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[130j, 130kRenumbered.]

Editorial Notes

AMENDMENTS

2024—Pub. L. 118–159, div. A, title XVI, §1649(b)(1), Dec. 23, 2024, 138 Stat. 2199, struck out item 130h ''Prohibitions relating to missile defense information and systems''. Amendment was made pursuant to operation of section 102 of this title.

2023—Pub. L. 118–31, div. A, title XII, §§1201(b), 1221(b), Dec. 22, 2023, 137 Stat. 441, 453, added items 127d and 127f and struck out former item 127f ''Expenditure of funds for clandestine activities that support operational preparation of the environment''.

2022—Pub. L. 117–263, div. A, title X, §1042(b), Dec. 23, 2022, 136 Stat. 2770, added item 130a.

2021—Pub. L. 116–283, div. A, title IX, §911(a)(2), title X, §1052(b), Jan. 1, 2021, 134 Stat. 3801, 3850, added items 125a and 127f.

2018—Pub. L. 115–232, div. A, title X, §1081(a)(2), title XVI, §1631(c)(1), Aug. 13, 2018, 132 Stat. 1983, 2123, struck out item 130g ''Authorities concerning military cyber operations'' and made technical correction to and struck out items 130j ''Notification requirements for sensitive military cyber operations'' and 130k ''Notification requirements for cyber weapons''.

2017—Pub. L. 115–91, div. A, title XVI, §1631(b), Dec. 12, 2017, 131 Stat. 1738, added items 130j and 130k.

2016—Pub. L. 114–328, div. A, title X, §1036(f)(2), title XI, §1101(b)(2), title XII, §§1203(a)(2), 1245(b), title XVI, §§1662(a)(3), 1682(a)(2), 1697(b), Dec. 23, 2016, 130 Stat. 2392, 2444, 2476, 2520, 2614, 2624, 2640, added items 127e, 128, 130f, 130h, and 130i, substituted ''Civilian personnel management'' for ''Prohibition of certain civilian personnel management constraints'' in item 129, and struck out former items 127d ''Allied forces participating in combined operations: authority to provide logistic support, supplies, and services'', 128 ''Physical protection of special nuclear material: limitation on dissemination of unclassified information'', 130f ''Congressional notification of sensitive military operations'', and 130h ''Prohibitions on providing certain missile defense information to Russian Federation''.

2015—Pub. L. 114–92, div. A, title X, §1042(d)(2), title XVI, §§1642(b), 1671(a)(2), Nov. 25, 2015, 129 Stat. 977, 1116, 1130, added items 130g and 130h and substituted ''Department of Defense rewards program'' for ''Assistance in combating terrorism: rewards'' in item 127b.

2014—Pub. L. 113–291, div. A, title X, §1071(f)(2), Dec. 19, 2014, 128 Stat. 3510, substituted ''Treatment under Freedom of Information Act of certain critical infrastructure security information'' for ''Treatment under Freedom of Information Act of critical infrastructure security information'' in item 130e and ''Congressional notification of sensitive military operations'' for ''Congressional notification regarding sensitive military operations'' in item 130f.

2013—Pub. L. 113–66, div. A, title X, §§1041(a)(2), 1091(a)(2), Dec. 26, 2013, 127 Stat. 857, 875, added item 130f and substituted ''Treatment under Freedom of Information Act of critical infrastructure security information'' for ''Treatment under Freedom of Information Act of certain critical infrastructure security information'' in item 130e.

2011—Pub. L. 112–81, div. A, title VIII, §802(a)(2), title IX, §931(b), title X, §1091(b), Dec. 31, 2011, 125 Stat. 1485, 1543, 1605, added items 129d and 130e and substituted ''General policy for total force management'' for ''General personnel policy'' in item 129a.

Pub. L. 111–383, div. A, title X, §1061(a)(2), Jan. 7, 2011, 124 Stat. 4362, added item 122a.

2008—Pub. L. 110–417, [div. A], title IV, §416(c)(2), Oct. 14, 2008, 122 Stat. 4430, substituted ''Suspension of end-strength and other strength limitations in time of war or national emergency'' for ''Suspension of end-strength limitations in time of war or national emergency'' in item 123a.

Pub. L. 110–181, div. A, title X, §1063(a)(1)(B), Jan. 28, 2008, 122 Stat. 321, which directed amendment of chapter 3 of title 10 ''by revising the table of sections at the beginning of such chapter to reflect the redesignation and transfer made by paragraph (1)'', was executed to reflect the probable intent of Congress by amending the analysis to this chapter to reflect the redesignation and transfer made by section 1063(a)(1)(A) of Pub. L. 110–181, which redesignated the section 127c relating to allied forces participating in combined operations as 127d, and transferred it so as to appear immediately after section 127c relating to purchase of weapons overseas.

Pub. L. 110–181, div. A, title IX, §901(a)(2), Jan. 28, 2008, 122 Stat. 272, struck out item 130a ''Major Depart-

ment of Defense headquarters activities personnel: limitation''.

2006—Pub. L. 109–364, div. A, title XII, §1201(b), title XIV, §1405(b), Oct. 17, 2006, 120 Stat. 2412, 2436, added items 127c, relating to allied forces participating in combined operations, and 130d.

Pub. L. 109–163, div. A, title XII, §1231(b), Jan. 6, 2006, 119 Stat. 3468, added item 127c relating to purchase of weapons overseas.

2003—Pub. L. 108–136, div. A, title VIII, §841(b)(2), Nov. 24, 2003, 117 Stat. 1552, substituted ''Authority to procure personal services'' for ''Experts and consultants: authority to procure services of'' in item 129b.

2002—Pub. L. 107–314, div. A, title X, §1065(b), Dec. 2, 2002, 116 Stat. 2656, added item 127b.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1073(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–280, added item 130c.

1999—Pub. L. 106–65, div. A, title IX, §921(a)(2), title X, §1044(b), Oct. 5, 1999, 113 Stat. 723, 762, substituted ''Major Department of Defense headquarters activities personnel: limitation'' for ''Management headquarters and headquarters support activities personnel: limitation'' in item 130a and added item 130b.

1997—Pub. L. 105–85, div. A, title IX, §911(a)(2), Nov. 18, 1997, 111 Stat. 1858, added item 130a.

1996—Pub. L. 104–106, div. A, title XV, §1504(a)(8), Feb. 10, 1996, 110 Stat. 513, made technical correction to directory language of Pub. L. 103–337, §1312(a)(2). See 1994 Amendment note below.

Pub. L. 104–106, div. A, title V, §564(a)(2), title X, §1003(a)(2), Feb. 10, 1996, 110 Stat. 326, 417, substituted ''Operations for which funds are not provided in advance: funding mechanisms'' for ''Expenses for contingency operations'' in item 127a and added item 129c.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(2), Oct. 5, 1994, 108 Stat. 3013, added item 123 and struck out former item 123 ''Suspension of certain provisions of law relating to reserve commissioned officers''.

