

1 **SEC. ____ . EXTENSION OF TEMPORARY AUTHORITY FOR NONIMMIGRANT**
2 **CONSTRUCTION AND MEDICAL-RELATED WORKERS ON GUAM AND**
3 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS AND**
4 **INCLUSION OF WAKE ISLAND IN AUTHORITY.**

5 (a) NUMERICAL LIMITATIONS FOR NONIMMIGRANT WORKERS.—

6 (1) NONIMMIGRANT WORKERS GENERALLY.—An alien, if otherwise qualified, may
7 seek admission to Wake Island, Guam, or the Commonwealth of the Northern Mariana
8 Islands (in this section referred to as the “Commonwealth”) as a nonimmigrant worker
9 under section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C.
10 1101(a)(15)(H)) without counting against the numerical limitations set forth in section
11 214(g) of such Act (8 U.S.C. 1184(g)).

12 (2) H-2B WORKERS.—An alien who seeks admission to Wake Island, Guam, or
13 the Commonwealth, under section 101(a)(15)(H)(ii)(b) of the Immigration and
14 Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)), if otherwise qualified, may be admitted
15 under such section, notwithstanding the requirement of such section that the service or
16 labor be temporary, for a period of up to 3 years—

17 (A) to perform service or labor related to construction on Wake Island,
18 Guam, or the Commonwealth, or

19 (B) to perform service or labor as a health care worker (such as a nurse,
20 physician assistant, or allied health professional), subject to the education,
21 training, licensing, and other requirements of section 212(a)(5)(C) of the
22 Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(C)), as applicable, except
23 that this subparagraph shall not be construed to include graduates of medical

1 schools coming to Wake Island, Guam, or the Commonwealth to perform service
2 or labor as members of the medical profession.

3 (3) CANCELLATION OF VISAS FOR MISUSE.—A visa or other document authorizing
4 admission of an alien to Wake Island, Guam, or the Commonwealth pursuant to section
5 6(b)(1) of Public Law 94–241 (48 U.S.C. 1806(b)(1)) or paragraph (1) or (2) of this
6 subsection shall be canceled if the alien enters an area within the United States other than
7 Guam, the Commonwealth, or a United States Minor Outlying Island in the Pacific.

8 (4) APPLICABILITY.—Paragraphs (1) and (2) shall apply during the period
9 beginning on January 1, 2030, and ending on December 31, 2035.

10 (b) SERVICE OR LABOR ON WAKE ISLAND RELATED TO MILITARY CONSTRUCTION.—

11 (1) IN GENERAL.—An alien admitted to Guam or the Commonwealth pursuant to
12 section 6(b)(1) of Public Law 94–241 (48 U.S.C. 1806(b)(1)) or subsection (a)(2) of this
13 section may travel to, and perform service or labor related to military construction on,
14 Wake Island.

15 (2) APPLICABILITY.—Paragraph (1) shall apply during the period beginning on the
16 date of the enactment of this Act and ending on December 31, 2038.

[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 provide temporary authority through 2035 for nonimmigrant construction- and health care-related labor on Wake Island and would provide for continued availability of construction and medical workers on Guam and in the Commonwealth of the Northern Mariana Islands (the Commonwealth) following December 31, 2029, when current provisions providing for such labor under the Commonwealth Transition Program (as provided in section 6(b)(1) of Public Law 94–241 (48 U.S.C. 1806(b)(1))) expire. Provisions providing exceptions to national cap on nonimmigrant workers have been in effect on Guam and in the Commonwealth since 2009, and exceptions to “temporary need” requirements have been in effect in various forms for Guam and the Commonwealth since the enactment of National Defense Authorization Act for Fiscal Year 2018. This proposal would (1) extend similar provisions to Wake Island, (2) allow nonimmigrant workers admitted to Guam or the Commonwealth to be recruited for construction-related labor or services on Wake Island, and (3) provide for continued

authority for such workforce on Wake Island, Guam, and the Commonwealth through December 31, 2035. This proposal also includes provisions providing additional assurances against misuse of nonimmigrant visas for Wake Island, Guam, and the Commonwealth.

Current temporary need exceptions do not include Wake Island, which is one of the United States Outlying Islands in the Pacific and is a location where extensive military construction in support of Indo-Pacific military posture is being planned. Current temporary need exceptions extend to “service or labor on Guam or in the Commonwealth pursuant to any agreement entered into by a prime contractor or subcontractor calling for services or labor required for performance of a contract or subcontract for construction, repairs, renovations, or facility services that is directly connected to, supporting, associated with, or adversely affected by the military realignment occurring on Guam and in the Commonwealth, with priority given to federally funded military projects” and to “service or labor as a health care worker (such as a nurse, physician assistant, or allied health professional) at a facility that jointly serves members of the Armed Forces, dependents, and civilians on Guam or in the Commonwealth, subject to the education, training, licensing, and other requirements of section 212(a)(5)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(C)), as applicable, except that this clause shall not be construed to include graduates of medical schools coming to Guam or the Commonwealth to perform service or labor as members of the medical profession”. These provisions were adopted to enable military realignment to Guam and the Commonwealth due to the limited availability of construction workers; the provisions were subsequently extended and expanded to continue to enable military construction and to reduce impacts of the realignment on communities in Guam and the Commonwealth. Virtually all construction on Guam or in the Commonwealth is “adversely affected” by the military realignment as the result of limited availability of labor due to the number of workers required in support of the military realignment. Current authorities for construction and health care workers on Guam expire on December 31, 2029 and do not extend to Wake Island.

