

1 **SEC. ___. AMENDMENTS RELATING TO GENERAL OFFICER SELECTION**

2 **BOARDS.**

3 (a) GENERAL OFFICER PROMOTION BOARD SELECTION RATES.—Section 616(d) of title 10,
4 United States Code, is amended —

5 (1) by inserting “ to a grade below brigadier general or rear admiral (lower half)”
6 after “section 611(a) of this title”; and

7 (2) by adding at the end the following: “The number of officers recommended
8 for promotion to a grade above colonel, or, in the case of the Navy, captain, may, in the
9 discretion of the Secretary concerned, be up to 100 percent of the number of officers
10 included in and above the promotion zone.”.

11 (b) MODIFICATION OF LIMITATION ON NUMBER OF OFFICERS RECOMMENDABLE FOR
12 PROMOTION BY PROMOTION SELECTION BOARDS.—Section 616(d) of such title, as amended by
13 subsection (a), is further amended—

14 (1) by striking “(d) The” and inserting “(d)(1) Except as provided in paragraph
15 (2), the” ; and

16 (2) by adding at the end the following new paragraph:

17 “(2) If a promotion zone established under section 623 of this title includes less
18 than 50 officers, the Secretary concerned may authorize selection boards convened under
19 section 611(a) to recommend for promotion a number equal to not more than 100 percent
20 of the number of officers included in such promotion zone.”.

**[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

Subsection (a) of this proposal would amend section 616(d) of title 10, United States Code, to afford the Secretaries of the military departments greater flexibility for General/Flag Officer promotion rates.

Section 616(d) limits promotion rates for all officers to 95 percent of those officers included in the promotion zone. This limits the services' ability to promote to requirements when there is a small pool of officers in the zone with a matching requirement to fill. Removing this statutory limitation provides the Secretaries of the military departments discretion to increase promotion rates to 100 percent, when needed.

By striking the 95 percent limitation in section 616(d) for General/Flag Officer promotion boards, the proposal would allow maximum flexibility to promote to requirements for General/Flag Officer positions. This proposal only addresses changing promotion rates for General/Flag Officers.

As an example, in Calendar Year 2020 the Department of the Air Force was not able to promote the number of General Officers needed to fill emerging requirements for the stand-up of the United States Space Force. Specifically, for the major general board, two officers were eligible in the newly established Space Force competitive category and there was a requirement to promote two officers. This was not permitted in accordance with section 616(d) of title 10. Therefore, the Department delayed the promotion board to increase the number of eligible officers to three, thus being able to select two on the promotion board. Delaying the board also delayed the confirmation of the officers selected and thus delayed critical fills for service and joint positions.

Further, this limitation also impeded the selection of Health Professional General Officers during Calendar Year 2020. Due to a limited pool of eligible officers for promotion to major general the service was limited in how many could be selected by the promotion board. The officers selected were sufficient to meet service requirements; however, the service was not able to compete to fill additional joint positions.

The Department of the Air Force anticipates that allowing greater flexibility in General/Flag Officer promotion rates will give the services the ability to meet National Security Objectives by having the proper force within the General/Flag Officer ranks.

Subsection (b) of this proposal would amend section 616 of title 10, United States Code, which requires the Services to limit the number of officers recommended for promotion by a selection board to 95 percent, by allowing an exception for promotion zones of less than 50 officers.

The Navy desires the ability to use a promotion selection rate of over 95 percent in very limited instances, in competitive categories that are small and have significant education, technical, and specialty training. For example, Navy would have applied this authority during the fiscal year (FY) 2022 O-4 promotion planning for Aerospace Engineering Duty Officer, Aerospace Maintenance Duty Officer, and Judge Advocate General Corps. Navy agrees that selection boards should be competitive. However, in these

small competitive categories, the officers have competitively joined their communities from other competitive categories after meeting stringent accession criteria. A greater than 95 percent promotion selection rate is necessary in these small competitive categories to ensure Navy can fill requirements and have Service flexibility in competitive category management. The Navy's lineal promotion process and significant number of competitive categories provide the ability to promote the right number of highly qualified officers with the right skill sets to support our growing and dynamic force.

This legislative proposal permits an exception to the 95 percent limit for smaller communities with promotion zones less than 50 officers in order to maintain officer management planning efforts. The 95 percent limitation will still remain in place for communities with promotion zones of 50 or more officers.

Service secretaries will have discretionary authority to implement based on the needs of their Service and will not be required to promote above 95 percent. For Navy, lower thresholds below 50 officers were considered, but would have had limited applicability for our specialized and technical communities in need.

This proposal is conservative in that an increase of up to 5% in promotion opportunity for a zone fewer than 50 officers would result in no more than 3 additional selections to the next higher grade per community zone.

The authority to promote up to 100 percent of the promotion zone can prevent small communities from being forced to pass over and separate otherwise fully qualified officers required at the next paygrade. The discretionary use of this authority may also prove beneficial in retaining talent as the Department of Defense continues to compete with the civilian sector for Cyber, Information Professionals and other specialized skillsets.

Resource Information: This proposal has no impact on the use of resources.

Changes to Existing Law: This proposal would amend section 616 of title 10, United States Code, as follows:

§616. Recommendations for promotion by selection boards

(a) A selection board convened under section 611(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 615(b) of this title), considers best qualified for promotion within each competitive category considered by the board.

(b) The Secretary of the military department concerned shall establish the number of officers such a selection board may recommend for promotion from among officers being considered from below the promotion zone in any competitive category. Such number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the service so require. If the number determined under this subsection is less than one, the board may recommend one such officer. The number of officers recommended for promotion

from below the promotion zone does not increase the maximum number of officers which the board is authorized under section 615 of this title to recommend for promotion.

(c) A selection board convened under section 611(a) of this title may not recommend an officer for promotion unless-

(1) the officer receives the recommendation of a majority of the members of the board;

(2) a majority of the members of the board finds that the officer is fully qualified for promotion; and

(3) a majority of the members of the board, after consideration by all members of the board of any adverse information about the officer that is provided to the board under section 615 of this title, finds that the officer is among the officers best qualified for promotion to meet the needs of the armed force concerned consistent with the requirement of exemplary conduct set forth in section 7233, 8167, or 9233 of this title, as applicable.

(d) (1) Except as provided in paragraph (2), the number of officers recommended for promotion by a selection board convened under section 611(a) of this title to a grade below brigadier general or rear admiral (lower half) may not exceed the number equal to 95 percent of the number of officers included in the promotion zone established under section 623 of this title for consideration by the board. The number of officers recommended for promotion to a grade above colonel, or, in the case of the Navy, captain, may, in the discretion of the Secretary concerned, be up to 100 percent of the number of officers included in and above the promotion zone.

(2) If a promotion zone established under section 623 of this title includes less than 50 officers, the Secretary concerned may authorize selection boards convened under section 611(a) to recommend for promotion a number equal to not more than 100 percent of the number of officers included in such promotion zone.

(e) Except as otherwise provided by law, an officer on the active-duty list may not be promoted to a higher grade under this chapter unless he is considered and recommended for promotion to that grade by a selection board convened under this chapter.

(f) The recommendations of a selection board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the written report of the recommendations of the board, required by section 617 of this title, is signed by each member of the board.

(g) The Secretary convening a selection board under section 611(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not-

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a selection board or any member of a selection board in the formulation of the board's recommendations

(h)(1) In selecting the officers to be recommended for promotion, a selection board may, when authorized by the Secretary of the military department concerned, recommend officers of

particular merit, from among those officers selected for promotion, to be placed higher on the promotion list established by the Secretary under section 624(a)(1) of this title.

(2) An officer may be recommended to be placed higher on a promotion list under paragraph (1) only if the officer receives the recommendation of at least a majority of the members of the board, unless the Secretary concerned establishes an alternative requirement. Any such alternative requirement shall be furnished to the board as part of the guidelines furnished to the board under section 615 of this title.

(3) For the officers recommended to be placed higher on a promotion list under paragraph (1), the board shall recommend the order in which those officers should be placed on the list.

1 **SEC. __. AUTHORITY TO BUILD CAPACITY FOR HUMANITARIAN ASSISTANCE**
2 **AND DISASTER RELIEF OPERATIONS.**

3 Section 333 of title 10, United States Code, is amended—

4 (1) in subsection (a), by adding at the end the following new paragraph:

5 “(10) Humanitarian assistance and disaster relief operations.”;

6 (2) in subsection (b)—

7 (A) in the heading, by striking “WITH SECRETARY OF STATE”;

8 (B) by adding at the end the following new paragraph:

9 “(5) SPECIAL RULE FOR HUMANITARIAN ASSISTANCE AND DISASTER RELIEF

10 OPERATIONS.—With respect to a program described in subsection (a)(10)—

11 “(A) the concurrence of the Administrator of the United States Agency for
12 International Development is required to conduct or support such program;

13 “(B) the Secretary of Defense and the Administrator shall—

14 “(i) jointly develop and plan any such program;

15 “(ii) jointly coordinate on the implementation of such program;

16 and

17 “(iii) each designate an individual responsible for program
18 coordination under this paragraph at the lowest appropriate level in the
19 Department and the Agency, respectively; and

20 “(C) the Secretary of Defense shall prepare any notice relating to such
21 program required by this section to be submitted to the appropriate committees of
22 Congress in coordination with the Administrator.”; and

23 (3) in subsection (c)—

- 1 (A) in paragraph (2)(A), by inserting “humanitarian principles,” after
2 “armed conflict,”; and
3 (B) in paragraph (3)—
4 (i) in the heading, by inserting “HUMANITARIAN PRINCIPLES,” after
5 “ARMED CONFLICT,”; and
6 (ii) by inserting “humanitarian principles,” after “armed conflict.”

[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 allow the Department of Defense (DoD) under section 333 of title 10, United States Code, to provide defense articles, training, defense services, supplies, and small-scale construction to the national security forces of foreign countries to build the capacity of such forces to support natural disaster preparedness and risk mitigation and response and to conduct multinational humanitarian assistance and disaster relief (HA/DR) operations, including response to pandemics, in accordance with humanitarian principles and, as applicable, international humanitarian law. The legislative proposal anticipates the potential for increased natural disasters due to climate change; responds to partner nation demand signals for HA/DR focused cooperation; and increase partners' interoperability with U.S. forces in HA/DR operations and multilateral coalitions.

Many U.S. partners, particularly developing countries, are vulnerable to natural disasters, such as pandemic disease, volcanic eruptions, floods, hurricanes, landslides, and earthquakes. Such events— some of which are liable to become increasingly prevalent due to climate change — can have particularly devastating consequences for developing countries, which often possess limited capacity and the capabilities needed for effective disaster response. Often, the military and security services of the affected nation are tasked with leading response and recovery efforts, albeit with limited capacity and capability to respond effectively, which may result in reliance on U.S. foreign assistance. A partner nation's inability to respond to crisis quickly and effectively in the event of a major natural disaster can stress response partners and exacerbate human suffering.

This legislative expansion to allow for DoD to build the capacity of foreign security forces for purposes of HA/DR aligns with the Department's intent to support a global, and prioritization-driven approach to security cooperation, as well as the intent of section 333 to build self-sustaining partner capacity in key areas. If section 333 were amended to include HA/DR capacity building as an approved mission area, DoD would use this new authority to help build the capacity of foreign military and security forces to conduct their own HA/DR operations in the event of a natural disaster, thereby lessening dependence on the United States. It would enhance security force capacity in support of civil authorities for preparedness, risk mitigation, and response to disasters; the role of security force support to civil authorities in

disaster response has proven vital during the ongoing COVID-19 pandemic. Often, security forces possess unique capacities that are crucial to disaster response that civilian agencies do not possess or cannot execute. HA/DR preparedness and risk-mitigation efforts are contact-layer activities that have contributed to establishing U.S. access, shaping perceptions of key audiences, and advancing U.S. and ally and partner messages of commitment and resolve. This proposal would strengthen this important role, and building military capacity in this area would allow reduced reliance on the United States in responding to overseas disasters.

Although DoD currently has humanitarian assistance authorities to assist countries after a natural disaster occurs, currently available authorities to provide the capacity building assistance proposed in this amendment are extremely limited. DoD's Humanitarian Assistance authority, 10 U.S.C. 2561, must serve a humanitarian purpose and benefit civilian populations. Typically, DoD is not able to justify using an existing humanitarian assistance authority to equip foreign security forces, using the Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) appropriation, because the assisted security force would be the primary beneficiary. Although responding to a disaster is commonly part of a security force unit's mission responsibilities, a security force unit's primary roles and day-to-day efforts are commonly security-related functions unrelated to humanitarian assistance. Therefore, using current DoD humanitarian assistance authority to equip a security force is not justifiable since the assisted security force unit will primarily use the transferred equipment for security missions.

Amending 10 U.S.C. 333 as proposed would fill a demand signal from partner nations who have identified increased capacity for HA/DR as an area of great interest, and would increase partners' interoperability with U.S. forces in HA/DR operations and multilateral coalitions. The intent would be for partners to increase regional participation and reduce their reliance on international assistance and burden-sharing in responding to natural disasters.

Adding HA/DR capacity building as one of the section 333 missions also creates a new avenue for the United States to attract new partners who may be hesitant to conduct other types of security cooperation activities with DoD or the U.S. government.

Further, building disaster response preparedness and risk mitigation is a non-controversial topic that the United States and partner nations have in common, and having this additional authority would provide opportunities for regional security cooperation in a politically benign context. In some situations, HA/DR-related efforts may be the only type of security cooperation engagement that a foreign partner is willing to pursue with DoD. In such cases, providing HA/DR-capacity-building assistance would be the only means for DoD to develop defense relationship between the United States and our partner nation and could be a catalyst leading to opportunities for DoD to conduct other types of security cooperation engagements with the foreign partner.

DoD views security cooperation efforts to strengthen partners' HA/DR capabilities as an effective way to increase multilateral defense cooperation and indirectly to advance other U.S. defense policy objectives. In certain regions of the world that are particularly vulnerable to natural disasters, as well as to the rising risks of climate change, and where there is a greater need for resiliency, such as the Western Hemisphere and South East Asia, the United States has committed to regional HA/DR cooperation as the top agenda item at forums such as the Conference of the Defense Ministers of the Americas (CDMA) and the Association of Southeast Asian Nations (ASEAN).

To facilitate implementation if this proposal is enacted, DoD will collaborate with the U.S. Agency for International Development (USAID) to develop an interagency approach for

DoD-funded HA/DR capacity-building programs for foreign security forces, under section 333(a) of title 10, United States Code.

Resource Information: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2023 President’s Budget request.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Section 333* Foreign Security Forces: Authority to Build Capacity	1,392	1,293	1,322	1,349	1,379	Operation and Maintenance, Defense-Wide	04	4GTD	1002200T
Total	1,392	1,293	1,322	1,349	1,379				

Changes to Existing Law: The proposal would make the following changes to Section 333 of title 10, United States Code:

§333. Foreign security forces: authority to build capacity

(a) **AUTHORITY.**—The Secretary of Defense is authorized to conduct or support a program or programs to provide training and equipment to the national security forces of one or more foreign countries for the purpose of building the capacity of such forces to conduct one or more of the following:

- (1) Counterterrorism operations.
- (2) Counter-weapons of mass destruction operations.
- (3) Counter-illicit drug trafficking operations.
- (4) Counter-transnational organized crime operations.
- (5) Maritime and border security operations.
- (6) Military intelligence operations.
- (7) Air domain awareness operations.
- (8) Operations or activities that contribute to an existing international coalition operation that is determined by the Secretary to be in the national interest of the United States.
- (9) Cyberspace security and defensive cyberspace operations.
- (10) Humanitarian assistance and disaster relief operations.

(b) **CONCURRENCE AND COORDINATION WITH SECRETARY OF STATE.**—

(1) **CONCURRENCE IN CONDUCT OF PROGRAMS.**—The concurrence of the Secretary of State is required to conduct or support any program authorized by subsection (a).

(2) JOINT DEVELOPMENT AND PLANNING OF PROGRAMS.—The Secretary of Defense and the Secretary of State shall jointly develop and plan any program carried out pursuant to subsection (a). In developing and planning a program to build the capacity of the national security forces of a foreign country under subsection (a), the Secretary of Defense and Secretary of State should jointly consider political, social, economic, diplomatic, and historical factors, if any, of the foreign country that may impact the effectiveness of the program.

(3) IMPLEMENTATION OF PROGRAMS.—The Secretary of Defense and the Secretary of State shall coordinate the implementation of any program under subsection (a). The Secretary of Defense and the Secretary of State shall each designate an individual responsible for program coordination under this paragraph at the lowest appropriate level in the Department concerned.

(4) COORDINATION IN PREPARATION OF CERTAIN NOTICES.—Any notice required by this section to be submitted to the appropriate committees of Congress shall be prepared in coordination with the Secretary of State.

(5) SPECIAL RULE FOR HUMANITARIAN ASSISTANCE AND DISASTER RELIEF OPERATIONS.—With respect to a program described in subsection (a)(10)—

(A) the concurrence of the Administrator of the United States Agency for International Development is required to conduct or support such program;

(B) the Secretary of Defense and the Administrator shall—

(i) jointly develop and plan any such program;

(ii) jointly coordinate on the implementation of such program; and

(iii) each designate an individual responsible for program coordination under this paragraph at the lowest appropriate level in the Department and the Agency, respectively; and

(C) the Secretary of Defense shall prepare any notice relating to such program required by this section to be submitted to the appropriate committees of Congress in coordination with the Administrator.

(c) TYPES OF CAPACITY BUILDING.—

(1) AUTHORIZED ELEMENTS.—A program under subsection (a) may include the provision and sustainment of defense articles, training, defense services, supplies (including consumables), and small-scale construction supporting security cooperation programs under this section.

(2) REQUIRED ELEMENTS.—A program under subsection (a) shall include elements that promote the following:

(A) Observance of and respect for the law of armed conflict, humanitarian principles, human rights and fundamental freedoms, the rule of law, and civilian control of the military.

(B) Institutional capacity building.

(3) OBSERVANCE OF AND RESPECT FOR THE LAW OF ARMED CONFLICT, HUMANITARIAN PRINCIPLES, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, THE RULE OF LAW, AND CIVILIAN CONTROL OF THE MILITARY.—In order to meet the requirement in paragraph (2)(A) with respect to particular national security forces under a program under subsection (a), the Secretary of Defense shall certify, prior to the initiation of the program, that the Department of Defense or the Department of State is already

undertaking, or will undertake as part of the security sector assistance provided to the foreign country concerned, training that includes a comprehensive curriculum on the law of armed conflict, humanitarian principles, human rights and fundamental freedoms, and the rule of law, and that enhances the capacity to exercise responsible civilian control of the military, as applicable, to such national security forces.

(4) INSTITUTIONAL CAPACITY BUILDING.—In order to meet the requirement in paragraph (2)(B) with respect to a particular foreign country under a program under subsection (a), the Secretary shall certify, prior to the initiation of the program, that the Department of Defense or another department or agency is already undertaking, or will undertake as part of the security sector assistance provided to the foreign country concerned, a program of institutional capacity building with appropriate institutions of such foreign country to enhance the capacity of such foreign country to organize, administer, employ, manage, maintain, sustain, or oversee the national security forces of such foreign country.

(d) LIMITATIONS.—

(1) ASSISTANCE OTHERWISE PROHIBITED BY LAW.—The Secretary of Defense may not use the authority in subsection (a) to provide any type of assistance described in subsection (c) that is otherwise prohibited by any provision of law.

(2) PROHIBITION ON ASSISTANCE TO UNITS THAT HAVE COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS.—The provision of assistance pursuant to a program under subsection (a) shall be subject to the provisions of section 362 of this title.

