

1 **SEC. ___. CLARIFICATION OF AUTHORITY TO SOLICIT GIFTS IN SUPPORT OF**
2 **THE MISSION OF THE DEFENSE POW/MIA ACCOUNTING AGENCY**
3 **TO ACCOUNT FOR MEMBERS OF THE ARMED FORCES AND**
4 **DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES LISTED AS**
5 **MISSING.**

6 Section 1501a of title 10, United States Code, is amended—

7 (1) in subsection (e)(1), by inserting “solicit,” after “the Secretary may”; and

8 (2) in subsection (f)(2)—

9 (A) by inserting “solicitation or” after “provide that”; and

10 (B) by striking “acceptance or use” and inserting “solicitation, acceptance,

11 or use”.

[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 1501a of title 10, United States Code, to allow the Department to solicit gifts that would be used to expand accounting for persons missing from designated past conflicts. The Department currently has authority to accept gifts of personal property, services, and money to assist in accounting for missing persons. The Office of Legal Counsel (OLC) within the Department of Justice has concluded that the expressed authority to accept gifts in statutes similar to section 1501a(e), includes the implied authority to solicit gifts [refer to Memorandum for the Director of Office of Government Ethics from Assistant Attorney General, OLC (January 19, 2001)]. The explicit authorization to solicit gifts (including gifts of service) is necessary for the Department to appropriately implement an effective missing persons accounting program and to change regulations that are not subject to changing policy limitations and legal interpretations. The proposed amendments to subsections (e) and (f) would explicitly authorize the Secretary to solicit gifts to expand accounting for missing persons and enable the Department to more fully utilize its current authority to accept gifts.

Accounting for U.S. personnel who are missing from designated past conflicts is one of the Department’s most unique, but essential missions. Through it, a steadfast commitment is made to those unreturned Department personnel who made the supreme sacrifice and to their waiting families, as well as to current Department personnel to never leave a fallen comrade behind. The proposal is congruent with the Secretary’s priority to properly support our Veterans and their families long after they have served their duty. If enacted, the proposal would provide

the Department with the clear authority to solicit gifts that, if received, would provide additional funding to increase the number of missing persons from past conflicts that the Department accounts for annually.

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 make the following changes to section 1501a of title 10, United States Code:

§1501a. Public-private partnerships; other forms of support

(a) PUBLIC-PRIVATE PARTNERSHIPS.—The Secretary of Defense may enter into arrangements known as public-private partnerships with appropriate entities outside the Government for the purposes of facilitating the activities of the designated Defense Agency. The Secretary may only partner with foreign governments or foreign entities with the concurrence of the Secretary of State. Any such arrangement shall be entered into in accordance with authorities provided under this section or any other authority otherwise available to the Secretary. Regulations prescribed under subsection (f)(1) shall include provisions for the establishment and implementation of such partnerships. An employee of an entity outside the Government that has entered into a public-private partnership with the designated Defense Agency under this section shall be considered to be an employee of the Federal Government by reason of participation in such partnership only for the purposes of section 552a of title 5 (relating to maintenance of records on individuals).

(b) ACCEPTANCE OF VOLUNTARY PERSONAL SERVICES.—The Secretary of Defense may accept voluntary services to facilitate accounting for missing persons in the same manner as the Secretary of a military department may accept such services under section 1588(a)(9) of this title.

(c) COOPERATIVE AGREEMENTS AND GRANTS.—

(1) IN GENERAL.—The Secretary of Defense may enter into a cooperative agreement with, or make a grant to, a private entity for purposes related to support of the activities of the designated Defense Agency.

(2) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Notwithstanding section 2304(k) of this title, the Secretary may enter such cooperative agreements or grants on a sole-source basis pursuant to section 2304(c)(5) of this title.

(d) USE OF DEPARTMENT OF DEFENSE PERSONAL PROPERTY.—The Secretary may allow a private entity to use, at no cost, personal property of the Department of Defense to assist the entity in supporting the activities of the designated Defense Agency.

(e) ACCEPTANCE OF GIFTS.—

(1) AUTHORITY TO ACCEPT.—Subject to subsection (f)(2), the Secretary may solicit, accept, hold, administer, spend and use any gift of personal property, money or

services made on the condition that the gift be used for the purpose of facilitating accounting for missing persons pursuant to section 1501(a)(2)(C) of this title.

(2) GIFT FUNDS.—Gifts and bequests of money accepted under this subsection shall be deposited in the Treasury in the Department of Defense General Gift Fund.

(3) USE OF GIFTS.—Personal property and money accepted under this subsection may be used by the Secretary, and services accepted under this subsection may be performed, without further specific authorization in law.

(4) EXPENSES OF TRANSFER.—The Secretary may pay all necessary expenses in connection with the conveyance or transfer of a gift accepted under this subsection.

(5) EXPENSES OF CARE.—The Secretary may pay or authorize the payment of all reasonable and necessary expenses in connection with the care of a gift accepted under this subsection.

(6) TREATMENT.—For the purposes of Federal income, estate, and gift taxes, any personal property, money, or services accepted under this subsection shall be considered as a gift, devise, or bequest to or for the use of the United States.

(f) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Defense shall prescribe regulations to implement this section.

(2) LIMITATION.—Such regulations shall provide that solicitation or acceptance of a gift (including a gift of services) or use of a gift under this section may not occur if the nature or circumstances of the solicitation, acceptance, or use would compromise the integrity, or the appearance of integrity, of any program of the Department of Defense or any individual involved in such program.

(g) DEFINITIONS.—In this section:

(1) COOPERATIVE AGREEMENT.—The term “cooperative agreement” means an authorized cooperative agreement as described in section 6305 of title 31.

(2) GRANT.—The term “grant” means an authorized grant as described in section 6304 of title 31.

(3) GIFT.—The term “gift” includes a devise or bequest.

1 **SEC. ____ . PERMANENT EXECUTIVE AGENCY WAIVER AUTHORITY FOR**
2 **CERTAIN PURCHASES.**

3 (a) PERMANENT WAIVER AUTHORITY.—Section 889(d)(1) of the John S. McCain
4 National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 41 U.S.C. nt.
5 prec. 3901) is amended to read as follows:

6 “(1) EXECUTIVE AGENCIES.—The head of an executive agency may waive the
7 requirements under subsection (a)(1)(B) for a period of not more than three years, on a
8 renewable basis, if the head of the executive agency—

9 “(A) after conducting a risk assessment, determines that compelling
10 justification exists to provide such waiver;

11 “(B) limits the applicability of the waiver to actions other than the
12 procurement of information and communications technology, including relevant
13 services, that are—

14 “(i) valued at or below the micro-purchase threshold;

15 “(ii) valued between the micro-purchase threshold and the
16 simplified acquisition threshold and taken under an indefinite-delivery
17 contract, a blanket purchase agreement, or a basic ordering agreement;

18 “(iii) valued between the micro-purchase threshold and \$25,000
19 taken using a Governmentwide commercial purchase card for commercial
20 item purchases made outside the United States for use outside the United
21 States;

22 “(iv) valued between the micro-purchase threshold and the
23 simplified acquisition threshold taken by a contracting officer in support

1 of activities listed in section 1903(a) of title 41, United States Code, or a
2 humanitarian or peacekeeping operation as defined in section 3015(2)¹ of
3 title 10, United States Code; or

4 “(v) taken under a fuel card program; and
5 “(C) not later than 30 days after issuing such waiver, submits to the
6 appropriate congressional committees a copy of and the basis for such waiver.”.

7 (b) ADDITIONAL DEFINITIONS.—Section 889(f) of such Act is amended by adding at the
8 end the following new paragraphs:

9 “(5) MICRO-PURCHASE THRESHOLD.—The term ‘micro-purchase threshold’ has
10 the meaning given the term in section 3573² of title 10, United States Code.

