DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

APR 0 3 2006

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

Dear Mr. Speaker:

The Department of Defense requests that the Congress enact the enclosed legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2007.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

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

Sincerely,

Daniel J. Dell'Orto
Acting General Counsel

Enclosure:
As stated

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

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SEC. ___ . SECOND BASIC ALLOWANCE FOR HOUSING FOR RESERVE MEMBERS IN SUPPORT OF A CONTINGENCY.

Subsection (g) of section 403 of title 37, United States Code, is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(2) by inserting after paragraph (1) the following new paragraph (2):

"(2)(A) Under regulations prescribed by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, the Secretary concerned may authorize a housing allowance to a member described in paragraph (1) at a monthly rate equal to the rate of the basic allowance for housing established under subsection (b) or the overseas basic allowance for housing established under subsection (c), whichever applies to that location for members in the same grade at that location without dependents.

"(B) A member may concurrently receive a basic allowance for housing under paragraphs (1) and (2)(A), but may not receive the portion of the allowance authorized under section 404 of this title, if any, for lodging expenses if a basic allowance for housing is authorized under paragraph (2)(A)."; and

(3) in paragraph (3), as so redesignated, by striking "Paragraph (1)" and inserting "Paragraphs (1) and (2)".

Section-by-Section Analysis

This section would authorize a second housing allowance for Reserve component members, without dependents, who are called or ordered to active duty in support of a contingency operation (for greater than 139 days) when government-provided housing is not available. This would give the military departments the option to either pay per diem or Basic Allowance for Housing (BAH) (and a cost-of-living adjustment, as applicable) at the gaining

command. When the military department opts for the second BAH at the gaining command, the first BAH would enable the activated Reservist to maintain the primary household (*i.e.*, mortgage or lease agreement) in existence at the time of mobilization and the second BAH would enable the Reservist to establish a household at the gaining command.

The mobilization of Reserve component members often means assigning them to a duty location away from where they normally reside. The relatively temporary nature (even though it may be for up to 24 months) of the assignment anticipates that the Reservist is to be returned to their civilian residence upon completion of the mobilization. Consequently, current law and Departmental policy is such that Reservists are paid BAH based on the location of their civilian residence and temporary duty entitlements (*i.e.*, per diem) at their duty location (even though they are permanently attached to the assigned command). This "work around" was implemented to ensure these Reservists are able financially to maintain two households. The immense costs associated with paying Reservists full per diem for the duration of their mobilization creates, in the case of the Navy, an environment where these costs must be factored into reserve force employment decisions, rather than exclusively focusing on mission requirements. A force employment environment that includes such a factor is, for all intents and purposes, indistinguishable from placing an explicit limit on the military departments' flexibility to determine where best to assign reserve personnel.

The constraints within existing law which preclude paying a single Reservist a second housing allowance when activated in support of a contingency operation, coupled with the per diem "work around" described above, have resulted in a significant imbalance between the payment of permanent duty station allowances and temporary duty per diem. This could create a potential resultant disparity between the compensation of an active duty member permanently assigned to a location for a tour of duty and a mobilized Reservist assigned to the same location who receives the lodging portion of per diem at the maximum rate.

In view of the current limitation of section 403 of title 37, taking the extraordinary step of paying a mobilized Reservist per diem whenever or wherever government quarters have not been available is entirely appropriate in order avoid causing an undue financial hardship to individual Reservists. However, per diem primarily is intended to reimburse members for the cost of temporary lodging (*i.e.*, less than 139 days), and the duration of the active duty mobilization for Reservists is long enough to support a reasonable expectation that these individuals could enter into longer-term housing arrangements, such as leasing furnished apartments, at the location of the "gaining command." Thus, a more reasonable, appropriate, and cost-effective solution is needed to avoid the significant costs experienced by the military departments, while simultaneously ensuring that the government continues to protect individual Reservists from suffering an undue financial burden resulting from being activated. This initiative, coupled with the employment of existing permanent change of station entitlements (such as allowing for the shipment of a limited amount of household goods), would solve that problem and is sustainable over the long-term. Authorizing a second housing allowance would serve to: (1) ensure Reservists are compensated adequately for their housing costs at both the location of their civilian residence and their "gaining command;" and (2) ensure that doing so over the long-term is accomplished without overburdening scarce taxpayer resources.

An OUSD(P&R) report to Congress regarding a review of the "Reserve Personnel Compensation Program" suggests that a solution such as the one provided by this section could address the out-of-pocket cost issues and is an option worth exploring.

SEC. ___ . CLARIFICATION OF DOMESTIC SOURCE AND CONTENT REQUIREMENTS.

(a) IN GENERAL.—Section 2533a of title 10, United States Code, is amended—

(1) in subsection (b), by amending paragraphs (1) through (3) to read as follows:

"(1) An article or item of—

"(A) meals ready to eat listed in Federal Supply Class 8970;

"(B) clothing or apparel listed in Federal Supply Class 8405, 8410, 8415, 8420, 8425, 8450, or 8475; footwear listed in Federal Supply Class 8430 or 8435; hosiery or handwear listed in Federal Supply Class 8440 or 8445; badges or insignia listed in Federal Supply Class 8455; or personal armor listed under Federal Supply Class 8470, other than an item added to, and not normally associated with clothing; and the materials and components of such articles and items, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);

"(C) tents, tarpaulins, or covers listed in Federal Supply Class 8340 and all textile content of such articles or items;

"(D) parachutes listed in Federal Supply Group 1670; textile household furnishings listed in Federal Supply Class 7210; textile draperies, awnings, or shades listed in Federal Supply Class 7230; textile fabrics listed in Federal Supply Class 8305; yarn or thread listed in Federal Supply class 8310; flags or pennants listed in Federal Supply Class 8345; and all textile content of such articles or items; or

"(E) individual equipment listed in Federal Supply Class 8465

manufactured or produced from or containing textile components or materials and all textile content of such article or item.