(3) DURATION OF SUSTAINMENT SUPPORT.—Sustainment support may not be provided pursuant to a program under subsection (a), or for equipment previously provided by the Department of Defense under any authority available to the Secretary during fiscal year 2015 or 2016, for a period in excess of five years unless the notice on the program pursuant to subsection (e) includes the information specified in paragraph (7) of subsection (e).

(e) NOTICE AND WAIT ON ACTIVITIES UNDER PROGRAMS.—Not later than 15 days before initiating activities under a program under subsection (a), the Secretary of Defense shall submit to the appropriate committees of Congress a written and electronic notice of the following:

(1) The foreign country, and specific unit, whose capacity to engage in activities as specified in subsection (a) will be built under the program, and the amount, type, and purpose of the support to be provided.

(2) A detailed evaluation of the capacity of the foreign country and unit to absorb the training or equipment to be provided under the program.

(3) The cost, implementation timeline, and delivery schedule for assistance under the program.

(4) A description of the arrangements, if any, for the sustainment of the program and the estimated cost and source of funds to support sustainment of the capabilities and performance outcomes achieved under the program beyond its completion date, if applicable.

(5) Information, including the amount, type, and purpose, on the security assistance provided the foreign country during the three preceding fiscal years pursuant to

authorities under this title, the Foreign Assistance Act of 1961, and any other train and equip authorities of the Department of Defense.

(6) A description of the elements of the theater security cooperation plan of the geographic combatant command concerned, and of the interagency integrated country strategy, that will be advanced by the program.

(7) In the case of a program described in subsection (d)(3), each of the following:

(A) A written justification that the provision of sustainment support described in that subsection for a period in excess of five years will enhance the security interest of the United States.

(B) To the extent practicable, a plan to transition such sustainment support from funding through the Department to funding through another security sector assistance program of the United States Government or funding through partner nations.

(8) In the case of activities under a program that results in the provision of small-scale construction above \$750,000, the location, project title, and cost of each small-scale construction project that will be carried out, a Department of Defense Form 1391 for each such project, and a masterplan of planned infrastructure investments at the location over the next 5 years.

(9) In the case of a program described in subsection (a), each of the following:

(A) A description of whether assistance under the program could be provided pursuant to other authorities under this title, the Foreign Assistance Act of 1961, or any other train and equip authorities of the Department of Defense.

(B) An identification of each such authority described in subparagraph

(A).

(f) QUARTERLY MONITORING REPORTS.—The Director of the Defense Security Cooperation Agency shall, on a quarterly basis, submit to the appropriate committees of Congress a report setting forth, for the preceding calendar quarter, the following:

(1) Information, by recipient country, of the delivery and execution status of all defense articles, training, defense services, supplies (including consumables), and small-scale construction under programs under subsection (a).

(2) Information on the timeliness of delivery of defense articles, defense services, supplies (including consumables), and small-scale construction when compared with delivery schedules for such articles, services, supplies, and construction previously provided to Congress.

(3) Information, by recipient country, on the status of funds allocated for programs under subsection (a), including amounts of unobligated funds, unliquidated obligations, and disbursements.

(g) FUNDING.—

(1) SOLE SOURCE OF FUNDS.—Amounts for programs carried out pursuant to subsection (a) in a fiscal year, and for other purposes in connection with such programs as authorized by this section, may be derived only from amounts authorized to be appropriated for such fiscal year for the Department of Defense for operation and maintenance, Defense-wide, and available for the Defense Security Cooperation Agency for such programs and purposes.

(2) AVAILABILITY OF FUNDS FOR PROGRAMS ACROSS FISCAL YEARS.—

(A) IN GENERAL.—Amounts available in a fiscal year to carry out the authority in subsection (a) may be used for programs under that authority that begin in such fiscal year and end not later than the end of the second fiscal year thereafter.

(B) ACHIEVEMENT OF FULL OPERATIONAL CAPACITY.—If, in accordance with subparagraph (A), equipment or training is delivered under a program under the authority in subsection (a) in the fiscal year after the fiscal year in which the program begins, amounts for defense articles, training, defense services, supplies (including consumables), and small-scale construction associated with such equipment or training and necessary to ensure that the recipient unit achieves full operational capability for such equipment or training may be used in the fiscal year in which the foreign country takes receipt of such equipment and in the next two fiscal years.

1 **SEC. ___. DIRECT HIRE AUTHORITY FOR CERTAIN PERSONNEL OF THE**
2 **DEPARTMENT OF DEFENSE.**

3 Section 9905(a) of title 5, United States Code, is amended—

4 (1) in the matter preceding paragraph (1), by inserting “, 3307,” after “3303”; and

5 (2) by adding at the end the following new paragraphs:

6 “(12) Any position in support of aircraft operations for which the Secretary
7 determines there is a critical hiring need or shortage of candidates.

8 “(13) Any position in support of the safety of the public, law enforcement, or first
9 response for which the Secretary determines there is a critical hiring need or shortage of
10 candidates.”.

**[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 section 9905 of title 5, United States Code (U.S.C.), to enable the Secretary of Defense to utilize new direct hire authorities (DHAs) for the following positions: (1) aircraft support operations positions for which the Secretary determines there is a critical hiring need or shortage of candidates; and (2) positions in support of public safety, law enforcement, and first response for which the Secretary determines there is a critical hiring need or shortage of candidates.

The Department of Defense (DoD) has analyzed and documented that there is a severe shortage of candidates for certain aircraft operator and certain first responder positions. As such, the Department approved temporary direct hire for these positions using the authority in 5 U.S.C. 9902(b)(2), pursuant to which the Secretary of Defense secured agreement from the Office of Personnel Management (OPM) to grant a DHA if there is a determination of a severe shortage of candidates or a critical hiring need following OPM’s requirements in title 5, Code of Federal Regulations. However, DoD seeks to consolidate DHA for aircraft operations and first responder positions under its streamlined authority in 5 U.S.C. 9905, as it is a mission imperative to improve the pace at which we respond to and hire qualified applicants who show an interest in DoD employment for these shortage category positions.

DoD’s civilian hiring processes are a national security imperative aligned with the Secretary of Defense’s priority to take care of our people by growing talent and building resilience and readiness. DoD is different from other Federal agencies in its national security

mission and the size and scope of its operations. The 1970's era one-size-fits-all Federal hiring framework is ill-suited for the dynamic national security challenges of the 21st century. DoD's civilian workforce is essential to sustaining the viability and capabilities of the All-Volunteer Force – providing critical capabilities that ensure our Soldiers, Sailors, Airmen, Marines, and Guardians are ready to deploy, world-wide, and answer the call of our operational Commanders and the defense of our homeland.

The unique mission, size, and complexity of the DoD civilian workforce, and the role it plays in supporting the warfighter, necessitates a lean, flexible, responsive, and expeditious hiring framework that will ensure speed of relevance, rather than a prescriptive patchwork of one-size-fits-all Federal hiring regulations. Our near peer competitors and adversaries are working to rapidly narrow our military's competitive advantage across multiple domains and unlike the United States, the political systems of China and Russia enable them to marshal the entire state's economic and human resources to enhance capabilities in these areas. The Department must be able to access top talent quickly and efficiently with the expertise needed to ensure superior capabilities and relevancy. The Department is competing for talent in multiple fields with a private sector that is unconstrained by overlapping, redundant, and bureaucratic hiring regulations. The 21st century security environment is less predictable, more dynamic, and calls for a human capital framework that can be responsive to emerging missions where competition for private sector talent is fierce.

The ability to hire needed talent directly is essential to achieving a new human capital approach, which is in keeping with the 2018 National Defense Strategy (NDS) which calls for the Department to “explore streamlined, non-traditional pathways to bring critical skills into service, expanding access to outside expertise, and devising new public-private partnerships to work with small companies, start-ups, and universities.”

To meet this NDS mandate the Department's efforts are being driven directly by the Deputy Secretary of Defense through the Deputy's Workforce Council (DWC), along with all Service Secretaries and Chiefs. In May 2021, the DWC conducted the first in a series of sessions directed at the issue of modernizing the workforce, which includes DoD's struggle to compete for talent with the private sector. This premise is not speculation and is supported by the Office of the Under Secretary of Defense (Personnel and Readiness) and data from the official DoD program known as Joint Advertising, Market Research & Studies. As noted by the Vice Chairman of the Joint Chiefs of Staff during the DWC, the DoD needs to be responsive to the threats we face from our adversaries and if we can get the right people then we can compete with the threats.

DoD civilians are an essential enabler of our mission capabilities and operational readiness. The NDS directs that the Department undertake a sustained effort to build up its civilian workforce to best serve mission requirements. For the additional occupations proposed for DHA coverage under 5 U.S.C. 9905, the Department has provided objective data that demonstrates consistent difficulty filling certain vacant positions and in a timely manner due to shortages of qualified candidates. The inability to reach top talent for these positions adversely affects the Department's ability to compete with our adversaries.

Resource Information: This proposal has no significant impact on the use of resources. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President’s Budget request.

Changes to Existing Law: This proposal would amend section 9905 of title 5, United States Code, as follows:

§9905. Direct hire authority for certain personnel of the Department of Defense

(a) IN GENERAL.—The Secretary of Defense may appoint, without regard to the provisions of subchapter I of chapter 33 (other than sections 3303, 3307, and 3328 of such chapter), qualified candidates to any of the following positions in the competitive service in the Department of Defense:

- (1) Any position involved with Department maintenance activities, including depot-level maintenance and repair.
- (2) Any cyber workforce position.
- (3) Any individual in the acquisition workforce that manages any services contracts necessary to the operation and maintenance of programs of the Department.
- (4) Any science, technology, or engineering position, including any such position at the Major Range and Test Facilities Base, in order to allow development of new systems and provide for the maintenance of legacy systems.
- (5) Any scientific, technical, engineering, or mathematics positions, including technicians, within the defense acquisition workforce, or any category of acquisition positions within the Department designated by the Secretary as a shortage or critical need category.
- (6) Any scientific, technical, engineering, or mathematics position, except any such position within any defense Scientific and Technology Reinvention Laboratory, for which a qualified candidate is required to possess a bachelor's degree or an advanced degree, or for which a veteran candidate is being considered.
- (7) Any category of medical or health professional positions within the Department designated by the Secretary as a shortage category or critical need occupation.
- (8) Any childcare services position for which there is a critical hiring need and a shortage of childcare providers.
- (9) Any financial management, accounting, auditing, actuarial, cost estimation, operational research, or business or business administration position for which a qualified candidate is required to possess a finance, accounting, management or actuarial science degree or a related degree, or a related degree of equivalent experience.
- (10) Any position, as determined by the Secretary, for the purpose of assisting and facilitating the efforts of the Department in business transformation and management innovation.
- (11) Any position in the military housing office of a military installation whose primary function is supervision of military housing covered by subchapter IV of chapter 169 of title 10.
- (12) Any position in support of aircraft operations for which the Secretary determines there is a critical hiring need or shortage of candidates.

(13) Any position in support of the safety of the public, law enforcement, or first response for which the Secretary determines there is a critical hiring need or shortage of candidates.

(b) SUNSET.—

(1) IN GENERAL.—Except as provided in paragraph (2), effective on September 30, 2025, the authority provided under subsection (a) shall expire.

(2) EXCEPTION.—Paragraph (1) shall not apply to the authority provided under subsection (a) to make appointments to positions described under paragraph (5) of such subsection.

(c) SUSPENSION OF OTHER HIRING AUTHORITIES.—During the period beginning on the effective date of the regulations issued to carry out the hiring authority with respect to positions described in paragraphs (5) through (10) of subsection (a) and ending on the date described in subsection (b)(1), the Secretary of Defense may not exercise or otherwise use any hiring authority provided under the following provisions of law:

(1) Sections 1599c(a)(2) and 1705(h) of title 10.

(2) Sections 1112 and 1113 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 129 Stat. 1033).

(3) Sections 1110 and 1643(a)(3) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2450 and 2602).

(4) Sections 559 and 1101 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 131 Stat. 1406 and 1627).

1 **SEC. ____ . CONSOLIDATION OF DIRECT HIRE AUTHORITIES FOR POSITIONS AT**
2 **SCIENCE AND TECHNOLOGY REINVENTION LABORATORIES.**

3 Section 4091 of title 10, United States Code, is amended—

4 (1) in subsection (a)(1), by striking “bachelor’s degree” and inserting “bachelor’s
5 or advanced degree”;

6 (2) in subsection (c)—

7 (A) in the subsection heading, by striking “CALENDAR YEAR” and
8 inserting “FISCAL YEAR”;

9 (B) in the matter preceding paragraph (1), by striking “calendar year” and
10 inserting “fiscal year”;

11 (C) in paragraph (1), by striking “6 percent” and inserting “11 percent”;

12 and

13 (D) in paragraphs (1), (2), and (3), by striking “the fiscal year last ending
14 before the start of such calendar year ” and inserting “the preceding fiscal year”;

15 (3) by striking subsection (f); and

16 (4) by redesignating subsection (g) as subsection (f).

**[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

Section 212 of the National Defense Authorization Act for Fiscal Year (FY) 2022 (Public Law 117–81) repealed section 1108 of the NDAA for FY 2009 and included the direct hire authority for candidates with advanced degrees with other Science and Technology Reinvention Laboratory direct hire authorities. This proposal would amend section 4091 of title 10, United States Code, by combining the existing direct hire authority of the Department of Defense for candidates with advanced degrees seeking positions in Science and Technology Reinvention Laboratories (STRs) with the direct hire authority of the Department for candidates with bachelor’s degrees seeking such positions. Combining the advanced degree and bachelor’s degree authorities would streamline recordkeeping on usage of direct hire authority and allow

those STRLs that need more advanced degree allocations to use unused bachelor's degree allocations, if needed, and vice versa.

The proposal also amends section 4091 so as to refer to fiscal years instead of calendar years. These amendments would further streamline recordkeeping as this is the only direct hire authority of the Department that is tracked by calendar year.

Section 1122 of the NDAA for FY 2017 (Public Law 114-328) codified the bachelor's degree, veterans, and student direct hire authorities (originally in section 1107 of the NDAA for FY 2014 (Public Law 113-66)) as section 2358a of title 10, U.S.C. Section 2358a of title 10 was later transferred and redesignated as section 4091 of title 10 (see section 1843(b)(1) of the William M. (Mac) Thornberry NDAA for FY 2021 (Public Law 116-283), as amended by section 1701(u)(4)(A) of the FY22 NDAA (Public Law 117-81)).

Without this change, the ability to shape the STRL workforce to meet mission requirements could be diminished as STRLs are currently unable to use all of their available direct hire authorities. In addition, servicing personnel offices could lose track of the authority since it currently resides in a note section of title 10, U.S.C. The effectiveness of the STRL workforce would be at risk as STRLs need to be competitive with the private sector for certain high-level scientific and technical positions.

Resource Information: This proposal has no significant impact on the use of resources. Resources affected by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President's Budget request.

Changes to Existing Law: This proposal would amend section 4091 of title 10, United States Code, as follows:

Title 10, United States Code

§ 4091. Authorities for certain positions at science and technology reinvention laboratories

(a) AUTHORITY TO MAKE DIRECT APPOINTMENTS.—

(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS AT SCIENCE AND TECHNOLOGY REINVENTION LABORATORIES.—The director of any Science and Technology Reinvention Laboratory (hereinafter in this section referred to as an “STRL”) may appoint qualified candidates possessing a bachelor's or advanced degree to positions described in paragraph (1) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title).

(2) VETERAN CANDIDATES FOR SIMILAR POSITIONS AT RESEARCH AND ENGINEERING FACILITIES.—The director of any STRL may appoint qualified veteran candidates to positions described in paragraph (2) of subsection (b) as an employee at a laboratory, agency, or organization specified in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5.

(3) STUDENTS ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The director of any STRL may appoint qualified candidates enrolled in a program of undergraduate or graduate instruction leading to a bachelor's or an advanced degree in a scientific, technical, engineering or mathematical course of study at an institution of higher education (as that term is defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002)) to positions described in paragraph (3) of subsection (b) as an employee in a laboratory described in that paragraph without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title).

(4) NONCOMPETITIVE CONVERSION OF APPOINTMENTS.—With respect to any student appointed by the director of an STRL under paragraph (3) to a temporary or term appointment, upon graduation from the applicable institution of higher education (as defined in such paragraph), the director may noncompetitively convert such student to another temporary appointment or to a term or permanent appointment within the STRL without regard to the provisions of subchapter I of chapter 33 of title 5 (other than sections 3303 and 3328 of such title), provided the student meets all eligibility and Office of Personnel Management qualification requirements for the position.

(b) COVERED POSITIONS.—

(1) CANDIDATES FOR SCIENTIFIC AND ENGINEERING POSITIONS.—The positions described in this paragraph are scientific and engineering positions that may be temporary, term, or permanent in any laboratory designated by section 4121(b) of this title as a Department of Defense science and technology reinvention laboratory.

(2) QUALIFIED VETERAN CANDIDATES.—The positions described in this paragraph are scientific, technical, engineering, and mathematics positions, including technicians, in the following:

(A) Any laboratory referred to in paragraph (1).

(B) Any other Department of Defense research and engineering agency or organization designated by the Secretary for purposes of subsection (a)(2).

(3) CANDIDATES ENROLLED IN SCIENTIFIC AND ENGINEERING PROGRAMS.—The positions described in this paragraph are scientific and engineering positions that may be temporary or term in any laboratory designated by section 4121(b) of this title as a Department of Defense science and technology reinvention laboratory.

(c) LIMITATION ON NUMBER OF APPOINTMENTS ALLOWABLE IN A CALENDAR FISCAL YEAR.—The authority under subsection (a) may not, in any ~~calendar~~ fiscal year and with respect to any laboratory, agency, or organization described in subsection (b), be exercised with respect to a number of candidates greater than the following:

(1) In the case of a laboratory described in subsection (b)(1), with respect to appointment authority under subsection (a)(1), the number equal to ~~6~~ 11 percent of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the preceding fiscal year ~~last ending before the start of such calendar year~~.

(2) In the case of a laboratory, agency, or organization described in subsection (b)(2), with respect to appointment authority under subsection (a)(2), the number equal to 3 percent of the total number of scientific, technical, engineering, mathematics, and

technician positions in such laboratory, agency, or organization that are filled as of the close of the preceding fiscal year ~~last ending before the start of such calendar year~~.

(3) In the case of a laboratory described in subsection (b)(3), with respect to appointment authority under subsection (a)(3), the number equal to 10 percent of the total number of scientific and engineering positions in such laboratory that are filled as of the close of the preceding fiscal year ~~last ending before the start of such calendar year~~.

(d) SENIOR SCIENTIFIC TECHNICAL MANAGERS.—

(1) ESTABLISHMENT.—There is hereby established in each STRL, each facility of the Major Range and Test Facility Base, and the Defense Test Resource Management Center a category of senior professional scientific and technical positions, the incumbents of which shall be designated as "senior scientific technical managers" and which shall be positions classified above GS-15 of the General Schedule, notwithstanding section 5108(a) of title 5. The primary functions of such positions shall be—

(A) to engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the mission of such STRL, of such facility of the Major Range and Test Facility Base, or the Defense Test Resource Management Center; and

(B) to carry out technical supervisory responsibilities.

(2) APPOINTMENTS.—(A) The laboratory positions described in paragraph (1) may be filled, and shall be managed, by the director of the STRL involved, under criteria established pursuant to section 4121(a) of this title, relating to personnel demonstration projects at laboratories of the Department of Defense, except that the director of the laboratory involved shall determine the number of such positions at such laboratory, not to exceed 2 percent of the number of scientists and engineers employed at such laboratory as of the close of the last fiscal year before the fiscal year in which any appointments subject to that numerical limitation are made.