Pub. L. 103–337, div. A, title XIII, §1312(a)(2), Oct. 5, 1994, 108 Stat. 2894, as amended by Pub. L. 104–106, div. A, title XV, §1504(a)(8), Feb. 10, 1996, 110 Stat. 513, added item 123b.

1993—Pub. L. 103–160, div. A, title XI, §1108(a)(2), Nov. 30, 1993, 107 Stat. 1752, added item 127a.

1990—Pub. L. 101–510, div. A, title XIV, §§1481(b)(2), 1483(c)(2), Nov. 5, 1990, 104 Stat. 1705, 1715, added items 123a, 129a, and 129b.

1989—Pub. L. 101–189, div. A, title XII, §1202(a)(2), Nov. 29, 1989, 103 Stat. 1563, added item 124.

1987—Pub. L. 100–180, div. A, title XI, §1123(b), Dec. 4, 1987, 101 Stat. 1150, added item 128.

Pub. L. 100–26, §9(b)(1), Apr. 21, 1987, 101 Stat. 287, struck out item 128 ''Funds transfers for foreign cryptologic support''.

1986—Pub. L. 99–433, title I, §110(c)(2), (e)(1), title II, §211(c)(2), Oct. 1, 1986, 100 Stat. 1002, 1003, 1017, inserted ''and Functions'' after ''General Powers'' in chapter heading, struck out item 124 ''Combatant commands: establishment; composition; functions; administration and support'', and added items 127 to 130.

1962—Pub. L. 87–651, title II, §201(b), Sept. 7, 1962, 76 Stat. 517, added items 124 to 126.

1958—Pub. L. 85–861, §1(2)(B), Sept. 2, 1958, 72 Stat. 1437, added items 122 and 123.

§ 121. Regulations

The President may prescribe regulations to carry out his functions, powers, and duties under this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 6.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
121	[No source].	[No source].

The revised section is inserted to make express the President's general authority to issue regulations, which has been expressly reflected in many laws and left to inference in the remainder.

§ 122. Official registers

The Secretary of a military department may have published, annually or at such other times as he may designate, official registers containing the names of, and other pertinent information about, such regular and reserve officers of the armed forces under his jurisdiction as he considers appropriate. The register may also contain any other list that the Secretary considers appropriate.

(Added Pub. L. 85–861, §1(2)(A), Sept. 2, 1958, 72 Stat. 1437.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
122	10 App.:20b. 34 App.:609.	July 24, 1956, ch. 677, §1, 70 Stat. 623.

§ 122a. Public availability of Department of Defense reports required by law

(a) IN GENERAL.—To the maximum extent practicable, on or after the date on which each report described in subsection (b) is submitted to Congress, the Secretary of Defense, acting through the Assistant to the Secretary of Defense for Public Affairs, shall ensure that the report is made available to the public by—

(1) posting the report on a publicly accessible Internet website of the Department of Defense; and

(2) upon request, transmitting the report by other means, as long as such transmission is at no cost to the Department.

(b) COVERED REPORTS.—(1) Except as provided in paragraph (2), a report described in this subsection is any report that is required by law to be submitted to Congress by the Secretary of Defense, or by any element of the Department of Defense.

(2) A report otherwise described in paragraph (1) is not a report described in this subsection if the report contains—

(A) classified information;

(B) proprietary information;

(C) information that is exempt from disclosure under section 552 of title 5 (commonly referred to as the ''Freedom of Information Act''); or

(D) any other type of information that the Secretary of Defense determines should not be made available to the public in the interest of national security.

(c) SEMI-ANNUAL SUMMARIES.—Not later than January 1 and July 1 of each year, the Secretary of Defense shall make publicly available on an appropriate internet website a summary of all reports submitted to Congress by the Department of Defense for the preceding six-month period that are required to be submitted by statute. Each such summary shall include, for each report covered by the summary, the title of report, the date of delivery, and the section of law under which such report is required.

(Added Pub. L. 111–383, div. A, title X, §1061(a)(1), Jan. 7, 2011, 124 Stat. 4362; amended

Pub. L. 112–81, div. A, title X, §1068, Dec. 31, 2011, 125 Stat. 1589; Pub. L. 113–66, div. A, title X, §1081(a), Dec. 26, 2013, 127 Stat. 871; Pub. L. 115–91, div. A, title X, §1081(a)(3), Dec. 12, 2017, 131 Stat. 1594; Pub. L. 117–81, div. A, title X, §1062(a), Dec. 27, 2021, 135 Stat. 1909.)

Editorial Notes

AMENDMENTS

2021—Subsec. (c). Pub. L. 117–81 added subsec. (c).

2017—Subsec. (a). Pub. L. 115–91 substituted ''acting through the Assistant to the Secretary of Defense for Public Affairs'' for ''acting through the Office of the Assistant Secretary of Defense for Public Affairs'' in introductory provisions.

2013—Subsec. (a). Pub. L. 113–66 amended subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall ensure that each report described in subsection (b) is

''(1) made available to the public, upon request submitted on or after the date on which such report is submitted to Congress, through the Office of the Assistant Secretary of Defense for Public Affairs; and

''(2) to the maximum extent practicable, transmitted in an electronic format.''

2011—Subsec. (a). Pub. L. 112–81 substituted pars. (1) and (2) for ''made available to the public, upon request submitted on or after the date on which such report is submitted to Congress, through the Office of the Assistant Secretary of Defense for Public Affairs.''

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117–81, div. A, title X, §1062(b), Dec. 27, 2021, 135 Stat. 1909, provided that: ''Subsection (c) of section 122a of title 10, United States Code, as added by subsection (a), shall apply beginning on the date that is one year after the date of the enactment of this Act [Dec. 27, 2021].''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title X, §1081(b), Dec. 26, 2013, 127 Stat. 871, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to reports submitted to Congress after the date of the enactment of this Act [Dec. 26, 2013].''

EFFECTIVE DATE

Pub. L. 111–383, div. A, title X, §1061(b), Jan. 7, 2011, 124 Stat. 4362, provided that: ''Section 122a of title 10, United States Code (as added by subsection (a)), shall take effect 90 days after the date of the enactment of this Act [Jan. 7, 2011], and shall apply with respect to reports that are required by law to be submitted to Congress on or after that date.''

PUBLIC AVAILABILITY OF DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS

Pub. L. 116–283, div. A, title X, §1059, Jan. 1, 2021, 134 Stat. 3857, provided that: ''Not later than 21 days after the transmission to the Committee on Armed Services of the Senate or the Committee on Armed Services of the House of Representatives of any official Department of Defense legislative proposal, the Secretary of Defense shall make publicly available on a website of the Department such legislative proposal, including any bill text and section-by-section analysis associated with the proposal.''