11 “(6) SIMPLIFIED ACQUISITION THRESHOLD.—The term ‘simplified acquisition
12 threshold’ has the meaning given the term in section 3015(1)³ of title 10, United States
13 Code.”.

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 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 41 U.S.C. nt. prec. 3901) by providing permanent authority for heads of executive agencies to waive the requirements under subsection (a)(1)(B) for certain purchases after conducting a risk assessment and determining that compelling justification exists to provide such waiver.

This permanent executive agency waiver authority for certain purchases is necessary to ensure that the acquisition efficiencies achieved with passage of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355), the Clinger-Cohen Act of 1996 (Division D of

¹ This proposal uses citations to title 10, United States Code, that will be in effect as of January 1, 2022, pursuant to section 1801(d)(1) of the FY21 NDAA (Public Law 116-283). Previous to such date, the reference is to section 2302(8) of title 10.

² See footnote 1. Previous to January 1, 2022, the reference is to section 2338 of title 10.

³ See footnote 1. Previous to January 1, 2022, the reference is to section 2302(7) of title 10.

Public Law 104-106), and other related statutes as implemented in FAR Part 13 continue to be realized for actions that present no or low cyber security and supply chain risk to the Government. As stated in FAR subpart 13.002, the purpose of simplified acquisition procedures is to reduce administrative costs; improve opportunities for small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns to obtain a fair proportion of Government contracts; promote efficiency and economy in contracting; and avoid unnecessary burdens for agencies and contractors.

If enacted, the Department intends to use this authority to provide waivers for the purchase of low-risk supplies and services to promote efficient procurement, and thus expedited delivery of capabilities to warfighters, without exposing the Department to significant risk. Implementation of section 889 for the Governmentwide Commercial Purchase Card (GPC) has created significant administrative burdens for the over 945K GPC cardholders who purchase under GSA's SmartPay[®] arrangements, and for our vendors. According to General Services Administration (GSA) SmartPay[®] data, over 20.1 million SmartPay[®] GPC transactions were processed in FY 2020. This equates to approximately 81K GPC transactions conducted each duty day by Federal Government employees and Service members. The vast majority of these cardholders are non-acquisition personnel who are assigned GPC holder responsibilities as an additional duty. Section 889 adds an administrative burden to these individuals and slows down an otherwise rapid purchasing process. It is important to note that even small workload increases that occur at the GPC transaction level cascade to a significant overall workload for the Federal Government due to this large volume of transactions.

As implemented in FAR subpart 4.21, to enable executive agencies to comply with section 889, offerors are required to complete the representation in the solicitation provision, FAR 52.204-26, Covered Telecommunications Equipment or Services-Representation and if they represent "does" in paragraph (c)(1) or (c)(2) they are required to further represent under FAR 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. The FAR 52.204-26 solicitation provision representation is included in the System for Award Management (SAM), which allows for a streamlined annual representation process established for contractors that are required to register in SAM per FAR subpart 4.11 and compete for Federal contracts using other than open-market micro-purchase procedures. These contractors complete the representation at least annually or when their responses change for each contract action.

The solicitation provisions at FAR 52.204-26 and 52.204-24 were not included in the list of provisions and clauses applicable to acquisitions at or below the micro-purchase threshold at FAR 13.202 or 32.1110. FAR 13.201(d) reads as follows: "Micro-purchases do not require provisions or clauses, except as provided at 13.202 and 32.1110. However, the section 889 prohibition still applies at or below the micro-purchase threshold and as a matter of policy, for DoD, a representation like FAR 52.204-24 is required for micro-purchases to ensure DoD does not violate section 889. Vendors that are registered in SAM may utilize the streamlined SAM representation at FAR 52.204-26; however, vendors that do not register in SAM.gov but are required to represent, will have to utilize a representation like the offer-by-offer representation at FAR 52.204-24, including merchants that provide only: supplies and services to deployed contracting officers in the course of military operations; supplies and services to contracting

officers in the conduct of emergency operations; and supplies and services valued below the micro-purchase threshold using the GPC as both the purchasing and payment mechanism (hereinafter referred to as “GPC micro-purchase merchants”), because these merchants are not required to register in SAM (FAR subpart 4.1102) and do not participate in formal solicitation processes (FAR subpart 13.203). Executive agencies, however, must still obtain a section 889 representation from such merchants to obtain the information necessary to identify whether the section 889 prohibitions apply to the pending action, as that information resides uniquely within the knowledge of the merchant. As a result, for GPC transactions, the DoD currently requires vendors to complete a representation outside of SAM to ensure the DoD does not conduct a prohibited procurement. This non-automated representation requirement has a disproportionately high impact on merchants supporting deployed contracting officers, merchants supporting contracting officers in the conduct of emergency operations, and GPC micro-purchase merchants, as merchants must separately complete/validate the representation for each transaction.

This additional administrative burden serves as a barrier that discourages small local vendors and other merchants that sell primarily lower cost commercial items from conducting business with the Federal Government. The correlated burden on Cardholders and deployed contracting officers delays the delivery of supplies and services to mission owners. The desire to avoid this administrative burden, coupled with the perceived higher-risk of compliance errors, may result in the unintended consequence of Cardholders choosing to transact primarily with merchants registered in SAM (typically larger businesses who compete for Government contracts) and avoid making purchases from locally owned and operated small businesses that are not registered in SAM.

The preponderance of GPC micro-purchase transactions are made to fulfill low risk supply and services requirements for items such as non-electronic office-supplies or tools. For higher-risk requirements, specifically IT, the Military Services have mitigated cyber, supply chain, and other risks by establishing or identifying indefinite-delivery contracts that include appropriate terms and conditions, or otherwise implementing specific policies and procedures. As an example, a brief survey of the Military Services revealed that Component-level GPC policy requires pre-purchase approvals and/or use of specific IT indefinite-delivery contract arrangements to fulfill commercially available off-the shelf IT requirements. Further, GSA has specifically awarded schedule contracts that can be leveraged throughout the Federal Government to streamline the purchasing process for authorized Unmanned Aerial Systems (UAS), and the Department of Defense has implemented policy to prohibit use of the GPC to purchase items considered to present the highest risk to the Department (e.g., UAS and video surveillance cameras).

For ordering (e.g., orders against multiple award schedule (MAS) contracts made using GSA Advantage![®] or indefinite delivery contracts using FedMall--hereinafter referred to as the underlying contract), the contracting officer who awards the underlying contract is responsible for ensuring compliance with all section 889 requirements, including the reporting required in FAR 52.204-25(d). Therefore, it is largely redundant and unnecessary to require the individual placing the order to obtain, review, and retain the section 889 representation at the order level as the contractor’s compliance status has already been determined acceptable by the Government.

Additionally, the contractor is contractually obligated to provide specific reporting to the contracting officer(s) on both the underlying contract and all affected orders if the contractor identifies or is notified by subcontractors or any other source that covered telecommunications equipment or services have been used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, including both the indefinite delivery contract and any affected orders in the report.

Enactment of this permanent subsection 889(a)(1)(B) executive agency waiver authority for certain transactions will result in lower overall administrative costs to both industry and the Government by reducing the labor cost associated with obtaining information from offerors to ensure Government compliance with section 889 prior to procuring or obtaining or entering into a contract to procure or obtain equipment or services for all no or low risk micro-purchases, orders valued below the simplified acquisition threshold against indefinite delivery contracts, certain GPC actions made outside of the United States, certain GPC transactions made by contracting officers supporting emergency-type operations or a humanitarian or peacekeeping operation, and actions made under a fuel card program. Further, the acquisition lead time for these actions would improve by allowing the executive agency to waive this prohibition for no or low risk micro-purchases.

The Department anticipates that enactment of this subsection 889(a)(1)(B) executive agency waiver authority for certain purchases will also likely increase the overall effectivity of the representation process by focusing human resource attention on scrutinizing those purchase requirements that present the highest cyber and/or supply chain risk to the Government. Finally, enactment of this waiver authority will facilitate purchases from small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns by reducing the administrative burden of contracting with the Government.