"(2) Specialty metals.

"(3) Hand tools listed in Federal Supply Group 51 and measuring tools listed in Federal Supply Group 52.";

(2) in subsection (c), by striking "(b)(1) or specialty metals (including stainless steel flatware)" and inserting "(b)";

(3) by redesignating subsections (f), (g), (h), (i), (j), and (k) as subsections (g), (h), (i), (j), (k), and (l), respectively;

(4) by inserting after subsection (e) the following new subsection (f):

"(f) EXCEPTION FOR SPECIALTY METALS TO FACILITATE CIVIL-MILITARY INTEGRATION.—(1) Subsection (a) does not preclude the procurement of an item containing specialty metals produced outside the United States if the contractor, on behalf of itself or a subcontractor that produces the item (or, in the case of a component that contains specialty metals, on behalf of the producer of such component), notifies the contracting officer, and the contracting officer determines, that—

"(A) the same production processes will be used for the production of the item or component to be delivered to the Department of Defense as is used for similar items or components to be delivered to other customers;

"(B) an amount of domestically-melted specialty metals at least equivalent in quality and amount to that which would have been used to produce the item or component to be delivered to the Department of Defense will be purchased during the period described in paragraph (2); and

"(C) the specialty metals identified under subparagraph (B) are purchased during the period described in paragraph (2).

"(2) The period referenced in subparagraphs (B) and (C) of paragraph (1) is the period ending on the date of the delivery of the item to the Department of Defense and beginning on—

"(A) the date of the of the award of the contract for the item; or

"(B) another date that the Department of Defense determines to be more appropriate."; and

(5) in subsection (j) (as so redesignated), by adding at the end the following new sentences: "Subsection (a) does not preclude the procurement under a contract of any items listed in subparagraphs (B) through (E) of subsection (b)(1) that contain content covered by such subparagraphs that is not grown, reprocessed, reused, or produced in the United States provided the estimated value of all such content in the items to be delivered under the contract is not greater than (1) the simplified acquisition threshold; or (2) 10 percent of the total price of such listed items, whichever is less. Subsection (a) does not preclude the procurement under a contract of any items that contain specialty metals that are not melted in the United States provided the estimated value of all such specialty metals in the items to be delivered under the contract is not greater than (1) the simplified acquisition threshold; or (2) 10 percent of the price of such items, whichever is less.".

(b) CONFORMING AMENDMENT.—Such section is further amended by striking "(h)" in subsection (a) and inserting "(j)".

Section-by-Section Analysis

This section would clarify 10 U.S.C. 2533a.

The proposed amendment of subsection (b) would retain the fundamental domestic

preference requirements of the law, but it would enable the Department of Defense and its suppliers to better implement, comply with, and enforce the law. In addition, at subsection (b)(1)(A), it would replace coverage of food, a generally commercial commodity, with coverage of meals ready-to-eat, a non commercial food product of national security interest. Over the last 65 years, it has become increasingly difficult for the Department to provide members of the armed forces with the expected assortment of fresh food products that comply with this law. This is attributed to the effects of seasonality, weather and contamination problems, and the now commonly accepted commercial inventory management practices of suppliers in an increasingly global marketplace. Finally, at subsection (b)(2), it would remove coverage of stainless steel flatware, a commercial commodity little produced in the U.S. after Oneida Ltd. ceased its domestic manufacturing operations.

The proposed amendment of subsection (c) would extend applicability to subsection (b) generally, thereby including hand or measuring tools as listed in subsection (b)(3). Also, the proposed amendment would delete the parenthetical reference to stainless steel flatware in light of the previously described amendment to subsection (b)(2).

The proposed new subsection (f) would promote civil-military integration in the manufacturing processes of the Department's suppliers. It would allow suppliers of aircraft, missiles and space systems, ships, tank-automotive items, weapons and ammunition, or components thereof, at the prime and subcontractor levels, to use commingled foreign and domestic specialty metals supplies so long as the contractor (or for components, the producer of the component) procures an equivalent amount (in terms of quantity and quality) of domestically-melted specialty metal. It would eliminate the obligation of suppliers of these items or components to have two separate production lines, one for the commercial/civil items or components and one for military items and components. As a result, the provision would eliminate the administrative and costly burden that suppliers face in ensuring that items and components destined for the Department's procurements include only specialty metal melted in the United States, while ensuring that the domestic industry is protected by requiring the purchase of an equivalent amount (in terms of quantity and quality) of domestically produced specialty metals. Eliminating the need for separate production lines for commercial and military products may encourage additional suppliers to participate in the Department's procurements and ultimately, result in lower costs to the Department.