(B) The test and evaluation positions described in paragraph (1) may be filled, and shall be managed, by the director of the Major Range and Test Facility Base, in the case of a position at a facility of the Major Range and Test Facility Base, and the director of the Defense Test Resource Management Center, in the case of a position at such center, under criteria established pursuant to section 4121(a) of this title, relating to personnel demonstration projects at laboratories of the Department of Defense, except that the director involved shall determine the number of such positions at each facility of the Major Range and Test Facility Base and the Defense Test Resource Management Center, not to exceed two percent of the number of scientists and engineers, but at least one position, employed at the Major Range and Test Facility Base or the Defense Test Resource Management Center, as the case may be, as of the close of the last fiscal year before the fiscal year in which any appointments subject to those numerical limitations are made.

(e) EXCLUSION FROM PERSONNEL LIMITATIONS.—

(1) IN GENERAL.—The director of an STRL shall manage the workforce strength, structure, positions, and compensation of such STRL—

(A) without regard to any limitation on appointments, positions, or funding with respect to such STRL, subject to subparagraph (B); and

(B) in a manner consistent with the budget available with respect to such STRL.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to Senior Executive Service positions (as defined in section 3132(a) of title 5) or scientific and professional positions authorized under section 3104 of such title.

~~(f) DIRECT HIRE AUTHORITY AT PERSONNEL DEMONSTRATION LABORATORIES FOR ADVANCED DEGREE HOLDERS.—~~

~~(1) AUTHORITY.—The Secretary of Defense may appoint qualified candidates possessing an advanced degree to positions described in paragraph (2) without regard to the provisions of subchapter of chapter 33 of title 5, other than sections 3303 and 3328 of such title.~~

~~(2) APPLICABILITY.—This subsection applies with respect to candidates for scientific and engineering positions within any laboratory designated by section 4121(b) of this title as a Department of Defense science and technology reinvention laboratory.~~

~~(3) LIMITATION.—(A) Authority under this subsection may not, in any calendar year and with respect to any laboratory, be exercised with respect to a number of candidates greater than the number equal to 5 percent of the total number of scientific and engineering positions within such laboratory that are filled as of the close of the fiscal year last ending before the start of such calendar year.~~

~~————(B) For purposes of this paragraph, positions and candidates shall be counted on a full-time equivalent basis.’’.~~

~~(g)~~ DEFINITIONS.—In this section:

(1) The term “Defense Test Resource Management Center” means the Department of Defense Test Resource Management Center established under section 4173 of this title.

(2) The term “employee” has the meaning given that term in section 2105 of title 5.

(3) The term “Major Range and Test Facility Base” means the test and evaluation facilities and resources that are designated by the Secretary of Defense as facilities and resources comprising the Major Range and Test Facility Base.

(4) The term “veteran” has the meaning given that term in section 101 of title 38.

1 **SEC. ___. EXTENSION OF AUTHORIZATION OF DEPOT WORKING CAPITAL**
2 **FUNDS FOR UNSPECIFIED MINOR MILITARY CONSTRUCTION.**

3 Section 2208(u)(4) of title 10, United States Code, is amended by striking “2023” and
4 inserting “2025”.

[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 2019 NDAA (Public Law 115–232) amended section 2208 of title 10, United States Code (in section 321) to enable any Department of Defense depot, arsenal, shipyard, or plant located within the United States to use a Defense Working Capital Fund (DWCF) to carry out an Unspecified Minor Military Construction (UMMC) project until September 30, 2023. The Air Force has taken full advantage of this vital authority as a tool to modernize our aging depot facilities. The Air Force Sustainment Center currently has five projects across three depots in work or in planning stages totaling \$28M from FY20-23 with the intent to fund an additional 16 projects from FY24-27, totaling \$66.2M. In 2019, 65 percent of organic depot facilities were listed as poor or failing with an average age of 58 years, and 64 percent are greater than 67 years old. Aging and deteriorating infrastructure interferes with maintaining fleet readiness at a cost effective level and also increases lifecycle sustainment costs by requiring constant repairs where facility replacement is ideal. Additionally, Air Force depot software workload is expected to grow by 109 percent over 20 years. Current facilities are inadequate to provide specialized, secure, and environmentally controlled spaces or support any employee retention benefit.

Extending this authority enables the Air Force to improve overall depot performance, reduces total lifecycle costs for facilities, provides sustained and predictable investments to restore readiness, and enhances the ability to invest in Industrial Base facilities, thereby improving aging infrastructure.

The expiration date of 30 September 2023 limits the Services’ ability to plan and budget modernization efforts over the long-term. By extending the expiration date of this authority until September 30, 2025, the proposal would allow Services to continue to fund UMMC projects related to revitalization and recapitalization of Defense Industrial Base Facilities utilizing DWCF, while also allowing the Department of Defense to further assess and better understand the potential impacts of this authority on DWCF fund solvency and health.

Resource Information: This proposal impacts the use of resources; the magnitude of the impact can be mitigated with standard financial/budgeting practices. Resources affected by this proposal should be included within the approved Fiscal Year (FY) President’s Budget request prior to beginning the specific UMMC project. This would be authority within the existing 6% reinvestment program and thus included within the depot maintenance rate structure as worked in the Air Force budget planning process.

Changes to Existing Law: This proposal would amend section 2208(u) of title 10, United States Code, as follows:

§2208. Working-capital funds

* * *

(u) Use for Unspecified Minor Military Construction Projects to Revitalize and Recapitalize Defense Industrial Base Facilities.-(1) The Secretary of a military department may use a working capital fund of the department under this section to fund an unspecified minor military construction project under section 2805 of this title for the revitalization and recapitalization of a defense industrial base facility owned by the United States and under the jurisdiction of the Secretary.

(2)(A) Except as provided in subparagraph (B), section 2805 of this title shall apply with respect to a project funded using a working capital fund under the authority of this subsection in the same manner as such section applies to any unspecified minor military construction project under section 2805 of this title.

(B) For purposes of applying subparagraph (A), the dollar limitation specified in subsection (a)(2) of section 2805 of this title, subject to adjustment as provided in subsection (f) of such section, shall apply rather than the dollar limitation specified in subsection (c) of such section.

(3) In this subsection, the term “defense industrial base facility” means any Department of Defense depot, arsenal, shipyard, or plant located within the United States.

(4) The authority to use a working capital fund to fund a project under the authority of this subsection expires on September 30, ~~2023~~2025.

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.—**

8 **“(1) BOMBING RANGES.—**Subject to valid rights in existence on the date of
9 enactment of the National Defense Authorization Act for Fiscal Year 2023, and except as
10 otherwise provided in this subtitle, the lands established at the B–16, B–17, B–19, and B–
11 20 Ranges, as referred to in subsection (b), and all other areas within the boundary of
12 such lands as depicted on the map referred to in such subsection, which may become
13 subject to the operation of the public land laws, are hereby withdrawn from all forms of

14 **“(A) entry, appropriation, or disposal under the public land laws;**

15 **“(B) location, entry, and patent under the mining laws; and**

16 **“(C) disposition under all laws relating to mineral and geothermal leasing**
17 **or mineral materials.**

18 **“(2) DIXIE VALLEY TRAINING AREA.—**The lands and interests in lands within the
19 boundaries established at the Dixie Valley Training Area, as referred to in subsection (b),
20 are hereby withdrawn from all forms of—

21 **“(A) entry, appropriation, or disposal under the public land laws; and**

22 **“(B) location, entry, and patent under the mining laws.**

23 **“(b) DESCRIPTION OF LAND.—**The public lands and interests in lands withdrawn and

1 reserved by this section comprise approximately 730,806 acres of land in Churchill County,
2 Lyon County, Mineral County, Pershing County, and Nye County, Nevada, as generally depicted
3 as “Proposed Withdrawal Land” and “Existing Withdrawals” on the map entitled “Fallon Range
4 Training Complex Modernization”, dated April 27, 2022, and filed in accordance with section
5 2912. The ranges in the Fallon Range Training Complex described in this subsection are
6 identified as B–16, B–17, B–19, B–20, Dixie Valley Training Area and the Shoal Site.

7 “(c) PURPOSE OF WITHDRAWAL AND RESERVATION.—The land withdrawn by subsection
8 (a) is reserved for use by the Secretary of the Navy for—

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

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

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

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

14 and

15 “(B) authorized under section 2914.

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

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

21 “(1) an integrated natural resources management plan prepared and implemented
22 under title I of the Sikes Act (16 U.S.C. 670a et seq.) and an integrated cultural resources
23 management plan;

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

4 “(3) a programmatic agreement between the Secretary of the Navy and the
5 Nevada State Historic Preservation Officer and other parties as appropriate regarding
6 management of historic properties as they relate to operation, maintenance, training, and
7 construction at the Fallon Range Training Complex;

8 “(4) agreements between the Secretary of the Navy and interested tribes and other
9 stakeholders to accommodate access by tribes to the B-16, B-17, B-19 and B-20 Ranges
10 consistent with military training requirements and public safety; and

11 “(5) any other applicable law.

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

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

17 “(A) the Federal Land Policy and Management Act of 1976 (43 U.S.C.
18 1701 et seq.); and

19 “(B) any other applicable law.

20 “(2) CONSULTATION WITH SECRETARY OF THE NAVY.—Prior to authorizing any
21 use of the land comprising the Dixie Valley Training Area or Shoal Site withdrawn and
22 reserved by section 2981, the Secretary of the Interior shall consult with the Secretary of
23 the Navy. Such consultation shall include—

1 “(A) informing the Secretary of the Navy of the pending authorization
2 request so that the Secretary of the Navy and the Secretary of the Interior may
3 work together to preserve the training environment; and

4 “(B) prior to authorizing any installation or use of mobile or stationary
5 equipment used to transmit and receive radio signals, obtaining permission from
6 the Secretary of the Navy to authorize the use of such equipment.

7 “(3) AGREEMENT.—The Secretary of the Navy and the Secretary of the Interior
8 shall enter into an agreement describing the roles and responsibilities of each Secretary
9 with respect to the management and use of the Dixie Valley Training Area and Shoal Site
10 to preserve the training environment.

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

12 “(a) B-16 AND B-20 RANGES.—To the extent the withdrawal and reservation made by
13 section 2981 for the B-16 and B-20 Ranges withdraws lands currently withdrawn and reserved
14 for use by the Bureau of Reclamation, the reservation made by such section shall be the primary
15 reservation for public safety management actions only, and the existing Bureau of Reclamation
16 reservation shall be the primary reservation for all other management actions. The Secretary of
17 the Navy shall enter into an agreement with the Secretary of the Interior to ensure continued
18 access to the B-16 and B-20 Ranges by the Bureau of Reclamation to conduct management
19 activities consistent with the purposes for which the Bureau of Reclamation withdrawal was
20 established.

21 “(b) SHOAL SITE.—The Secretary of Energy shall remain responsible and liable for the
22 subsurface estate and all its activities at the ‘Shoal Site’ withdrawn and reserved by Public Land
23 Order Number 2771, as amended by Public Land Order Number 2834.

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

2 “The approximately 22,335 acres of public land in the Clan Alpine Mountains
3 Wilderness Study Area, the approximately 4,900 acres of public land of the Stillwater Range
4 Wilderness Study Area, and the approximately 19,000 acres of public land of the Job Peak
5 Wilderness Study Area that are reserved for use by the Secretary of the Navy under section 2981
6 shall no longer be subject to section 603(c) of the Federal Land Policy and Management Act of
7 1976 (43 U.S.C. 1782(c)).

8 **“SEC. 2985. USE OF MINERAL MATERIALS.**

9 “Notwithstanding any other provision of this subtitle or of the Act of July 31, 1947
10 (commonly known as the Materials Act of 1947; 30 U.S.C. 601 et seq.), the Secretary of the
11 Navy may use sand, gravel, or similar mineral materials resources of the type subject to
12 disposition under that Act from lands withdrawn and reserved by this subtitle if use of such
13 resources is required for construction needs on such lands.

14 **“SEC. 2986. TRIBAL ACCESS AGREEMENT AND CULTURAL RESOURCES**
15 **SURVEY.**

16 “(a) TRIBAL ACCESS AGREEMENT.—The Secretary of the Navy and the Secretary of the
17 Interior shall enter into an agreement with the affected federally recognized tribes that
18 establishes access protocols to provide continued, regular, and timely access to the land
19 withdrawn and reserved by section 2981, including all lands subject to previous withdrawals
20 under section 3011(a) of the Military Lands Withdrawal Act of 1999 (title XXX of Public Law
21 106-65), that contains cultural, religious, and archaeological resources of importance to the
22 affected federally recognized tribes.

1 “(b) ETHNOGRAPHIC STUDY.—The Secretary of the Navy, in consultation with the State
2 of Nevada and appropriate tribal governments, shall conduct an ethnographic study of the
3 expanded Fallon Range Training Complex to assess the importance of that area to Indian tribes
4 and the religious and cultural practices of those tribes.

5 “(c) CULTURAL RESOURCES SURVEY.—

6 “(1) SURVEY.—The Secretary of the Navy, after consultation with the affected
7 federally recognized tribes and review of data, studies, and reports in the possession of
8 such tribes, shall conduct a cultural resources survey of the land withdrawn and reserved
9 by section 2981 for the expanded areas of the B-16, B-17 and B-20 Ranges that were not
10 subject to previous withdrawals comprising the Fallon Range Training Complex that
11 includes pedestrian field surveys and the inventory and identification of specific sites
12 containing cultural, religious, and archaeological resources of importance to the affected
13 federally recognized tribes.

14 “(2) RESULTS.—The Secretary of the Navy shall provide the results of the survey
15 conducted under paragraph (1) to the affected federally recognized tribes for review and
16 comment prior to concluding survey activities.

17 “(3) INCLUSION IN AGREEMENT.—The agreement under subsection (a) shall
18 include access to the specific sites identified by the survey conducted under paragraph (1)
19 by the affected federally recognized tribes.

20 “(4) LIMITATION ON USE OF LAND PRIOR TO COMPLETION OF SURVEY.—The
21 Secretary of the Navy may not make operational use of the expanded areas of the B-16,
22 B-17 and B-20 Ranges that were not subject to previous withdrawals comprising the

1 Fallon Range Training Complex are withdrawn and reserved by section 2981 until
2 completion of the survey required by paragraph (1) .

3 “(d) AGREEMENT TO MITIGATE ADVERSE EFFECTS.—The Secretary of the Navy, the
4 Secretary of the Interior, and the affected federally recognized tribes shall enter into an
5 agreement consistent with section 306108 of title 54, United States Code, that identifies actions
6 to avoid, minimize, or mitigate adverse effects to sites identified in subsection (c), including
7 adverse effects from noise.

8 “(e) REPORT.—Not later than one year after the date of the enactment of this Act, the
9 Secretary of the Navy and the Secretary of the Interior shall jointly submit to Congress a report
10 describing—

11 “(1) the access protocols established by the agreement under subsection (a);

12 “(2) the results of the ethnographic study conducted under subsection (b);

13 “(3) the results of the cultural resource survey under subsection (c); and

14 “(4) actions to be taken to avoid, minimize, or mitigate adverse effects to sites on
15 the land withdrawn and reserved by section 2981.

16 **“SEC. 2987. RESOLUTION OF WALKER RIVER PAIUTE TRIBE CLAIMS.**

17 “(a) PAYMENT TO THE TRIBE.—Not later than one year after the date of enactment of the
18 National Defense Authorization Act for Fiscal Year 2023, the Secretary of the Navy shall
19 transfer \$20,000,000 of amounts authorized to be appropriated to the Secretary of the Navy for
20 operation and maintenance to an account designated by the Walker River Paiute Tribe (in this
21 section referred to as the “Tribe”) to resolve the claims of the Tribe against the United States for
22 the contamination, impairment, and loss of use of approximately 6,000 acres of land that is
23 within the boundaries of the reservation of the Tribe.

1 “(b) TRIBAL TRUST LAND IMPACTS.—With respect to the land established as the B–19
2 Range at the Fallon Range Training Complex, the Secretary of the Navy shall ensure the target
3 placement and use does not result in additional ordnance landing off-range onto the Walker
4 River Paiute Reservation.

5 “(c) ADDITIONAL TRUST LAND.—

6 “(1) ENVIRONMENTAL SITE ASSESSMENT.—Not later than one year after the date
7 of the enactment of the National Defense Authorization Act for Fiscal Year 2023 and
8 prior to taking the land described in paragraph (4) into trust for the benefit of the Tribe
9 under paragraph (3)(A), the Director of the Bureau of Indian Affairs (in this subsection
10 referred to as the “Director”) shall complete an environmental site assessment to
11 determine with respect to the land—

12 “(A) the likelihood of the presence of hazardous substance-related or other
13 environmental liability; and

14 “(B) if the Director determines the presence of hazardous substance-
15 related or other environmental liability is likely—

16 “(i) the extent of the contamination caused by such hazardous
17 substance or other environmental liability; and

18 “(ii) whether that liability can be remediated by the United States.

19 “(2) EXERCISE OF DISCRETION BY TRIBE.—If the Director determines pursuant to
20 the environmental site assessment completed under paragraph (1) that there is a
21 likelihood of the presence of hazardous substance-related or other environmental liability
22 on the land described in paragraph (4) that cannot be remediated by the United States, the

1 Tribe may determine whether the land should be taken into trust for the benefit of the
2 Tribe.

3 “(3) LAND TO BE HELD IN TRUST FOR THE TRIBE; IDENTIFICATION OF ALTERNATIVE
4 LAND.—

5 “(A) IN GENERAL.—If the Tribe determines pursuant to paragraph (2) that
6 the land described in paragraph (4) should be taken into trust for the benefit of the
7 Tribe, subject to valid existing rights, all right, title, and interest of the United
8 States in and to the land shall be—

9 “(i) held in trust by the United States for the benefit of the Tribe;

10 and

11 “(ii) made part of the existing reservation of the Tribe.

12 “(B) IDENTIFICATION OF SUITABLE AND COMPARABLE ALTERNATIVE
13 LAND.—If the Tribe determines pursuant to paragraph (2) due to discovered
14 environmental issues that the land described in paragraph (4) should not be taken
15 into trust for the benefit of the Tribe, not later than one year after the date on
16 which the Tribe makes that determination, the Director and the Tribe shall enter
17 into an agreement to identify suitable and comparable alternative land to be
18 withdrawn from Federal use and taken into trust for the benefit of the Tribe.

19 “(4) LAND DESCRIBED.—Subject to paragraph (5), the land to be held in trust for
20 the benefit of the Tribe under paragraph (3)(A) is the approximately 11,491 acres of
21 Bureau of Land Management and Bureau of Reclamation land located in Churchill, Lyon,
22 and Mineral Counties, Nevada, as generally depicted on the map entitled ‘Walker River
23 Paiute Trust Lands’, dated April 19, 2022, and more particularly described as follows:

1 “(A) FERNLEY EAST PARCEL.—The following land in Churchill County,

2 Nevada:

3 “(i) All land held by the Bureau of Reclamation in T. 20 N., R. 26
4 E., sec. 28, Mount Diablo Meridian.

5 “(ii) All land held by the Bureau of Reclamation in T. 20 N., R. 26
6 E., sec. 36, Mount Diablo Meridian.

7 “(B) SILVER SPRINGS PARCEL.—The following land in Lyon County,

8 Nevada:

9 “(i) All land held by the Bureau of Land Management in T. 18 N.,
10 R. 24 E., sec. 17, S1/2SW1/4 and S1/2SE1/4, Mount Diablo Meridian.

11 “(ii) All land held by the Bureau of Land Management in T. 18 N.,
12 R. 24 E., sec. 20, Mount Diablo Meridian.