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 889 of John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 41 U.S.C. nt. prec. 3901) as follows:

SEC. 889. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) PROHIBITION ON USE OR PROCUREMENT.—

(1) The head of an executive agency may not—

- (A) procure or obtain or extend or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (B) enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or service that uses covered telecommunications

equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(2) Nothing in paragraph (1) shall be construed to—

(A) prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(B) cover telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(b) PROHIBITION ON LOAN AND GRANT FUNDS.—

(1) The head of an executive agency may not obligate or expend loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain the equipment, services, or systems described in subsection (a).

(2) In implementing the prohibition in paragraph (1), heads of executive agencies administering loan, grant, or subsidy pro-grams, including the heads of the Federal Communications Commission, the Department of Agriculture, the Department of Homeland Security, the Small Business Administration, and the Department of Commerce, shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(3) Nothing in this subsection shall be construed to— (A) prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (B) cover telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) EFFECTIVE DATES.—The prohibition under subsection (a)(1)(A) shall take effect one year after the date of the enactment of this Act, and the prohibitions under subsections (a)(1)(B) and (b)(1) shall take effect two years after the date of the enactment of this Act.

(d) WAIVER AUTHORITY.—

~~(1) EXECUTIVE AGENCIES.—The head of an executive agency may, on a one-time basis, waive the requirements under sub-section (a) with respect to an entity that requests such a waiver. The waiver may be provided, for a period of not more than two years after the effective dates described in subsection (c), if the entity seeking the waiver—~~

~~(A) provides a compelling justification for the additional time to implement the requirements under such subsection, as determined by the head of the executive agency; and~~

~~(B) submits to the head of the executive agency, who shall not later than 30 days thereafter submit to the appropriate congressional committees, a full and complete laydown of the presences of covered telecommunications or video~~

~~surveillance equipment or services in the entity's supply chain and a phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the entity's systems.~~

(1) EXECUTIVE AGENCIES.—The head of an executive agency may waive the requirements under subsection (a)(1)(B) for a period of not more than three years, on a renewable basis, if the head of the executive agency—

(A) after conducting a risk assessment, determines that compelling justification exists to provide such waiver;

(B) limits the applicability of the waiver to actions other than the procurement of information and communications technology, including relevant services, that are—

(i) valued at or below the micro-purchase threshold;

(ii) valued between the micro-purchase threshold and the simplified acquisition threshold and taken under an indefinite-delivery contract, a blanket purchase agreement, or a basic ordering agreement;

(iii) valued between the micro-purchase threshold and \$25,000 taken using a Governmentwide commercial purchase card for commercial item purchases made outside the United States for use outside the United States;

(iv) valued between the micro-purchase threshold and the simplified acquisition threshold taken by a contracting officer in support of activities listed in section 1903(a) of title 41, United States Code, or a humanitarian or peacekeeping operation as defined in section 3015(2)⁴ of title 10, United States Code; or

(iv) taken under a fuel card program; and

(C) not later than 30 days after issuing such waiver, submits to the appropriate congressional committees a copy of and the basis for such waiver.

(2) DIRECTOR OF NATIONAL INTELLIGENCE.—The Director of National Intelligence may provide a waiver on a date later than the effective dates described in subsection (c) if the Director determines the waiver is in the national security interests of the United States.

(f) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) the Committee on Financial Services, the Committee on Foreign Affairs, and the Committee on Oversight and Government Reform of the House of Representatives.

(2) COVERED FOREIGN COUNTRY.—The term “covered foreign country” means the People's Republic of China.

⁴ See footnote 1.

(3) COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES.—The term “covered telecommunications equipment or services” means any of the following:

(A) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (B) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(C) Telecommunications or video surveillance services provided by such entities or using such equipment.

(D) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(4) EXECUTIVE AGENCY.—The term “executive agency” has the meaning given the term in section 133 of title 41, United States Code.

(5) MICRO-PURCHASE THRESHOLD.—The term “micro-purchase threshold” has the meaning given the term in section 3573⁵ of title 10, United States Code.

(6) SIMPLIFIED ACQUISITION THRESHOLD.—The term “simplified acquisition threshold” has the meaning given the term in section 3015(1)⁶ of title 10, United States Code.

⁵ See footnote 2.

⁶ See footnote 3.

1 **SEC. ____ . REPEAL AND MODIFICATION OF REPORTING REQUIREMENTS.**

2 (a) DEFENSE INSTITUTION CAPACITY BUILDING.—Section 332(b)(2) of title 10, United
3 States Code, is amended by striking “quarter” each place it appears.

4 (b) AUTHORITY TO BUILD CAPACITY OF FOREIGN FORCES.—Section 333(f) of title 10,
5 United States Code, is amended—

6 (1) in the heading, by striking “QUARTERLY” and inserting “ANNUAL”; and

7 (2) in the matter preceding paragraph (1)—

8 (A) by striking “a quarterly” and inserting “an annual”; and

9 (B) by striking “quarter” and inserting “year”.

10 (c) ANNUAL REPORT ON SECURITY COOPERATION ACTIVITIES.—Section 386 of title 10,
11 United States Code, is amended to read as follows:

12 **“§ 386. Annual report**

13 “(a) ANNUAL REPORT REQUIRED.—Not later than March 31 of each year beginning in
14 2023, the Secretary of Defense shall submit to the appropriate congressional committees a report
15 that sets forth, on a country-by-country basis, an overview of security cooperation activities
16 carried out by the Department of Defense using the authorities specified in subsection (b) during
17 the fiscal year ending in the year before the year in which such report is submitted.

18 “(b) ELEMENTS OF REPORT.—Each report required under subsection (a) shall include for
19 each country covered by such report, and for the reporting period covered by such report, the
20 following:

21 “(1) A narrative summary that provides a brief overview of the primary security
22 cooperation objectives for the activities encompassed by the report and a description of

1 how such activities advance the theater security cooperation strategy of the relevant
2 geographic combatant command.

3 “(2) A table that includes an aggregated amount of funds as described for each of
4 the following provisions:

5 “(A) With respect to section 332(a) of this title, the total Department of
6 Defense cost to provide any Department personnel as advisors to a ministry of
7 defense.

8 “(B) With respect to section 332(b) of this title, the total Department of
9 Defense incremental execution costs to conduct activities under such section.

10 “(C) With respect to section 333 of this title, the total value of all
11 programs for which notice is required by such section.

12 “(D) With respect to section 341 of this title, the total amount of
13 Department of Defense manpower and travel costs to conduct bi-lateral state
14 partnership program engagements with the partner nation.

15 “(E) With respect to section 342 of this title, the total amount of
16 Department of Defense funded foreign-partner travel costs to attend a regional
17 center activity that commenced during the period of the required report.

18 “(F) With respect to section 345 of this title, the estimated total
19 Department of Defense execution cost to complete all training that commenced in
20 the fiscal year for the required report.

21 “(G) With respect to section 2561 of this title, the total planned execution
22 cost of completing humanitarian assistance activities for the partner nation that
23 were approved in the fiscal year for the required report.

1 “(3) A table that includes aggregated totals as described for each of the following
2 provisions:

3 “(A) With respect to section 311 of this title, the total number of personnel
4 from a partner nation assigned to a Department of Defense organization pursuant
5 such section.

6 “(B) With respect to section 332(a) of this title, the total number of
7 Department of Defense personnel assigned as advisors to a ministry of defense.

8 “(C) With respect to section 332(b) of this title, the total number of
9 activities conducted by the Department of Defense under such section.

10 “(D) With respect to section 333 of this title, the total number of new
11 programs carried out that required notice under that section during the period of
12 the required report.