The proposed change to the redesignated subsection (j) would not preclude the procurement of (1) "listed" items that have a small quantity of textile content or other covered content that is not grown, reprocessed, reused, or produced in the United States; and (2) items with a small quantity of specialty metal content if such content is not melted in the United States provided, in each case , the estimated value of all such content in the contract is not greater than either the simplified acquisition threshold or 10 percent of the total price of such items, whichever is less. Suppliers have identified recurring situations where items cannot be produced for the Department without obtaining a time consuming domestic non availability determination for a small quantity of such content. For example, the situation can arise where a contractor experiences the loss of domestic production of a covered content material, such as goat hair canvas, during contract performance. In such a situation currently, the Department is compelled to issue a stop work order and suspend acceptance of further deliveries and payments until an

authorized official determines whether the situation meets the conditions stipulated by the availability exception at subsection (c). The lead-time to reach such a determination can be many months. This creates a significant delay in deliveries and hardship for the end users, the suppliers, and the suppliers' workforce. Many of these suppliers are small business concerns dedicated to serving the needs of the Department, and they and their workforce are incapable of withstanding the effects of prolonged periods without cash flow. Consequently, unemployment ensues and companies are pushed to the brink of bankruptcy. To illustrate, one case involved the production of military dress coats that were adversely impacted by the domestic non-availability of goat hair canvas valued at less than $1.00 per coat.

SEC. ___ . FUNDING SOURCES FOR CONSTRUCTION OF COMMUNITY FACILITIES.

(a) IN GENERAL.—Chapter 147 of title 10, United States Code, is amended by adding at the end the following new section:

"**§ 2496. Funding sources for construction of armed service exchange, military lodging, morale, welfare, and recreation, and community facilities**

"(a) DESIGNATION OF FUNDING SOURCE.—(1) The Secretary of Defense may designate single funding sources for the construction of the following:

"(A) Armed service exchange facilities.

"(B) Military lodging facilities.

"(C) Morale, welfare, and recreation facilities.

"(D) Community facilities.

"(2) The Secretary may issue regulations specifying the criteria under which the Secretary may grant waivers to the single funding sources.

"(3) The Secretary shall notify the congressional defense committees of changes to and waivers of funding sources.

"(b) DEFINITIONS.—In this section—

"(1) The term 'armed service exchange facilities' means structures used to conduct and support armed service exchange resale and revenue-generating activities and services.

"(2) The term 'military lodging facilities' means structures used to provide temporary lodging to authorized personnel, including temporary duty lodging, permanent change of station lodging, recreational lodging programs, and military treatment facility

lodging.

"(3) The term 'morale, welfare, and recreation facilities' means structures used to conduct and support military and civilian mission-sustaining, community support, and revenue-generating activities.

"(4) The term 'community facilities' means structures to conduct supplemental mission activities, including military museums and service academy extra-curricular activities, and private organizations or enterprises such as banking, credit union, memorials and thrift shop facilities on military installations.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2496. Funding sources for construction of armed service exchange, military lodging, morale, welfare, and recreation, and community facilities.".

Section-by-Section Analysis

This section would allow the Secretary of Defense to designate single sources of funding (either appropriated or nonappropriated) for the construction of various morale, welfare, and recreation (MWR), armed service exchange, military lodging facilities, and community facilities. This section also would allow the Secretary to waive such funding sources under conditions specified in regulations issued by the Secretary.

Current Department of Defense (DoD) policy provides that most MWR, armed forces exchange, and military lodging facilities be constructed using appropriated funds (APF). However, some of these facilities -- particularly those that generate revenue -- are constructed using nonappropriated funds (NAF). In addition, certain supplemental mission activities and private organizations are constructed with private funding.

The DoD informed the congressional defense committees of this policy with a letter and report (entitled "Reassessment of the Department of Defense Morale, Welfare and Recreation Programs") dated August 10, 1987. The letter noted that "it is recognized that from time to time Service-unique situations or exigencies that need immediate or more specific attention may require deviation or exception to the basic funding policy. These deviations or exceptions will be reviewed by the ASD(FM&P) and ASD(C) on a case-by-case basis." Section 8089 of the Department of Defense Appropriations Act, 1988 (Public Law 100-202), directed that funds be spent in accordance with the criteria set forth in this report. Subsequent correspondence from the

armed services committees has questioned the use of NAF to construct facilities when APF are authorized; has indicated that the DoD should carefully review all attempts to use NAF for projects authorized for construction using APF; and that the DoD should identify to Congress all of the projects that qualify for APF and the rationale for using NAF instead.

Because the current policy is based on a combination of correspondence, reports, committee language, and statutory language, it is not entirely clear how the Secretary of Defense should assign funding sources and, more importantly, when and how he can waive those sources of funding. This section would clarify the Secretary's authority and ensure that waivers are accomplished in a well-defined manner.

This section is vital to ensuring that the Department has clear statutory authority to establish funding sources and, when necessary, to waive those funding sources without violating statutory provisions on augmentation of Military Construction appropriations.

SEC. ___ . ADDITION OF U.S. SPECIAL OPERATIONS COMMAND TO AUTHORIZATION TO CONTRACT FOR VESSELS AND AIRCRAFT.

Section 2401 of title 10, United States Code, is amended—

(1) in subsection (a), by inserting "and the commander of the United States Special Operations Command" after "military department" both places it appears; and

(2) in subsection (b)(1), by inserting "or the commander" after "Secretary" each place it appears.

Section-by-Section Analysis

This section would give United States Special Operations Command (USSOCOM) the authority to contract for vessels and aircraft. Under current legislation the Commander, USSOCOM would be required to go to the Secretary of the Department of Defense to obtain approval to spend MFP-11 funds to renew or extend leases for 18 months or more for any vessel, aircraft, or vehicle.

Current law not only constrains the manner in which the USSOCOM Commander can spend MFP-11, but impacts the command's operational and acquisition capabilities for timely responses for special operations.