13 “(iii) All land held by the Bureau of Land Management in T. 18 N.,
14 R. 24 E., sec. 21, S1/2, Mount Diablo Meridian.

15 “(iv) All land held by the Bureau of Land Management in T. 18 N.,
16 R. 24 E., sec. 22, Mount Diablo Meridian.

17 “(v) All land held by the Bureau of Land Management in T. 18 N.,
18 R. 24 E., sec. 28, N1/2NE1/4, SW1/4NE1/4, W1/2SE1/4NE1/4, and
19 NW1/4, Mount Diablo Meridian.

20 “(vi) All land held by the Bureau of Land Management in T. 18 N.,
21 R. 24 E., sec. 28, SE1/4SE1/4, Mount Diablo Meridian.

22 “(vii) All land held by the Bureau of Reclamation in T. 18 N., R.
23 24 E., sec. 29, Mount Diablo Meridian

1 “(C) WALKER LAKE PARCEL.—The following land in Mineral County,
2 Nevada:

3 “(i) All land held by the Bureau of Land Management in T. 11 N.,
4 R. 29 E., secs. 35 and 36, Mount Diablo Meridian.

5 “(ii) All land held by the Bureau of Reclamation in T. 10 N., R.
6 30 E., secs. 4, 5, 6, 8, 9, 16, 17, 20, 21, 28, 29, 32, and 33, Mount Diablo
7 Meridian.

8 “(iii) All land held by the Bureau of Land Management in T. 10.5
9 N., R. 30 E., secs. 31 and 32, Mount Diablo Meridian.

10 “(5) ADMINISTRATION.—

11 “(A) SURVEY.—Not later than 180 days after the date of enactment of the
12 National Defense Authorization Act for Fiscal Year 2023, the Secretary of the
13 Interior (referred to in this paragraph as the ‘Secretary’) shall complete a survey
14 to fully describe, and adequately define the boundaries of, the land described in
15 paragraph (4).

16 “(B) LEGAL DESCRIPTION.—

17 “(i) IN GENERAL.—Upon completion of the survey required under
18 subparagraph (A), the Secretary shall publish in the Federal Register a
19 legal description of the land described in paragraph (4).

20 “(ii) TECHNICAL CORRECTIONS.—Before the date of publication of
21 the legal description under this subparagraph, the Secretary may correct
22 any technical or clerical errors in the legal description as the Secretary
23 determines appropriate.

1 “(iii) EFFECT.—Effective beginning on the date of publication of
2 the legal description under this subparagraph, the legal description shall be
3 considered to be the official legal description of the land to be held in trust
4 for the benefit of the Tribe under paragraph (3)(A).

5 “(6) USE OF TRUST LAND.—The land taken into trust under paragraph (3)(A) shall
6 not be eligible, or considered to have been taken into trust, for class II gaming or class III
7 gaming (as those terms are defined in section 4 of the Indian Gaming Regulatory Act (25
8 U.S.C. 2703)).

9 “(e) ELIGIBILITY FOR FEDERAL AND FEDERALLY-FUNDED PROGRAMS.—Funds paid to the
10 Tribe pursuant to this section, including any interest or investment income earned, may not be
11 treated as income or resources or otherwise used as the basis for denying or reducing the basis
12 for Federal financial assistance or other Federal benefit (including under the Social Security Act
13 (42 U.S.C. 301 et seq.)) to which the Tribe, a member of the Tribe, or a household would
14 otherwise be entitled.

15 **“SEC. 2988. LAND TO BE HELD IN TRUST FOR THE FALLON PAIUTE SHOSHONE**
16 **TRIBE.**

17 “(a) CONVEYANCE.—The Secretary of the Navy shall transfer to the Secretary of the
18 Interior, at no cost, the approximately 800 acres of land acquired by the Department of the Navy
19 in Churchill County, Nevada, and referred to on the map in section 2981(b) as ‘Dixie Meadows’.

20 “(b) TRUST LAND.—Upon transfer of the land in accordance with subsection (a), subject
21 to valid existing rights, all right, title, and interest of the United States in and to the land shall
22 be—

1 “(1) held in trust by the United States for the benefit of the Fallon Paiute
2 Shoshone Tribe;

3 “(2) made part of the reservation of the Fallon Paiute Shoshone Tribe; and

4 “(3) shall not be eligible, or considered to have been taken into trust, for class II
5 gaming or class III gaming (as those terms are defined in section 4 of the Indian Gaming
6 Regulatory Act (25 U.S.C. 2703)).

7 **“SEC. 2989. NATIONAL CONSERVATION AREAS.**

8 “(a) DESIGNATION OF NATIONAL CONSERVATION AREAS.—

9 “(1) FOX PEAK.—Approximately 184,657 acres of public land is designated as
10 the Fox Peak National Conservation Area.

11 “(2) GRIMES POINT.—Approximately 720 acres of public land identified as the
12 Grimes Point National Archeological Historic District is designated as the Grimes Point
13 National Conservation Area.

14 “(3) BLACK MOUNTAIN.—Approximately 3,415 acres of public land identified as
15 the Black Mountain-Pistone Archeological District, as depicted on a map dated May 12,
16 2020, is designated as the Black Mountain National Conservation Area.

17 “(b) MAPS AND LEGAL DESCRIPTIONS.—

18 “(1) IN GENERAL.—As soon as practicable after the date of enactment of the
19 National Defense Authorization Act for Fiscal Year 2023, the Secretary of the Interior
20 shall submit to Congress a map and legal description of each National Conservation Area
21 designated under subsection (a).

22 “(2) EFFECT.—The maps and legal descriptions submitted under paragraph (1)
23 shall have the same force and effect as if included in this section, except that the

1 Secretary of the Interior may correct technical or clerical errors in the maps and legal
2 descriptions.

3 “(3) PUBLIC AVAILABILITY.—A copy of each map and legal description submitted
4 under paragraph (1) shall be on file and available for public inspection in the appropriate
5 offices of the Bureau of Land Management.

6 “(c) MANAGEMENT.—The Secretary of the Interior shall manage the National
7 Conservation Areas designated under subsection (a)—

8 “(1) in a manner that conserves, protects, and enhances the resources of the
9 National Conservation Areas, including—

10 “(A) the relationship of the unique and nationally important historic,
11 cultural, archaeological, natural, and educational resources on the site to tribes;

12 “(B) the management of wildfire, invasive species, and wildlife; and

13 “(C) wildfire restoration;

14 “(2) in accordance with—

15 “(A) this subtitle;

16 “(B) the Federal Land Policy and Management Act of 1976 (43 U.S.C.
17 1701 et seq.); and

18 “(C) any other applicable law; and

19 “(3) as components of the National Landscape Conservation System established
20 by section 2002 of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202).

21 “(d) MANAGEMENT PLAN.—

22 “(1) DEVELOPMENT.—Not later than two years after the date of enactment of the
23 National Defense Authorization Act for Fiscal Year 2023 and in accordance with

1 subsection (e), the Secretary of the Interior shall develop a comprehensive plan for the
2 long-term management of each National Conservation Area designated under subsection
3 (a).

4 “(2) CONSULTATION.—In developing the management plan required under
5 paragraph (1), the Secretary of the Interior shall consult with—

6 “(A) appropriate Federal, State, local and tribal governments; and

7 “(B) members of the public.

8 “(3) REQUIREMENTS.—The management plan required under paragraph (1)
9 shall—

10 “(A) describe the appropriate uses of each National Conservation Area;

11 “(B) authorize the appropriate use of motor vehicles in each National
12 Conservation Area, including the maintenance of existing roads;

13 “(C) incorporate any provision of an applicable land and resource
14 management plan that the Secretary considers to be appropriate; and

15 “(D) specifically address the relationship of the unique and nationally
16 important historic, cultural, archaeological, natural, and educational resources on
17 each National Conservation Area to interested tribes.

18 “(e) USES.—The Secretary of the Interior shall only allow use of each National
19 Conservation Area designated under subsection (a) that the Secretary determines would further
20 the purposes of this section.

21 “(f) MOTORIZED VEHICLES.—Except as needed for administrative purposes or to respond
22 to an emergency, the use of motorized vehicles in each National Conservation Area designated

1 under subsection (a) shall be permitted only on roads and trails designated for the use of
2 motorized vehicles by the management plan required under subsection (d).

3 “(g) WITHDRAWAL.—Subject to valid existing rights, all public land in each National
4 Conservation Area designated under subsection (a) is withdrawn from—

5 “(1) all forms of entry, appropriation, and disposal under the public land laws;

6 “(2) location, entry, and patent under the mining laws; and

7 “(3) disposition under all laws relating to mineral and geothermal leasing or
8 mineral materials.

9 “(h) ADDITIONAL LAND.—Notwithstanding any other provision of law, if the Secretary of
10 the Interior acquires mineral or other interests in a parcel of land within the National
11 Conservation Areas designated under subsection (a) after the date of enactment of this Act, the
12 parcel is withdrawn from operation of the laws referred to in subsection (g) on the date of
13 acquisition of the parcel.

14 “(i) HUNTING, FISHING, AND TRAPPING.—

15 “(1) IN GENERAL.—Subject to subsection (c), nothing in this section affects the
16 jurisdiction of the State with respect to fish and wildlife, including hunting, fishing, and
17 trapping, in the National Conservation Areas designated under subsection (a).

18 “(2) LIMITATIONS.—

19 “(A) REGULATIONS.—The Secretary of the Interior may designate by
20 regulation areas in which, and establish periods during which, no hunting, fishing,
21 or trapping is permitted in the National Conservation Areas designated under
22 subsection (a), for reasons of public safety, administration, or compliance with
23 applicable laws.

1 “(B) CONSULTATION REQUIRED.—Except in the case of an emergency,
2 before prescribing regulations under subparagraph (A) that close a portion of a
3 National Conservation Area to hunting, fishing, or trapping, the Secretary of the
4 Interior shall consult with the appropriate State agency.

5 “(j) GRAZING.—In the case of land included in a National Conservation Area designated
6 under subsection (a) on which the Secretary of the Interior permitted livestock grazing as of the
7 date of enactment of the National Defense Authorization Act for Fiscal Year 2023, the Secretary
8 shall allow such livestock grazing to continue, subject to applicable laws.

9 “(k) VISITOR SERVICE FACILITIES.—The Secretary of the Interior, in consultation with the
10 State of Nevada and tribes that the Secretary determines to be appropriate, may establish visitor
11 service facilities for the purpose of providing information about the historical, cultural,
12 archaeological, ecological, recreational, geologic, scientific, and other resources of the National
13 Conservation Areas designated under subsection (a).

14 “(l) LOW-LEVEL OVERFLIGHTS.—Nothing in this section shall be construed to restrict or
15 preclude low-level overflights of military aircraft, flight testing and evaluation, or the
16 designation or creation of new units of special use airspace or the establishment of military
17 training routes over the National Conservation Areas designated under subsection (a).

18 “(m) INAPPLICABILITY OF GENERAL PROVISIONS.—Notwithstanding section 2911(a),
19 subtitle A of this Act shall not apply to this section.

20 **“SEC. 2990. CLAN ALPINE MOUNTAINS WILDERNESS.**

21 “(a) DESIGNATION. —In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.),
22 approximately 68,458 acres of the land identified as the Clan Alpine Mountains Wilderness
23 Study Area is designated as a wilderness area and as a component of the National Wilderness

1 Preservation System.

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

6 “(c) INAPPLICABILITY OF GENERAL PROVISIONS.—Notwithstanding section 2911(a),
7 subtitle A of this Act shall not apply to this section.

8 **“SEC. 2991. ROAD RECONSTRUCTION AND TREATMENT OF EXISTING ROADS**
9 **AND RIGHTS-OF-WAY.**

10 “(a) ROAD RECONSTRUCTION.—The Secretary of the Navy shall be responsible for the
11 timely—

12 “(1) reconstruction of—

13 “(A) Lone Tree Road leading to the B-16 Range; and

14 “(B) State Highway 361; and

15 “(2) relocation of—

16 “(A) Sand Canyon/Red Mountain Roads; and

17 “(B) Pole Line Road.

18 “(b) EXISTING ROADS AND RIGHTS-OF-WAY.—The withdrawal and reservation of land
19 made by section 2981 shall not be construed to affect the following roads and associated rights-
20 of-way:

21 “(1) United States Highways 50 and 95.

22 “(2) State Routes 121 and 839.

1 “(3) County roads identified as Simpson Road, East County Road, Earthquake
2 Fault Road, and Fairview Peak Road.

3 “(c) RS 2477 CLAIMS.—The withdrawal and reservation of land made by section 2981
4 shall not be construed to obstruct or interfere with the ability of the County to seek adjudication
5 of claims concerning existing County roads under section 2477 of the Revised Statutes (43
6 U.S.C. 932), as in effect prior to being repealed by section 706(a) of the Federal Land Policy and
7 Management Act of 1976 (Public Law 94–579; 90 Stat. 2793).

8 “(d) TREATMENT OF THE WESTSIDE ENERGY CORRIDOR.—

9 “(1) IN GENERAL.—Nothing in section 2981 shall be construed to restrict the
10 development of high voltage electrical power utility lines within that portion of the
11 designated Westside Energy Corridor as is located outside of the B–16 Range.

12 “(2) TRANSMISSION LINE.—The Secretary of the Navy shall allow one
13 transmission line within that portion of the designated Westside Energy Corridor that is
14 located within the B–16 Range nearest the existing transmission line adjacent to the
15 western boundary of the B–16 Range.

16 “(3) FUTURE TRANSMISSION LINE.—If the Secretary of the Navy and the Secretary
17 of the Interior determine that additional transmission lines cannot be accommodated
18 outside of the B-16 Range, to the extent possible, the Secretary shall allow the
19 construction of a new transmission line as close as possible to the existing transmission
20 line.

21 **“SEC. 2992. SAGE GROUSE STUDY.**

22 “The Secretary of the Navy, in consultation with the State of Nevada, shall conduct a
23 study to further assess greater sage grouse reactions to military overflights.

1 **“SEC. 2993. TREATMENT OF LIVESTOCK GRAZING PERMITS.**

2 “(a) IN GENERAL.—The Secretary of the Navy shall notify holders of grazing allotments
3 impacted by the withdrawal and reservation of land pursuant to section 2981 and, if possible,
4 assist those holders in obtaining replacement forage.

5 “(b) REVISIONS TO ALLOTMENT PLANS.—The Secretary of the Navy shall reimburse the
6 Bureau of Land Management for grazing program-related administrative costs reasonably
7 incurred by the Bureau of Land Management due to the withdrawal and reservation of land
8 pursuant to section 2981.

9 “(c) ALTERNATIVE TO REPLACEMENT FORAGE.—If replacement forage cannot be
10 identified under subsection (a), the Secretary of the Navy shall make payments to Federal
11 grazing permit holders for all losses suffered by the permit holders as a result of the withdrawal
12 or other use of former Federal grazing lands for national defense purposes pursuant to the Act of
13 June 28, 1934 (commonly known as the “Taylor Grazing Act”) (48 Stat. 1269, chapter 865; 43
14 U.S.C. 315 et seq.).

15 “(d) NOTIFICATION AND PAYMENT.—The Secretary of the Navy shall notify, by certified
16 mail, holders of grazing allotments that are terminated and shall compensate those holders for
17 authorized permanent improvements associated with those allotments.

18 **“SEC. 2994. TRANSFER OF LAND UNDER THE ADMINISTRATIVE JURISDICTION**
19 **OF THE DEPARTMENT OF THE NAVY.**

20 “(a) TRANSFER REQUIRED.—Subject to subsection (b), the Secretary of the Navy shall
21 transfer to the Secretary of the Interior, at no cost, administrative jurisdiction of the
22 approximately 86 acres of a noncontiguous parcel of land acquired by the Department of the
23 Navy in Churchill County, Nevada, for inclusion in the Sand Mountain Recreation Area.

1 “(b) CERTIFICATION WITH RESPECT TO ENVIRONMENTAL HAZARDS.—Prior to conveying
2 land under subsection (a), the Secretary of the Navy shall certify the land is free from
3 environmental hazards.

4 **“SEC. 2995. PUBLIC PURPOSE CONVEYANCES.**

5 “(a) CONVEYANCE REQUIRED FOR PUBLIC PURPOSES.—Notwithstanding section 202 of
6 the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), the Secretary of the
7 Interior shall convey, subject to valid existing rights and subsection (b), for no consideration, all
8 right, title, and interest of the United States in approximately 6,645 acres of Federal land to
9 Churchill County and 212 acres of land the City of Fallon identified as ‘Public Purpose
10 Conveyances to Churchill County and City of Fallon’ on the Map “Fallon Range Training
11 Complex Modernization”, dated April 27, 2022,. The County and City shall use the lands for
12 public purposes, including construction and operation of a new fire station, expansion and
13 operation of wastewater treatment facilities, expansion and operation of sand and gravel quarries
14 for County road maintenance, expansion and operation of the County sanitary landfill, and
15 construction and operation of public recreational facilities.

16 “(b) EFFECT OF LACK OF USE OF LAND.—If a parcel of Federal land conveyed to the
17 County under paragraph (1) ceases to be used for public recreation or other public purposes
18 consistent with the Act of June 14, 1926 (commonly known as the “Recreation and Public
19 Purposes Act”; 43 U.S.C. 869 et seq.), the parcel of Federal land shall, at the discretion of the
20 Secretary, revert to the United States.

21 **“SEC. 2996. CHECKERBOARD RESOLUTION.**

22 “(a) LAND EXCHANGE AUTHORITY.—

1 “(1) AUTHORITY.—To the extent practicable and subject to existing rights, the
2 Secretary of the Interior shall offer to exchange land identified for exchange for private
3 land in Churchill County that is adjacent to Federal land in the County if the exchange
4 would consolidate land ownership and facilitate improved land management in the
5 County, as determined by the Secretary.

6 “(2) APPLICABLE LAW.—Except as otherwise provided in this subsection, a land
7 exchange under this subsection shall be conducted in accordance with—

8 “(A) section 206 of the Federal Land Policy and Management Act of 1976
9 (43 U.S.C. 14 1716); and

10 “(B) any other applicable law.

11 “(3) IDENTIFICATION OF FEDERAL LAND FOR EXCHANGE.—The Secretary of the
12 Interior shall identify Federal land in Churchill County managed by the Commissioner of
13 the Bureau of Reclamation and Federal land in Churchill County managed by the
14 Director of the Bureau of Land Management to offer for exchange from Federal land
15 identified as potentially suitable for disposal in an applicable resource management plan.

16 “(4) EQUAL VALUE LAND EXCHANGES.—

17 “(A) APPRAISALS.—Land to be exchanged under this subsection shall be
18 of equal value, based on appraisals prepared in accordance with—

19 “(i) Uniform Appraisal Standards for Federal Land Acquisitions;

20 and

21 “(ii) Uniform Standards of Professional Appraisal Practice.

22 “(B) USE OF MASS APPRAISALS.—Subject to subparagraph (C), the
23 Secretary of the Interior may use a mass appraisal to determine the value of land

1 to be exchanged under this subsection, if the Secretary determines that the land to
2 be subject to the mass appraisal is of similar character and value.

3 “(C) EXCLUSION.—The Secretary of the Interior shall exclude from a mass
4 appraisal under this paragraph any land with a value that is likely to exceed \$250
5 per acre, as determined by the Secretary of the Interior.

6 “(D) AVAILABILITY.—The Secretary of the Interior shall make the results
7 of a mass appraisal conducted under this paragraph available to the public.

8 “(b) AUTHORIZATION FOR SALE OF LAND.—

9 “(1) IDENTIFICATION PROCESS.—The Secretary of the Interior, in consultation with
10 Churchill County and after providing an opportunity for public comment, shall identify
11 Federal land in the County managed by the Commissioner of the Bureau of Reclamation
12 and Federal land in the County managed by the Director of the Bureau of Land
13 Management to offer for sale from Federal land identified as potentially suitable for
14 disposal in an applicable resource management plan.