PUBLIC AVAILABILITY OF TOP-LINE NUMBERS OF DEPLOYED MEMBERS OF THE ARMED FORCES

Pub. L. 115–232, div. A, title V, §595, Aug. 13, 2018, 132 Stat. 1789, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of Defense shall make publicly available, on a quarterly basis, on a website of the Department the top-line numbers of members of the Armed Forces deployed for each country as of the date of the submittal of the report and the total number of members of the Armed Forces so deployed during the quarter covered by the report.

''(b) WAIVER.—

''(1) IN GENERAL.—The Secretary may waive the requirement under subsection (a) in the case of a sensitive military operation if—

''(A) the Secretary determines the public disclosure of the number of deployed members of the Armed Forces could reasonably be expected to provide an operational military advantage to an adversary; or

''(B) members of the Armed Forces are deployed for a period that does not exceed 30 days.

''(2) NOTICE.— If the Secretary issues a waiver under this subsection, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives—

''(A) a notice of the waiver; and

''(B) the reasons for the determination to issue the waiver.

''(c) SENSITIVE MILITARY OPERATION DEFINED.—The term 'sensitive military operation' has the meaning given that term in section 130f(d) of title 10, United States Code.''

COST OF WARS

Pub. L. 114–328, div. A, title X, §1090, Dec. 23, 2016, 130 Stat. 2428, as amended by Pub. L. 117–263, div. A, title X, §1085, Dec. 23, 2022, 136 Stat. 2800, provided that:

''(a) PUBLICATION OF INFORMATION.—The Secretary of Defense, in consultation with the Commissioner of the Internal Revenue Service and the Director of the Bureau of Economic Analysis, shall post on the public Internet website of the Department of Defense the costs to each United States taxpayer of any contingency operation conducted by the United States Armed Forces on or after September 18, 2001.

''(b) DISPLAY OF INFORMATION.—The information required to be posted under subsection (a) shall, to the extent practicable—

''(1) be posted directly on the website of the Department of Defense, in an accessible and clear format;

''(2) include corresponding documentation as links or attachments; and

''(3) include, for each contingency operation, a list of countries where the contingency operation has taken place.

''(c) UPDATES.—The Secretary shall ensure that all the information required to be posted under subsection (a) is updated by not later than 90 days after the last day of each fiscal year.

''(d) CONTINGENCY OPERATION DEFINED.—In this section, the term 'contingency operation' has the meaning given such term in section 101(a)(13) of title 10, United States Code.''

§ 123. Authority to suspend officer personnel laws during war or national emergency

(a) In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard Reserve. So long as such war or national emergency continues, any such suspension may be extended by the President.

(b) Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on

the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

(c) If a provision of law pertaining to the promotion of reserve officers is suspended under this section and if the Secretary of Defense submits to Congress proposed legislation to adjust the grades and dates of rank of reserve commissioned officers other than commissioned warrant officers, such proposed legislation shall, so far as practicable, be the same as that recommended for adjusting the grades and dates of rank of officers of the regular component of the armed force concerned.

(d) Upon the termination of a suspension made under the authority of subsection (a) of a provision of law otherwise requiring the separation or retirement of officers on active duty because of age, length of service or length of service in grade, or failure of selection for promotion, the Secretary concerned shall extend by up to 90 days the otherwise required separation or retirement date of any officer covered by the suspended provision whose separation or retirement date, but for the suspension, would have been before the date of the termination of the suspension or within 90 days after the date of such termination.

(Added Pub. L. 85–861, §1(2)(A), Sept. 2, 1958, 72 Stat. 1437; amended Pub. L. 86–559, §1(1), June 30, 1960, 74 Stat. 264; Pub. L. 89–718, §1, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, §1(1), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V, §§501(3), 511(1), Dec. 12, 1980, 94 Stat. 2907, 2920; Pub. L. 97–22, §10(b)(1), July 10, 1981, 95 Stat. 137; Pub. L. 103–337, div. A, title XVI, §1622(a), Oct. 5, 1994, 108 Stat. 2961; Pub. L. 104–106, div. A, title XV, §1501(c)(4), Feb. 10, 1996, 110 Stat. 498; Pub. L. 107–107, div. A, title V, §508(b), Dec. 28, 2001, 115 Stat. 1090; Pub. L. 116–283, div. A, title IX, §924(b)(2)(A)(i), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
123	50:1199 (less applicability to National Guard).	Sept. 3, 1954, ch. 1257, §209 (less applicability to National Guard), 68 Stat. 1152.

In subsection (b), the words ''the same as'' are substituted for the word ''comparable'', since any necessary differences in the recommended legislation between Reserves and Regulars are fully taken account of in the words ''So far as practicable''.

Editorial Notes

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (b), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255. Title II of the Act is classified generally to subchapter II (§1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 644 of this title prior to repeal by Pub. L. 103–337, §1622(b).

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283 substituted ''Marine Corps, Space Force,'' for ''Marine Corps,''.

2001—Subsec. (d). Pub. L. 107–107 added subsec. (d).

1996—Subsec. (a). Pub. L. 104–106 struck out ''281, 592, 1002, 1005, 1006, 1007, 1374, 3217, 3218, 3219, 3220, 3352(a) (last sentence),'' after ''armed force:'', ''5414, 5457, 5458, 5506,'' after ''3855,'', and ''8217, 8218, 8219,'' after ''6410,'' and substituted ''8855, 10214, 12003, 12004, 12005, 12007, 12202, 12213(a) (second sentence), 12642, 12645, 12646, 12647, 12771, 12772, and 12773'' for ''and 8855''.

1994—Pub. L. 103–337 substituted ''Authority to suspend officer personnel laws during war or national emergency'' for ''Suspension of certain provisions of law relating to reserve commissioned officers'' as section catchline and amended text generally, substituting subsecs. (a) to (c) for former subsecs. (a) and (b).

1981—Subsec. (a). Pub. L. 97–22 struck out references to sections 3494 and 8494.

1980—Subsec. (a). Pub. L. 96–513 struck out references to sections 3571, 3847, 5867, 8370, 8571, and 8847.

1967—Subsec. (a). Pub. L. 90–130 struck out reference to section 3391.

1966—Subsec. (a). Pub. L. 89–718 struck out reference to section 5907.

1960—Subsec. (a). Pub. L. 86–559 inserted references to sections 281, 3855, and 8855 and struck out references to sections 3841, 3842, 3849, 8841, 8842, and 8849.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, §1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–22, §10(b), July 10, 1981, 95 Stat. 137, provided that the amendment made by that section is effective Sept. 15, 1981.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(3) of Pub. L. 96–513, striking out references to sections 3571, 5867, and 8571, effective Sept. 15, 1981, and amendment by section 511(1) of Pub. L. 96–513, striking out references to sections 3847, 8370, and 8847, effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Executive Documents

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 1(11) of Ex. Ord. No.

11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, and authority of President under this section as invoked by section 2 of Ex. Ord. No. 13223 delegated to Secretary of Homeland Security by section 5 of Ex. Ord. No. 13223, as amended, set out as a note under section 12302 of this title.