The process of identifying and evaluating assets is extremely long. The inability to enter into leases in excess of 18 months without DoD approval has a major affect on the ability of special operations to obtain, in a time constrained manner, commercial assets for evaluation and assessment. Current acquisition processes to lease or procure assets is extremely long. Assets must first be acquired, shipped, worthiness certified, crews trained, modifications to assets made, and capability assessments completed, at times may require extension of leases longer than 18 month in order to prevent a six to twelve month operational gap. This is especially true where a special use asset following this process may be limited to a period less than six months. The goal for these assets is to utilize them as long operations can be sustained, but not to necessarily have them in inventory when change outs are required for mission capability.

SEC. ___ . AMENDMENTS TO THE DEFENSE PRODUCTION ACT.

The Defense Production Act of 1950 (50 U.S.C. App. 2091 - 2094) is amended—

(1) in section 301—

(A) in subsection (a), by adding at the end of paragraph (1) the following new sentence: "This authority includes, but is not limited to, the modification or expansion of privately-owned facilities or the modification or improvement of production processes."; and

(B) in subsection (e)(1)—

(i) by amending subparagraph (A) to read as follows:

"(1)(A) Except as provided in subparagraph (D), a guarantee may be made under this section only if the industrial resource or critical technology item shortfall which such guarantee is intended to correct has been identified in writing and transmitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives. Such notification shall be accompanied by a statement from the President demonstrating that the notification is in accordance with the provisions of subsection (a)(3) of this section.";

(ii) in subparagraph (B), by striking "60 days" and inserting "30 days"; and

(iii) in subparagraph (C), by striking "$50,000,000" and inserting "$200,000,000";

(2) in section 302—

(A) by adding at the end of subsection (a) the following new sentence: "This authority includes, but is not limited to, the modification or expansion of

privately-owned facilities or the modification or improvement of production processes."; and

(B) in subsection (c)—

(i) by amending paragraph (1) to read as follows:

"(1) Except as provided in paragraph (4), no loans may be made under this section, unless the industrial resource shortfall which such loan is intended to correct has been identified in writing and transmitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives. Such notification shall be accompanied by a statement from the President demonstrating that the notification is in accordance with the provisions of subsection (b)(2) of this section.".

(ii) in paragraph (2), by striking "60 days" and inserting "30 days"; and

(iii) in paragraph (3), by striking "$50,000,000" and inserting "$200,000,000";

(3) in section 303—

(A) in subsection (a)(6)—

(i) by amending subparagraph (A) to read as follows:

"(A) IN GENERAL.—Except as provided in paragraph (7), the President shall take no action under this section unless the industrial resource shortfall which such action is intended to correct has been identified in writing and transmitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

Such notification shall be accompanied by a statement from the President demonstrating that the notification is in accordance with the provisions of paragraph (5).";

(ii) in subparagraph (B), by striking "60 days" and inserting "30 days"; and

(iii) in subparagraph (C), by striking "$50,000,000" and inserting "$200,000,000"; and

(B) in subsection (e), by adding at the end the following new sentence: "The President may also provide for the modification or expansion of facilities in which such equipment will be installed, including the modification or improvement of production processes."; and

(4) in section 304(b), by amending paragraph (2) to read as follows:

"(2) all moneys received by the Federal Government on transactions entered into pursuant to section 303.".

Section-by-Section Analysis

This section would amend the Defense Production Act (DPA) to ensure that the authorities of the Act can be applied in an efficient and timely manner to address domestic industrial base issues for technologies and materials essential for national security needs. The proposed language amends the process for notifying Congress of proposed Title III actions, reduces the waiting period after such notification to 30 days from 60 days, increases the authorization for projects from $50 million to $200 million, clarifies that funds received by the Government pursuant to Title III actions under section 303 are returned to the DPA Fund, and specifically provides for the modification or expansion of privately-owned facilities.

In section 301, a sentence is added at the end of subsection (a)(1) to clarify that this authority includes, but is not limited to, the modification and expansion of privately-owned facilities including the modification or improvement of production processes.

Section 301(e) requires: (1) the President to identify proposed Title III action either in the Budget or a Budget amendment submitted to Congress; (2) that no assistance under this section

may be provided until 60 days have elapsed after notification has been made; and (3) that specific authorization, in law, be obtained for any assistance that would create an outstanding Government obligation exceeding $50,000,000.

This process is inefficient, cumbersome, and time-consuming, and is a barrier to the timely application of Title III authorities to address industrial base issues that affect national defense. The proposed legislation shortens the notification period to 30 days, and will allow notification to be made, in writing, to the House and Senate Banking Committees rather than through the Budget of the United States, or amendments thereto. The proposed language also increases the statutory limitation, on actions under Title III, from $50,000,000 to $200,000,000 before specific authorization in law is required. The process for obtaining specific authorization in law for projects exceeding $50,000,000 undermines the purpose of Title III authorities by delaying the timely application of these authorities to remedy urgent industrial base needs. Adequate opportunity for Congressional review and approval of proposed Title III projects is maintained via the appropriation process as well as the requirement that Congress be formally notified of each prospective Title III action and allowed time for review and action.

In section 302, a sentence is added at the end of subsection (a) to clarify that this authority includes, but is not limited to, the modification or expansion of privately-owned facilities including the modification or improvement of production processes.

Section 302(c) requires: (1) the President to identify proposed Title III action either in the Budget or a Budget amendment submitted to Congress; (2) that no assistance under this section may be provided until 60 days have elapsed after notification has been made; and (3) that specific authorization, in law, be obtained for any assistance that would create an outstanding Government obligation exceeding $50,000,000.