15 “(2) DISCRETION OF THE SECRETARY.—Nothing in this subsection shall be
16 construed to prohibit the Secretary of the Interior from—

17 “(A) postponing a sale of Federal land under this section; or

18 “(B) excluding all or a portion of Federal land identified for sale under this
19 subsection.

20 “(3) METHOD OF SALE.—A sale of Federal land under this subsection shall be—

21 “(A) consistent with section 203 of the Federal Land Policy and
22 Management Act of 1976 (43 11 U.S.C. 1713);

1 “(B) conducted through a competitive bidding process, unless otherwise
2 determined by the Secretary of the Interior; and

3 “(C) for not less than fair market value as determined by the Secretary of
4 the Interior.

5 “(4) LIMITATION OF SALES.—Not more than a total of 50,000 acres of Federal land
6 in Churchill County shall be sold under this subsection.

7 **“SEC. 2997. TRIBAL LIAISON OFFICE.**

8 “The Secretary of the Navy shall establish and maintain a dedicated tribal liaison position
9 at Naval Air Station Fallon.

10 **“SEC. 2998. TERMINATION OF PRIOR WITHDRAWAL.**

11 “Notwithstanding section 2842 of the William M. (Mac) Thornberry National Defense
12 Authorization Act for Fiscal Year 2021 (Public Law 116–283) and section 3015 of the Military
13 Lands Withdrawal Act of 1999 (title XXX of Public Law 106–65), the withdrawal and
14 reservation under section 3011(a) of such Act is terminated.

15 **“SEC. 2999. DURATION OF WITHDRAWAL AND RESERVATION.**

16 “The withdrawal and reservation of public land made by section 2981 shall terminate on
17 November 6, 2047.”.

Section-by-Section Analysis

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2000 (Public Law 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. 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 William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) extended this withdrawal and reservation without change in size or

management and directed the Department of the Navy (DON) to work with the committees of jurisdiction, the Nevada congressional delegation, State and Tribal stakeholders to secure a mutually-agreed upon expansion at Fallon Range Training Complex (FRTC).

The current FRTC comprises withdrawn and fee-owned land in and around Fallon, Nevada. When the land withdrawal expires, 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, the FRTC is too small for today's tactics, techniques, and procedures. The range complex must be expanded by withdrawing an additional 527,942 acres to accommodate precision-guided munitions and SEAL ground mobility training in a tactical environment. The DON determined 1,079 acres of B-16 are not required and are being relinquished. The total withdrawal request is for 730,806 acres.

This proposal would modernize the FRTC by adding a subtitle to the Military Land Withdrawals Act of 2013 (title XXIX of the NDAA for FY 2004 (Public Law 113-66)). Sections 2901 and 2902 and subtitle A 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 and reserved lands. The 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. The 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 the DON and DOI to enter into an agreement for DON review of DOI proposed actions.

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. With regard to Bureau of Reclamation withdrawals on B-16 and B-20, the section requires the DON to enter into an agreement with DOI 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.

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 authorizes the DON to extract sand and gravel from the withdrawn area for its use on the withdrawn lands.

Section 2986 directs the Secretaries of the Navy and Interior and the affected federally recognized tribes to develop an access agreement that will govern protocols for tribes to visit historical and culturally significant areas located within the bombing ranges; directs the Secretary of the Navy to conduct a cultural resources survey of the FRTC that considers input from the tribes; and requires the Secretaries of the Navy and the Interior to submit a report to Congress describing the access agreement and cultural resources survey.

Section 2987 resolves claims against the United States for past contamination of the Walker River Tribal reservation by authorizing payment of \$20 million to the Walker River Paiute Tribe, and requiring the Federal land to be held in trust by the United States for the benefit of the Tribe.

Section 2988 authorizes the Secretary of the Navy to transfer approximately 800 acres to the Secretary of the Interior to be held in trust by the United States for the benefit of the Fallon Paiute Shoshone Tribe.

Section 2989 creates the Black Mountain, Fox Peak, and Grimes Point National Conservation Areas.

Section 2990 designates as wilderness that portion, comprising approximately 68,458 acres, of the Clan Alpine Mountains Wilderness Study Area that is suitable for wilderness designation as determined by the Bureau of Land Management in 2000 while preserving the ability to conduct low-level military overflight of this area.

Section 2991 prescribes the treatment of existing roads and rights-of-way.

Section 2992 directs the Secretary of the Navy to fund and conduct a sage grouse study.

Section 2993 prescribes how the Secretary of the Navy shall compensate affected livestock grazing permit holders.

Section 2994 directs 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 the DON, but of great value to DOI for meeting its requirements associated with the Sand Mountain Recreation Area.

Section 2995 directs the Secretary of the Interior to convey 7,045 acres of federally-owned land to Churchill County and 212 acres of federally-owned land to the City of Fallon, Nevada for public benefit purposes. The Secretary is also directed to convey 12,960 acres of federally-owned land to Churchill County for unrestricted use.

Section 2996 directs the Secretary of the Interior to offer to exchange federally-owned land for private land in order to resolve the checkerboard pattern of ownership in Churchill County. It also directs the Secretary to identify no more than 50,000 acres of federally-owned land in Churchill County for sale.

Section 2997 directs the Secretary of the Navy to establish and fund a Tribal Liaison position at Naval Air Station Fallon.

Section 2998 terminates the prior withdrawal for the FRTC.

Section 2999 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.

Resource Information: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2023 President’s Budget Request.

RESOURCE IMPACTS (\$MILLIONS)									
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Appropriation	Budget Activity	BLI/SAG	Program Element
Civilian Personnel (6 additional FTEs)	\$0.90	\$0.90	\$0.91	\$0.91	\$0.91	Operation 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	Operation and Maintenance, Navy	01	BSM1	N/A
Total	\$3.15	\$2.2	\$2.25	\$2.29	\$2.33				

PERSONNEL IMPACTS (END STRENGTH OR FTEs)

	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	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 G to the Military Land Withdrawals Act of 2013, the full text of which is shown in the legislative text above.

1 **SEC. ____ . REFORM OF THE STRATEGIC AND CRITICAL MATERIALS STOCK**
2 **PILING ACT.**

3 (a) REPEAL OF STRATEGIC MATERIALS PROTECTION BOARD.—Section 187 of title 10,
4 United States Code, is repealed.

5 (b) REFORM OF STRATEGIC AND CRITICAL MATERIALS STOCK PILING ACT.—

6 (1) FINDINGS AND PURPOSE.—Section 2 of the Strategic and Critical Materials
7 Stock Piling Act (50 U.S.C 98a) is amended to read as follows:

8 “FINDINGS AND PURPOSE

9 “SEC. 2. (a) The Congress finds that the natural resources of the United States for certain
10 strategic and critical materials are deficient or insufficiently developed to supply the military,
11 industrial, and essential civilian needs of the United States for national defense.

12 “(b) It is the purpose of this Act to provide for the acquisition and retention of stocks of
13 certain strategic and critical materials and to encourage the conservation of reliable sources of
14 such materials to decrease and, when possible, preclude a dangerous and costly dependence by
15 the United States upon unreliable foreign sources for supplies of such materials in times of
16 national emergency.

17 “(c) The purpose of the National Defense Stockpile is to serve the interest of national
18 defense and essential civilian industry only. The National Defense Stockpile shall not be used as
19 a budgetary offset for non-defense programs or other defense programs unrelated to the mission
20 of the National Defense Stockpile Program.

21 “(d) To the maximum extent practicable and to reduce the reliance of the National
22 Defense Stockpile Program on appropriated funds, the National Defense Stockpile Manager shall
23 achieve positive cash flows from the recovery of strategic and critical materials pursuant to

1 subsection (a)(5) of section 6 and a positive return on investment for any action pursuant to
2 subsection (b)(3)(N) of section 9.”.

3 (2) AUTHORITY FOR STOCKPILE OPERATIONS.—Section 5 of such Act (50 U.S.C.
4 98d) is amended to read as follows:

5 “AUTHORITY FOR STOCKPILE OPERATIONS

6 “SEC. 5. (a) PROHIBITION ON ACQUISITIONS.—No funds may be obligated or appropriated
7 for acquisition of any material under this Act unless funds for such acquisition have been
8 authorized by law. Funds appropriated for such acquisition (and for transportation related to such
9 acquisition) shall remain available indefinitely, unless otherwise provided in appropriation or
10 authorization Acts.

11 “(b) PROHIBITION ON DISPOSALS.—No disposal may be made from the stockpile unless
12 such disposal has been authorized by law.

13 “(c) EXCEPTIONS.—

14 “(1) The prohibition in subsection (a) does not apply—

15 “(A) to actions covered by the rotation or upgrading of materials in the
16 National Defense Stockpile, as provided in section 6; and

17 “(B) to actions less than \$50,000,000, if the National Defense Stockpile
18 Manager has satisfied the quarterly reporting requirement to the Board pursuant to
19 section 11.

20 “(2) The prohibition in subsection (b) does not apply—

21 “(A) to actions covered by the rotation or upgrading of materials in the
22 National Defense Stockpile, as provided in section 6;

1 “(B) to actions less than \$50,000,000, if the National Defense Stockpile
2 Manager has satisfied the quarterly reporting requirement to the Board pursuant to
3 section 11; and

4 “(C) to actions under section 7.”.

5 (3) STOCKPILE MANAGEMENT.—Section 6 of such Act (50 U.S.C. 98e) is
6 amended to read as follows:

7 “STOCKPILE MANAGEMENT

8 “SEC. 6. (a) NATIONAL DEFENSE STOCKPILE MANAGER AUTHORITY.—The National
9 Defense Stockpile Manager shall—

10 “(1) acquire materials determined to be strategic and critical materials, pursuant to
11 the findings of section 14;

12 “(2) provide for the proper storage, security, and maintenance of materials in the
13 stockpile;

14 “(3) provide for the upgrading, refining, or processing of any material in the
15 stockpile when necessary to convert such material into a form more suitable for storage,
16 subsequent disposition, or immediate use in a national emergency;

17 “(4) provide for the rotation of any material in the stockpile when necessary to
18 prevent the deterioration or technological obsolescence of such material, pursuant to the
19 findings of section 14;

20 “(5) provide for the recovery of any strategic and critical materials that may be
21 available from other Federal agencies, either directly as materials or embedded in excess-
22 to-need, end-of-life items, or waste streams; and

23 “(6) provide for the timely disposal of materials in the stockpile, subject to
24 authorization Acts or the requirements of section 14.

1 “(b) CONTRACTING PRACTICES.—

2 “(1) PILOT PROGRAM FOR COMMERCIAL CONTRACTING.—

3 “(A) To the maximum extent practical, the National Defense Stockpile
4 Manager shall use commercial best-practices in the acquisition and disposal of
5 strategic and critical materials for the stockpile.

6 “(B) The authority in subsection (b)(1)(A) is repealed effective as of the
7 date that is 5 years after the enactment of this subsection.

8 “(2) FEDERAL CONTRACTING PRACTICES.—Except as provided in subsection
9 (b)(1)(A) and subsections (c) and (d), acquisition and disposal of strategic and critical
10 materials under this Act shall be made in accordance with established Federal
11 procurement practices, and the National Defense Stockpile Manager shall avoid undue
12 disruption of the usual markets of producers, processors, and consumers of such
13 materials.

14 “(3) RECOVERY PROGRAMS.—Unless otherwise necessary for national defense,
15 recovery programs implemented pursuant to subsection (a)(5) shall be cash flow positive.

16 “(4) WAIVER.—The National Defense Stockpile Manager may waive the
17 applicability of subsection (b)(2) to any acquisition or disposal of material, if—

18 “(A) the National Defense Stockpile Manager notifies in writing the
19 Strategic and Critical Materials Board of Directors and congressional defense
20 committees at least 30 days before any obligation of the United States is incurred
21 in connection with such an action; and

22 “(B) the written notification in subparagraph (A) includes justification for
23 not complying with any provision of subsection (b)(2).

1 “(c) BARTER.—

2 “(1) The National Defense Stockpile Manager shall encourage the use of barter
3 for actions covered under subsection (a) and research and development actions under
4 section 8, when the National Defense Stockpile Manager determines that barter is
5 practical and in the best interest of the United States.

6 “(2) To the extent otherwise authorized by law, property owned by the United
7 States may be bartered for materials needed for the stockpile.

8 “(d) LEASEHOLD INTERESTS IN PROPERTY.—The President may acquire leasehold interests
9 in property, for periods not in excess of 20 years, for storage, security, and maintenance of
10 materials in the stockpile.

11 “(e) LOANS OF STOCKPILE MATERIALS.—The National Defense Stockpile Manager may
12 loan stockpile materials to the Department of Defense (including a military department, a
13 Defense Agency, a Department of Defense Field Activity, or another component of the
14 Department) or other Federal agency if the National Defense Stockpile Manager—

15 “(1) has a reasonable assurance that stockpile materials of a similar or superior
16 quantity and quality to the materials loaned will be returned to the stockpile or paid for;

17 “(2) notifies the congressional defense committees (as defined in section 101(a) of
18 title 10, United States Code), in writing, not less than 30 days before making any such
19 loan; and

20 “(3) includes in the written notification under paragraph (2) sufficient support for
21 the assurance described in paragraph (1).”.

22 (4) SPECIAL DISPOSAL AUTHORITY.—Section 7 of such Act (50 U.S. C. 98f) is
23 amended to read as follows:

24 “SPECIAL DISPOSAL AUTHORITY

1 “SEC. 7. (a) Materials in the stockpile may be released for use, sale, or other
2 disposition—

3 “(1) on the order of the President, at any time the President determines the release
4 of such materials is required for the purposes of national defense or sustaining essential
5 civilian industry;

6 “(2) in time of war declared by the Congress or during a national emergency, on
7 the order of the National Defense Stockpile Manager; or

8 “(3) on the order of the National Defense Stockpile Manager, if the National
9 Defense Stockpile Manager determines that the release of such materials is required for
10 use, manufacture, or production for purposes of national defense or sustaining essential
11 civilian industry.

12 “(b) Any order issued under subsection (a) shall be promptly reported by the President or
13 the National Defense Stockpile Manager, in writing, to the congressional defense committees.”.

14 (5) MATERIALS RESEARCH AND DEVELOPMENT.—Section 8 of such Act (50 U.S.C. 98g)
15 is amended to read as follows:

16 “MATERIALS RESEARCH AND DEVELOPMENT

17 “SEC. 8. (a) The National Defense Stockpile Manager shall make scientific, technologic,
18 and economic investigations concerning the exploration and development, including alternative
19 methods of refining and materials testing, of sources of materials determined to be strategic and
20 critical that—

21 “(1) are found in the United States, its territories and possessions, or in a reliable
22 source; and

23 “(2) are essential to national defense or essential civilian needs of the United
24 States.

1 “(b) Such investigations shall be carried out in order to develop new sources of strategic
2 and critical materials, develop substitutes, or conserve domestic and reliable sources of supply
3 for such strategic and critical materials.”.

4 (6) STRATEGIC AND CRITICAL MATERIALS FUND.—Section 9 of such Act (50
5 U.S.C. 98h) is amended to read as follows:

6 “STRATEGIC AND CRITICAL MATERIALS FUND

7 “SEC. 9. (a) ESTABLISHMENT.—There is established in the Department of Defense a
8 separate fund to be known as the Strategic and Critical Materials Fund (hereinafter in this section
9 referred to as the ‘fund’).

10 “(b) FUND OPERATIONS.—

11 “(1) All moneys held by the National Defense Stockpile Transaction Fund,
12 established in the Treasury of the United States, shall be covered into the fund.

13 “(2) All moneys received from the sale of materials in the stockpile shall be
14 covered into the fund.

15 “(3) All moneys received from the sale of materials being rotated or disposed of
16 pursuant to section 7 of this Act shall be covered into the fund.

17 “(4) Subject to section 5 of this Act, moneys covered into the fund under
18 paragraphs (1), (2) and (3) are hereby made available, subject to such limitations as may
19 be provided in appropriation or authorization Acts, for the following purposes:

20 “(A) The acquisition, maintenance, and disposal of strategic and critical
21 materials.

22 “(B) Transportation, storage, and other incidental expenses related to such
23 acquisition, maintenance, and disposal.

1 “(C) Development of specifications and standards for stockpile materials,
2 as well as the upgrade of existing stockpile materials to meet such specifications
3 and standards.

4 “(D) Encouraging the conservation of strategic and critical materials.

5 “(E) Testing and quality studies of stockpile materials.

6 “(F) Studying future material and mobilization requirements for the
7 stockpile.

8 “(G) Activities authorized under section 15 of this Act.

9 “(H) Contracting for materials development and research—

10 “(i) to improve the quality and availability of strategic and critical
11 materials from reliable sources;

12 “(ii) to develop new materials for the stockpile; and

13 “(iii) to qualify a reliable source of supply for use in the production
14 of munitions, combat support items, and weapon systems;

15 “(I) Improvement and rehabilitation of facilities, structures, and
16 infrastructure to maintain the integrity of stockpile materials.

17 “(J) Disposal of hazardous materials that are stored in the stockpile and
18 authorized for disposal.

19 “(K) Performance of environmental remediation, restoration, waste
20 management, or compliance activities at locations of the stockpile that are
21 required under a Federal law or are undertaken by the Government under an
22 administrative decision or negotiated agreement.

1 “(L) Payment of employees of the National Defense Stockpile program,
2 including travel and per diem of personnel covered under section 10 of this Act
3 while such persons are performing duties for the National Defense Stockpile
4 program.

5 “(M) Other expenses of the National Defense Stockpile program.

6 “(N) Investment in reliable sources to produce strategic and critical
7 materials, pursuant to the Defense Production Act of 1950 (50 U.S.C. 4501 et
8 seq.).

9 “(O) Off-take agreements in connection with an investment pursuant to the
10 Defense Production Act of 1950 (50 U.S.C. 4501 et seq.).

11 “(c) EFFECT OF BARTERING.—If, during a fiscal year, the National Defense Stockpile
12 Manager barter materials in the stockpile, the contract value of the materials so bartered shall—

13 “(1) for disposals, be applied toward the total value of that materials that are
14 authorized for disposal during that fiscal year; and

15 “(2) be treated as an acquisition for the purposes of satisfying any requirement
16 under subsection (b)(4)(A).”.

17 (7) STRATEGIC AND CRITICAL MATERIALS BOARD OF DIRECTORS.—Section 10 of
18 such Act (50 U.S.C. 98h-1) is amended to read as follows:

19 “STRATEGIC AND CRITICAL MATERIALS BOARD OF DIRECTORS

20 “SEC. 10. (a) ESTABLISHMENT.—There is established a Strategic and Critical Materials
21 Board of Directors (hereinafter referred to as the ‘Board’).

22 “(b) MEMBERS.—The Board shall be composed, at a minimum, of the following:

23 “(1) The Assistant Secretary of Defense for Industrial Base Policy, who shall
24 serve as chairman of the Board.

1 “(2) One designee, each, by the Secretary of Commerce, the Secretary of State,
2 the Secretary of Energy, and the Secretary of the Interior.

3 “(3) One designee, each, by the Chairman and Ranking Member of the Readiness
4 Subcommittee of the House Committee on Armed Services.

5 “(4) One designee, each, by the Chairman and Ranking Member of the Readiness
6 Subcommittee of the Senate Committee on Armed Services.

7 “(5) Four designees of the chairman of the Board, who shall have expertise
8 relating to military affairs, defense procurement, production of strategic and critical
9 materials, finance, or any other disciplines deemed necessary by the chairman to conduct
10 the Board’s business.