§ 123a. Suspension of end-strength and other strength limitations in time of war or national emergency

(a) DURING WAR OR NATIONAL EMERGENCY.—(1) If at the end of any fiscal year there is in effect a war or national emergency, the President may waive any statutory end strength with respect to that fiscal year. Any such waiver may be issued only for a statutory end strength that is prescribed by law before the waiver is issued.

(2) When a designation of a major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)) is in effect, the President may waive any statutory limit that would otherwise apply during the period of the designation on the number of members of a reserve component or the Space Force who are authorized to be on active duty under subparagraph (A) or (B) of section 115(b)(1) of this title, if the President determines the waiver is necessary to provide assistance in responding to the major disaster or emergency.

(b) TERMINATION OF WAIVER.—(1) Upon the termination of a war or national emergency with respect to which the President has exercised the authority provided by subsection (a)(1), the President may defer the effectiveness of any statutory end strength with respect to the fiscal year during which the termination occurs. Any such deferral may not extend beyond the last day of the sixth month beginning after the date of such termination.

(2) A waiver granted under subsection (a)(2) shall terminate not later than 90 days after the date on which the designation of the major disaster or emergency that was the basis for the waiver expires.

(c) STATUTORY END STRENGTH.—In this section, the term ''statutory end strength'' means any end-strength limitation with respect to a fiscal year that is prescribed by law for any military or civilian component of the armed forces or of the Department of Defense.

(Added Pub. L. 101–510, div. A, title XIV, §1483(b)(1), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 107–107, div. A, title IV, §421(b), Dec. 28, 2001, 115 Stat. 1076; Pub. L. 110–417, [div. A], title IV, §416(a)–(c)(1), Oct. 14, 2008, 122 Stat. 4430; Pub. L. 118–31, div. A, title XVII, §1722(a)(2), Dec. 22, 2023, 137 Stat. 667.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(4) of this title, prior to repeal by Pub. L. 101–510, §1483(a).

AMENDMENTS

2023—Subsec. (a)(2). Pub. L. 118–31 inserted ''or the Space Force'' after ''a reserve component''.

2008—Pub. L. 110–417 in section catchline substituted ''Suspension of end-strength and other strength limitations in time of war or national emergency'' for ''Suspension of end-strength limitations in time of war or national emergency'', in subsec. (a) designated existing provisions as par. (1) and added par. (2), and in subsec. (b) substituted ''Termination of Waiver'' for ''Upon Termination of War or National Emergency'' in heading, designated existing provisions as par. (1), substituted ''subsection (a)(1)'' for ''subsection (a)'', and added par. (2).

2001—Pub. L. 107–107 amended text generally. Prior to amendment, text read as follows: ''If at the end of any fiscal year there is in effect a war or national emergency, the President may defer the effectiveness of any end-strength limitation with respect to that fiscal year prescribed by law for any military or civilian component of the armed forces or of the Department of Defense. Any such deferral may not extend beyond November 30 of the following fiscal year.''

Executive Documents

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, and authority of President under this section as invoked by section 2 of Ex. Ord. No. 13223 delegated to Secretary of Homeland Security by section 5 of Ex. Ord. No. 13223, as amended, set out as a note under section 12302 of this title.

§ 123b. Forces stationed abroad: limitation on number

(a) END-STRENGTH LIMITATION.—No funds appropriated to the Department of Defense may be used to support a strength level of members of the armed forces assigned to permanent duty ashore in nations outside the United States at the end of any fiscal year at a level in excess of 203,000.

(b) EXCEPTION FOR WARTIME.—Subsection (a) does not apply in the event of a declaration of war or an armed attack on any member nation of the North Atlantic Treaty Organization, Japan, the Republic of Korea, or any other ally of the United States.

(c) PRESIDENTIAL WAIVER.—The President may waive the operation of subsection (a) if the President declares an emergency. The President shall immediately notify Congress of any such waiver.

(Added Pub. L. 103–337, div. A, title XIII, §1312(a)(1), Oct. 5, 1994, 108 Stat. 2894.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 102–484, div. A, title XIII, §1302, Oct. 23, 1992, 106 Stat. 2545, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 103–337, §1312(c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 103–337, div. A, title XIII, §1312(b), Oct. 5, 1994, 108 Stat. 2894, provided that: ''Section 123b of title 10,

United States Code, as added by subsection (a), does not apply with respect to a fiscal year before fiscal year 1996.''

§ 124. Detection and monitoring of aerial and maritime transit of illegal drugs: Department of Defense to be lead agency

(a) LEAD AGENCY.—(1) The Department of Defense shall serve as the single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States.

(2) The responsibility conferred by paragraph (1) shall be carried out in support of the counter-drug activities of Federal, State, local, and foreign law enforcement agencies.

(b) PERFORMANCE OF DETECTION AND MONITORING FUNCTION.—(1) To carry out subsection (a), Department of Defense personnel may operate equipment of the Department to intercept a vessel or an aircraft detected outside the land area of the United States for the purposes of—

(A) identifying and communicating with that vessel or aircraft; and

(B) directing that vessel or aircraft to go to a location designated by appropriate civilian officials.

(2) In cases in which a vessel or an aircraft is detected outside the land area of the United States, Department of Defense personnel may begin or continue pursuit of that vessel or aircraft over the land area of the United States.

(c) UNITED STATES DEFINED.—In this section, the term ''United States'' means the land area of the several States and any territory, commonwealth, or possession of the United States.

(Added Pub. L. 101–189, div. A, title XII, § 1202(a)(1), Nov. 29, 1989, 103 Stat. 1563; amended Pub. L. 102–190, div. A, title X, § 1088(b), Dec. 5, 1991, 105 Stat. 1485.)

Editorial Notes

PRIOR PROVISIONS

A prior section 124, added Pub. L. 87–651, title II, § 201(a), Sept. 7, 1962, 76 Stat. 514; amended Pub. L. 98–525, title XIII, § 1301(a), Oct. 19, 1984, 98 Stat. 2611; Pub. L. 99–145, title XIII, § 1303(a)(1), Nov. 8, 1985, 99 Stat. 738, related to establishment, composition, and functions of combatant commands, prior to repeal by Pub. L. 99–433, § 211(c)(1). See section 161 et seq. of this title. Similar provisions were contained in Pub. L. 100–456, div. A, title XI, § 1102, Sept. 29, 1988, 102 Stat. 2042, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 101–189, § 1202(b).

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 designated existing provisions as par. (1) and added par. (2).

Statutory Notes and Related Subsidiaries

SUPPORT FOR COUNTERDRUG ACTIVITIES AFFECTING FLOW OF DRUGS INTO THE UNITED STATES

Pub. L. 118–159, div. A, title X, § 1011, Dec. 23, 2024, 138 Stat. 2050, provided that: ''Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2024], the Secretary shall prescribe Department-wide guidance that establishes support for counterdrug activities and programs affecting the flow of drugs into the United States as the principal foreign counterdrug program priority of the Department.''