This process is inefficient, cumbersome, and time-consuming, and is a barrier to the timely application of Title III authorities to address industrial base issues that affect national defense. The proposed legislation shortens the notification period to 30 days, and will allow notification to be made, in writing, to the House and Senate Banking Committees rather than through the Budget of the United States, or amendments thereto. The proposed language also increases the statutory limitation on actions under Title III from $50,000,000 to $200,000,000 before specific authorization in law is required. The process for obtaining specific authorization in law for projects exceeding $50,000,000 undermines the purpose of Title III authorities by delaying the timely application of these authorities to remedy urgent industrial base needs. Adequate opportunity for Congressional review and approval of proposed Title III projects is maintained via the appropriation process as well as the requirement that Congress be formally notified of each prospective Title III action and allowed time for review and action.

Section 303(a)(6) requires: (1) the President to identify proposed Title III action in the Budget or Budget amendment submitted to Congress; (2) that such notification to Congress be made at least 60 days in advance of such assistance; and (3) obtain authorization, in law, for any assistance that would create an outstanding Government obligation exceeding $50,000,000.

This process is inefficient, cumbersome, and time-consuming, and is a barrier to the

timely application of Title III authorities to address industrial base issues that affect national defense. The proposed legislation shortens the notification period to 30 days, and will allow notification to be made, in writing, to the House and Senate Banking Committees rather than through the Budget of the United States, or amendments thereto. The proposed language also increases the statutory limitation on actions under Title III from $50,000,000 to $200,000,000 before specific authorization in law is required. The process for obtaining specific authorization in law for projects exceeding $50,000,000 undermines the purpose of Title III authorities by delaying the timely application of these authorities to remedy urgent industrial base needs. Adequate opportunity for Congressional review and approval of proposed Title III projects is maintained via the appropriation process as well as the requirement that Congress be formally notified of each prospective Title III action and allowed time for review and action.

Section 303(e) authorizes the President to install equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities to aid the national defense. A sentence is added at the end of this subsection to clarify that this authority includes, but is not limited to, the modification or expansion of privately-owned facilities including the modification or improvement of production processes.

Section 304(b) is amended to clarify that all moneys received by the Government in connection with Title III actions pursuant to Section 303 shall be credited to the DPA Fund. The current section 304(b)(2) language refers to "moneys received by the Fund". Since moneys are actually received by the Federal Government, not by the Fund, it is unclear whether such funds can be credited back to the Fund. This technical amendment replaces the word "Fund" with the words "Federal Government." This revolving fund allows the Title III Program to recoup any moneys received from the liquidation of financial commitments entered into through section 303 (e.g. the sale of material purchased by the Program).

SEC. ___ . IMPROVING THE MILITARY MUNITIONS RECYCLING PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Chapter 443 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 4690. Sale of recyclable munitions materials

"(a) AUTHORITY FOR PROGRAM.—(1) The Secretary of the Army may establish a program to sell recyclable munitions materials resulting from the demilitarization of conventional military munitions and use the proceeds from these sales for reclamation, recycling, and reuse of conventional military munitions.

"(2) The authority granted in paragraph (1) may only be exercised in the United States and its territories and possessions.

"(b) METHOD OF SALE.—The Secretary may use competitive procedures to sell recyclable munitions materials under this section. The Secretary may use procedures other than competitive procedures in any case in which the Secretary determines there is only one potential buyer of the items being offered for sale. The provisions of title 40 concerning disposal of property are not applicable to sales under this section.

"(c) PROCEEDS.—(1) Proceeds from the sale of recyclable munitions materials under this section shall be credited to the Procurement of Ammunition, Army Ammunition Demilitarization Account to pay costs and shall be use solely for reclamation, recycling, and reuse of conventional military munitions (including research and development and equipment purchased for such purposes).

"(2) Funds credited under this subsection shall be available for obligation during the fiscal year in which the funds are received and for three years thereafter.

"(3) Any funds not used during the period available for obligation shall be deposited into

the Treasury as miscellaneous receipts.

"(d) REGULATIONS.—The Secretary shall prescribe regulations for the operation of the program established by this section. These regulations shall be consistent with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and its implementing regulations.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"4690. Sale of recyclable munitions materials.".

Section-by-Section Analysis

This section would authorize the Secretary of the Army to establish a separate program to sell recyclable munitions materials resulting from the demilitarization of conventional military munitions in the United States, its territories and possessions. This program is exempt from U.S.C. Title 40 provisions relating to the disposal of property by Executive Agencies. The recyclable munitions material include materials such as brass, scrap metal, propellants, and explosives. The proceeds from the sales would be credited to the funds available to the Army for reclamation, recycling, and reuse of conventional military munitions. This entire process would be consistent with the Solid Waste Disposal Act (commonly referred to as the Resource Conversation and Recovery Act) (42 U.S.C. 6901 et seq.) and its implementing regulations.

Reliance on open burning and open detonation (OB/OD) has been dramatically reduced and will be eliminated by Fiscal Year 2011, except for emergency OB/OD. Consequently, other demilitarization technologies are being used and developed to reduce the effect on human health and the environment. These technologies are very expensive to establish and demilitarization stocks are increasing. As the older weapons become obsolete, unserviceable or excess ammunition items migrate to the demilitarization stockpile. Other factors, such as base closures, are also causing the expansion of the demilitarization stockpile.