11 “(c) DUTIES OF THE BOARD.—In addition to other matters assigned to it by the chairman,
12 the Board shall conduct the following, without power of delegation:

13 “(1) Adopt by-laws that ensure sufficient oversight, governance, and effectiveness
14 of the National Defense Stockpile program.

15 “(2) Elect or remove Board members.

16 “(3) Hire and terminate the employment of the National Defense Stockpile
17 Manager.

18 “(4) Advise the National Defense Stockpile Manager.

19 “(5) Establish performance metrics and conduct an annual performance review of
20 the National Defense Stockpile Manager.

21 “(6) Set compensation for the National Defense Stockpile Manager.

22 “(7) Review and approve the annual budget of the National Defense Stockpile
23 program and conduct appropriate reviews of annual financial statements.

1 “(8) Re-allocate budget resources within the annual budget of the National
2 Defense Stockpile program.

3 “(9) Review and approve the Annual Materials and Operations Plan required by
4 section 11(a) of this Act, including a review of the projected domestic and foreign
5 economic effects of proposed actions to be taken under the Annual Materials and
6 Operations Plan.

7 “(10) Complete and submit the annual Board Report, in accordance with section
8 11(c) of this Act.

9 “(11) Review any action pursuant to section 9 or section 15 of this Act, if the
10 total value of that action exceeds \$25,000,000.

11 “(12) Terminate any action pursuant to section 9 or section 15 of this Act.

12 “(d) BOARD MEETINGS.—The Board shall meet as determined necessary by the chairman
13 but not less frequently than once every year to fulfill the duties described in subsection (c).”.

14 (8) REPORTS.—Section 11 of such Act (50 U.S.C. 98h-2) is amended to read as
15 follows:

16 “REPORTS

17 “SEC. 11. (a) REPORTS TO THE BOARD BY THE NATIONAL DEFENSE STOCKPILE
18 MANAGER.—The National Defense Stockpile Manager shall submit the following reports to the
19 Board:

20 “(1) Unaudited financial statements and a Manager’s Discussion and Analysis for
21 a given quarterly period, not later than 40 calendar days after the conclusion of that
22 quarter other than the fourth quarter.

23 “(2) Not later than 60 calendar days after the conclusion of the fourth quarter of a
24 fiscal year—

1 “(A) audited financial statements and a Manager’s Discussion and
2 Analysis for the prior fiscal year; and

3 “(B) an Annual Materials and Operations Plan for the forthcoming year.

4 “(b) REPORT BY THE NATIONAL DEFENSE STOCKPILE MANAGER TO CONGRESS.—Not later
5 than 90 days after the conclusion of the fourth quarter of a fiscal year, the National Defense
6 Stockpile Manager shall submit a report to the congressional defense committees. The report
7 shall include—

8 “(1) information with respect to foreign and domestic purchases of materials
9 during the preceding fiscal year;

10 “(2) information with respect to the acquisition and disposal of materials under
11 this Act by barter, during such fiscal year;

12 “(3) information with respect to the activities by the National Defense Stockpile
13 Manager to encourage the conservation, substitution, and development of strategic and
14 critical materials;

15 “(4) information with respect to the research and development activities
16 conducted under section 8 of this Act;

17 “(5) audited annual financial statements for the Strategic and Critical Materials
18 Fund;

19 “(6) other pertinent information on the administration of this Act as will enable
20 the Congress to evaluate the effectiveness of the program;

21 “(7) details of all planned expenditures from the Strategic and Critical Materials
22 Fund over the Future Years’ Defense Program and anticipated receipts from proposed
23 disposals of stockpile materials; and

1 “(8) the Board Report required by subsection (c).

2 “(c) REPORT BY THE BOARD TO CONGRESS.—The Board shall prepare a written report to
3 accompany the report required by subsection (b) describing, at a minimum, the activities of the
4 Board to carry out the duties listed in section 10 of this Act.”.

5 (9) ADDITIONAL DEFINITIONS.— Section 12 of such Act (50 U.S.C. 98h-3) is
6 amended by adding at the end the following new paragraphs:

7 “(4) The term ‘reliable source’ mean citizens and business entities of—

8 “(A) the United States and its territories or possessions;

9 “(B) a country of the national technology and industrial base; or

10 “(C) a qualifying country, pursuant to section 225.003 of the Defense
11 Federal Acquisition Regulation Supplement.

12 “(5) The term ‘bankable feasibility study’ means a comprehensive technical and
13 economic study of the selected development option for a strategic and critical material
14 project that includes appropriately detailed assessments of realistically assumed
15 extraction, processing, metallurgical, economic, marketing, legal, environmental, social,
16 and governmental considerations, together with any other relevant operational factors and
17 detailed financial analysis, that are necessary to demonstrate at the time of reporting that
18 production is reasonably justified. The results of the study may reasonably serve as the
19 basis for a final decision by a proponent or financial institution to proceed with, or
20 finance, the development of the project.”.

21 (10) REPORT REVISIONS.—

22 (A) Section 14 of such Act (50 U.S.C. 98h-5) is amended—

1 (i) by amending the second sentence of subsection (b) to read as
2 follows: “The Secretary shall base the national emergency planning
3 assumptions on the priority military scenario of the National Defense
4 Strategy.”;

5 (ii) by amending subsection (c) to read as follows:

6 “(c) PERIOD WITHIN WHICH TO REPLACE OR REPLENISH MATERIALS.—The stockpile
7 requirements shall be based on those strategic and critical materials necessary for the United
8 States to replenish or replace, over the course of the Future Years’ Defense Program immediately
9 following the scenario under subsection (b), all munitions, combat support items, and weapons
10 systems that would be required after such a military conflict.”; and

11 (iii) by amending subsection (d) to read as follows:

12 “(d) EFFECT OF ALTERNATIVE SCENARIOS.—The Secretary may include in each report
13 under this section an examination of scenarios other than the priority scenario of the National
14 Defense Strategy and sensitivity analyses of national emergency planning assumptions.”.

15 (B) Subsection (i)(30) of section 1061 of Public Law 114-328 (130 Stat.
16 2404; 10 U.S.C. 111 note) is repealed, effective as of December 30, 2021.

17 (11) DEVELOPMENT OF RELIABLE SOURCES.—Section 15 of such Act (50 U.S.C.
18 98h-6) is amended to read as follows:

19 “DEVELOPMENT OF RELIABLE SOURCES

20 “SEC. 15. (a) DUTIES.—Subject to subsection (c) and to the extent that the President
21 determines that such action is required, the National Defense Stockpile Manager shall encourage
22 the development and appropriate conservation of reliable sources of materials determined to be
23 strategic and critical—

1 “(1) by purchasing, or making a commitment to purchase, strategic and critical
2 materials from reliable sources when such materials are needed for the stockpile;

3 “(2) by contracting with facilities located in and owned and controlled by reliable
4 sources, or making a commitment to contract with such facilities, for the processing or
5 refining of strategic and critical materials in the stockpile when processing or refining is
6 necessary to convert such materials into a form more suitable for storage, disposition, or
7 meeting stockpile requirements;

8 “(3) by qualifying facilities located in and owned and controlled by reliable
9 sources, or qualifying strategic and critical materials produced by such facilities, to meet
10 stockpile requirements;

11 “(4) by contracting with facilities located in and owned and controlled by reliable
12 sources to recycle strategic and critical materials to meet stockpile requirements or
13 increase the balance of the Strategic and Critical Materials Fund; and

14 “(5) by entering into an agreement to co-fund bankable feasibility studies for the
15 development of strategic and critical materials located in and owned and controlled by
16 reliable sources, if the agreement —

17 “(A) limits the liability of the stockpile to not greater than the total
18 funding provided by the Government;

19 “(B) limits the funding contribution of the Government to not more than
20 50 percent of the cost of the bankable feasibility study; and

21 “(C) does not obligate the Government to purchase strategic and critical
22 materials from the reliable source.

23 “(b) ADDITIONAL AUTHORITIES.—

1 “(1) MULTI-YEAR CONTRACTING.—

2 “(A) A contract or commitment made under subsection (a) may endure for
3 a period up to 10 years.

4 “(B) A contract entered into for more than 10 years may be extended for a
5 total of not more than 10 years pursuant to any option or options set forth in the
6 contract.

7 “(2) MATTERS RELATING TO CO-FUNDING OF BANKABLE FEASIBILITY STUDIES.—

8 To the extent authorized by Congress pursuant to the Defense Production Act of 1950
9 (50 U.S.C. 4501 et seq.) and determined to be required by the President under such Act,
10 the National Defense Stockpile Manager may provide for loans or procure debt issued by
11 other enterprises to execute a strategic and critical material project pursuant to a bankable
12 feasibility study under subsection (a)(5).

13 “(c) PROPOSED TRANSACTIONS INCLUDED IN ANNUAL MATERIALS PLAN; AVAILABILITY OF
14 FUNDS.—

15 “(1) Descriptions of proposed transactions under subsection (a) shall be included
16 in the appropriate annual materials plan submitted to Congress under section 11 of this
17 Act. Changes to any such transaction or the addition of a transaction not included in such
18 plan shall be made in accordance with section 5 of this Act.

19 “(2) The authority of the National Defense Stockpile Manager to enter into
20 obligations under this section is effective for any fiscal year only to the extent that funds
21 in the Strategic and Critical Materials Fund are adequate to meet such obligations.”.

22 (12) NATIONAL DEFENSE STOCKPILE MANAGER.—Section 16 of such Act (50
23 U.S.C. 98h-7) is amended to read as follows:

24 “NATIONAL DEFENSE STOCKPILE MANAGER

1 “SEC. 16. (a) RECRUITMENT AND SELECTION.—The Board shall hire a United States
2 citizen to have responsibility for performing the duties of this Act.

3 “(b) TITLE OF DESIGNATED OFFICER.—The individual selected by the Board pursuant to
4 subsection (a) shall be known, for the purposes of functions under this Act, as the ‘National
5 Defense Stockpile Manager’.

6 “(c) DELEGATION OF FUNCTIONS.—Any functions in this Act that are assigned to the
7 President may not be delegated.”.

**[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 reform the *Strategic and Critical Materials Stock Piling Act* (“the Act”). Though the Department has proposed minor changes to this body of law from the FY2014 National Defense Authorization Act to the present, no substantive assessment and overhaul of this body of law has occurred since 1979. Consequently, this proposal makes substantive changes to the manner in which the Department of Defense manages risk in and administers programs towards strategic and critical materials supply chains.

First, this proposal eliminates the Strategic and Critical Materials Protection Board. The Board does not meet frequently, nor does it drive Department policy as was envisioned in congressional intent for its formation. Consequently, the Department intends to eliminate the Strategic Materials Protection Board as a stand-alone entity, and it will transform this organization into a true oversight panel, with direct resources, authorities, and congressional reporting responsibilities. This new Board further combines the functions of the Market Impact Committee, to integrate inter-agency oversight from the Department of Commerce (Bureau of Industry and Security), the Department of State (Bureau of Energy Resources), the Department of Energy, and the Department of Interior (National Minerals Information Center).

Within the Act, this proposal makes significant, substantive changes to the Department’s approach to strategic and critical materials supply chains with the intent of (1) continuously infusing Government and private sector best-practices into management of the National Defense Stockpile, (2) providing Congress with meaningful insight into the management of National Defense Stockpile funds, and (3) expanding the scope of mitigation options to increase supply of strategic and critical materials from reliable sources. A summary of these changes is as follows:

- Amends the purpose of the program to include “reliable sources” (i.e., U.S. allies) as useable for the purposes of the program; the current program is exclusively “Buy America” focused

- Amends the purpose of the program to clarify that recycling programs may be cash-flow positive; under current practice, recycling programs must be cash-flow negative or neutral
- Amends the authority for stockpile operations to greater flexibility for acquisition and sales of material without unique legislative proposals from Congress, decreasing total time to award from the current standard of 4-6 years
- Amends stockpile management authority to provide a pilot program for exercising materials contracts based on commercial best practices, rather than the Federal Acquisition Regulations (FAR) or Defense Federal Acquisition Regulations Supplement (DFARS), an authority already provided to the National Defense Stockpile Manager given congressional notification
- Amends barter provisions to allow the use of barter for research and development programs, in addition to procurement and upgrade programs already authorized
- Amends national emergency disposal authority, delegating this function to the National Defense Stockpile Manager
- Amends materials research and development authority to allow for exploitation of “reliable source” (i.e., US allies) materials
Amends the National Defense Stockpile Transaction Fund to (1) explicitly authorize new research and development actions for specification development and qualification and (2) fund Defense Production Act, Title III, actions (not currently authorized), and (3) authorize funding of bankable feasibility studies for materials projects
- Amends oversight activities of the National Defense Stockpile program by merging the functions of the Market Impact Committee (with members from the Department of Commerce, the Department of State, the Department of the Interior, and the Department of Energy), the Strategic Materials Protection Board, and the “advisory committee” function of the Act to serve as a Board of Directors for the National Defense Stockpile
- Amends National Defense Stockpile reporting requirements by requiring (1) submission of unaudited quarterly financial statements to the Board of Directors, (2) submission of audited annual financial statements to the Board of Directors and Congress, (3) submission of a Manager’s Discussion and Analysis (MD&A) to the Board of Directors quarterly and Congress annually, (4) submission of a Board report on the annual financial statements and the MD&A to Congress, and (5) merging existing reports under the Annual Materials Plan and Annual Operations Plan with the MD&A
- Strikes subsection (i)(30) of section 1061 (P.L. 114-328), which repeals the requirement for the National Defense Stockpile to model strategic and critical materials requirements for DoD
- Amends development of domestic sources authority to (1) include development of “reliable” sources of strategic and critical materials (i.e., US allies) and (2) extend the maximum allowable period for multi-year contracting for such development activities
- Amends the Act throughout by (1) delegating the functions of the President to the National Defense Stockpile Manager, (2) establishing the National Defense Stockpile Manager as an appointee of the Board of Directors, and (3) authorizing the Board of Directors to hire / fire the National Defense Stockpile Manager, set compensation, and other elements related to executive management

Resource Implications: This proposal has no significant budgetary impact. Resources impacted by this proposal are incidental in nature and amount and are included within the Fiscal Year (FY) 2023 President’s Budget request

Changes to Existing Law: This proposal would amend section 187 of title 10, United States Code, and the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*) as follows:

~~§187—Strategic Materials Protection Board~~

~~(a) ESTABLISHMENT.—~~

~~(1) The Secretary of Defense shall establish a Strategic Materials Protection Board.~~

~~(2) The Board shall be composed of the following:~~

~~(A) The Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, who shall be the chairman of the Board.~~

~~(B) The Administrator of the Defense Logistics Agency Strategic Materials, or any successor organization, who shall be the vice chairman of the Board.~~

~~(C) A designee of the Assistant Secretary of the Army for Acquisition, Logistics, and Technology.~~

~~(D) A designee of the Assistant Secretary of the Navy for Research, Development, and Acquisition.~~

~~(E) A designee of the Assistant Secretary of the Air Force for Acquisition.~~

~~(b) DUTIES.— In addition to other matters assigned to it by the Secretary of Defense, the Board shall—~~

~~(1) determine the need to provide a long-term secure supply of materials designated as critical to national security to ensure that national defense needs are met;~~

~~(2) analyze the risk associated with each material designated as critical to national security and the effect on national defense that the nonavailability of such material would have;~~

~~(3) recommend a strategy to the Secretary to ensure a secure supply of materials designated as critical to national security;~~

~~(4) recommend such other strategies to the Secretary as the Board considers appropriate to strengthen the industrial base with respect to materials critical to national security; and~~

~~(5) publish not less frequently than once every two years in the Federal Register recommendations regarding materials critical to national security, including a list of specialty metals, if any, recommended for addition to, or removal from, the definition of “specialty metal” for purposes of section 4863 [former 2533b] of this title.~~

~~(c) MEETINGS.— The Board shall meet as determined necessary by the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy but not less frequently than once every two years to make recommendations regarding materials critical to national security as described in subsection (b)(5).~~

~~(d) REPORTS.—~~

~~(1) Subject to paragraph (2), after each meeting of the Board, the Board shall prepare a report containing the results of the meeting and such recommendations as the Board determines appropriate. Each such report shall be submitted to the~~

congressional defense committees, together with comments and recommendations from the Secretary of Defense, not later than 90 days after the meeting covered by the report.

(2) In any year in which the Board meets more than once, each report prepared by the Board as required by paragraph (1) may be combined into one annual report and submitted as provided by paragraph (1) not later than 90 days after the last meeting of the year.

(a) DEFINITIONS.— In this section:

(1) The term “materials critical to national security” means materials —

(A) upon which the production or sustainment of military equipment is dependent; and

(B) the supply of which could be restricted by actions or events outside the control of the Government of the United States.

(3) The term “military equipment” means equipment used directly by the armed forces to carry out military operations.

(4) The term “secure supply”, with respect to a material, means the availability of a source or sources for the material, including the full supply chain for the material and components containing the material.

STRATEGIC AND CRITICAL MATERIALS STOCK PILING ACT

SEC. 1. [50 U.S.C. 98] This Act may be cited as the “Strategic and Critical Materials Stock Piling Act”.

FINDINGS AND PURPOSE

SEC. 2. [50 U.S.C. 98a] (a) The Congress finds that the natural resources of the United States in certain strategic and critical materials are deficient or insufficiently developed to supply the military, industrial, and essential civilian needs of the United States for national defense. (b) It is the purpose of this Act to provide for the acquisition and retention of stocks of certain strategic and critical materials and to encourage the conservation and development of sources of such materials within the United States and thereby to decrease and to preclude, when possible, a dangerous and costly dependence by the United States upon foreign sources or a single point of failure for supplies of such materials in times of national emergency. (c) The purpose of the National Defense Stockpile is to serve the interest of national defense only. The National Defense Stockpile is not to be used for economic or budgetary purposes.

FINDINGS AND PURPOSE

SEC. 2. [50 U.S.C. 98a] (a) The Congress finds that the natural resources of the United States for certain strategic and critical materials are deficient or insufficiently developed to supply the military, industrial, and essential civilian needs of the United States for national defense.

(b) It is the purpose of this Act to provide for the acquisition and retention of stocks of certain strategic and critical materials and to encourage the conservation of reliable sources of such materials to decrease and, when possible, preclude a dangerous and costly dependence by the United States upon unreliable foreign sources for supplies of such materials in times of national emergency.

(c) The purpose of the National Defense Stockpile is to serve the interest of national defense and essential civilian industry only. The National Defense Stockpile shall not be used as a

budgetary offset for non-defense programs or other defense programs unrelated to the mission of the National Defense Stockpile Program.

(d) To the maximum extent practicable and to reduce the reliance of the National Defense Stockpile Program on appropriated funds, the National Defense Stockpile Manager shall achieve positive cash flows from the recovery of strategic and critical materials pursuant to subsection (a)(5) of section 6 and a positive return on investment for any action pursuant to subsection (b)(3)(N) of section 9.

MATERIALS TO BE ACQUIRED: PRESIDENTIAL AUTHORITY AND GUIDELINES

SEC. 3. [50 U.S.C. 98b] (a) Subject to subsection (c), the President shall determine from time to time (1) which materials are strategic and critical materials for the purposes of this Act, and (2) the quality and quantity of each such material to be acquired for the purposes of this Act and the form in which each such material shall be acquired and stored. Such materials when acquired, together with the other materials described in section 4 of this Act, shall constitute and be collectively known as the National Defense Stockpile (hereinafter in this Act referred to as the “stockpile”).

(b) The President shall make the determinations required to be made under subsection (a) on the basis of the principles stated in section 2(c).

(c)(1) The quantity of any material to be stockpiled under this Act, as in effect on September 30, 1987, may be changed only as provided in this subsection or as otherwise provided by law enacted after December 4, 1987.