13 “(E) With respect to section 341 of this title, the total number of
14 Department of Defense bi-lateral state partnership program engagements with the
15 partner nation that were commenced during the period of the required report.

16 “(F) With respect to section 342 of this title, the total number of partner
17 nation officials who participated in regional center activity that commenced
18 during the period of the required report.

19 “(G) With respect to sections 343, 345, 348, 349, 350 and 352 of this title,
20 the total number of partner nation personnel who commenced training during the
21 period of the required report.

1 “(H) With respect to section 347 of this title, the total number of cadets
2 from a partner nation that were enrolled in the Service Academies during the
3 period of the required report.

4 “(I) With respect to section 2561 of this title, the total number of new
5 humanitarian assistance projects funded by the Overseas Humanitarian Disaster
6 and Civic Aid account that were approved during the period of the required
7 report.

8 “(4) A table that includes the data elements described for each of the following
9 provisions:

10 “(A) With respect to section 311 of this title, for each person from the
11 partner nation assigned to a Department of Defense organization pursuant to this
12 authority, whether the person is a member of the armed forces or a civilian, the
13 rank of the person (if applicable), and the component of the Department of
14 Defense and location to which such person is assigned.

15 “(B) With respect to section 332(a) of this title, for each Department of
16 Defense personnel that was assigned as an advisor to a ministry of defense during
17 the period of the report, a description of the object of the Department of Defense
18 for such support and the name of the ministry or regional organization to which
19 the personnel was assigned.

20 “(C) With respect to each activity commenced under section 332(b) of this
21 title during the period of the report, the name of the supported ministry or regional
22 organization, the Department of Defense component that conducted the activity,
23 the duration of the activity, and a description of the objective of the activity.

1 “(D) With respect to section 333 of this title, for each program that
2 required notice to Congress under such section during the period of the report, the
3 units of the national security forces of the foreign country to which assistance was
4 provided, the type of operational capability assisted, a description of the nature of
5 the assistance being provided, and the estimated cost for such assistance included
6 in the notice provided.

7 “(E) With respect to each activity commenced under section 341 of this
8 title during the period of the report, a description of the activity, the duration of
9 the activity, the number of participating members of the National Guard, and the
10 number of participating personnel of the foreign country.

11 “(F) With respect to each activity of a Regional Center for Security
12 Studies commenced under section 342 of this title during the period of the report,
13 a description of the activity, the name of the Regional Center that sponsored the
14 activity, the location of the training, the duration of the training, and the number
15 of officials from a foreign country who participated in the activity.

16 “(G) With respect to each training event that commenced under section
17 343, 345, 348, 349, 350, or 352 of this title during the period of the report, a
18 description of the training, the location of the training, the duration of the training,
19 and the number of personnel of a foreign country trained by the activity.

20 “(H) With respect to each new project approved under section 2561 of this
21 title during the period of the report and funded by the Overseas Humanitarian
22 Disaster and Civic Aid account, the title of the project, a description of the
23 assistance to be provided, and the anticipated cost to provide such assistance.”.

1 (d) NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—

2 (1) REPORTING AND BRIEFING REQUIREMENTS.—Section 2504 of title 10, United
3 States Code, is amended—

4 (A) in the section heading, by striking “**annual**” and inserting “**biennial**”;

5 (B) in subsection (a)—

6 (i) in the subsection heading, by striking “ANNUAL” and inserting
7 “BIENNIAL”; and

8 (ii) in the matter preceding paragraph (1), by striking “March 1 of
9 each year” and inserting “March 1 of every second year”; and

10 (C) in subsection (b), by adding at the end the following new paragraph:

11 “(3) The Secretary of Defense shall ensure that the Secretaries of the military
12 departments and the Assistant Secretary of Defense for Industrial Policy each provide, on an
13 annual basis, at least one of the quarterly briefings under paragraph (1).”.

14 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter
15 II of chapter 148 of such title is amended by striking the item relating to section 2504 and
16 inserting the following new item:

“2504. National technology and industrial base: biennial report and quarterly briefings.”.

17 (e) ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN
18 AUTHORITY.—Section 2807(b) of title 10, United States Code, is amended in the first sentence
19 by striking “\$1,000,000” and inserting “\$5,000,000”.

20 (f) DOCUMENTATION RELATING TO F-35 ACQUISITION PROGRAM.—Section 159 of the
21 William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public
22 Law 116-283; 134 Stat. 3447) is amended—

1 (1) in the matter preceding paragraph (1), by striking “or entering into a contract
2 for the full-rate production of F–35 aircraft” and inserting “or, if such approval is not
3 merged with the full-rate production decision, not later than 15 days following the date of
4 the full-rate production decision”;

5 (2) by striking paragraphs (4) and (7); and

6 (3) by redesignating paragraphs (5), (6), (8), (9), (10), and (11) as paragraphs (4),
7 (5), (6), (7), (8), and (9), respectively.

8 (g) STRATEGIC AND CRITICAL MATERIALS.—Section 851 of the William M. (Mac
9 Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283; 134
10 Stat. 3773) is amended—

11 (1) in the section heading, by striking “**REPORT**” and inserting “**BRIEFING**”;

12 (2) in subsection (a)—

13 (A) in the subsection heading, by striking “REPORT” and inserting
14 “BRIEFING”;

15 (B) by striking “submit” and inserting “provide”; and

16 (C) by striking “an appendix to the annual report” and inserting “a briefing
17 in connection with the biennial report”;

18 (3) in subsection (b), in the matter preceding paragraph (1), by striking
19 “appendix” and inserting “briefing”; and

20 (4) in subsection (c)—

21 (A) by striking “appendix” and inserting “briefing”;

22 (B) by striking “submitted” and inserting “provided”; and

23 (C) by striking “annex” and inserting “session”.

1 (h) ALUMINUM REFINING, PROCESSING, AND MANUFACTURING.—Section 852 of the
2 William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public
3 Law 116-283; 134 Stat. 3774) is amended—

4 (1) in the section heading, by striking “**REPORT**” and inserting “**BRIEFING**”;

5 (2) in subsection (a), in the matter preceding paragraph (1)—

6 (A) by striking “In preparing the annual report” and inserting “In
7 connection with the biennial report”; and

8 (B) by striking “include as an appendix to such report information on” and
9 inserting “provide to the congressional committees referred to in subsection (b) a
10 briefing on”; and

11 (3) in subsection (b)—

12 (A) in the subsection heading, by striking “SUBMISSION” and inserting
13 “BRIEFING”;

14 (B) by striking “submit” and inserting “provide”; and

15 (C) by striking “appendix” and inserting “briefing”.

16 (i) USE OF MILITARY FORCE AND SUPPORT OF PARTNER FORCES.—Section 1285 of the
17 National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92; 50 U.S.C. 1550)
18 is repealed.

19 (j) ACTIVITIES UNDER TITLE III OF DEFENSE PRODUCTION ACT OF 1950.—Section 1705(b)
20 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92; 133 Stat.
21 1798) is repealed.

1 (k) THEFT, LOSS, OR RELEASE OF BIOLOGICAL SELECT AGENTS OR TOXINS INVOLVING
2 DEPARTMENT OF DEFENSE.—Section 1067(a) of the National Defense Authorization Act for
3 Fiscal Year 2017 (Public Law 114-328; 50 U.S.C. 1528(a)) is amended to read as follows:

4 “(a) NOTIFICATION.—(1) Subject to paragraph (2), not later than 90 days after a covered
5 report of any theft, loss, or release of a biological select agent or toxin involving the Department
6 of Defense is filed with the Centers for Disease Control and Prevention or the Animal and Plant
7 Health Inspection Service, the Secretary of Defense, acting through the Assistant Secretary of
8 Defense for Nuclear, Chemical, and Biological Defense Programs, shall provide to the
9 congressional defense committees notice of such theft, loss, or release.