Realignment- and posture-related military construction is now expected to continue and expand through at least 2035. Additional authority is required to provide for an adequate workforce for Wake Island, and to continue to provide an adequate workforce on Guam and in the Commonwealth. Realignment- and military posture-related projects are expected to continue to require nonimmigrant labor and will continue to impact communities in Guam and the Commonwealth by limiting construction labor available for civilian projects. Increasing numbers of military members, military civilians, and military contractors will also continue to strain the limited health care workforce on Guam and the Commonwealth. Extensive military posture projects in support of the Indo-Pacific posture are now also being planned for Wake Island, with major construction expected to begin as early as 2027. Wake Island has no permanent population and normally only has a temporary transient workforce of around 100; the existing workforce cannot support completion of major construction projects with short timelines. A nonimmigrant labor force will be required both to complete the military construction projects needed on Wake Island and to provide support services and health care to support the construction workforce. Addition of a nonimmigrant workforce authority for Wake Island and continuation of such authority for Guam and the Commonwealth through at least 2035 is essential to the continued realignment to Guam and the Commonwealth and to U.S. military posture in the Indo-Pacific.

The proposal contains the following provisions:

- Subsection (a)(1) would provide an exception from the national cap on nonimmigrant workers for Wake Island, Guam, and the Commonwealth. This would essentially carry forward the provisions currently found at section 6(b)(1)(A) of Public Law 94–241 (48 U.S.C. 1806(b)(1)(A)), which will expire at the conclusion of the Commonwealth transition program on December 31, 2029, while also expanding those provisions Wake Island.

- Subsection (a)(2) would provide an exception to “temporary need” requirements for construction- and health care-related services and labor normally precluded by the continuing need for such services and labor on Wake Island, Guam, the Commonwealth. This subsection simplifies and effectively carries forward the provisions currently found at section 6(b)(1)(B) of Public Law 94–241 (48 U.S.C. 1806(b)(1)(B)), which are currently set to expire on December 31, 2029, and also extends the provisions to Wake Island. Extension of these provisions through at least 2035 is needed to avoid uncertainty regarding availability of labor that is expected to have significant cost and schedule impacts to multi-year military construction projects on Guam and in the Commonwealth, and expansion is needed to facilitate military posture projects on Wake Island.
- Subsection (a)(3) is intended to provide an additional assurance against misuse of nonimmigrant Wake Island, Guam, and Commonwealth visas. Although overstays and abuse of Guam and Commonwealth nonimmigrant visas is virtually non-existent, this provision would provide an additional assurance against misuse of the nonimmigrant visas for Wake Island, Guam, and the Commonwealth, while also providing some flexibility for entry into other United States Minor Outlying Islands in the Pacific (which could be required as a result of weather or emergent military requirements).
- Subsection (a)(4) would provide for a delayed effective date and temporary period of effectiveness for paragraphs (1) and (2) of subsection (a), thereby making these paragraphs effective on January 1, 2029, and providing that they will remain effective until December 31, 2035. This is intended to provide for an immediate seamless transition when the existing, similar provisions of section 6 of Public Law 94–241 (48 U.S.C. 1806) expire on December 31, 2029.
- Subsection (b)(1) would allow the use of workers admitted to Guam or the Commonwealth under existing authorities for work on Wake Island notwithstanding existing provisions that limit such labor to Guam and the Commonwealth and would also allow continued use of labor previously approved for Guam and the Commonwealth under subsection (a)(2) of the proposal. This subsection would provide an important bridge to facilitate labor for the projects needed on Wake Island from a workforce that may be ready and capable within the territories of the United States.
- Subsection (b)(2) would provide for an immediate and temporary effective date, making subsection (b)(1) effective until December 31, 2038, after the last of the admissions authorized under paragraphs (1) and (2) of section (a) expire.

This proposal is needed to provide the workforce needed for construction on Wake Island to support emerging Indo-Pacific posture requirements and to provide assurance that construction and health care labor will remain available on Guam and in the Commonwealth to support projects essential to military posture in the Indo-Pacific following the expiration of current authorities in section 6 of Public Law 94–241 (48 U.S.C. 1806). Expansion and extension are needed well in advance of expiration of current authorities to avoid cost and schedule impacts to multiyear military construction projects that are essential to maintaining the U.S. military posture in the Indo-Pacific. Such expanded authority is now expected to be needed through at least 2035 as the U.S. military continues to pursue construction to support training and posture in Guam and the Commonwealth and commences construction on Wake Island.

