service determination .-(A) For purposes of applying the exception under paragraph (1)(B) to the required submission of certified cost or pricing data, the contracting officer may presume that a prior commercial product or commercial service determination made by a military department, a Defense Agency, or another component of the Department of Defense shall serve as a determination for subsequent procurements of such product or service.

(B) If the contracting officer does not make the presumption described in subparagraph (A) and instead chooses to proceed with a procurement of a product or service previously determined to be a commercial product or a commercial service using procedures other than the procedures authorized for the procurement of a commercial product or a commercial service, as the case may be, the contracting officer shall request a review of the commercial item determination by the head of the contracting activity.

(C) Not later than 30 days after receiving a request for review of a determination under subparagraph (B), the head of a contracting activity shall-

(i) confirm that the prior determination was appropriate and still applicable; or

(ii) issue a revised determination with a written explanation of the basis for the revision.

(5) A contracting officer shall consider evidence provided by an offeror of recent purchase prices paid by the Government for the same or similar commercial products or commercial services in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison after considering the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased or applicable terms and conditions.

(6) Determination by prime contractor .-A prime contractor required to submit certified cost or pricing data under subsection (a) with respect to a prime contract shall be responsible for determining whether a subcontract under such contract qualifies for an exception under paragraph (1)(A) from such requirement.

(c) Cost or Pricing Data on Below-Threshold Contracts.-

(1) Authority to require submission.-Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

(2) Exception.-The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

(3) Delegation of authority prohibited.-The head of a procuring activity may not delegate functions under this paragraph.

(d) Submission of Other Information.-

(1) Authority to require submission .-When certified cost or pricing data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the offeror or contractor shall be required to submit to the contracting officer data other than certified cost or pricing data (if requested by the contracting officer), to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in subsection (b)(1)(A), the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement. If the contracting officer determines that the offeror or contractor does not have access to and cannot provide sufficient information on prices for the same or similar items to determine the reasonableness of price, the contracting officer shall require the submission of information on prices for similar levels of work or effort on related products or services, prices for alternative solutions or approaches, and other information that is relevant to the determination of a fair and reasonable price. If the contracting officer determines that the price information submitted by the offeror or contractor is not adequate for evaluating the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract, the offeror or contractor shall be required to submit to the contracting officer uncertified cost information to the extent necessary to determine the reasonableness of such price. Contracting officers shall not determine the price of a contract or subcontract to be fair and reasonable based solely on historical prices paid by the Government.

(2) Ineligibility for award.- (A) In the event the contracting officer is unable to determine proposed prices are fair and reasonable by any other means, an offeror who fails to make a good faith effort to comply with a reasonable request to submit data in accordance with paragraph (1) is ineligible for award unless the head of the contracting activity, or the designee of the head of contracting activity, determines

that it is in the best interest of the Government to make the award to that offeror, based on consideration of pertinent factors, including the following:

- (i) The effort to obtain the data.
- (ii) Availability of other sources of supply of the item or service.
- (iii) The urgency or criticality of the Government's need for the item or service.
- (iv) Reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract based on information available to the contracting officer.
- (v) Rationale or justification made by the offeror for not providing the requested data.
- (vi) Risk to the Government if award is not made.

(B)(i) Any new determination made by the head of the contracting activity under subparagraph (A) shall be reported to the Principal Director, Defense Pricing and Contracting on a quarterly basis.

(ii) The Under Secretary of Defense for Acquisition and Sustainment, or a designee, shall produce an annual report identifying offerors that have denied multiple requests for submission of uncertified cost or pricing data over the preceding three-year period, but nevertheless received an award. The report shall identify products or services offered by such offerors that should undergo should-cost analysis. The Secretary of Defense may include a notation on such offerors in the system used by the Federal Government to monitor or record contractor past performance. The Under Secretary shall assess the extent to which those offerors are sole source providers within the defense industrial base and shall develop strategies to incentivize new entrants into the industrial base to increase the availability of other sources of supply for the product or service.

(3) Limitations on authority .-The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under paragraph (1):

(A) Reasonable limitations on requests for sales data relating to commercial products or commercial services.