10 “(2) The Secretary shall provide to the congressional defense committees notice of a
11 release under paragraph (1) only if the Secretary, acting through the Assistant Secretary,
12 determines that the release is outside the barriers of secondary containment into the ambient air
13 or environment or is causing occupational exposure that presents a threat to public safety.

14 “(3) In this subsection, the term ‘covered report’ means a report filed under any of the
15 following:

16 “(A) Section 331.19 of title 7, Code of Federal Regulations.

17 “(B) Section 121.19 of title 9, Code of Federal Regulations.

18 “(C) Section 73.19 of title 42, Code of Federal Regulations.”.

19 (l) COMPTROLLER GENERAL REPORT ON F-35 AIRCRAFT ACQUISITION PROGRAM.—
20 Section 153 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization
21 Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3323) is repealed.

**[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 modify or eliminate the following statutory reporting requirements:

Defense institution capacity building (10 U.S.C. 332). This proposal would change the frequency of the reporting requirement from each quarter to once annually. Reporting annually will be more effective and efficient: allowing a better picture of progress made over multiple engagements rather than short-term snapshots of advances and setbacks quarterly and alleviating significant DoD man hours required to solicit, validate, draft, and coordinate the reports which due to the quarterly nature is essentially a year-round effort.

Authority to build capacity of foreign forces (10 U.S.C. 333). This proposal would change the frequency of the reporting requirement from each quarter to once annually. Due to the need to collect quarterly data, complete a DoD-wide review and validation of the data, and obtain interagency concurrence for each report, the manpower effort to accomplish quarterly reports requires a constant year round effort. Changing the frequency of the report to an annual basis alleviates a significant manpower burden while not degrading the quality of the information provided to Congress.

Annual report on security cooperation activities (10 U.S.C. 386). This proposal would modify the annual reporting requirement on security cooperation activities to improve the timeliness, accuracy, and quality of this existing report requirement. The existing reporting requirement framework is inherently flawed in that it requires DoD to provide individual data elements that have no application in the context of a specific authority. It also fails to account for that fact that the execution timeline for some of the specified authorities extends for several years beyond the one-year reporting period. The result is a time-consuming report that provides DoD and Congress limited strategic insight due to the inflexible report format mandated by the existing legislation. To gain strategic insight into how the Department prioritizes and utilizes its discretion to execute security cooperation authorities, the report should consolidate data from the specific security cooperation authorities that are primarily relied upon by the Department to build partner nation capacity and maintain effect relationships with key allies and partners. Removed from the existing report requirement are obsolete authorities, security cooperation authorities primarily intended for training U.S. forces, and security cooperation authorities intended to support foreign partner current operational requirements.

National Technology and Industrial Base (10 U.S.C. 2504). This proposal would change the frequency of reporting from annually to biennially in order to reduce the burden of generating and coordinating the report and improve the quality of the reporting. There is relatively little change in the information reported from year to year. Information gathered over a longer reporting period will be more significant and provide a more insightful overview of the changes in the industrial base.

In addition, this proposal would amend the statutory language to reflect an agreement that the Department of Defense (DoD) has with the congressional defense committees to spread this briefing requirement between the services (Army, Air Force, and Navy) and the Office of Industrial Policy, so that no one organization needs to brief more than once per year.

Architectural and engineering services and construction design notifications (10 U.S.C. 2807). This proposal would modify the current \$1,000,000 per project threshold for congressional notification for architectural and engineering services to \$5,000,000. This increase in threshold would shorten the time to complete the design of projects funded by military construction appropriations (MILCON) by three weeks or more for projects having estimated design costs between \$1,000,000 and \$5,000,000. This threshold was last revised in 2003 from \$500,000 to \$1,000,000. For the Department of the Navy (DON) MILCON, the average estimated cost of a requested project in fiscal year (FY) 2003 was \$13.22 million. The average estimated cost of a requested project in FY 2021 was \$68.21 million, which represents a 516% increase. As the anticipated amount of MILCON design funding required for a project when evaluating the need for a notification under section 2807 is based on the estimated cost in addition to the level of complexity, this increase is directly related to the threshold for notification. This has resulted in a significant increase in the number of projects that must wait for the notification under section 2807. For example, in the FY 2021 program, only one of the 44 projects was below the threshold for notification, so almost the entire program lost three plus weeks of time waiting for notification under section 2807 prior to executing critical design development activities.

Documentation Relating to F-35 Acquisition Program (Section 159 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021): This proposal would modify the statutory requirements for the preparation of the documentation relating to the F-35 program by adjusting certain reporting requirements to align with decision points in the defense acquisition system identified in both public law and Department of Defense Instructions 5000.02 and 5000.8.

During the F-35 program restructure, on June 2, 2010, the Under Secretary of Defense for Acquisition, Technology, and Logistics directed that “the F-35 program would re-enter the defense acquisition system at an appropriate milestone and that a future Milestone C would constitute the full-rate production decision review for the program.” While consistent with the acquisition statutes at that time, this approach of combining the Milestone C decision and the full-rate production decision caused a potential conflict with section 2399 of title 10, United States Code, and its requirements for operational testing. Section 159 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (section 159) specifically directs requirements typically associated with the full rate production decision review to be accomplished prior to Milestone C.

The proposed revision preserves the Department’s ability to approve Milestone C for the F-35 program prior to a separate full-rate production decision by removing duplicative reporting requirements and assigning this work specifically to a full-rate production decision. These requirements will be completed and delivered as statutorily required.

Section 159 deals with requirements prior to the completion of a milestone review or entering into a contract after completion of a decision review. For clarity, this revision adjusts the language to relate strictly to a combined Milestone C and full-rate production decision or to a separate full-rate production decision instead of relating to a Milestone C decision or the award of a contract.

Paragraph (4) of section 159 is repealed by this proposal because it duplicates the requirements of section 2334 of title 10, United States Code, that require the Director of Cost Assessment and Program Evaluation (DCAPE) to conduct or approve independent cost estimates for all major defense acquisition programs in advance of any decision to grant milestone approval or decision to enter low-rate-initial or full-rate production. As DCAPE will prepare an independent cost estimate for the F-35 Milestone C and full-rate production decision, the requirement of paragraph (4) is duplicative.

Likewise, the proposal repeals paragraph (7) of section 159 as it duplicates the requirements of section 2399 of title 10, United States Code. That section directs the Director of Operational Test and Evaluation to analyze the results of operational testing and prepare a report stating the opinion of the Director as to whether the testing and evaluation performed were adequate and if the items tested are effective and suitable for combat. The Department will satisfy the section 2399 requirement prior to the full-rate production decision, so the requirement of paragraph (7) is duplicative.

Strategic and Critical Materials (Section 851 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021). This proposal would modify the requirement to provide that the information will be delivered as a briefing with the submission of the Industrial Capabilities Report.

Aluminum Refining, Processing, and Manufacturing (Section 852 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021). This proposal would modify the requirement to provide that the information will be delivered as a briefing with the submission of the Industrial Capabilities Report.

Reports and briefings on use of military force and support of partner forces (Section 1285 of the National Defense Authorization Act for Fiscal Year 2020 (50 U.S.C. 1550)). This proposal would repeal the reporting requirement due to redundancy with existing DoD reporting requirements. The Department of Defense reports to Congress on activities supporting partner forces pursuant to the 2001 Authorization for the Use of Military Force (P.L. 107-40) through the notification and reporting requirements detailed in 10 U.S.C. 127e(d) and 127e(i). The Department also provides similar information to Congress as required by 10 U.S.C. 465; 10 U.S.C. 130f; and 10 U.S.C. 1723.

Activities Under Title III of Defense Production Act (DPA) of 1950 (Section 1705(b) of the National Defense Authorization Act for Fiscal Year 2020). This proposal would strike section 1705(b) of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92). This requirement is duplicative as the Department leverages the DPA Fund Report to respond to this requirement. As such, this requirement should be eliminated.