Budget Implications: This proposal has no budgetary impact on the use of resources requested within the Fiscal Year (FY) 2026 President's Budget. However, workforce issues may be a cost factor for MILCON project estimates for Wake Island, Guam, and the Commonwealth. If this legislative proposal is not adopted contractors will face uncertainty regarding the availability of labor and there is likely to be a significant cost increase to the Department for projects awarded for Wake Island and for Guam and Commonwealth projects for FY 2027 and beyond.

Changes to Existing Law: This proposal would not change the text of any existing provision of law.

1 **SEC. ____ . MODIFICATION TO AUTHORITY TO AWARD PRIZES FOR ADVANCED**
2 **TECHNOLOGY ACHIEVEMENTS.**

3 (a) MAXIMUM AMOUNT OF AWARD PRIZES.—

4 (1) AWARDS.—Subsection (c) of section 4025 of title 10, United States Code, is
5 amended—

6 (A) by striking “LIMITATIONS.—” and all that follows through “(1) No
7 prize” and inserting “LIMITATION.—No prize”;

8 (B) by striking “\$10,000,000” and inserting “\$20,000,000”; and

9 (C) by striking paragraphs (2) and (3).

10 (2) AWARDS ABOVE THRESHOLD.—Subsection (c) of such section is further
11 amended by striking “the Under Secretary of Defense for Research and Engineering” and
12 inserting “the Secretary of Defense”.

13 (3) CONGRESSIONAL NOTIFICATION THRESHOLD.—Subsection (g)(1) of such
14 section is amended by striking “\$10,000,000” and inserting “the amount specified in
15 subsection (c)”.

16 (b) AUTHORITY TO AWARD FOLLOW-ON PRODUCTION CONTRACTS.—Such section is
17 further amended—

18 (1) by redesignating subsection (g) as subsection (h); and

19 (2) by inserting after subsection (f) the following new subsection (g):

20 “(g) AUTHORITY TO AWARD FOLLOW-ON PRODUCTION CONTRACTS.—The Secretary of
21 Defense may issue, without further justification, follow-on contract awards or agreements,
22 including sole source awards or agreements, to a recipient competitively selected under
23 subsection (b).”.

1 (c) REPEAL OF SPECIFIED OFFICIALS THROUGH WHOM THE SECRETARY MAY MAKE

2 AWARDS.—Subsection (a) of such section is amended by striking “, acting through” and all that

3 follows through “each military department,”.

Section-by-Section Analysis

This proposal would amend section 4025 of title 10, United States Code, which provides the Secretary of Defense the authority to run prize competitions. This proposal would enable the Secretary of Defense to delegate the authority at a higher threshold to accommodate new defense innovation organizations like the Defense Innovation Unit as well as run higher value prize challenges that have the potential to bring in commercially derived cutting-edge technology, and then scale to production contracts. Additionally, more clearly codifying the ability to award follow-on contracts would further increase competition and accelerate fielding of winning submissions to the warfighter.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2026 President’s Budget.

Changes to Existing Law: This proposal would amend section 4025 of title 10, United States Code, as follows:

§ 4025. Prizes for advanced technology achievements

(a) ~~AUTHORITY.—The Secretary of Defense, acting through the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment, and the service acquisition executive for each military department,~~ may carry out programs to award cash prizes and other types of prizes, including procurement contracts and other agreements, that the Secretary determines are appropriate to recognize outstanding achievements in basic, advanced, and applied research, technology development, and prototype development that—

(1) have the potential for application to the performance of the military missions of the Department of Defense; or

(2) demonstrate management practices that improve the schedule or performance, reduce the costs, or otherwise support the transition of technology into acquisition programs or operational use.

(b) **COMPETITION REQUIREMENTS.**—Each program under subsection (a) shall use a competitive process for the selection of recipients of cash prizes and for the selection of recipients of procurement contracts and other agreements. The process shall include the widely-advertised solicitation of submissions.

(c) **LIMITATIONS.**—~~(1) No prize competition may result in the award of a prize with a fair market value of more than 10,000,000~~ \$20,000,000 without the approval of the ~~Under Secretary of Defense for Research and Engineering.~~

~~(2) No prize competition may result in the award of more than \$1,000,000 in cash prizes without the approval of the Under Secretary of Defense for Research and Engineering.~~

~~(3) No prize competition may result in the award of a solely nonmonetary prize with a fair market value of more than \$10,000 without the approval of the Under Secretary of Defense for Research and Engineering.~~

(d) RELATIONSHIP TO OTHER AUTHORITY.—A program under subsection (a) may be carried out in conjunction with or in addition to the exercise of any other authority of an official referred to in that subsection.

(e) ACCEPTANCE OF FUNDS.—In addition to such sums as may be appropriated or otherwise made available to the Secretary to award prizes under this section, the Secretary may accept funds or nonmonetary items from other departments and agencies of the Federal Government, from State and local governments, and from the private sector, to award prizes under this section. The Secretary may not give any special consideration to any private sector entity in return for a donation.