This section would assist the Army in addressing the increasing costs associated with the demilitarization program. It is estimated that conventional ammunition demilitarization projects would generate approximately $2,500,000 per year and missile demilitarization would generate approximately $500,000 per year from the sale of recyclable munitions materials. These proceeds would be used to develop and use environmentally preferable demilitarization technologies to support the Army's effort to eliminate OB/OD, except for emergency OB/OD operations, by Fiscal Year 2011.

SEC. ___ . BASELINE DESCRIPTION AND UNIT COST REPORTS.

(a) DEFINITION OF ORIGINAL BASELINE ESTIMATE.—Section 2435(d)(1) of title 10, United States Code, is amended by striking "with respect to the program under subsection (a)" and all that follows to the end and inserting "in preparation for entry into system development and demonstration, or at program initiation, whichever occurs later. No adjustment or revision to the original Baseline Estimate is permitted except as provided in paragraph (2).".

(b) PERIODIC REPORTING.—Section 2433(e)(1) of such title is amended by adding at the end the following new subparagraph:

"(C) If the Secretary concerned determines that the program acquisition unit cost or procurement unit cost of a major defense acquisition program has increased by a percentage equal to or greater than the significant cost growth threshold for the program, and a Selected Acquisition Report has been submitted to the Congress under subparagraph (A) or (B), each subsequent quarterly or comprehensive annual Selected Acquisition Report shall include the information required by subsection (g). No further reports of increases in the program acquisition unit cost or procurement unit cost shall be required under subsection (c) or subsection (d) unless the program manager has reasonable cause to believe that the program acquisition unit cost or procurement unit cost has increased by a percentage equal to or greater than the critical cost growth threshold.".

Section-by-Section Analysis

To clarify the Department of Defense's obligation to provide unit cost reports to Congress, this section would amend sections 2433 and 2435 of title 10, United States Code to modify the definition of the term "original Baseline Estimate" and provide for periodic reporting of program acquisition unit costs and procurement unit costs above the significant cost growth threshold identified in section 2433.

As amended in section 802 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), section 2435 of title 10 defines the "original Baseline Estimate" to mean the baseline description established with respect to the program under section 2435(a) of title 10, without adjustment or revision, unless increases in unit cost breach the critical cost growth threshold. This section would explicitly define the "original Baseline Estimate" as the baseline established before the program enters system development and demonstration, or prior to program initiation, whichever occurs later. This section also would preserve the Department's right to establish a new "original Baseline Estimate" if unit costs exceed the critical cost growth threshold and the Under Secretary of Defense (Acquisition, Technology and Logistics) certifies the program in accordance with section 2433 of title 10. The proposed amendments are consistent with section 2433, which does not require unit cost reporting for programs prior to system development and demonstration (see sections 2433(b) and 2432(b)(3) of title 10). In addition, the proposed amendments are consistent with the Department's policy that an acquisition effort becomes a "program" at the system development and demonstration decision, with the exception of some ship programs, which may be initiated prior to system development and demonstration. Such ship programs are excluded from unit cost reporting prior to system development and demonstration, as discussed above. As a practical matter, the Department is not prepared to establish a baseline estimate that satisfies the requirements of section 2435 until a program approaches entry into system development and demonstration, because the cost estimate and other measures of performance are not sufficiently mature to provide a reliable and complete indication of the state of a major defense acquisition program.

This section also would clarify the Department's reporting obligations after the program acquisition unit cost or procurement unit cost has breached the significant cost growth threshold. In order to provide for regular and continuing oversight of programs under these circumstances, this section would require that each Selected Acquisition Report following the breach include updated information concerning unit costs, but would not compel the program manager to submit an out-of-cycle report of each additional increase in unit costs. This arrangement should ensure transparency, without creating an undue burden that could prevent the program manager from devoting sufficient attention to the program.

SEC. ___ . APPLICABILITY OF STATUTORY EXECUTIVE COMPENSATION CAP MADE PROSPECTIVE.

(a) PROSPECTIVE APPLICABILITY OF EXECUTIVE COMPENSATION CAP.—Section 808(e)(2) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat. 1838; 41 U.S.C. 435 note) is amended by striking "before, on," and inserting "on".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as if included in the National Defense Authorization Act for Fiscal Year 1998 as enacted.

Section-by-Section Analysis

This amendment is essential to prevent the Government from being found liable for breach of contract in several pending court cases, and from unnecessarily expending resources to defend such cases. Section 808(e)(2) of the National Defense Authorization Act for Fiscal Year 1998 made unallowable the compensation of certain executives in excess of a "benchmark" to be set by regulations, and made the statutory cap expressly applicable to contracts entered into before, on, or after the date of enactment. In *General Dynamics Corp. v. United States*, 47 Fed.Cl. 514 (Fed. Cl. 2000), the court held that application of the statutory cap to a contract awarded prior to the enactment date of the National Defense Authorization Act for Fiscal Year 1998 constituted a breach of contract, and that the Government was liable for breach damages due to the retroactive application of the cap. This section would make the statutory cap prospective from the date of its original enactment in 1997, and thus avoid the breach of contract claims due to the retroactive application of the statutory cap as addressed in General Dynamics and in several similar pending court cases. Executive compensation would still be subject to a test of reasonableness.

SEC. ___ . REPEAL OF OMB-CBO OUTLAY REPORT.

(a) IN GENERAL.—Section 226 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 9 of such title is amended by striking the item relating to section 226.