Theft, Loss, or Release of Biological Select Agents or Toxins Involving the Department of Defense (Section 1067(a) of the National Defense Authorization Act for Fiscal Year 2017 (50 U.S.C. 1528(a)). This proposal would change the reporting requirement from 15 days to 90 days for any biological select agent or toxin (BSAT) theft, loss, or release that is external to

secondary containment or is causing occupational exposure that presents a threat to public safety. The additional 75 days allows the Department to receive a copy of the report filed by the facility and provide the requested summary under section 1528(b) the National Defense Authorization Act for Fiscal Year 2017 to the congressional defense committees.

DoD will only report BSAT releases to the congressional defense committees if the releases pose a hazard to the external environment and public safety. In a majority of instances in which there is a BSAT release outside the primary barriers of biocontainment, as defined in the Federal Select Agent Regulations, the BSAT release is contained within the engineering controls of the laboratory's secondary barriers of biocontainment. Therefore, the only BSAT releases that require congressional attention are those that pose a hazard to the environment and public safety. The language also clarifies the requirement for the laboratories regarding which BSAT releases are reportable and prevents the congressional defense committees from receiving reports that do not require congressional attention.

The addition of references to sections 73.19 of title 42, Code of Federal Regulations (C.F.R.), and 121.19 of title 9, C.F.R., along with the existing reference to section 331.19 of title 7, C.F.R., encompass the Federal Select Agent Regulations, which cover those pathogens (bacteria, viruses, and toxins) that are regulated by the Federal Government. The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs is the appropriate DoD official to provide information to the congressional defense committees in accordance with sections 138(b)(10) and 138d of title 10, United States Code.

Comptroller General Report on F-35 Aircraft Acquisition Program (Section 153 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015). This proposal would repeal the requirement under section 153 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291) (section 153) for the Comptroller General to submit a report to the congressional defense committees on the status of the F-35 aircraft acquisition program. The Comptroller General has issued six reports under this provision through Fiscal Year 2021.

This is a duplicative reporting requirement because the Department provides quarterly updates to the congressional defense committees pursuant to section 155 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232) (section 155) on the progress of the F-35 Joint Strike Fighter program, which includes updates on all phases of program execution.

Section 153 requires a similar review of the “baseline” or “system development and demonstration” phase of the program, which delivered the Block 3F aircraft configuration. This phase is nearly complete with the exception of the completion of the initial operational test and evaluation. Minimal cost, schedule, and performance metrics remain for the Comptroller General to review, but any reviews required are also incorporated in the aforementioned quarterly briefs of the congressional defense committees under section 155.

During execution of the activities required under section 153, a significant amount of Government and contractor labor is expended for minimal to no return on investment. This labor

would be redirected to support higher value efforts within the program. Likewise, the Comptroller General team assigned this workload could be reassigned to higher priority activities. This reporting requirement is a duplicative and costly administrative burden and Congress already requires the Department to provide information on a regular and recurring basis on the F-35 aircraft acquisition program. With so many overlapping requirements, striking section 153 will streamline the Department's F-35 reporting requirements.

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 386 of title 10, United States Code, to read as shown in the legislative text above. Additionally, this proposal would make the following changes to existing law:

Title 10, United States Code

§ 332. Friendly foreign countries; international and regional organizations: defense institution capacity building

(a) **MINISTRY OF DEFENSE ADVISOR AUTHORITY.**—The Secretary of Defense may, with the concurrence of the Secretary of State, carry out a program to assign civilian employees of the Department of Defense and members of the armed forces as advisors to the ministries of defense (or security agencies serving a similar defense function) of foreign countries or regional organizations with security missions in order to—

(1) provide institutional, ministerial-level advice, and other training to personnel of the ministry or regional organization to which assigned in support of stabilization or post-conflict activities; or

(2) assist such ministry or regional organization in building core institutional capacity, competencies, and capabilities to manage defense-related processes.

(b) **TRAINING OF PERSONNEL OF FOREIGN MINISTRIES WITH SECURITY MISSIONS.**—

(1) **IN GENERAL.**—The Secretary of Defense may, with the concurrence of the Secretary of State, carry out a program to provide advisors or trainers to provide training and associated training support services to personnel of foreign ministries of defense (or ministries with security force oversight) or regional organizations with security missions—

(A) for the purpose of—

(i) enhancing civilian oversight of foreign security forces;

(ii) establishing responsible defense governance and internal controls in order to help build effective, transparent, and accountable defense institutions;

(iii) assessing organizational weaknesses and establishing a roadmap for addressing shortfalls; and

(iv) enhancing ministerial, general or joint staff, or service level core management competencies; and

(B) for such other purposes as the Secretary considers appropriate, consistent with the authority in subsection (a).

(2) NOTICE TO CONGRESS.—Each fiscal year ~~quarter~~, the Secretary of Defense shall submit to the appropriate committees of Congress a report on activities under the program under paragraph (1) during the preceding fiscal year ~~quarter~~. Each report shall include, for the fiscal year ~~quarter~~ covered by such report, the following:

(A) A list of activities under the program.

(B) A list of any organization described in paragraph (1) to which the Secretary provided advisors or trainers under the program, including the number of such advisors or trainers so provided, the duration of each provision of such an advisor or trainer, a brief description of the activities of each advisor or trainer so provided, and a statement of the cost of each provision of such an advisor or trainer.

(C) A comprehensive justification of any activities conducted pursuant to paragraph (1)(B).

* * * * *

§ 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.

* * * * *

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

* * * * *

§ 2504. National technology and industrial base: ~~annual~~ biennial report and quarterly briefings

(a) ~~ANNUAL BIENNIAL~~ REPORT TO CONGRESS.—The Secretary of Defense shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives by March 1 of ~~each year~~ every second year a report which shall include the following information:

(1) A description of the departmental guidance prepared pursuant to section 2506 of this title.

(2) A description of the assessments prepared pursuant to section 2505 of this title and other analyses used in developing the budget submission of the Department of Defense for the next fiscal year.

(3) Based on the strategy required by section 2501 of this title and on the assessments prepared pursuant to Executive order or section 2505 of this title—

(A) a map of the industrial base;

(B) a prioritized list of gaps or vulnerabilities in the national technology and industrial base, including—

(i) a description of mitigation strategies necessary to address such gaps or vulnerabilities;

(ii) the identification of the Secretary concerned or the head of the Defense Agency responsible for addressing such gaps or vulnerabilities; and

(iii) a proposed timeline for action to address such gaps or vulnerabilities; and

(C) any other steps necessary to foster and safeguard the national technology and industrial base.

(4) Identification of each program designed to sustain specific essential technological and industrial capabilities and processes of the national technology and industrial base.

(5) A detailed description of any use by the Secretary of Defense or a Secretary concerned, as applicable, during the prior 12 months of a waiver or exception to the sourcing requirements or prohibitions established by chapter 83 of title 41 or subchapter V of chapter 148 of this title, including—

(A) the type of waiver or exception used; and

(B) the reasoning for the use of each such waiver or exception.

(b) QUARTERLY BRIEFINGS.—(1) The Secretary of Defense shall ensure that the congressional defense committees receive quarterly briefings on the industrial base supporting

the Department of Defense, describing challenges, gaps, and vulnerabilities in the defense industrial base and commercial sector relevant to execution of defense missions, and describing initiatives to address such challenges.

(2) Each briefing under paragraph (1) shall include an update on the progress of addressing such gaps or vulnerabilities by the Secretary, the Secretary of the military department concerned, or the appropriate head of a Defense Agency, including an update on-

(A) actions taken to address such gaps or vulnerabilities;

(B) policy changes necessary to address such gaps or vulnerabilities; and

(C) the proposed timeline for action and resources required to address such gaps or vulnerabilities.

(3) The Secretary of Defense shall ensure that the Secretaries of the military departments and the Assistant Secretary of Defense for Industrial Policy each provide, on an annual basis, at least one of the quarterly briefings under paragraph (1).