(2) The President shall notify Congress in writing of any change proposed to be made in the quantity of any material to be stockpiled. The President may make the change after the end of the 45-day period beginning on the date of the notification. The President shall include a full explanation and justification for the proposed change with the notification.

MATERIALS CONSTITUTING THE NATIONAL DEFENSE STOCKPILE

SEC. 4. [50 U.S.C. 98c] (a) The stockpile consists of the following materials:

(1) Materials acquired under this Act and contained in the national stockpile on July 29, 1979.

(2) Materials acquired under this Act after July 29, 1979.

(3) Materials in the supplemental stockpile established by section 104(b) of the Food for Peace Act (as in effect from September 21, 1959, through December 31, 1966) on July 29, 1979.

(4) Materials acquired by the United States under the provisions of section 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2093) and transferred to the stockpile by the President pursuant to subsection (f) of such section.

(5) Materials transferred to the United States under section 663 of the Foreign Assistance Act of 1961 (22 U.S.C. 2423) that have been determined to be strategic and critical materials for the purposes of this Act and that are allocated by the President under subsection (b) of such section for stockpiling in the stockpile.

(6) Materials acquired by the Commodity Credit Corporation and transferred to the stockpile under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h)).

(7) Materials acquired by the Commodity Credit Corporation under paragraph (2) of section 103(a) of the Act entitled “An Act to provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes”, approved August 28, 1954 (7 U.S.C. 1743(a)), and transferred to the stockpile under the third sentence of such section.

(8) Materials transferred to the stockpile by the President under paragraph (4) of section 103(a) of such Act of August 28, 1954.

(9) Materials transferred to the stockpile under subsection (b).

(10) Materials transferred to the stockpile under subsection (c).

(b) Notwithstanding any other provision of law, any material that (1) is under the control of any department or agency of the United States, (2) is determined by the head of such department or agency to be excess to its needs and responsibilities, and (3) is suitable for transfer or disposal through the stockpile shall be transferred to the stockpile. Any such transfer shall be made without reimbursement to such department or agency, but all costs required to effect such transfer shall be paid or reimbursed from funds appropriated to carry out this Act.

(c) The Secretary of Defense shall determine whether materials are suitable for transfer to the stockpile under subsection (b), are suitable for disposal through the stockpile, and are uncontaminated.

AUTHORITY FOR STOCKPILE OPERATIONS

~~SEC. 5. [50 U.S.C. 98d] (a)(1) Except for acquisitions made under the authority of paragraph (3) or (4) of section 6(a), no funds may be obligated or appropriated for acquisition of any material under this Act unless funds for such acquisition have been authorized by law. Funds appropriated for such acquisition (and for transportation and other incidental expenses related to such acquisition) shall remain available until expended, unless otherwise provided in appropriation Acts. (2) If for any fiscal year the President proposes certain stockpile transactions in the annual materials plan submitted to Congress for that year under section 11(b) and after that plan is submitted the President proposes (or Congress requires) a significant change in any such transaction, or a significant transaction not included in such plan, no amount may be obligated or expended for such transaction during such year until the President has submitted a full statement of the proposed transaction to the appropriate committees of Congress and a period of 45 days has passed from the date of the receipt of such statement by such committees. (b) Except for disposals made under the authority of paragraph (3), (4), or (5) of section 6(a) or under section 7(a), no disposal may be made from the stockpile unless such disposal, including the quantity of the material to be disposed of, has been specifically authorized by law. (c) There is authorized to be appropriated such sums as may be necessary to provide for the transportation, processing, refining, storage, security, maintenance, rotation, and disposal of materials contained in or acquired for the stockpile. Funds appropriated for such purposes shall remain available to carry out the purposes for which appropriated for a period of two fiscal years, if so provided in appropriation Acts.~~

AUTHORITY FOR STOCKPILE OPERATIONS

SEC. 5. [50 U.S.C. 98d] (a) PROHIBITION ON ACQUISITIONS.—No funds may be obligated or appropriated for acquisition of any material under this Act unless funds for such acquisition have been authorized by law. Funds appropriated for such acquisition (and for transportation related to such acquisition) shall remain available indefinitely, unless otherwise provided in appropriation or authorization Acts.

(b) PROHIBITION ON DISPOSALS.—No disposal may be made from the stockpile unless such disposal has been authorized by law.

(c) EXCEPTIONS.—

(1) The prohibition in subsection (a) does not apply—

(A) to actions covered by the rotation or upgrading of materials in the National Defense Stockpile, as provided in section 6; and

(B) to actions less than \$50,000,000, if the National Defense Stockpile Manager has satisfied the quarterly reporting requirement to the Board pursuant to section 11.

(2) The prohibition in subsection (b) does not apply—

(A) to actions covered by the rotation or upgrading of materials in the National Defense Stockpile, as provided in section 6;

(B) to actions less than \$50,000,000, if the National Defense Stockpile Manager has satisfied the quarterly reporting requirement to the Board pursuant to section 11; and

(C) to actions under section 7.

STOCKPILE MANAGEMENT

~~SEC. 6. [50 U.S.C. 98e] (a) The President shall— (1) acquire the materials determined under section 3(a) to be strategic and critical materials; (2) provide for the proper storage, security, and maintenance of materials in the stockpile; (3) provide for the upgrading, refining, or processing of any material in the stockpile (notwithstanding any intermediate stockpile quantity established for such material) when necessary to convert such material into a form more suitable for storage, subsequent disposition, and immediate use in a national emergency; (4) provide for the rotation of any material in the stockpile when necessary to prevent deterioration or technological obsolescence of such material by replacement of such material with an equivalent quantity of substantially the same material or better material; (5) subject to the notification required by subsection (d)(2), provide for the timely disposal of materials in the stockpile that (A) are excess to stockpile requirements, and (B) may cause a loss to the Government if allowed to deteriorate; and (6) subject to the provisions of section 5(b), dispose of materials in the stockpile the disposal of which is specifically authorized by law. (b) Except as provided in subsections (c) and (d), acquisition of strategic and critical materials under this Act shall be made in accordance with established Federal procurement practices, and, except as provided in subsections (c) and (d) and in section 7(a), disposal of strategic and critical materials from the stockpile shall be made in accordance with the next sentence. To the maximum extent feasible— (1) competitive procedures shall be used in the acquisition and disposal of such materials; and (2) efforts shall be made in the acquisition and disposal of such materials to consult with producers and processors of such materials to avoid undue disruption of the usual markets of producers, processors, and consumers of such materials and to protect the United States against avoidable loss. (c)(1) The President shall encourage the use of barter in the acquisition under subsection (a)(1) of strategic and critical materials for, and the disposal under subsection (a)(5) or (a)(6) of materials from, the stockpile when acquisition or disposal by barter is authorized by law and is practical and in the best interest of the United States. (2) Materials in the stockpile (the disposition of which is authorized by paragraph (3) to finance the upgrading, refining, or processing of a material in the stockpile, or is otherwise authorized by law) shall be available for transfer at fair market value as payment for expenses (including transportation and other incidental expenses) of acquisition of materials, or of upgrading, refining, processing, or rotating materials, under this Act. (3) Notwithstanding section 3(c) or any other provision of law, whenever the President provides under subsection (a)(3) for the upgrading, refining, or processing of a material in the stockpile to convert that material into a form more suitable for~~

storage, subsequent disposition, and immediate use in a national emergency, the President may barter a portion of the same material (or any other material in the stockpile that is authorized for disposal) to finance that upgrading, refining, or processing. (4) To the extent otherwise authorized by law, property owned by the United States may be bartered for materials needed for the stockpile. (d)(1) The President may waive the applicability of any provision of the first sentence of subsection (b) to any acquisition of material for, or disposal of material from, the stockpile. Whenever the President waives any such provision with respect to any such acquisition or disposal, or whenever the President determines that the application of paragraph (1) or (2) of such subsection to a particular acquisition or disposal is not feasible, the President shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in writing of the proposed acquisition or disposal at least 45 days before any obligation of the United States is incurred in connection with such acquisition or disposal and shall include in such notification the reasons for not complying with any provision of such subsection. (2) Materials in the stockpile may be disposed of under subsection (a)(5) only if such congressional committees are notified in writing of the proposed disposal at least 45 days before any obligation of the United States is incurred in connection with such disposal. (e) The President may acquire leasehold interests in property, for periods not in excess of twenty years, for storage, security, and maintenance of materials in the stockpile. special disposal authority of the president. (f) The President may loan stockpile materials to the Department of Energy or the military departments if the President —

- (1) has a reasonable assurance that stockpile materials of a similar or superior quantity and quality to the materials loaned will be returned to the stockpile or paid for;
- (2) notifies the congressional defense committees (as defined in section 101(a) of title 10, United States Code), in writing, not less than 30 days before making any such loan;

and

- (3) includes in the written notification under paragraph (2) sufficient support for the assurance described in paragraph (1).

STOCKPILE MANAGEMENT

SEC. 6. [50 U.S.C. 98e] (a) NATIONAL DEFENSE STOCKPILE MANAGER AUTHORITY.—The National Defense Stockpile Manager shall—

- (1) acquire materials determined to be strategic and critical materials, pursuant to the findings of section 14;
- (2) provide for the proper storage, security, and maintenance of materials in the stockpile;
- (3) provide for the upgrading, refining, or processing of any material in the stockpile when necessary to convert such material into a form more suitable for storage, subsequent disposition, or immediate use in a national emergency;
- (4) provide for the rotation of any material in the stockpile when necessary to prevent the deterioration or technological obsolescence of such material, pursuant to the findings of section 14;
- (5) provide for the recovery of any strategic and critical materials that may be available from other Federal agencies, either directly as materials or embedded in excess-to-need, end-of-life items, or waste streams; and

(6) provide for the timely disposal of materials in the stockpile, subject to authorization Acts or the requirements of section 14.

(b) CONTRACTING PRACTICES.—

(1) PILOT PROGRAM FOR COMMERCIAL CONTRACTING.—

(A) To the maximum extent practical, the National Defense Stockpile Manager shall use commercial best-practices in the acquisition and disposal of strategic and critical materials for the stockpile.

(B) The authority in subsection (b)(1)(A) is repealed effective as of the date that is 5 years after the enactment of this subsection.

(2) FEDERAL CONTRACTING PRACTICES.—Except as provided in subsection (b)(1)(A) and subsections (c) and (d), acquisition and disposal of strategic and critical materials under this Act shall be made in accordance with established Federal procurement practices, and the National Defense Stockpile Manager shall avoid undue disruption of the usual markets of producers, processors, and consumers of such materials.

(3) RECOVERY PROGRAMS.—Unless otherwise necessary for national defense, recovery programs implemented pursuant to subsection (a)(5) shall be cash flow positive.

(4) WAIVER.—The National Defense Stockpile Manager may waive the applicability of subsection (b)(2) to any acquisition or disposal of material, if—

(A) the National Defense Stockpile Manager notifies in writing the Strategic and Critical Materials Board of Directors and congressional defense committees at least 30 days before any obligation of the United States is incurred in connection with such an action; and

(B) the written notification in subparagraph (A) includes justification for not complying with any provision of subsection (b)(2).

(c) BARTER.—

(1) The National Defense Stockpile Manager shall encourage the use of barter for actions covered under subsection (a) and research and development actions under section 8, when the National Defense Stockpile Manager determines that barter is practical and in the best interest of the United States.

(2) To the extent otherwise authorized by law, property owned by the United States may be bartered for materials needed for the stockpile.

(d) LEASEHOLD INTERESTS IN PROPERTY.—The President may acquire leasehold interests in property, for periods not in excess of 20 years, for storage, security, and maintenance of materials in the stockpile.

(e) LOANS OF STOCKPILE MATERIALS.—The National Defense Stockpile Manager may loan stockpile materials to the Department of Defense (including a military department, a Defense Agency, a Department of Defense Field Activity, or another component of the Department) or other Federal agency if the National Defense Stockpile Manager—

(1) has a reasonable assurance that stockpile materials of a similar or superior quantity and quality to the materials loaned will be returned to the stockpile or paid for;

(2) notifies the congressional defense committees (as defined in section 101(a) of title 10, United States Code), in writing, not less than 30 days before making any such loan; and

(3) includes in the written notification under paragraph (2) sufficient support for the assurance described in paragraph (1).

SPECIAL DISPOSAL AUTHORITY OF THE PRESIDENT

~~SEC. 7. [50 U.S.C. 98f] (a) Materials in the stockpile may be released for use, sale, or other disposition— (1) on the order of the President, at any time the President determines the release of such materials is required for purposes of the national defense; (2) in time of war declared by the Congress or during a national emergency, on the order of any officer or employee of the United States designated by the President to have authority to issue disposal orders under this subsection, if such officer or employee determines that the release of such materials is required for purposes of the national defense; and (3) on the order of the Under Secretary of Defense for Acquisition and Sustainment, if the President has designated the Under Secretary to have authority to issue release orders under this subsection and, in the case of any such order, if the Under Secretary determines that the release of such materials is required for use, manufacture, or production for purposes of national defense. (b) Any order issued under subsection (a) shall be promptly reported by the President, or by the officer or employee issuing such order, in writing, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.~~

SPECIAL DISPOSAL AUTHORITY

SEC. 7. [50 U.S.C. 98f] (a) Materials in the stockpile may be released for use, sale, or other disposition—

(1) on the order of the President, at any time the President determines the release of such materials is required for the purposes of national defense or sustaining essential civilian industry;

(2) in time of war declared by the Congress or during a national emergency, on the order of the National Defense Stockpile Manager; or

(3) on the order of the National Defense Stockpile Manager, if the National Defense Stockpile Manager determines that the release of such materials is required for use, manufacture, or production for purposes of national defense or sustaining essential civilian industry.

(b) Any order issued under subsection (a) shall be promptly reported by the President or the National Defense Stockpile Manager, in writing, to the congressional defense committees.

MATERIALS DEVELOPMENT AND RESEARCH

~~SEC. 8. [50 U.S.C. 98g] (a)(1) The President shall make scientific, technologic, and economic investigations concerning the development, mining, preparation, treatment, and utilization of ores and other mineral substances that (A) are found in the United States, or in its territories or possessions, (B) are essential to the national defense, industrial, and essential civilian needs of the United States, and (C) are found in known domestic sources in inadequate quantities or grades. (2) Such investigations shall be carried out in order to— (A) determine and develop new domestic sources of supply of such ores and mineral substances; (B) devise new methods for the treatment and utilization of lower grade reserves of such ores and mineral substances; and (C) develop substitutes for such essential ores and mineral products. (3) Investigations under paragraph (1) may be carried out on public lands and, with the consent of the owner, on privately owned lands for the purpose of exploring and determining the extent and quality of deposits of~~

such minerals, the most suitable methods of mining and beneficiating such minerals, and the cost at which the minerals or metals may be produced. (b) The President shall make scientific, technologic, and economic investigations of the feasibility of developing domestic sources of supplies of any agricultural material or for using agricultural commodities for the manufacture of any material determined pursuant to section 3(a) of this Act to be a strategic and critical material or substitutes therefor. (c) The President shall make scientific, technologic, and economic investigations concerning the feasibility of— (1) developing domestic sources of supply of materials (other than materials referred to in subsections (a) and (b)) determined pursuant to section 3(a) to be strategic and critical materials; and (2) developing or using alternative methods for the refining or processing of a material in the stockpile so as to convert such material into a form more suitable for use during an emergency or for storage. (d) The President shall encourage the conservation of domestic sources of any material determined pursuant to section 3(a) to be a strategic and critical material by making grants or awarding contracts for research regarding the development of— (1) substitutes for such material; or (2) more efficient methods of production or use of such material. national defense stockpile transaction fund.

MATERIALS RESEARCH AND DEVELOPMENT

SEC. 8. [50 U.S.C. 98g] (a) The National Defense Stockpile Manager shall make scientific, technologic, and economic investigations concerning the exploration and development, including alternative methods of refining and materials testing, of sources of materials determined to be strategic and critical that—

(1) are found in the United States, its territories and possessions, or in a reliable source; and

(2) are essential to national defense or essential civilian needs of the United States.

(b) Such investigations shall be carried out in order to develop new sources of strategic and critical materials, develop substitutes, or conserve domestic and reliable sources of supply for such strategic and critical materials.

STRATEGIC AND CRITICAL MATERIALS FUNDS

SEC. 9. [50 U.S.C. 98h] (a) There is established in the Treasury of the United States a separate fund to be known as the National Defense Stockpile Transaction Fund (hereinafter in this section referred to as the “fund”). (b)(1) All moneys received from the sale of materials in the stockpile under paragraphs (5) and (6) of section 6(a) shall be covered into the fund. (2) Subject to section 5(a)(1), moneys covered into the fund under paragraph (1) are hereby made available (subject to such limitations as may be provided in appropriation Acts) for the following purposes: (A) The acquisition, maintenance, and disposal of strategic and critical materials under section 6(a). (B) Transportation, storage, and other incidental expenses related to such acquisition, maintenance, and disposal. (C) Development of current specifications of stockpile materials and the upgrading of existing stockpile materials to meet current specifications (including transportation, when economical, related to such upgrading). (D) Testing and quality studies of stockpile materials. (E) Studying future material and mobilization requirements for the stockpile. (F) Activities authorized under section 15. (G) Contracting under competitive procedures for materials development and research to— (i) improve the quality and availability of materials stockpiled from time to time in the stockpile; and (ii) develop new materials for the stockpile. (H) Improvement or rehabilitation of facilities, structures, and infrastructure needed to maintain the

~~integrity of stockpile materials. (I) Disposal of hazardous materials that are stored in the stockpile and authorized for disposal by law. (J) Performance of environmental remediation, restoration, waste management, or compliance activities at locations of the stockpile that are required under a Federal law or are undertaken by the Government under an administrative decision or negotiated agreement. (K) Pay of employees of the National Defense Stockpile program. (L) Other expenses of the National Defense Stockpile program. (3) Moneys in the fund shall remain available until expended. (c) All moneys received from the sale of materials being rotated under the provisions of section 6(a)(4) or disposed of under section 7(a) shall be covered into the fund and shall be available only for the acquisition of replacement materials. (d) If, during a fiscal year, the National Defense Stockpile Manager barter materials in the stockpile for the purpose of acquiring, upgrading, refining, or processing other materials (or for services directly related to that purpose), the contract value of the materials so bartered shall— (1) be applied toward the total value of materials that are authorized to be disposed of from the stockpile during that fiscal year; (2) be treated as an acquisition for purposes of satisfying any requirement imposed on the National Defense Stockpile Manager to enter into obligations during that fiscal year under subsection (b)(2); and (3) not increase or decrease the balance in the fund.~~

STRATEGIC AND CRITICAL MATERIALS FUNDS

SEC. 9. [50 U.S.C. 98h] (a) ESTABLISHMENT.—There is established in the Department of Defense a separate fund to be known as the Strategic and Critical Materials Fund (hereinafter in this section referred to as the “fund”).

(b) FUND OPERATIONS.—

(1) All moneys held by the National Defense Stockpile Transaction Fund, established in the Treasury of the United States, shall be covered into the fund.

(2) All moneys received from the sale of materials in the stockpile shall be covered into the fund.

(3) All moneys received from the sale of materials being rotated or disposed of pursuant to section 7 of this Act shall be covered into the fund.

(4) Subject to section 5 of this Act, moneys covered into the fund under paragraphs (1), (2) and (3) are hereby made available, subject to such limitations as may be provided in appropriation or authorization Acts, for the following purposes:

(A) The acquisition, maintenance, and disposal of strategic and critical materials.

(B) Transportation, storage, and other incidental expenses related to such acquisition, maintenance, and disposal.