(B) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial products or commercial services from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(C) A statement that any information received relating to commercial products or commercial services that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

(e) Price Reductions for Defective Cost or Pricing Data.-(1)(A) A prime contract (or change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the agency that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

(B) For the purposes of this section, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding

sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(2) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

(3) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that-

(A) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor-

(i) was the sole source of the property or services procured; or

(ii) otherwise was in a superior bargaining position with respect to the property or services procured;

(B) the contracting officer should have known that the cost and pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(D) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under subsection (a)(2).

(4)(A) A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by paragraph (1) if-

(i) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(ii) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, and that the data were not submitted as specified in subsection (a)(3) before such date.

(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph (A) if-

(i) the certification under subsection (a)(2) with respect to the cost or pricing data involved was known to be false when signed; or

(ii) the United States proves that, had the cost or pricing data referred to in subparagraph (A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

(f) Interest and Penalties for Certain Overpayments.-(1) If the United States makes an overpayment to a contractor under a contract subject to this section and the overpayment was due

to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States-

(A) for interest on the amount of such overpayment, to be computed-

(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and

(ii) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986; and

(B) if the submission of such defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

(2) Any liability under this subsection of a contractor that submits cost or pricing data but refuses to submit the certification required by subsection (a)(2) with respect to the cost or pricing data shall not be affected by the refusal to submit such certification.

(g) Right of United States To Examine Contractor Records.-For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the authority provided by [section 2313\(a\)\(2\)](#) of this title.

(h) Definitions .-In this section:

(1) Cost or pricing data .-The term "cost or pricing data" means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), or, if applicable consistent with subsection (e)(1)(B), another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

(2) Subcontract .-The term "subcontract" includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

1 **SEC. ____. USE OF DETAILED MANUFACTURING AND PROCESS INFORMATION.**

2 Section 2320(a)(2)(D)(i) of title 10, United States Code, is amended—

3 (1) in subclause (II), by striking “; or” and inserting a semicolon;

4 (2) in subclause (III), by striking the semicolon and inserting “; or”; and

5 (3) by adding at the end the following new subclause:

6 “(IV) is a release, disclosure, or use of detailed manufacturing or
7 process data necessary for operation, maintenance (including depot-level
8 maintenance, repair, and overhaul), installation, training, airworthiness
9 determinations, testing and evaluation, or accident or incident
10 investigations;”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

DOD has a substantial inventory of manned and unmanned aircraft that must be maintained in an airworthy condition, including a growing inventory of “commercial derivative aircraft (CDA).” For civil aircraft, Title 14 of the Code of Federal Regulations (Federal Aviation Administration (FAA) Regulations) requires that original equipment manufacturers (OEMs) provide airworthiness maintenance data, known as Instructions for Continued Airworthiness (ICA), to owners and maintainers. *See* “Department of Defense Access to Intellectual Property for Weapon Systems Sustainment,” Institute for Defense Analysis, IDA Paper P-8266, submitted pursuant to Section 875 of the fiscal year 2016 National Defense Authorization Act. This provision is intended to enable the release, disclosure or use of operation, maintenance, installation or training data, including ICA data, that is detailed manufacturing or process data to commercial maintenance, repair, and overhaul firms, seeking to compete for DoD maintenance and repair work, including depot-level maintenance, provided the person to whom the data is released or disclosed is subject to a prohibition on the further release, disclose, or use of such data and the owner of the data is notified of such release, disclosure or use. In addition, this provision would enable DoD to share detailed manufacturing or process data with firms seeking to compete for contracts to support engineering analysis, testing and evaluation, training, airworthiness determinations, and data necessary to conduct accident or incident investigations, provided the person to whom the data is released or disclosed is subject to a prohibition on the further release, disclose, or use such data and the owner of the data is notified of such release, disclosure or use.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President's Budget Request.

Changes to Existing Law: This proposal would make the following changes to section 2320 of title 10, United States Code:

§2320. Rights in technical data

(a)(1) The Secretary of Defense shall prescribe regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data pertaining to an item or process. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation. Such regulations may not impair any right of the United States or of any contractor or subcontractor with respect to patents or copyrights or any other right in technical data otherwise established by law. Such regulations also may not impair the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(2) Such regulations shall include the following provisions:

(A) Development exclusively with federal funds.—In the case of an item or process that is developed by a contractor or subcontractor exclusively with Federal funds (other than an item or process developed under a contract or subcontract to which regulations under section 9(j)(2) of the Small Business Act (15 U.S.C. 638(j)(2)) apply), the United States shall have the unlimited right to—

- (i) use technical data pertaining to the item or process; or
- (ii) release or disclose the technical data to persons outside the government or permit the use of the technical data by such persons.