* * * * *

§ 2807. Architectural and engineering services and construction design

(a) Within amounts appropriated for military construction and military family housing, the Secretary concerned may obtain architectural and engineering services and may carry out construction design in connection with military construction projects, family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are not otherwise authorized by law. Amounts available for such purposes may be used for construction management of projects that are funded by foreign governments directly or through international organizations and for which elements of the armed forces of the United States are the primary user.

(b) In the case of architectural and engineering services and construction design to be undertaken under subsection (a) for which the estimated cost exceeds ~~\$1,000,000~~ \$5,000,000, the Secretary concerned shall notify the appropriate committees of Congress of the scope of the proposed project and the estimated cost of such services before the initial obligation of funds for such services. The Secretary may then obligate funds for such services only after the end of the 14-day period beginning on the date on which the notification is received by the committees in an electronic medium pursuant to section 480 of this title.

(c) If the Secretary concerned determines that the amount authorized for activities under subsection (a) in any fiscal year must be increased the Secretary may proceed with activities at such higher level only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress notice of the need for the increase, including the source of funds to be used for the increase.

(d) For architectural and engineering services and construction design related to military construction and family housing projects, the Secretaries of the military departments may incur obligations for contracts or portions of contracts using military construction and family housing

appropriations from different fiscal years to the extent that those appropriations are available for obligation.

**WILLIAM M. (MAC) THORNBERRY NATIONAL DEFENSE AUTHORIZATION ACT
FOR FISCAL YEAR 2021
(PUBLIC LAW 116-283)**

SEC. 159. DOCUMENTATION RELATING TO THE F-35 AIRCRAFT PROGRAM.

The Secretary of Defense shall submit to the congressional defense committees, not later than 15 days following Milestone C approval for the F-35 aircraft program pursuant to section 2366c of title 10, United States Code, ~~or entering into a contract for~~, if such approval is not merged with the full-rate production decision, not later than 15 days following the date of the full-rate production decision of F-35 aircraft, the documentation with respect to the F-35 aircraft program as follows:

(1) A certification by the Under Secretary of Defense for Acquisition and Sustainment that—

(A) all alternative supply contractors for parts, required for the airframe and propulsion prime contractors of the F-35 aircraft program as a result of the removal of the Republic of Turkey from the program, have been identified, and all related undefinitized contract actions have been definitized (as described in section 7401 of part 217 of the Defense Federal Acquisition Regulation Supplement);

(B) the parts produced by each such contractor have been qualified and certified as meeting applicable technical design and use specifications; and

(C) each such contractor has reached the required rate of production to meet supply requirements for parts under the program.

(2) A cost analysis, prepared by the joint program office for the F-35 aircraft program, that assesses and defines—

(A) the manner in which the full integration of Block 4 and Technical Refresh 3 capabilities for each lot of Block 4 production aircraft beginning after lot 14 will affect the average procurement unit cost of United States variants of the F-35A, F-35B, and F-35C aircraft; and

(B) the manner in which the establishment of alternate sources of production and sustainment of supply and repair parts due to the removal of the Republic of Turkey from the program will affect such unit cost.

(3) All reports required by section 167 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92; 133 Stat. 1250).

~~(4) An independent cost estimate, prepared by Director of Cost Assessment and Program Evaluation, that defines, for each phase of the F-35 aircraft program, the cost to develop, procure, integrate, and retrofit F-35 aircraft with all Block 4 capability requirements that are specified in the most recent Block 4 capabilities development document.~~

~~(5)~~(4) A plan to correct or mitigate any deficiency in the F-35 aircraft, identified as of the date of enactment of this Act that—

(A) may cause death, severe injury or occupational illness, or major loss or damage to equipment or a system, and for which there is no identified workaround (commonly known as a “category 1A deficiency”); or

(B) critically restricts combat readiness capabilities or results in the inability to attain adequate performance to accomplish mission requirements (commonly known as a “category 1B deficiency”).

~~(6)~~(5) A software and hardware capability, upgrade, and aircraft modification plan for the F-35 aircraft that defines the cost and schedule for retrofitting F-35 aircraft that currently have Technical Refresh 2 capabilities installed to ensure compatibility with Block 4 and Technical Refresh 3 capabilities.

~~(7)~~ The following reports for the F-35 aircraft program, as prepared by the Director of Operational Test and Evaluation:

(A) A report on the results of the realistic survivability testing of the F-35 aircraft, as described in section 2366(d) of title 10, United States Code.

(B) A report on the results of the initial operational test and evaluation conducted for program, as described in section 2399(b)(2) of such title.

~~(8)~~(6) A mitigation strategy and implementation plan to address each critical deficiency in the F-35 aircraft autonomic logistics information system that has been identified as of the date of enactment of this Act.

~~(9)~~(7) A certification that the F-35A aircraft meets required mission reliability performance using an average sortie duration of 2 hours and 30 minutes.

~~(10)~~(8) A certification that the Secretary has developed and validated a fully integrated and realistic schedule for the development, production and integration of Block 4 Technical Refresh 3 capabilities for the F-35 aircraft, that includes a strategy for resolving all software technical debt that has accumulated within the F-35 operational flight program source code during development, production, and integration of Technical Refresh 1 and Technical Refresh 2 capabilities.

~~(11)~~(9) The following:

(A) A complete list of hardware modifications that will be required to integrate Block 4 capabilities into lot 16 and lot 17 production F-35 aircraft.

(B) An estimate of the costs of any engineering changes required as a result of such modifications.

(C) A comparison of those engineering changes and costs with the engineering changes and costs for lot 15 production F-35 aircraft.

* * * * *

SEC. 851. REPORT BRIEFING ON STRATEGIC AND CRITICAL MATERIALS.

(a) REPORT BRIEFING REQUIRED.—The Secretary of Defense shall ~~submit~~ provide to the Committees on Armed Services of the Senate and the House of Representatives ~~an appendix to a briefing in connection with the annual biennial~~ report required in section 2504 of title 10, United States Code, due on March 1, 2021, describing strategic and critical materials, including the gaps and vulnerabilities in supply chains of such materials.

(b) ELEMENTS.—The Secretary of Defense shall include in the ~~appendix~~ briefing required in subsection (a) the following:

(1) An identification of the strategic and critical materials that are currently used by the Department of Defense.

(2) To the extent practicable, an identification of the overall annual tonnage of each strategic or critical material identified pursuant to paragraph (1) that was used by the Department during the 10-year period ending on December 31, 2020.

(3) An identification of domestic and international sources for the strategic and critical materials identified pursuant to paragraph (1).

(4) An identification of risks relating to access to the strategic and critical materials identified pursuant to paragraph (1) from supply chain disruptions due to geopolitical, economic, and other vulnerabilities.

(5) An evaluation of the benefits of a robust domestic supply chain for providing strategic and critical materials, as needed, to manufacturers in the defense industrial base.

(6) An evaluation of the effects of the use of waivers by the Strategic Materials Protection Board established under section 187 of title 10, United States Code, on the domestic supply of strategic and critical materials.

(7) Recommendations for policies and procedures to ensure a capability within the Department of Defense to secure strategic and critical materials necessary for emerging technologies, as well as antimicrobial products, minerals, and metals for use in medical equipment and other technologies.

(8) An identification of improvements required to the National Defense Stockpile in order to ensure the Secretary of Defense has access to the strategic and critical materials identified pursuant to paragraph (1).

(9) An evaluation of the domestic processing and manufacturing capacity needed to supply the strategic and critical materials identified pursuant to paragraph (1) to the Secretary of Defense in an economic and secure manner.

(10) In consultation with the Director of the United States Geological Survey, an identification of domestic locations with existing commercial manufacturing interest that are already verified to contain large supplies of the strategic and critical materials identified pursuant to paragraph (1).