AUTHORITY FOR DETECTION AND MONITORING OF ILLEGAL DRUGS REGARDLESS OF DESTINATION

Pub. L. 118–159, div. A, title X, § 1012, Dec. 23, 2024, 138 Stat. 2050, provided that: ''In conducting detection and monitoring of illegal drugs under section 124 of title 10, United States Code, the Joint Interagency Task Force South may conduct detection and monitoring of vessels or aircraft transiting illegal drugs in the air and maritime domains within the established joint operating area of such task force regardless of the destination of the illegal drugs.''

CONDITION ON DEVELOPMENT OF FORWARD OPERATING LOCATIONS FOR UNITED STATES SOUTHERN COMMAND COUNTER-DRUG DETECTION AND MONITORING FLIGHTS

Pub. L. 106–65, div. A, title X, § 1024, Oct. 5, 1999, 113 Stat. 748, provided that:

''(a) CONDITION.—Except as provided in subsection (b), none of the funds appropriated or otherwise made available to the Department of Defense for any fiscal year may be obligated or expended for the purpose of improving the physical infrastructure at any proposed forward operating location outside the United States from which the United States Southern Command may conduct counter-drug detection and monitoring flights until a formal agreement regarding the extent and use of, and host nation support for, the forward operating location is executed by both the host nation and the United States.

''(b) EXCEPTION.—The limitation in subsection (a) does not apply to an unspecified minor military construction project authorized by section 2805 of title 10, United States Code.''

COUNTER-DRUG DETECTION AND MONITORING SYSTEMS PLAN

Pub. L. 102–484, div. A, title X, § 1043, Oct. 23, 1992, 106 Stat. 2492, provided that:

''(a) REQUIREMENTS OF DETECTION AND MONITORING SYSTEMS.—The Secretary of Defense shall establish requirements for counter-drug detection and monitoring systems to be used by the Department of Defense in the performance of its mission under section 124(a) of title 10, United States Code, as lead agency of the Federal Government for the detection and monitoring of the transit of illegal drugs into the United States. Such requirements shall be designed—

''(1) to minimize unnecessary redundancy between counter-drug detection and monitoring systems;

''(2) to grant priority to assets and technologies of the Department of Defense that are already in existence or that would require little additional development to be available for use in the performance of such mission;

''(3) to promote commonality and interoperability between counter-drug detection and monitoring systems in a cost-effective manner; and

''(4) to maximize the potential of using counter-drug detection and monitoring systems for other defense missions whenever practicable.

''(b) EVALUATION OF SYSTEMS.—The Secretary of Defense shall identify and evaluate existing and proposed counter-drug detection and monitoring systems in light of the requirements established under subsection (a). In carrying out such evaluation, the Secretary shall—

''(1) assess the capabilities, strengths, and weaknesses of counter-drug detection and monitoring systems; and

''(2) determine the optimal and most cost-effective combination of use of counter-drug detection and monitoring systems to carry out activities relating to the reconnaissance, detection, and monitoring of drug traffic.

''(c) SYSTEMS PLAN.—Based on the results of the evaluation under subsection (b), the Secretary of Defense shall prepare a plan for the development, acquisition, and use of improved counter-drug detection and monitoring systems by the Armed Forces. In developing the plan, the Secretary shall also make every effort to de-

termine which counter-drug detection and monitoring systems should be eliminated from the counter-drug program based on the results of such evaluation. The plan shall include an estimate by the Secretary of the full cost to implement the plan, including the cost to develop, procure, operate, and maintain equipment used in counter-drug detection and monitoring activities performed under the plan and training and personnel costs associated with such activities.

''(d) REPORT.—Not later than six months after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall submit to Congress a report on the requirements established under subsection (a) and the results of the evaluation conducted under subsection (b). The report shall include the plan prepared under subsection (c).

''(e) LIMITATION ON OBLIGATION OF FUNDS.—(1) Except as provided in paragraph (2), none of the funds appropriated or otherwise made available for the Department of Defense for fiscal year 1993 pursuant to an authorization of appropriations in this Act [see Tables for classification] may be obligated or expended for the procurement or upgrading of a counter-drug detection and monitoring system, for research and development with respect to such a system, or for the lease or rental of such a system until after the date on which the Secretary of Defense submits to Congress the report required under subsection (d).

''(2) Paragraph (1) shall not prohibit obligations or expenditures of funds for—

''(A) any procurement, upgrading, research and development, or lease of a counter-drug detection and monitoring system that is necessary to carry out the evaluation required under subsection (b); or

''(B) the operation and maintenance of counter-drug detection and monitoring systems used by the Department of Defense as of the date of the enactment of this Act.

''(f) DEFINITION.—For purposes of this section, the term 'counter-drug detection and monitoring systems' means land-, air-, and sea-based detection and monitoring systems suitable for use by the Department of Defense in the performance of its mission—

''(1) under section 124(a) of title 10, United States Code, as lead agency of the Federal Government for the detection and monitoring of the aerial and maritime transit of illegal drugs into the United States; and

''(2) to provide support to law enforcement agencies in the detection, monitoring, and communication of the movement of traffic at, near, and outside the geographic boundaries of the United States.''

INTEGRATION OF COMMUNICATIONS NETWORK

Pub. L. 101–189, div. A, title XII, §1204(a), Nov. 29, 1989, 103 Stat. 1564, provided that:

''(1) The Secretary of Defense shall integrate into an effective communications network the command, control, communications, and technical intelligence assets of the United States that are dedicated (in whole or in part) to the interdiction of illegal drugs into the United States.

''(2) The Secretary shall carry out this subsection in consultation with the Director of National Drug Control Policy.''

RESEARCH AND DEVELOPMENT

Pub. L. 101–189, div. A, title XII, §1205, Nov. 29, 1989, 103 Stat. 1564, provided that: ''The Secretary of Defense shall ensure that adequate research and development activities of the Department of Defense, including research and development activities of the Defense Advanced Research Projects Agency, are devoted to technologies designed to improve—

''(1) the ability of the Department to carry out the detection and monitoring function of the Department under section 124 of title 10, United States Code, as added by section 1202; and

''(2) the ability to detect illicit drugs and other dangerous and illegal substances that are concealed in containers.''

TRAINING EXERCISES IN DRUG-INTERDICTION AREAS

Pub. L. 101–189, div. A, title XII, §1206, Nov. 29, 1989, 103 Stat. 1564, provided that:

''(a) EXERCISES REQUIRED.—The Secretary of Defense shall direct that the armed forces, to the maximum extent practicable, shall conduct military training exercises (including training exercises conducted by the reserve components) in drug-interdiction areas.

''(b) REPORT.—(1) Not later than February 1 of 1991 and 1992, the Secretary shall submit to Congress a report on the implementation of subsection (a) during the preceding fiscal year.