(f) USE OF PRIZE AUTHORITY.—Use of prize authority under this section shall be considered the use of competitive procedures for the purposes of [chapter 221 of this title](#).

(g) AUTHORITY TO AWARD FOLLOW-ON PRODUCTION CONTRACTS.—The Secretary of Defense may issue, without further justification, follow-on contract awards or agreements, including sole source awards or agreements, to a recipient competitively selected under subsection (b).

~~(g)~~ (h) CONGRESSIONAL NOTICE.—

(1) IN GENERAL.—Not later than 15 days after a procurement contract or other agreement that exceeds a fair market value of ~~10,000,000~~ the amount specified in subsection (c) is awarded under the authority under a program under subsection (a), the Secretary of Defense shall submit to the congressional defense committees written notice of such award.

(2) CONTENTS.—Each notice submitted under paragraph (1) shall include—

(A) the value of the relevant procurement contract or other agreement, as applicable, including all options;

(B) if applicable, a summary of the management practice that contributed to an improvement to schedule or performance or a reduction in cost relating to the transition of technology;

(C) an identification of any program executive officer (as defined in [section 1737 of this title](#)) responsible for implementation or oversight of research results, technology development, prototype development, or management practices (as applicable) for which an award was made under this section, and a brief summary of lessons learned by such program executive officer in carrying out such implementation or oversight;

(D) a brief description of the research result, technology development, or prototype for which such procurement contract or other agreement, as applicable, was awarded; and

(E) an explanation of the benefit to the performance of the military mission of the Department of Defense resulting from the award.

1 **SEC. __. NATIONAL GUARD PERSONNEL DISASTER RESPONSE DUTY.**

2 (a) IN GENERAL.—Chapter 3 of title 32, United States Code, is amended—

3 (1) by redesignating section 329 as section 330; and

4 (2) by inserting after section 328 the following new section 329:

5 **“§ 329. Active Guard and Reserve duty: disaster response duty**

6 “(a) DISASTER RESPONSE AUTHORITY.—When a Governor has declared an emergency
7 due to a disaster, the Secretary of Defense may authorize the Governor to direct National Guard
8 personnel serving under section 328 of this title to perform duties in response to, or in
9 preparation for, such disaster.

10 “(b) REQUIREMENTS.—The disaster response duty described in subsection (a)—

11 “(1) shall be conducted on a reimbursable basis, in accordance with subsection

12 (c);

13 “(2) may be performed to the extent that the performance of the duty does not
14 interfere with the performance of the member’s primary Active Guard and Reserve duties
15 of organizing, administering, recruiting, instructing, and training the reserve components;
16 and

17 “(3) shall not exceed 14 days per person per calendar year, except that—

18 “(A) the Secretary of Defense may, at the request of a Governor prior to
19 the expiration of the 14th day, authorize an extension of the duration of duty to up
20 to 21 days if the Secretary determines that such an extension is necessary and
21 appropriate; and

22 “(B) the Secretary of Defense may, at the request of a Governor, authorize
23 an extension of the duration of duty to up to 60 days if the Secretary determines

1 that the duty is in support of the response to a catastrophic incident, as that term is
2 defined in section 501 of the Homeland Security Act of 2002 (6 U.S.C. 311).

3 “(c) REIMBURSEMENT.—

4 “(1) CHARGE OF COSTS TO STATE.—The Secretary of the military department
5 concerned shall charge a State for the fully burdened costs of manpower for each day of
6 duty performed pursuant to subsection (a).

7 “(2) SOURCE OF FUNDS.—Such charges shall be paid from the funds of the State
8 using National Guard personnel to perform duty pursuant to subsection (a) or from any
9 other non-United States Government funds.

10 “(3) CREDITING OF AMOUNTS RECEIVED.—Any amounts received by the Secretary
11 concerned under subsection (a) shall be credited, at the discretion of the Secretary of
12 Defense, to—

13 “(A) the appropriation, fund, or account used in incurring the obligation;

14 or

15 “(B) an appropriate appropriation, fund, or account currently available for
16 the purposes for which the expenditures were made.

17 “(4) ARREARS.—The duty described in subsection (a) may not be performed if a
18 State is more than 90 days in arrears in reimbursing the Secretary of the military
19 department concerned for any previous disaster response duty conducted pursuant to
20 subsection (a), unless authorized by the Secretary of Defense after the applicable
21 Governor has obligated funds for the amount in arrears.

22 “(d) LIABILITY.—A member described in subsection (a) is not an instrumentality of the
23 United States with respect to any act or omission in carrying out a disaster response duty

1 pursuant to this section. The United States shall not be responsible for any claim or judgment
2 arising from the use of National Guard personnel under this section.

3 “(e) DEFINITIONS.—In this section:

4 “(1) DISASTER RESPONSE DUTY.—The term ‘disaster response duty’ means duty
5 performed by a member of the National Guard at the direction of the Governor of the
6 State and pursuant to an emergency declaration by such Governor in response to a
7 disaster or in preparation for an imminent disaster.