Section-by-Section Analysis

This section would repeal a report that no longer is necessary because it largely duplicates information already provided in the President's Budget.

Section 226 of title 10, United States Code, requires the Director of the Office of Management and Budget (OMB) and the Director of the Congressional Budget Office (CBO) to provide Congress with a joint report -- no later than December 15 of each year -- containing an agreed-upon resolution of all differences between the technical assumptions used by OMB and CBO in preparing the estimates with respect to all accounts in function 050 (national defense) for the budget to be submitted to Congress in the following year. If the two Directors are unable to agree upon any technical assumption, the report reflects the use of averages of the relevant account rates used by the two offices.

Not only is this report unnecessary, but OMB and CBO already work together to reconcile outlay estimates and regularly alert Congress to where outlay estimates differ.

SEC. ___ . SUPPORT FOR LOCAL POPULATIONS DURING OPERATIONS BY U.S. FORCES.

(a) AUTHORITY.—From funds available to the Department of Defense for operation and maintenance, the Secretary of Defense, with the concurrence of the Secretary of State, may provide funds to the commander of a combatant command for the purpose of enabling United States military commanders engaged in a contingency operation in a foreign country to respond to urgent humanitarian relief or reconstruction requirements that will benefit the local populace.

(b) SCOPE OF ASSISTANCE.—Assistance under the authority of this section may include the construction, reconstruction, or repair of municipal, educational, cultural, or other local facilities, reconstitution or improvement of utilities or other local infrastructure, or the provision of any other goods, services, or funding needed to improve the living conditions of the people in the area. Such assistance may be provided notwithstanding the requirements of chapters 137, 140, 141, or 163 of title 10, United States Code, or any other provision of law that would prohibit, restrict, or limit the provision of such assistance.

(c) LIMITATION.—No humanitarian or reconstruction response undertaken pursuant to the authority of this section may exceed $500,000 without the approval of the Secretary of Defense.

Section-by-Section Analysis

This section would allow the Secretary of Defense, with the concurrence of the Secretary of State, to authorize U.S. military commanders to use Department of Defense funds for urgent humanitarian relief and reconstruction assistance to local populations where U.S. forces are participating in a contingency operation. Resources under this section would be available for all military and security operations, including humanitarian, civic assistance, disaster relief, and peace operations.

The Secretary of Defense will develop guidance, with the concurrence of the Secretary of State, for the execution of programs under this authority. It is anticipated that this guidance will ensure flexibility and responsiveness and coordination with Department of State country teams.

This section would capitalize on the success of the Commander's Emergency Response

Program (CERP), which has proven to be a high-impact, relatively low-cost program, indispensable to security and stabilization efforts in Iraq and Afghanistan. Providing this capability to military commanders enables them to respond immediately to small-scale but urgent humanitarian relief and reconstruction requirements. The program has built trust and support at the grassroots level and provides results that people can see.

Terrorist networks exist across the world, including in many countries with which the United States is not at war. A key U.S. goal is to fight the Global War on Terror (GWOT) in partnership with those countries seeking to close safe havens, disrupt or destroy terrorist or criminal networks, or contribute to international stability through participation in international or regional peacekeeping missions. The United States cannot win the GWOT by itself or by military might alone. Developing receptive attitudes among the local populations of nations in which U.S. forces may be engaged in a contingency operation, and assisting partner nations willing to support our GWOT efforts, will yield long-term benefits in the interests of U.S. national security.

Subsection (b) of the proposal describes the scope of assistance authorized under the program, and waives the application of various procurement- and claims-related statutes, and other provisions of law, that could be construed as prohibiting, restricting or otherwise limiting the provision of assistance under this section.

Subsection (c) limits the amount of assistance that can be provided in connection with any single response effort without Secretary of Defense approval.

SEC. ___ . INTEROPERABILITY DEVELOPMENT AND TRAINING.

(a) PROGRAM PURPOSE AND AUTHORITY.—In furtherance of the national security objectives of the United States and to improve the interoperability between United States and military forces of friendly foreign countries, the Secretary of Defense may:

(1) provide electronic distributed learning content for the education and training of military and civilian government personnel of foreign countries and personnel of internationally recognized nongovernmental organizations as necessary to develop or enhance allied and friendly military capabilities for multinational operation, including joint exercises and coalition operations; and

(2) provide information technology and develop and provide software in support of such education and training.

(b) EDUCATION AND TRAINING.—In furtherance of subsection (a), the following types of education and training are authorized:

(1) Internet-based education and training.

(2) Advanced distributed learning and similar internet learning tools, as well as distributed training and computer-assisted exercises.

(c) INFORMATION TECHNOLOGY.—Expenditures on information technology are limited to the development and provision of software and learning content necessary to support the education and training authorized by this section.

(d) SECRETARY OF STATE CONCURRENCE.—Activities authorized by this section involving military or civilian government personnel of foreign countries or nongovernmental organizations that are not authorized under another provision of law may not be conducted without the concurrence of the Secretary of State.

(e) RELATIONSHIP TO OTHER AUTHORITY.—The authority granted by this section is in addition to any other authority available to the Secretary of Defense to provide assistance to foreign nations or forces.