''(2) The report shall include—

''(A) a description of the exercises conducted in drug-interdiction areas and the effectiveness of those exercises in the national counter-drug effort; and

''(B) a description of those additional actions that could be taken (and an assessment of the results of those actions) if additional funds were made available to the Department of Defense for additional military training exercises in drug-interdiction areas for the purpose of enhancing interdiction and deterrence of drug smuggling.

''(c) DRUG-INTERDICTION AREAS DEFINED.—For purposes of this section, the term 'drug-interdiction areas' includes land and sea areas in which, as determined by the Secretary, the smuggling of drugs into the United States occurs or is believed by the Secretary to have occurred.''

§ 125. Functions, powers, and duties: transfer, reassignment, consolidation, or abolition

(a) Subject to section 2 of the National Security Act of 1947 (50 U.S.C. 3002), the Secretary of Defense shall take appropriate action (including the transfer, reassignment, consolidation, or abolition of any function, power, or duty) to provide more effective, efficient, and economical administration and operation, and to eliminate duplication, in the Department of Defense. However, except as provided by subsections (b) and (c), a function, power, or duty vested in the Department of Defense, or an officer, official, or agency thereof, by law may not be substantially transferred, reassigned, consolidated, or abolished.

(b) Notwithstanding subsection (a), if the President determines it to be necessary because of hostilities or an imminent threat of hostilities, any function, power, or duty vested by law in the Department of Defense, or an officer, official, or agency thereof, including one assigned to the Army, Navy, Air Force, Marine Corps, or Space Force by section 7062(b), 8062, 8063, 9062(c), or 9081 of this title, may be transferred, reassigned, or consolidated. The transfer, reassignment, or consolidation remains in effect until the President determines that hostilities have terminated or that there is no longer an imminent threat of hostilities, as the case may be.

(c) Notwithstanding subsection (a), the Secretary of Defense may assign or reassign the development and operational use of new weapons or weapons systems to one or more of the military departments or one or more of the armed forces.

(Added Pub. L. 87–651, title II, §201(a), Sept. 7, 1962, 76 Stat. 515; amended Pub. L. 89–501, title IV, §401, July 13, 1966, 80 Stat. 278; Pub. L. 98–525, title XIV, §1405(1), Oct. 19, 1984, 98 Stat. 2621; Pub. L. 99–433, title I, §103, title III, §301(b)(1), title V, §514(c)(1), Oct. 1, 1986, 100 Stat. 996, 1022,

1055; Pub. L. 101–510, div. A, title XIII, §1301(3), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 113–291, div. A, title X, §1071(c)(1), Dec. 19, 2014, 128 Stat. 3508; Pub. L. 115–232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–283, div. A, title IX, §924(b)(3)(A), (b)(6), Jan. 1, 2021, 134 Stat. 3821, 3822.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
125(a)	5:171a(c)(1), (2). 5:171n(a) (as applicable to 5:171a(c)(1)).	July 26, 1947, ch. 343, §202(c)(1), (2), (4), (5), (6); added Aug. 10, 1949, ch. 412, §5(3d, 4th, 6th, 7th, and 8th pars.); restated Aug. 6, 1958, Pub. L. 85–599, §3(a), (1st, 2d, 5th, 6th, and 7th pars.), 72 Stat. 514, 515. July 26, 1947, ch. 343, §308(a) (as applicable to §202(c)(1), (5), (6)), 61 Stat. 509.
125(b)	5:171a(c)(5). 5:171n(a) (as applicable to 5:171a(c)(5)).	
125(c)	5:171a(c)(4).	
125(d)	5:171a(c)(6). 5:171n(a) (as applicable to 5:171a(c)(6)).	

In subsection (a), the following substitutions are made: ''Except as provided by subsections (b) and (c)'' for ''except as otherwise provided in this subsection''; ''vested . . . by law'' for ''established by law to be performed by''; ''recommending'' for ''stating''; ''proposes'' for ''contemplates''; and ''the period'' for ''the thirty-day period or the forty-day period''. The words ''on the first day after'' are inserted for clarity. The words ''if carried out'' are omitted as surplusage.

In subsection (b), the words ''Notwithstanding subsection (a)'' are substituted for the words ''Notwithstanding other provisions of this subsection''; and ''Unless the President determines otherwise'' for ''subject to the determination of the President''.

In subsection (c), the following substitutions are made: ''Notwithstanding subsection (a)'' for ''Notwithstanding the provisions of paragraph (1) hereof''; and ''armed forces'' for ''services''.

In subsection (d), the following substitutions are made: ''In subsection (a) (1)'' for ''within the meaning of paragraph (1) hereof''; and ''considers'' for ''deems''. The words ''advantageous to the Government in terms of'' are omitted as surplusage.

Editorial Notes

AMENDMENTS

2021—Subsec. (b). Pub. L. 116–283 substituted ''Marine Corps, or Space Force'' for ''or Marine Corps'' and ''9062(c), or 9081'' for ''or 9062(c)''.

2018—Subsec. (b). Pub. L. 115–232 substituted ''section 7062(b), 8062, 8063, or 9062(c)'' for ''section 3062(b), 5062, 5063, or 8062(c)''.

2014—Subsec. (a). Pub. L. 113–291 substituted ''(50 U.S.C. 3002)'' for ''(50 U.S.C. 401)''.

1990—Subsec. (c). Pub. L. 101–510 struck out at end ''However, notwithstanding any other provision of this title or any other law, the Secretary of Defense shall not direct or approve a plan to initiate or effect a substantial reduction or elimination of a major weapons system until the Secretary of Defense has reported all the pertinent details of the proposed action to the Congress of the United States while the Congress is in session.''

1986—Subsec. (a). Pub. L. 99–433, §103(1), struck out provision under which the Secretary of Defense could substantially transfer, reassign, consolidate, or abolish functions, powers, or duties vested in the Department of Defense by law if the Secretary reported the details of the proposed transfer, reassignment, consolidation, or abolition to Congress and if Congress did not affirmatively reject the proposal.

Subsec. (b). Pub. L. 99–433, §§103(2), 514(c)(1), inserted ''vested by law in the Department of Defense, or an officer, official, or agency thereof'' and substituted ''5062, 5063'' for ''5012, 5013''.

Subsec. (d). Pub. L. 99–433, §301(b)(1), struck out subsec. (d) which read as follows: ''In subsection (a)(1), 'major combatant function, power, or duty' does not include a supply or service activity common to more than one military department. The Secretary of Defense shall, whenever he determines it will be more effective, economical, or efficient, provide for the performance of such an activity by one agency or such other organizations as he considers appropriate.''

1984—Subsec. (a). Pub. L. 98–525 substituted ''section 2 of the National Security Act of 1947 (50 U.S.C. 401)'' for ''section 401 of title 50''.