(B) Development exclusively at private expense.—Except as provided in subparagraphs (C), (D), and (G), in the case of an item or process that is developed by a contractor or subcontractor exclusively at private expense, the contractor or subcontractor may restrict the right of the United States to release or disclose technical data pertaining to the item or process to persons outside the government or permit the use of the technical data by such persons.

(C) Exception to subparagraph (b).—Subparagraph (B) does not apply to technical data that—

- (i) constitutes a correction or change to data furnished by the United States;
- (ii) relates to form, fit, or function;
- (iii) is necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data, including such data pertaining to a major system component); or
- (iv) is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

(D) Exception to subparagraph (b).—Notwithstanding subparagraph (B), the United States may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) such release, disclosure, or use—

(I) is necessary for emergency repair and overhaul;

(II) is a release, disclosure, or use of technical data pertaining to an interface between an item or process and other items or processes necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; ~~or~~

(III) is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the United States and is required for evaluational or informational purposes; or

(IV) is a release, disclosure, or use of detailed manufacturing or process data necessary for operation, maintenance (including depot-level maintenance, repair, and overhaul), installation, training, airworthiness determinations, testing and evaluation, or accident or incident investigations;

(ii) such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) the contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(E) Development with mixed funding.—Except as provided in subparagraphs (F) and (G), in the case of an item or process that is developed in part with Federal funds and in part at private expense, the respective rights of the United States and of the contractor or subcontractor in technical data pertaining to such item or process shall be established as early in the acquisition process as practicable (preferably during contract negotiations) and shall be based on negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiations would not be practicable. The establishment of such rights shall be based upon consideration of all of the following factors:

(i) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(ii) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(iii) The interest of the United States in encouraging contractors to develop at private expense items for use by the Government.

(iv) Such other factors as the Secretary of Defense may prescribe.

(F) Interfaces developed with mixed funding.—Notwithstanding subparagraph (E), the United States shall have government purpose rights in technical data pertaining to an interface between an item or process and other items or processes that was developed

in part with Federal funds and in part at private expense, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiation of different rights in such technical data would be in the best interest of the United States.

(G) Major system interfaces developed exclusively at private expense or with mixed funding.—Notwithstanding subparagraphs (B) and (E), the United States shall have government purpose rights in technical data pertaining to a major system interface developed exclusively at private expense or in part with Federal funds and in part at private expense and used in a modular open system approach pursuant to section 2446a of this title, except in any case in which the Secretary of Defense determines that negotiation of different rights in such technical data would be in the best interest of the United States. Such major system interface shall be identified in the contract solicitation and the contract. For technical data pertaining to a major system interface developed exclusively at private expense for which the United States asserts government purpose rights, the Secretary of Defense shall negotiate with the contractor the appropriate and reasonable compensation for such technical data.

(H) A contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract—

(i) to sell or otherwise relinquish to the United States any rights in technical data except—

(I) rights in technical data described in subparagraph (A) for which a use or release restriction has been erroneously asserted by a contractor or subcontractor;

(II) rights in technical data described in subparagraph (C); or

(III) under the conditions described in subparagraph (D); or

(ii) to refrain from offering to use, or from using, an item or process to which the contractor is entitled to restrict rights in data under subparagraph (B).

(I) The Secretary of Defense may—

(i) negotiate and enter into a contract with a contractor or subcontractor for the acquisition of rights in technical data not otherwise provided under subparagraph (C) or (D), if necessary to develop alternative sources of supply and manufacture;

(ii) agree to restrict rights in technical data otherwise accorded to the United States under this section if the United States receives a royalty-free license to use, release, or disclose the data for purposes of the United States (including purposes of competitive procurement); or

(iii) permit a contractor or subcontractor to license directly to a third party the use of technical data which the contractor is otherwise allowed to restrict, if necessary to develop alternative sources of supply and manufacture.

(3) The Secretary of Defense shall define the terms "developed", "exclusively with Federal funds", and "exclusively at private expense" in regulations prescribed under paragraph (1). In defining such terms, the Secretary shall specify the manner in which indirect costs shall be treated and shall specify that amounts spent for independent research and development and bid and proposal costs shall not be considered to be Federal funds for the purposes of the definitions under this paragraph.

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