8 “(2) STATE.—The term ‘State’ means each of the several States, the
9 Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands.”.

10 (b) REGULATIONS.—The Secretary of Defense shall prescribe regulations implementing
11 section 329 of title 32, United States Code, as added by subsection (a), not later than 180 days
12 after the date of the enactment of this Act.

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

Section-by-Section Analysis

This proposal would enable the Secretary of Defense to provide governors greater flexibility to use National Guard members performing Active Guard and Reserve duties under section 328 of title 32, United States Code, on a temporary, non-interference, and reimbursable basis to respond to State disasters. This authority would allow governors and Adjutants General to tailor the force composition of their disaster responses, and it would provide temporary access to Active Guard and Reserve personnel possessing high-demand, low-density skills that are vital during disaster response operations. Under regulations prescribed by the Secretary of Defense, these National Guard personnel could be used for disaster response duties for up to 14 days per person per calendar year, although the Secretary could approve up to 21 days per person per calendar year when warranted and up to 60 days in the event of a “catastrophic incident,” as defined in section 501 of the Homeland Security Act of 2002 (6 U.S.C. 311). This authority would be available so long as the State is no more than 90 days in arrears in reimbursing the Department of Defense for any previous disaster response duty. State reimbursement for the fully burdened costs of manpower for each day of disaster response duty would be required in all cases, and such reimbursements would be credited, at the discretion of the Secretary of Defense, to the appropriation, fund, or account used in incurring the obligation, or to an appropriation, fund, or account currently available for the purposes for which expenditures were made.

Resource Information: This proposal has no significant impact on the use of resources requested within the Fiscal Year (FY) 2026 President's Budget.

Changes to Existing Law: This proposal would add a new section to chapter 3 of title 32, United States Code, the full text of which is shown in the legislative language above.

1 **SEC. ____.** **REVISIONS TO LIMITATIONS ON PAY FOR OFFICERS AND CREWS OF**
2 **MARITIME VESSELS OPERATED BY OR FOR THE UNITED STATES.**

3 Section 5348 of title 5, United States Code is amended—

4 (1) in subsection (a)—

5 (A) by striking “subsection (b) of this section” and inserting “subsection

6 (c)”; and

7 (B) by inserting before the period at the end the following: “, not to exceed

8 the rate of pay for the Vice President under section 104 of title 3”;

9 (2) by redesignating subsection (b) as subsection (c); and

10 (3) by inserting after subsection (a) the following new subsection (b):

11 “(b) The aggregate pay limitation prescribed under section 5307 shall not apply to an
12 employee whose pay is fixed under subsection (a).”.

**[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 address limitations on the pay of officers and crews of maritime vessels operated by the United States. Two revisions are proposed, each of which is vital to the capability of the Military Sealift Command (MSC) of the Department of the Navy (DON) to recruit and retain highly skilled licensed officers to meet national security operational requirements today and as those requirements continue to grow.

First, the proposal would amend section 5348 of title 5, United States Code (U.S.C.), to exclude Federal Civil Service Mariners (CIVMARs) from the aggregate limitation on pay under section 5307 of title 5, U.S.C., without additional funding.

Second, the proposal would amend section 5348 to authorize the head of an agency to fix the annual rate of basic pay for officers and crews of vessels under their administrative control at a rate not greater than the annual rate of salary of the Vice President. Approval would increase MSC’s overall rates by less than 3/10^{ths} of 1 percent.

Consistent with section 5348(a), these changes would pay Federal CIVMARs comparably with their maritime industry counterparts, strengthen agency retention efforts, and increase the pool of employees willing to seek promotion to positions as senior licensed officers.

MSC is the ocean transportation provider for the Department of Defense (DoD). MSC's mission is to empower global warfighting capabilities across the full spectrum of military operations. MSC delivers assured logistics and strategic sealift and conducts other specialized missions at sea anywhere in the world, under any conditions. MSC operates a fleet of approximately 140 vessels. Of these, 61 are Government-owned and Government-operated (GO/GO) and are crewed by CIVMARs. MSC is the largest Federal employer of merchant mariners and employs approximately 5,500 CIVMARs to operate, maintain, and carry out the missions of the Government-operated vessels. This workforce is expected to grow to approximately 6,800 with the addition of new and more sophisticated vessels plus implementation of changes in Shore Leave accrual in accordance with the Fiscal Year 2024 National Defense Authorization Act (NDAA). Contract operators employ contract mariners for operation of the remainder of MSC's fleet.