(11) An assessment of the feasibility of partnerships with institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that receive grants for the purpose of enhancing the security and stability of the supply chain for strategic and critical materials for the National Defense Stockpile, including an identification of barriers to such partnerships and recommendations for improving such partnerships.

(12) Any other matter relating to strategic and critical materials that the Secretary considers appropriate.

(c) FORM.—The ~~appendix~~ briefing required in subsection (a) shall be ~~submitted~~ provided in unclassified form, but may include a classified ~~annex~~ session.

(d) STRATEGIC AND CRITICAL MATERIALS DEFINED.—In this section, the term “strategic and critical materials” means materials, including rare earth elements, that are necessary to meet

national defense and national security requirements, including requirements relating to supply chain resiliency, and for the economic security of the United States.

SEC. 852. ~~REPORT BRIEFING ON ALUMINUM REFINING, PROCESSING, AND MANUFACTURING.~~

(a) ~~IN GENERAL.~~—~~In preparing connection with the annual biennial report required under section 2504 of title 10, United States Code, due on March 1, 2022, the Secretary of Defense shall include as an appendix to such report information provide to the congressional committees referred to in subsection (b) a briefing on—~~

(1) ~~how authorities under the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.) could be used to provide incentives to increase activities relating to refining aluminum and the development of processing and manufacturing capabilities for aluminum; and~~

(2) ~~whether a new initiative would further the development of such processing and manufacturing capabilities for aluminum.~~

(b) ~~SUBMISSION BRIEFING.~~—~~Not later than March 1, 2022, the Secretary of Defense shall submit provide to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate the appendix briefing described in subsection (a).~~

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2020
(PUBLIC LAW 116-92)**

~~SEC. 1285. REPORTS AND BRIEFINGS ON USE OF MILITARY FORCE AND SUPPORT OF PARTNER FORCES.~~

(a) ~~IN GENERAL.~~—~~Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the President shall submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a report on actions taken pursuant to the Authorization for Use of Military Force (Public Law 107-40) against those countries or organizations described in such law, as well as any actions taken to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such forces are engaged in hostilities or in situations where imminent involvement in hostilities is clearly indicated by the circumstances, during the preceding 180-day period.~~

(b) ~~MATTERS TO BE INCLUDED.~~—~~The report required by subsection (a) shall include, with respect to the time period for which the report was submitted, the following:~~

(1) ~~A list of each country or organization with respect to which force has been used pursuant to the Authorization for Use of Military Force, including the legal and factual basis for the determination that authority under such law applies with respect to each such country or organization.~~

(2) ~~An intelligence assessment of the risk to the United States posed by each such country or organization.~~

~~(3) A list of each country in which operations were conducted pursuant to such law and a description of the circumstances necessitating the use of force pursuant to such law, including whether the country is designated as an area of active hostilities.~~

~~(4) A general description of the status of operations conducted pursuant to such law as well as a description of the expected scope and duration of such operations.~~

~~(5) A list of each partner force and country with respect to which United States Armed Forces have commanded, coordinated, participated in the movement of, or accompanied the regular or irregular forces of any foreign country or government that have engaged in hostilities or there existed an imminent threat that such forces would become engaged in hostilities, including—~~

~~(A) a delineation of any such instances in which such United States Armed Forces were or were not operating under the Authorization for Use of Military Force; and (B) a determination of whether the foreign forces, irregular forces, groups, or individuals against which such hostilities occurred are covered by such law.~~

~~(6) A description of the actual and proposed contributions, including financing, equipment, training, troops, and logistical support, provided by each foreign country that participates in any international coalition with the United States to combat a country or organization described in the Authorization for Use of Military Force.~~

~~(c) FORM.—The information required under paragraphs (1) and (2) of subsection (b) shall be submitted in unclassified form.~~

~~(d) OTHER REPORTS.—If United States Armed Forces are introduced into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, against any country, organization, or person pursuant to statutory or constitutional authorities other than Authorization for Use of Military Force, the President shall comply with the reporting requirements under—~~

~~(1) this section to the same extent and in the same manner as if such actions had been taken under Authorization for Use of Military Force;~~

~~(2) the War Powers Resolution (50 U.S.C. 1541 et seq.); and~~

~~(3) any other applicable provision of law.~~

~~(e) BRIEFINGS.—At least once during each 180-day period described in subsection (a), the President shall provide to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives a briefing on the matters covered by the report required under this section for such period.~~

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SEC. 1705. AUTHORIZATION OF APPROPRIATIONS FOR TITLE III OF THE DEFENSE PRODUCTION ACT OF 1950

(a) ***

~~(b) ANNUAL BRIEFING REQUIRED.— Not later than 180 days after the date of the enactment of this Act, and annually thereafter for five years, the Secretary of Defense, or the designee of the Secretary, shall brief the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on activities undertaken in the preceding year with respect to title III of the Defense Production Act of 1950 (50 U.S.C. 4531 et seq.).~~

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2017
(PUBLIC LAW 114-328)**

**SEC. 1067. [50 U.S.C. 1528] CONGRESSIONAL NOTIFICATION OF BIOLOGICAL
SELECT AGENT AND TOXIN THEFT, LOSS, OR RELEASE INVOLVING THE
DEPARTMENT OF DEFENSE.**

~~(a) NOTIFICATION.— Not (1) Subject to paragraph (2), not later than 15 90 days after notice a covered report of any theft, loss, or release of a biological select agent or toxin involving the Department of Defense is provided to filed with the Centers for Disease Control and Prevention or the Animal and Plant Health Inspection Service, as specified by section 331.19 of part 7 of the Code of Federal Regulations, the Secretary of Defense, acting through the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs, shall provide to the congressional defense committees notice of such theft, loss, or release.~~

~~(2) The Secretary shall provide to the congressional defense committees notice of a release under paragraph (1) only if the Secretary, acting through the Assistant Secretary, determines that the release is outside the barriers of secondary containment into the ambient air or environment or is causing occupational exposure that presents a threat to public safety.~~

~~(3) In this subsection, the term “covered report” means a report filed under any of the following:~~

~~(A) Section 331.19 of title 7, Code of Federal Regulations.~~

~~(B) Section 121.19 of title 9, Code of Federal Regulations.~~

~~(C) Section 73.19 of title 42, Code of Federal Regulations.~~

~~(b) ELEMENTS.—Notice of a theft, loss, or release of a biological select agent or toxin under subsection (a) shall include each of the following:~~

~~(1) The name of the agent or toxin and any identifying information, including the strain or other relevant characterization information.~~

~~(2) An estimate of the quantity of the agent or toxin stolen, lost, or released.~~

~~(3) The location or facility from which the theft, loss, or release occurred.~~

~~(4) In the case of a release, any hazards posed by the release and the number of individuals potentially exposed to the agent or toxin.~~

~~(5) Actions taken to respond to the theft, loss, or release.~~

**CARL LEVIN AND HOWARD P. “BUCK” MCKEON NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL YEAR 2015
(PUBLIC LAW 113-291)**

SEC. 153. COMPTROLLER GENERAL REPORT ON F-35 AIRCRAFT ACQUISITION PROGRAM.

~~(a) ANNUAL REPORT.~~—Not later than April 15, 2015, and each year thereafter until the F-35 aircraft acquisition program enters into full rate production, the Comptroller General of the United States shall submit to the congressional defense committees a report reviewing such program.

~~(b) MATTERS INCLUDED.~~—Each report under subsection (a) shall include the following:

- ~~(1) The extent to which the f-35 aircraft acquisition program is meeting cost, schedule, and performance goals.~~
- ~~(2) The progress and results of developmental and operational testing.~~
- ~~(3) The progress of the procurement and manufacturing of f-35 aircraft.~~
- ~~(4) An assessment of any plans or efforts of the secretary of defense to improve the efficiency of the procurement and manufacturing of f-35 aircraft.~~