(C) Development of specifications and standards for stockpile materials, as well as the upgrade of existing stockpile materials to meet such specifications and standards.

(D) Encouraging the conservation of strategic and critical materials.

(E) Testing and quality studies of stockpile materials.

(F) Studying future material and mobilization requirements for the stockpile.

(G) Activities authorized under section 15 of this Act.

(H) Contracting for materials development and research—

(i) to improve the quality and availability of strategic and critical materials from reliable sources;

(ii) to develop new materials for the stockpile; and
(iii) to qualify a reliable source of supply for use in the production of munitions, combat support items, and weapon systems;

(I) Improvement and rehabilitation of facilities, structures, and infrastructure to maintain the integrity of stockpile materials.

(J) Disposal of hazardous materials that are stored in the stockpile and authorized for disposal.

(K) Performance of environmental remediation, restoration, waste management, or compliance activities at locations of the stockpile that are required under a Federal law or are undertaken by the Government under an administrative decision or negotiated agreement.

(L) Payment of employees of the National Defense Stockpile program, including travel and per diem of personnel covered under section 10 of this Act while such persons are performing duties for the National Defense Stockpile program.

(M) Other expenses of the National Defense Stockpile program.

(N) Investment in reliable sources to produce strategic and critical materials, pursuant to the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.).

(O) Off-take agreements in connection with an investment pursuant to the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.).

(c) EFFECT OF BARTERING.—If, during a fiscal year, the National Defense Stockpile Manager barter materials in the stockpile, the contract value of the materials so bartered shall—

(1) for disposals, be applied toward the total value of that materials that are authorized for disposal during that fiscal year; and

(2) be treated as an acquisition for the purposes of satisfying any requirement under subsection (b)(4)(A).

ADVISORY COMMITTEES

~~SEC. 10. [50 U.S.C. 98h–1] (a) The President may appoint advisory committees composed of individuals with expertise relating to materials in the stockpile or with expertise in stockpile management to advise the President with respect to the acquisition, transportation, processing, refining, storage, security, maintenance, rotation, and disposal of such materials under this Act. (b) Each member of an advisory committee established under subsection (a) while serving on the business of the advisory committee away from such member's home or regular place of business shall be allowed travel expenses, including per diem in lieu of substance, as authorized by section 5703 of title 5, United States Code, for persons intermittently employed in the Government service. (c)(1) The President shall appoint a Market Impact Committee composed of representatives from the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Energy, the Department of the Interior, the Department of State, the Department of the Treasury, and the Federal Emergency Management Agency, and such other persons as the President considers appropriate. The representatives from the Department of Commerce and the Department of State shall be Cochairmen of the Committee. (2) The Committee shall advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile that are proposed to be included in the annual materials plan submitted to~~

Congress under section 11(b), or in any revision of such plan, and shall submit to the manager the Committee's recommendations regarding those acquisitions and disposals. (3) The annual materials plan or the revision of such plan, as the case may be, shall contain—(A) the views of the Committee on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile; (B) the recommendations submitted by the Committee under paragraph (2); and (C) for each acquisition or disposal provided for in the plan or revision that is inconsistent with a recommendation of the Committee, a justification for the acquisition or disposal. (4) In developing recommendations for the National Defense Stockpile Manager under paragraph (2), the Committee shall consult from time to time with representatives of producers, processors, and consumers of the types of materials stored in the stockpile.

STRATEGIC AND CRITICAL MATERIALS BOARD OF DIRECTORS

SEC. 10. [50 U.S.C. 98h–1] (a) ESTABLISHMENT.—There is established a Strategic and Critical Materials Board of Directors (hereinafter referred to as the ‘Board’).

(b) MEMBERS.—The Board shall be composed, at a minimum, of the following:

(1) The Assistant Secretary of Defense for Industrial Base Policy, who shall serve as chairman of the Board.

(2) One designee, each, by the Secretary of Commerce, the Secretary of State, the Secretary of Energy, and the Secretary of the Interior.

(3) One designee, each, by the Chairman and Ranking Member of the Readiness Subcommittee of the House Committee on Armed Services.

(4) One designee, each, by the Chairman and Ranking Member of the Readiness Subcommittee of the Senate Committee on Armed Services.

(5) Four designees of the chairman of the Board, who shall have expertise relating to military affairs, defense procurement, production of strategic and critical materials, finance, or any other disciplines deemed necessary by the chairman to conduct the Board’s business.

(c) DUTIES OF THE BOARD.—In addition to other matters assigned to it by the chairman, the Board shall conduct the following, without power of delegation:

(1) Adopt by-laws that ensure sufficient oversight, governance, and effectiveness of the National Defense Stockpile program.

(2) Elect or remove Board members.

(3) Hire and terminate the employment of the National Defense Stockpile Manager.

(4) Advise the National Defense Stockpile Manager.

(5) Establish performance metrics and conduct an annual performance review of the National Defense Stockpile Manager.

(6) Set compensation for the National Defense Stockpile Manager.

(7) Review and approve the annual budget of the National Defense Stockpile program and conduct appropriate reviews of annual financial statements.

(8) Re-allocate budget resources within the annual budget of the National Defense Stockpile program.

(9) Review and approve the Annual Materials and Operations Plan required by section 11(a) of this Act, including a review of the projected domestic and foreign economic effects of proposed actions to be taken under the Annual Materials and Operations Plan.

(10) Complete and submit the annual Board report, in accordance with section 11(c) of this Act.

(11) Review any action pursuant to section 9 or section 15 of this Act, if the total value of that action exceeds \$25,000,000.

(12) Terminate any action pursuant to section 9 or section 15 of this Act.

(d) BOARD MEETINGS.—The Board shall meet as determined necessary by the chairman but not less frequently than once every year to fulfill the duties described in subsection (c).

REPORTS TO CONGRESS

~~SEC. 11. [50 U.S.C. 98h–2] (a) Not later than February 15 of each year, the President shall submit to the Congress an annual written report detailing operations under this Act. Each such report shall include—(1) information with respect to foreign and domestic purchases of materials during the preceding fiscal year; (2) information with respect to the acquisition and disposal of materials under this Act by barter, as provided for in section 6(c) of this Act, during such fiscal year; (3) information with respect to the activities by the Stockpile Manager to encourage the conservation, substitution, and development of strategic materials within the United States; (4) information with respect to the research and development activities conducted under sections 2 and 8; (5) a statement and explanation of the financial status of the National Defense Stockpile Transaction Fund and the anticipated appropriations to be made to the fund, and obligations to be made from the fund, during the current fiscal year; and (6) such other pertinent information on the administration of this Act as will enable the Congress to evaluate the effectiveness of the program provided for under this Act and to determine the need for additional legislation. (b)(1) Each report under subsection (a) shall also include an annual materials plan for the operation of the stockpile during the next fiscal year and the succeeding four fiscal years. (2) With respect to the plan described in paragraph (1), each such report shall include details of all planned expenditures from the National Defense Stockpile Transaction Fund during such period (including expenditures to be made from appropriations from the general fund of the Treasury) and of anticipated receipts from proposed disposal of stockpile materials during such period. With respect to such plan, each report shall also contain details regarding the materials development and research projects to be conducted under section 9(b)(2)(H) during the fiscal years covered by the report. With respect to each development and research project, the report shall specify the amount planned to be expended from the fund, the material intended to be developed, the potential military or defense industrial applications for that material, and the development and research methodologies to be used. (3) Any proposed expenditure or disposal detailed in the annual materials plan for any such fiscal year, and any expenditure or disposal proposed in connection with any transaction submitted for such fiscal year to the appropriate committees of Congress pursuant to section 5(a)(2), that is not obligated or executed in that fiscal year may not be obligated or executed until such proposed expenditure or disposal is resubmitted in a subsequent annual materials plan or is resubmitted to the appropriate committees of Congress in accordance with section 5(a)(2), as appropriate.~~

REPORTS TO CONGRESS

SEC. 11. [50 U.S.C. 98h–2] (a) REPORTS TO THE BOARD BY THE NATIONAL DEFENSE STOCKPILE MANAGER.—The National Defense Stockpile Manager shall submit the following reports to the Board:

(1) Unaudited financial statements and a Manager’s Discussion and Analysis for a given quarterly period, not later than 40 calendar days after the conclusion of that quarter other than the fourth quarter.

(2) Not later than 60 calendar days after the conclusion of the fourth quarter of a fiscal year—

(A) audited financial statements and a Manager’s Discussion and Analysis for the prior fiscal year; and

(B) an Annual Materials and Operations Plan for the forthcoming year.

(b) REPORT BY THE NATIONAL DEFENSE STOCKPILE MANAGER TO CONGRESS.—Not later than 90 days after the conclusion of the fourth quarter of a fiscal year, the National Defense Stockpile Manager shall submit a report to the congressional defense committees. The report shall include—

(1) information with respect to foreign and domestic purchases of materials during the preceding fiscal year;

(2) information with respect to the acquisition and disposal of materials under this Act by barter, during such fiscal year;

(3) information with respect to the activities by the National Defense Stockpile Manager to encourage the conservation, substitution, and development of strategic and critical materials;

(4) information with respect to the research and development activities conducted under section 8 of this Act;

(5) audited annual financial statements for the Strategic and Critical Materials Fund;

(6) other pertinent information on the administration of this Act as will enable the Congress to evaluate the effectiveness of the program;

(7) details of all planned expenditures from the Strategic and Critical Materials Fund over the Future Years’ Defense Program and anticipated receipts from proposed disposals of stockpile materials; and

(8) the Board Report required by subsection (c).

(c) REPORT BY THE BOARD TO CONGRESS.—The Board shall prepare a written report to accompany the report required by subsection (b) describing, at a minimum, the activities of the Board to carry out the duties listed in section 10 of this Act.

DEFINITIONS

SEC. 12. [50 U.S.C. 98h–3] For the purposes of this Act:

(1) The term “strategic and critical materials” means materials that (A) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national emergency, and (B) are not found or produced in the United States in sufficient quantities to meet such need.

(2) The term “national emergency” means a general declaration of emergency with respect to the national defense made by the President or by the Congress. importation of strategic and critical materials.

(3) The term “national technology and industrial base” has the meaning given such term in section 4801 of title 10, United States Code.

(4) The term “reliable source” mean citizens and business entities of—

(A) the United States and its territories or possessions;

(B) a country of the national technology and industrial base; or
(C) a qualifying country, pursuant to section 225.003 of the Defense Federal Acquisition Regulation Supplement.

(5) The term “bankable feasibility study” means a comprehensive technical and economic study of the selected development option for a strategic and critical material project that includes appropriately detailed assessments of realistically assumed extraction, processing, metallurgical, economic, marketing, legal, environmental, social, and governmental considerations, together with any other relevant operational factors and detailed financial analysis, that are necessary to demonstrate at the time of reporting that production is reasonably justified. The results of the study may reasonably serve as the basis for a final decision by a proponent or financial institution to proceed with, or finance, the development of the project.

IMPORTATION OF STRATEGIC AND CRITICAL MATERIALS

SEC. 13. [50 U.S.C. 98h–4] The President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this Act, if such material is the product of any foreign country or area not listed in general note 3(b) of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for so long as the importation into the United States of material of that kind which is the product of a country or area listed in such general note is not prohibited by any provision of law. biennial report on stockpile requirements

BIENNIAL REPORT ON STOCKPILE REQUIREMENTS

SEC. 14. [50 U.S.C. 98h–5] (a) Not later than January 15 of every other year, the Secretary of Defense shall submit to Congress a report on stockpile requirements. Each such report shall include— (1) the Secretary's recommendations with respect to stockpile requirements; and (2) the matters required under subsection (b).

(b) Each report under this section shall set forth the national emergency planning assumptions used by the Secretary in making the Secretary's recommendations under subsection (a)(1) with respect to stockpile requirements. ~~The Secretary shall base the national emergency planning assumptions on a military conflict scenario consistent with the scenario used by the Secretary in budgeting and defense planning purposes.~~ The Secretary shall base the national emergency planning assumptions on the priority military scenario of the National Defense Strategy. The assumptions to be set forth include assumptions relating to each of the following:

- (1) The length and intensity of the assumed military conflict.
- (2) The military force structure to be mobilized.
- (3) The losses anticipated from enemy action.
- (4) The military, industrial, and essential civilian requirements to support the national emergency.
- (5) The availability of supplies of strategic and critical materials from foreign sources during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.
- (6) The domestic production of strategic and critical materials during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.

(7) Civilian austerity measures required during the mobilization period and military conflict.
(e) ~~The stockpile requirements shall be based on those strategic and critical materials necessary for the United States to replenish or replace, within three years of the end of the military conflict scenario required under subsection (b), all munitions, combat support items, and weapons systems that would be required after such a military conflict.~~

(c) PERIOD WITHIN WHICH TO REPLACE OR REPLENISH MATERIALS.—The stockpile requirements shall be based on those strategic and critical materials necessary for the United States to replenish or replace, over the course of the Future Years’ Defense Program immediately following the scenario under subsection (b), all munitions, combat support items, and weapons systems that would be required after such a military conflict.

~~(d) The Secretary shall also include in each report under this section an examination of the effect that alternative mobilization periods under the military conflict scenario required under subsection (b), as well as a range of other military conflict scenarios addressing potentially more serious threats to national security, would have on the Secretary's recommendations under subsection (a)(1) with respect to stockpile requirements.~~

(d) EFFECT OF ALTERNATIVE SCENARIOS.—The Secretary may include in each report under this section an examination of scenarios other than the priority scenario of the National Defense Strategy and sensitivity analyses of national emergency planning assumptions.

(e) The President shall submit with each report under this section a statement of the plans of the President for meeting the recommendations of the Secretary set forth in the report.

DEVELOPMENT OF DOMESTIC SOURCES

~~SEC. 15. [50 U.S.C. 98h–6] (a) Subject to subsection (c) and to the extent the President determines such action is required for the national defense, the President shall encourage the development of domestic sources for materials determined pursuant to section 3(a) to be strategic and critical materials—(1) by purchasing, or making a commitment to purchase, strategic and critical materials of domestic origin when such materials are needed for the stockpile; (2) by contracting with domestic facilities, or making a commitment to contract with domestic facilities, for the processing or refining of strategic and critical materials in the stockpile when processing or refining is necessary to convert such materials into a form more suitable for storage and subsequent disposition; (3) by qualifying existing domestic facilities and domestically produced strategic and critical materials to meet the requirements of defense and essential civilian industries in times of national emergency when existing domestic sources of supply are either insufficient or vulnerable to single points of failure; (4) by contracting with domestic facilities to recycle strategic and critical materials, thereby increasing domestic supplies when such materials would otherwise be insufficient to support defense and essential civilian industries in times of national emergency; and (5) if domestic sources are unavailable to meet the requirements defined in paragraphs (1) through (4), by making efforts to prioritize the purchase of strategic and critical materials from the national technology and industrial base.~~

~~(b) A contract or commitment made under subsection (a) may not exceed five years from the date of the contract or commitment. Such purchases and commitments to purchase may be made for such quantities and on such terms and conditions, including advance payments, as the President considers to be necessary. (c)(1) Descriptions of proposed transactions under subsection (a) shall be included in the appropriate annual materials plan submitted to Congress~~

~~under section 11(b). Changes to any such transaction, or the addition of a transaction not included in such plan, shall be made in the manner provided by section 5(a)(2). (2) The authority of the President to enter into obligations under this section is effective for any fiscal year only to the extent that funds in the National Defense Stockpile Transaction Fund are adequate to meet such obligations. Payments required to be as a result of obligations incurred under this section shall be made from amounts in the fund. (d) The authority of the President under subsection (a) includes the authority to pay—(1) the expenses of transporting materials; and (2) other incidental expenses related to carrying out such subsection. (e) The President shall include in the reports required under section 11(a) information with respect to activities conducted under this section.~~

DEVELOPMENT OF RELIABLE SOURCES

SEC. 15. [50 U.S.C. 98h–6] (a) DUTIES.—Subject to subsection (c) and to the extent that the President determines that such action is required, the National Defense Stockpile Manager shall encourage the development and appropriate conservation of reliable sources of materials determined to be strategic and critical—

(1) by purchasing, or making a commitment to purchase, strategic and critical materials from reliable sources when such materials are needed for the stockpile;

(2) by contracting with facilities located in and owned and controlled by reliable sources, or making a commitment to contract with such facilities, for the processing or refining of strategic and critical materials in the stockpile when processing or refining is necessary to convert such materials into a form more suitable for storage, disposition, or meeting stockpile requirements;

(3) by qualifying facilities located in and owned and controlled by reliable sources, or qualifying strategic and critical materials produced by such facilities, to meet stockpile requirements;

(4) by contracting with facilities located in and owned and controlled by reliable sources to recycle strategic and critical materials to meet stockpile requirements or increase the balance of the Strategic and Critical Materials Fund; and

(5) by entering into an agreement to co-fund bankable feasibility studies for the development of strategic and critical materials located in and owned and controlled by reliable sources, if the agreement —

(A) limits the liability of the stockpile to not greater than the total funding provided by the Government;

(B) limits the funding contribution of the Government to not more than 50 percent of the cost of the bankable feasibility study; and

(C) does not obligate the Government to purchase strategic and critical materials from the reliable source.

(b) ADDITIONAL AUTHORITIES.—

(1) MULTI-YEAR CONTRACTING.—

(A) A contract or commitment made under subsection (a) may endure for a period up to 10 years.

(B) A contract entered into for more than 10 years may be extended for a total of not more than 10 years pursuant to any option or options set forth in the contract.

(2) MATTERS RELATING TO CO-FUNDING OF BANKABLE FEASIBILITY STUDIES.—

To the extent authorized by Congress pursuant to the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.) and determined to be required by the President under such Act, the National Defense Stockpile Manager may provide for loans or procure debt issued by other enterprises to execute a strategic and critical material project pursuant to a bankable feasibility study under subsection (a)(5).

(c) PROPOSED TRANSACTIONS INCLUDED IN ANNUAL MATERIALS PLAN; AVAILABILITY OF FUNDS.—

(1) Descriptions of proposed transactions under subsection (a) shall be included in the appropriate annual materials plan submitted to Congress under section 11 of this Act. Changes to any such transaction or the addition of a transaction not included in such plan shall be made in accordance with section 5 of this Act.

(2) The authority of the National Defense Stockpile Manager to enter into obligations under this section is effective for any fiscal year only to the extent that funds in the Strategic and Critical Materials Fund are adequate to meet such obligations.

NATIONAL DEFENSE STOCKPILE MANAGER

~~SEC. 16. [50 U.S.C. 98h–7] (a) The President shall designate a single Federal office to have responsibility for performing the functions of the President under this Act, other than under sections 7(a)(1) and 13. The office designated shall be one to which appointment is made by the President, by and with the advice and consent of the Senate. (b) The individual holding the office designated by the President under subsection (a) shall be known for purposes of functions under this Act as the “National Defense Stockpile Manager”. (c) The President may delegate functions of the President under this Act (other than under sections 7(a)(1) and 13) only to the National Defense Stockpile Manager. Any such delegation made by the President shall remain in effect until specifically revoked by law or Executive order. The President may not delegate functions of the President under sections 7(a)(1) and 13.~~

NATIONAL DEFENSE STOCKPILE MANAGER

SEC. 16. [50 U.S.C. 98h–7] (a) RECRUITMENT AND SELECTION.—The Board shall hire a United States citizen to have responsibility for performing the duties of this Act.

(b) TITLE OF DESIGNATED OFFICER.—The individual selected by the Board pursuant to subsection (a) shall be known, for the purposes of functions under this Act, as the “National Defense Stockpile Manager”.

(c) DELEGATION OF FUNCTIONS.—Any functions in this Act that are assigned to the President may not be delegated.