Federal Wage Mariner (WM) pay and pay practices are different from those prescribed for General Schedule or Wage Grade Federal employees. Section 5348(a) of title 5 of the U.S. Code states, "...the pay of officers and members of crews of vessels excepted from chapter 51 of this title by section 5102(c)(8) of this title *shall* be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry." (*emphasis added*)

Per authority delegated to it, the Defense Civilian Personnel Advisory Service (DCPAS) determines all MSC Federal mariner wage increases based upon the Office of Personnel Management's (OPM) annual Fiscal Year Prevailing Rate Pay Adjustments memorandum and MSC's submission of annual wage survey information received from the U.S. commercial industry shipping companies and maritime unions. Commercial maritime industry rates may vary based on an assigned vessel's "power tonnage" classification. Within the constraints of the DCPAS assessments, MSC pay scales parallel those paid for similar positions in the commercial maritime industry, consistent with the type and class of vessel to which assigned. Regardless of the geographic location, each position has a single rate of base pay for each vessel's pay classification documented annually in the DCPAS' authorized Schedule of Wages.

In contrast to section 5348(a), the pay of Federal CIVMARs serving in licensed deck and engine officer positions is not consistent or competitive with the prevailing rates and practices in the commercial maritime industry. Unlike their commercial industry counterparts, Federal mariners are subject to an annual basic as well as aggregate limitation on pay. In 2023, MSC's Federal mariners serving as a vessel's Master forfeited under section 5373 up to \$83,590 (31 percent) in basic pay dependent upon the vessel pay class assigned. Similarly, Chief Engineers forfeited up to \$62,962 (26 percent) in basic pay. In addition, these same Federal mariners deferred most if not all their earned discretionary pay ranging from several thousands of dollars to upward of \$150,000.

(a) Exclusion of Federal Civil Service Mariners from the Limitation of Certain Payments

Under section 5307, a covered employee may not receive any allowance, differential, bonus, award, or other cash payment in a calendar year to the extent that such payment, when added to the employee's total basic pay paid or payable, would cause the employee's aggregate compensation to exceed the annual rate payable for Level I of the Executive Schedule at the end of that calendar year. Any amount in excess of the aggregate limit is deferred under section 5307(b)(1) to the beginning of the next calendar year, which for MSC's senior licensed officers most often results in a series of continual deferrals until the employee leaves Federal service. This proposal would amend section 5348 of title 5, U.S.C., to exclude pay received by this closely defined group of Federal employees from the aggregate pay cap under section 5307(a).

At the beginning of each calendar year, the Defense Finance and Accounting Service (DFAS) estimates whether an employee's aggregate compensation for that year will exceed the applicable aggregate limitation on pay. MSC's senior licensed officers in the positions of Master, Chief Engineer, First Officer, and First Assistant Engineer have salaries which generally exceed the annual aggregate limitation each year. Any deferred amount paid out at the beginning of the following calendar year is included in that employee's subsequent year's aggregate limit, which then merely serves to reach the aggregate limit earlier for that and subsequent years. This results in an on-going, perpetually increasing amount deferred until all discretionary payments are deferred.

Dependent upon a senior licensed officer's work schedule, annual deferrals can reach upwards of \$150,000 in pay unavailable for the CIVMAR's immediate use, and depending on the officer's length of Federal service, their individual total deferred earnings can and have reached upwards of a million dollars, which acts as a strong incentive to separate from Federal service. This proposal removes that accumulating deferral and would pay the mariners what they earn when they earn it, which is comparable with their commercial industry counterparts.

Contrary to section 5348(a), the aggregate limitation acts as a forced withholding of CIVMAR pay, lowering the CIVMAR's effective pay below that of identically qualified mariners in the commercial maritime industry. Additionally, the aggregate limitation can result in junior licensed officers receiving the same annual take home pay as the most senior officer positions of Master and Chief Engineer. In sum, the aggregate limitation not only prevents application of any meaningful retention incentives, but it also actively incentivizes turnover of licensed officers: the quickest way to access their deferred pay is to leave Federal service.

Excluding CIVMARs from coverage under section 5307(a) may raise questions about MSC relying upon implementing an OPM approved performance appraisal program under 5 U.S.C. 5307(d). This approach would be counterproductive. In February 1981, OPM approved the DON's request to exclude MSC's CIVMARs from coverage of chapter 43 of title 5, U.S.C. as by law, the employment conditions of MSC's CIVMARs closely follow those for mariners in the private sector. Accordingly, CIVMARs are excluded from the traditional performance evaluation requirements due to their shipboard operating environment involving frequent crew changes, and unusual tours of duty, which precludes the normal tenure of the supervisor/employee relationship. Duties also often vary from assignment to assignment, making it difficult to develop a consistent pattern of performance for the rating period. Under these conditions, the benefits of linking a performance appraisal system to compensation,

promotions, and other personnel functions would not be realized. To require MSC to conform to the performance appraisal requirements would not achieve the intended outcome; it would place MSC at a distinct disadvantage relative to the private sector and would produce no tangible benefits. Under OPM's exclusion, CIVMAR performance and conduct-related issues are aptly addressed under chapter 75 of title 5, U.S.C. For these same reasons, this proposal assumes retention of OPM's exclusion as it exists, and seeks the changes described to the pay cap application itself.