1966—Subsec. (c). Pub. L. 89–501 required the Secretary of Defense to report to the Congress all the pertinent details regarding any substantial reduction or elimination of a major weapons system before action could be initiated or effected by the Department of Defense.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

RESOLUTIONS RELATING TO TRANSFERS, REASSIGNMENTS, CONSOLIDATIONS, OR ABOLITIONS OF COMBATANT FUNCTIONS

Pub. L. 87–651, title III, §303, Sept. 7, 1962, 76 Stat. 525, provided that:

''(a) For the purposes of this section, any resolution reported to the Senate or the House of Representatives pursuant to the provisions of section 125 of title 10, United States Code, shall be treated for the purpose of consideration by either House, in the same manner as a resolution with respect to a reorganization plan reported by a committee within the meaning of the Reorganization Act of 1949 as in effect on July 1, 1958 (5 U.S.C. 133z and the following) [63 Stat. 203; 71 Stat. 611], and shall be governed by the provisions applicable to the consideration of any such resolution by either House of the Congress as provided by sections 205 and 206 of that Act [63 Stat. 207].

''(b) The provisions of this section are enacted by the Congress—

''(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, and supersede other rules only to the extent that they are inconsistent therewith; and

''(2) with full recognition of the constitutional right of either House to change the rules (as far as relating to the procedure in that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.''

§ 125a. Reform: improvement of efficacy and efficiency

(a) IN GENERAL.—The Secretary of Defense shall take such action as is necessary to reform the Department of Defense to improve the efficacy and efficiency of the Department, and to improve the ability of the Department to prioritize among and assess the costs and benefits of covered elements of reform.

(b) POLICY.—The Secretary shall develop a policy and issue guidance to implement reform within the Department and to improve the ability of the Department to prioritize among and assess the costs and benefits of covered elements of reform.

(c) FRAMEWORK FOR REFORM.—

(1) IN GENERAL.—Not later than February 1, 2023, the Secretary shall establish policies,

guidance, and a consistent reporting framework to measure the progress of the Department toward covered elements of reform, including by establishing categories of reform, consistent metrics, and a process for prioritization of reform activities.

(2) SCOPE.—The framework required by paragraph (1) may address duties under the following:

(A) Section 125 of this title.
(B) Section 192 of this title.
(C) Section 2222 of this title.
(D) Section 1124 of title 31.
(E) Section 11319 of title 40.

(3) CONSULTATION.—The Secretary shall consult with the Deputy Secretary of Defense, the Performance Improvement Officer of the Department of Defense, the Chief Data Officer of the Department of Defense, the Chief Information Officer of the Department of Defense, the Director for Administration and Management of the Department of Defense, and the financial managers of the military departments in carrying out activities under this subsection.

(d) COVERED ELEMENTS OF REFORM.—For purposes of this section and the policies, guidance, and reporting framework required by subsection (c), covered elements of reform may include the following:

(1) Business systems modernization.

(2) Enterprise business operations process reengineering.

(3) Expanded and modernized collection, management, dissemination, and visualization of data to support decision-making at all levels of the enterprise.

(4) Improvements in workforce training and education and increasing capabilities of the Department workforce to support and execute reform activities and business processes.

(5) Improvements to decision-making processes to enable cost savings, cost avoidance, or investments to develop process improvements.

(6) Development and implementation of a uniform methodology for tracking and assessing cost savings and cost avoidance from reform initiatives.

(7) Implementation of reform-focused research to improve management and administrative science.

(8) Tracking and implementation of technological approaches to improve management decision-making, such as artificial intelligence tools.

(9) Such other elements as the Secretary considers appropriate.

(e) ANNUAL REPORT.—At the same time the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Secretary shall, using the policies, guidance, and reporting framework required by subsection (c), submit to the congressional defense committees a report, including detailed narrative justifications and tradeoff analyses between options, on the actions of the Department as follows:

(1) The activities, expenditures, and accomplishments carried out or made to effect reform under this section during the fiscal year in which such budget is submitted.

(2) The proposed activities, expenditures, and accomplishments to effect reform under this section, and consistent with priorities established by the Secretary, during the fiscal year covered by such budget and each of the four succeeding fiscal years.

(Added Pub. L. 116–283, div. A, title IX, §911(a)(1), Jan. 1, 2021, 134 Stat. 3800; amended Pub. L. 117–263, div. A, title IX, §911, Dec. 23, 2022, 136 Stat. 2750.)

Editorial Notes

AMENDMENTS

2022—Subsec. (c)(1). Pub. L. 117–263, §911(1)(A), substituted ''2023'' for ''2022''.

Subsec. (c)(3). Pub. L. 117–263, §911(1)(B), inserted ''the Director for Administration and Management of the Department of Defense,'' after ''the Chief Information Officer of the Department of Defense,''.

Subsec. (d)(6) to (9). Pub. L. 117–263, §911(2), added pars. (6) to (8) and redesignated former par. (6) as (9).

Statutory Notes and Related Subsidiaries

STRATEGIC MANAGEMENT DASHBOARD DEMONSTRATION

Pub. L. 117–263, div. A, title IX, §916, Dec. 23, 2022, 136 Stat. 2755, provided that:

''(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Dec. 23, 2022], the Secretary of Defense shall conduct a demonstration of a strategic management dashboard to automate the data collection and data visualization of the primary management goals of the Department of Defense.

''(b) ELEMENTS.—The Secretary of Defense shall ensure that the strategic management dashboard demonstrated under subsection (a) includes the following:

''(1) The capability for real-time monitoring of the performance of the Department of Defense in meeting the management goals of the Department.

''(2) An integrated analytics capability, including the ability to dynamically add or upgrade new capabilities when needed.

''(3) Integration with the framework required by subsection (c) of section 125a of title 10, United States Code, for measuring the progress of the Department toward covered elements of reform (as defined in subsection (d) of that section).

''(4) Incorporation of the elements of the strategic management plan required by section 904(d) of the National Defense Authorization Act of Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. note prec. 2201), as derived from automated data feeds from existing information systems and databases.

''(5) Incorporation of the elements of the most recent annual performance plan of the Department required by section 1115(b) of title 31, United States Code, and the most recent update on performance of the Department required by section 1116 of that title.

''(6) Use of artificial intelligence and machine learning tools to improve decision making and assessment relating to data analytics.

''(7) Adoption of leading and lagging indicators for key strategic management goals.

''(c) AUTHORITIES.—

''(1) IN GENERAL.—In conducting the demonstration required by subsection (a), the Secretary of Defense may use the authorities described in paragraph (2), and such other authorities as the Secretary considers appropriate—

''(A) to help accelerate the development of innovative technological or process approaches; and

''(B) to attract new entrants to solve the data management and visualization challenges of the Department.

''(2) AUTHORITIES DESCRIBED.—The authorities described in this paragraph are the authorities provided under the following provisions of law:

''(A) Section 4025 of title 10, United States Code (relating to prizes for advanced technology achievements).