Section-by-Section Analysis

This section would authorize expenditures of Department of Defense operations and maintenance funds by the Secretary of Defense as necessary to provide training to foreign military and civilian government personnel, as well as certain nongovernmental organization personnel, in order to enhance interoperability during multinational operations. This training will involve Internet-based and advanced distributed learning-based education, and similar training initiatives, which will allow these foreign personnel to readily educate themselves through computer-based and other training to provide the understanding and consistency needed in joint and combined operations. This section does not require additional Total Obligation Authority for the Department of Defense. The ability of the Secretary of Defense to allocate funds to rapidly respond to the training needs of allied and coalition partners will enhance the national security interests of the United States. This new authority is consistent with and supports the Department of Defense Training Transformation initiatives. It will enhance the ability of Combatant Commanders to develop the skills of allied and coalition partners to ensure interoperability for multinational operations.

Current law does not specifically address the ability of the Secretary of Defense to authorize Combatant Commanders and other Defense Agencies to expend operations and maintenance funds to support direct training of foreign forces to enhance the ability of those forces to participate in multinational operations. The Defense Department has demonstrated the value of being able to provide the training described herein through the Partnership for Peace (PfP) Program. The proposed legislative change would enable operations and maintenance funds to be applied for PfP type initiatives to a broader coalition of multinational countries.

In order for the Department of Defense to provide the training described herein to forces of countries it is not otherwise authorized to provide with such training, the State Department will provide concurrence at the appropriate level to ensure the training and education activities are consistent with other security assistance programs and restrictions.

Increasingly, Combatant Commanders, who are responsible for security cooperation initiatives, receive requests from coalition and allied partners for training which allows them to understand the planning processes, organization and command and control systems used by U.S. warfighters. Providing this type of training allows our foreign partners to develop capabilities in a manner that will ensure interoperability with U.S. forces on the battlefield. Complete interoperability is essential to the execution of a battle plan in a manner that will eliminate friendly losses due to differences in operating procedures and communication techniques, which differences create additional confusion on the battlefield. There are traditional, in-residence programs in place that allow for formal training and education in this area (i.e., IMET); however, those programs are not always responsive to the immediate, shorter notice, wider dissemination

needs of the Combatant Commander in executing his security cooperation responsibilities or to the warfighter preparing for a contingency operation.

SEC. ___ . PARTICIPATION IN MULTINATIONAL MILITARY ORGANIZATIONS.

(a) IN GENERAL.—Subchapter II of chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2350m. Participation in multinational military centers of excellence

"(a) The Secretary of Defense, with the concurrence of the Secretary of State, may enter into memoranda of understanding or other agreements with one or more member nations of the North Atlantic Treaty Organization (NATO), major non-NATO allies, or other friendly foreign countries to participate in multinational military organizations which are centers of excellence established for the purpose of developing doctrine and education, improving capabilities, and providing training to enhance the ability of civilian employees and the armed forces of the participating nations to engage in joint exercises or in coalition or international military operations, and for improving interoperability between United States armed forces and the armed forces of friendly foreign nations.

"(b) Funds appropriated or otherwise made available to the Department of Defense for operation and maintenance shall be available to pay the United States share of expenses of organizations in which the United States participates under subsection (a) and to fund the salaries and other expenses of Department of Defense personnel assigned to such organizations, or to the United States military elements of such organizations.

"(c) The Secretary of Defense may authorize the provision of logistic support, supplies and services to any organization described in subsection (a) under terms and conditions applicable to cross-servicing agreements under section 2342 of this title and may authorize the use of Department of Defense facilities and equipment, with or without reimbursement, to support organizations described in subsection (a) that are hosted by the Department of Defense.".

(b) CLERICAL AMENDMENT.-The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"2350m. Participation in multinational military centers of excellence.".

Section-by-Section Analysis

This section would authorize the Secretary of Defense to enter into agreements with NATO alliance members, major non-NATO allies and other friendly foreign countries to participate in organizations which are centers of excellence established for the purpose of enhancing interoperability, for the development of military doctrine and/or the development and testing of new concepts. This section also would authorize the expenditure of funds appropriated or otherwise made available for the support of international military organizations and to pay the salaries and expenses of personnel assigned to such organizations. Additionally, this section would authorize the Secretary of Defense to provide facilities and equipment for the use of such organizations with or without reimbursement.

Examples of these organizations are the Centers of Excellence (COE) and training schools that have been independently formed by NATO alliance partners to support NATO. Following the lead of the U.S. efforts to affect Training Transformation within its forces, during the 2002 Prague Summit, NATO announced the creation of Allied Command Transformation whose mission is to lead NATO through transformation to face the operational challenges of coalition warfare against new and emerging threats. In support of this effort, Alliance partners, independent but in support of NATO, have created, through bilateral and multilateral agreements, COE and established schools the purposes of which are to support NATO transformation through doctrinal development, education, training and validation of new concepts through experimentation. This section would clarify the authority of the Secretary of Defense to support those organizations and others that may be established to support common security interests.

The United States benefits from this participation through its ability to influence the commonality of doctrine, education, training and development of new capabilities. The U.S. also gains the synergies associated with working cooperatively with allied/coalition partners in a synchronized effort across international programs and with multinational forces creating a transformed fighting team. This process improves interoperability between U.S. and foreign militaries and enhances security cooperation efforts to prosecute the Global War on Terror. This section would allow U.S. Forces to leverage the specific expertise or experience of some partners while simultaneously assisting all partners to reach shared understandings of doctrine. Building the capabilities of allied/coalition partners increases unity of effort and enhances the U.S. ability to execute multinational operations. Increased interoperability and enhanced capability of allied/coalition partners will result in a reduced strain on U.S. Forces as we operate in a coalition environment addressing common security interests. Strengthening our relationships through participation in organization supportive transformational concepts also strengthens the current transformational efforts of the Department of Defense.