(b) Increase in Limitation on Pay for Officers and Crews of Maritime Vessels

Under 5 U.S.C. 5373, the annual rate of basic pay fixed by administrative action for a position or employee may not exceed the rate for Level IV of the Executive Schedule. Unlike the deferral of discretionary pay that exceeds the annual aggregate limitation (Level I of the Executive Schedule at \$235,600 in 2023), basic pay the exceeds the cap is forfeited. Table (1) below demonstrates the individual monetary impact of limiting the annual rate of basic pay at Level IV. As reflected, all MSC Master and Chief Engineer basic pay rates exceed the annual base pay limitation. This proposal would amend section 5348(a) by raising the basic pay limitation to a rate not greater than the annual rate of salary of the Vice President; the lowest authorized annual rate wherein industry-competitive basic pay would not be forfeited.

Forfeiture of Basic Pay					
Class of Vessel	2023 Basic Pay Rates		2023 Executive Schedule (EX – 4)	Subject to Forfeiture	
	Master	Chief Engineer		Master	Chief Engineer
T-AKE, T-AOE, T-AH, ESB, T-EPF	\$267,090	\$246,462	\$183,500	(\$83,590)	(\$62,962)
T-AS, LCC	\$256,040	\$225,649	\$183,500	(\$72,540)	(\$42,149)
T-AO	\$246,893	\$240,619	\$183,500	(\$63,393)	(\$57,119)
T-ARC, T-ATS	\$226,002	\$201,829	\$183,500	(\$42,502)	(\$18,329)
T-ARS, T-ATF, Pipeline	\$203,256	\$187,544	\$183,500	(\$19,756)	(\$4,044)

Table (1) (2024 rates are approved in July.)

The limitation on basic pay at Level IV of the Executive Schedule incentivizes upwardly mobile CIVMARs to separate from Federal service before achieving the rank of Master or Chief Engineer. Not only can industry compensate them at a higher rate of pay, but all compensation is also paid at the time work is performed without forfeiture. Promotion to the most senior MSC CIVMAR positions results in little to no additional payment for the assumption of additional duties, responsibilities, licensures, certifications, liabilities, and risk. The current base pay cap acts as an artificial ceiling to CIVMAR pay with, in 2023, forfeiture up to 31 percent in Masters' and up to 26 percent in Chief Engineers' basic pay. As basic pay rates increase, left unchanged, so too will the amount of forfeiture.

To meet minimum shipboard manning during 2024, MSC must employ 181 Masters and Chief Engineers. On January 31, 2024, MSC employed 142, yielding a vacancy rate of 22

percent. More Masters and Chief Engineers are eligible to retire than any other licensed officer rating. Of the 142, approximately 20 percent of the Masters and 19 percent of the Chief Engineers are either eligible or will be eligible to retire by the end of 2024, and an additional 6 percent of Masters and 12 percent of Chief Engineers will be eligible by the end of 2026. In contrast, significantly fewer licensed officers in all other officer ratings remain in Federal service long enough to reach retirement eligibility.

Licensed officer turnover is at 17 percent. For the past three fiscal years (FY), licensed officer turnover, especially in deck officers, has increased from 14 percent in FY 2021 to 18 percent in FY 2022, to 17 percent in FY 2023 and through January 31, 2024, in FY 2024. Of the 862 licensed officer separations during this period, only two (2) elected to remain in Federal service through transfers to other agencies. Resignations were the primary method of separation at 81 percent followed by retirement at 16 percent. Senior licensed officers in the positions of Master, Chief Engineer, First Officer, and First Assistant Engineer accounted for 16 percent of all licensed officer separations with resignations at 66 percent followed by retirements at 34 percent. Senior officers leaving MSC employment to work for commercial merchant marine companies and offshore industries have cited the disparity in pay, pay practices, and leave as their primary reasons for departure.

Turnover and vacancies have impacted the CIVMAR workforce to such an extent that MSC is forced to crew ships with less than 80 percent of the manning necessary, resulting in increasing risk to safety as well as reducing the operational capabilities of the platforms and the vessel maintenance performed.

The Transportation Institute (TI) published and distributed the *Mariner Workforce Survey* in the first quarter of 2023, to maritime businesses throughout the United States “to gain a better understanding of workforce shortages among U.S. merchant mariners, its impacts on fleets, and to identify some strategies and solutions to address those issues.” (TI Mariner Workforce Shortage Survey Findings, August 2023). A total of 163 U.S. carriers responded.

Findings, during the six-month survey period, indicated 58 percent of the respondents are struggling with delays in, and the inability to fill mariner positions with the senior deck officers and other deck ratings, with entry-level deck positions being the most difficult to fill. Over 25 percent of the respondents claimed that 75 percent or more of their fleet had been affected by the shortage. Further, 49 percent experienced vessel delays, off-hire days, or missed work opportunities due to crew shortages, and slightly more than 25 percent of the respondents claimed to having had to sail below the U.S. Coast Guard (USCG) Certificate of Inspection levels in the past six months. The impact of unfilled positions has prompted employers to explore solutions to hire and retain workers, including extending contractual tours of duty, offering bonuses and/or offering to pay a higher rating than the position being filled. More than a quarter of the respondents shared they have used all three strategies to hire and retain workers. In short, competition for mariners is intense.

Congress has also recognized the shortage of merchant mariners. The FY 2024 NDAA, Sec. 3534 chartered Maritime Workforce Working Group, directs the Maritime Administrator, in consultation with the National Merchant Marine Personnel Advisory Committee, the National

Offshore Safety Advisory Committee, the National Towing Safety Advisory Committee, and the Committee on the Marine Transportation System to convene a working group “to examine and assess the size of the pool of mariners with covered credentials necessary to support the United States flag fleet.” (H.R. 2670-696).

MSC’s FY 2024 required CIVMAR workforce of 6,016 is approximately 52 percent the size of all its closest U.S. industry competitors combined. As of January 31, 2024, MSC employed 5,537 CIVMARs with 479 vacancies, of which 338 or 71 percent were licensed deck and engine officer positions. A limited pool of qualified candidates coupled with sustained high turnover only adds to MSC’s difficulty in attracting, training and then retaining sufficient numbers of qualified licensed officers. The ability to pay senior licensed officers their full rate of basic pay without forfeiture as well as pay all discretionary pays when earned without deferral is essential for licensed officer retention.

The annual basic and aggregate limitations on pay are severe disadvantages to Federal maritime employment. Consistent with section 5348(a), if approved, this proposal would pay-out rather than defer accrued earnings for Federal CIVMARs. Secondly, this proposal would authorize payment of the agency head approved industry-competitive base pay rates at a rate not greater than the Vice President, and in doing so, eliminate the Masters’ and Chief Engineers’ forfeiture of basic pay. Together, these changes would pay Federal CIVMARs comparably with their maritime industry counterparts, and would strengthen agency retention efforts, improve recruitment outcomes, and increase the pool of employees willing to seek promotion to the senior positions, directly impacting the United States’ ability to operate the CIVMAR crewed vessels.

Resource Information:

1. EXCLUSION OF FEDERAL CIVIL SERVICE OFFICERS AND MEMBERS OF CREWS OF MSC OPERATED VESSELS FROM THE LIMITATION OF CERTAIN PAYMENTS. — This change has no impact on the use of resources requested within the Fiscal Year (FY) 2026 President’s Budget. Adjustments are made to General Ledger Account Code (GLAC) 2210.2400 (Accrued - Funded Payroll/Leave - Public - Holiday/Other) depending on if Deferred Earnings are incurred (increase to 2210.2400) or if Deferred Earnings are paid out (decrease to 2210.2400).

If this change is approved, the earnings would be moved from deferred to paid and released from GLAC 2210.2400. This subsection would result in a process change to pay the employee all their earnings vice placing the deferred funds into the accrued general account only to be released to the employee when the employee’s earnings are below the cap, or the employee exits the Federal workforce.

2. INCREASE IN LIMITATION ON PAY FOR OFFICERS AND CREWS OF MARITIME VESSELS OPERATED BY OR FOR THE DEPARTMENT OF DEFENSE. — Tables (2) and (3) below reflect the best estimates of resources requested within the FY 2026 President’s Budget request that are impacted by this proposal. As reflected in Table (2), this proposal will impact approximately 201 personnel serving in the senior licensed officer positions of Master and Chief Engineer.

PERSONNEL IMPACT (FTES)

Program	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Civilian Personnel	201	205	209	211	213	Working Capital Funding Navy	7	4000	NA
Total	201	205	209	211	213	--	--	--	--

Table (2)

The amounts in Table (3) were inflated using a rate found in Budget Guidance Memorandum BG23-3 (PB25 Guidance) of 2.1 percent across the Future Years Defense Program (FYDP). The FY total reflects the difference between the DCPAS approved annual rate of basic pay and the Executive Schedule Level IV annual limitation. This proposal will have a minimal impact on out-year customer rates for Government-owned and Government-operated vessels. The increase to MSC's overall rates will be less than 3/10^{ths} of 1 percent.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Civilian Personnel	11.4	11.8	12.4	12.8	12.8	Working Capital Funding Navy	7	4000	NA
Total	11.4	11.8	12.4	12.8	12.8	--	--	--	--

Table (3)

Changes to Existing Law: This proposal would amend section 5348 of title 5, United States Code, as follows:

Title 5, United States Code

§5348. Crews of vessels

(a) Except as provided by subsection ~~(b)~~(c) of this section, the pay of officers and members of crews of vessels excepted from chapter 51 of this title by section 5102(c)(8) of this title shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry, not to exceed the rate of pay for the Vice President under section 104 of title 3.

(b) The aggregate pay limitation prescribed under section 5307 shall not apply to an employee whose pay is fixed under subsection (a).

~~(b)~~(c) Vessel employees in an area where inadequate maritime industry practice exists and vessel employees of the Corps of Engineers shall have their pay fixed and adjusted under the provisions of this subchapter other than this section, as appropriate.