''(B) Section 217 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2222 note) (relating to science and technology activities to support business systems information technology acquisition programs).

''(C) Section 908 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 10 U.S.C. 129a note) (relating to management innovation activities).

''(d) USE OF BEST PRACTICES.—In conducting the demonstration required by subsection (a), the Secretary of Defense shall leverage commercial best practices in management and leading research in management and data science.

''(e) STRATEGIC MANAGEMENT DASHBOARD DEFINED.—In this section, the term 'strategic management dashboard' means a system for dynamically displaying management metrics, performance goals, and other information necessary for Department of Defense leadership to make strategic decisions related to the management of the Department using modern, commercial practices for data visualization and drawn from existing automated information systems available to the Department.''

IMPLEMENTING POLICIES, GUIDANCE, AND REPORTING FRAMEWORK

Pub. L. 116–283, div. A, title IX, §911(b), Jan. 1, 2021, 134 Stat. 3801, provided that:

''(1) SUBMITTAL TO CONGRESS.—Not later than March 1, 2022, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth the policies, guidance, and reporting framework established pursuant to subsection (c) of section 125a of title 10, United States Code (as added by subsection (a) of this section).

''(2) UPDATE.—Not later than 90 days after the date of the submittal to Congress of the report required by section 901(d) of this Act [10 U.S.C. 132a note], the Secretary shall update the reporting framework referred to in paragraph (1).''

§ 126. Transfer of funds and employees

(a) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred or assigned to another department or agency of that department, balances of appropriations that the Secretary of Defense determines are available and needed to finance or discharge that function, power, duty, or activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty or activity, as the case may be, is transferred, and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—

(1) be credited to any applicable appropriation account of the receiving department or agency; or

(2) be credited to a new account that may be established on the books of the Department of the Treasury;

and be merged with the funds already credited to that account and accounted for as one fund. Balances of appropriations credited to an account under clause (1) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under clause (2) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

(b) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred to another department or agency of that department, those civilian employees of the department or agency from which the transfer is made that the Secretary of Defense determines are needed to perform that function, power, or duty, or for that activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty, or activity, as the case may be, is transferred. The authorized strength in civilian employees of a department or agency from which employees are transferred under this section is reduced by the number of employees so transferred. The authorized strength in civilian employees of a department or agency to which employees are transferred under this section is increased by the number of employees so transferred.

(Added Pub. L. 87–651, title II, §201(a), Sept. 7, 1962, 76 Stat. 516; amended Pub. L. 96–513, title V, §511(2), Dec. 12, 1980, 94 Stat. 2920.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
126(a)	5:172f(a). 5:171n(a) (as applicable to 5:172f(a)).	July 26, 1947, ch. 343, §407; added Aug. 10, 1949, ch. 412, §11 (21st and 22d pars.), 63 Stat. 589.
126(b)	5:172f (less (a)).	July 26, 1947, ch. 343, §308(a) (as applicable to §407), 61 Stat. 509.

In subsection (a), the words ''under authority of law'' are omitted as surplusage. The following substitutions are made: ''needed'' for ''necessary''; ''used'' for ''be available for use by''; and ''those appropriations'' for ''said funds''.

In subsection (b), 5 U.S.C. 172f(b) is restated to reflect more clearly its purpose to authorize ''transfers of personnel'' (Senate Report No. 366, 81st Congress, p. 23).

Editorial Notes

AMENDMENTS

1980—Subsec. (b) Pub. L. 96–513 substituted ''President'' for ''Director of the Bureau of the Budget''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

Executive Documents

DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to approve transfers of balances of appropriations provided for therein delegated to Director of Office of Management and Budget, see section 9(2) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 127. Emergency and extraordinary expenses

(a) Subject to the limitations of subsection (c), and within the limitation of appropriations made for the purpose, the Secretary of Defense,

the Inspector General of the Department of Defense, and the Secretary of a military department within his department, may provide for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary concerned or the Inspector General for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United States. The Secretary concerned or the Inspector General may certify the amount of any such expenditure authorized by him that he considers advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount. The authority to expend amounts made available for the Military Intelligence Program for intelligence and counterintelligence objects of a confidential, extraordinary, or emergency nature is provided by section 429a of this title instead of this section.

(b) The authority conferred by this section may be delegated by the Secretary of Defense to any person in the Department of Defense, by the Inspector General to any person in the Office of the Inspector General, or by the Secretary of a military department to any person within his department, with or without the authority to make successive redelegations.

(c)(1) Funds may not be obligated or expended in an amount in excess of $500,000 under the authority of subsection (a) or (b) until the Secretary of Defense has notified the congressional defense committees of the intent to obligate or expend the funds, and—

(A) in the case of an obligation or expenditure in excess of $1,000,000, 15 days have elapsed since the date of the notification; or

(B) in the case of an obligation or expenditure in excess of $500,000, but not in excess of $1,000,000, 5 days have elapsed since the date of the notification.

(2) Subparagraph (A) or (B) of paragraph (1) shall not apply to an obligation or expenditure of funds otherwise covered by such subparagraph if the Secretary of Defense determines that the national security objectives of the United States will be compromised by the application of the subparagraph to the obligation or expenditure. If the Secretary makes a determination with respect to an obligation or expenditure under the preceding sentence, the Secretary shall immediately notify the committees referred to in paragraph (1) that such obligation or expenditure is necessary and provide any relevant information (in classified form, if necessary) jointly to the chairman and ranking minority member (or their designees) of such committees.

(3) A notification under paragraph (1) and information referred to in paragraph (2) shall include the amount to be obligated or expended, as the case may be, and the purpose of the obligation or expenditure.

(4)(A) Notwithstanding paragraph (1), funds may not be obligated or expended in an amount in excess of $100,000 under the authority of subsection (a) or (b) for intelligence or counter-intelligence activities until the Secretary of Defense has notified the congressional defense committees and the congressional intelligence committees of the intent to obligate or expend the funds and 15 days have elapsed since the date of the notification.

(B) The Secretary of Defense may waive subparagraph (A) if the Secretary determines that such a waiver is necessary due to extraordinary circumstances that affect the national security of the United States. If the Secretary issues a waiver under this subparagraph, the Secretary shall submit to the congressional defense and congressional intelligence committees, by not later than 48 hours after issuing the waiver, written notice of and justification for the waiver.

(d) ANNUAL REPORT.—(1) Not later than December 1 each year, the Secretary of Defense shall submit—

(A) to the congressional defense committees a report on all expenditures during the preceding fiscal year under subsections (a) and (b); and

(B) to the congressional intelligence committees a report on expenditures relating to intelligence and counter-intelligence during the preceding fiscal year under subsections (a) and (b).

(2) Each report submitted under paragraph (1) shall include, for each individual expenditure covered by such report in an amount in excess of $100,000, the following:

(A) A detailed description of the purpose of such expenditure.

(B) The amount of such expenditure.

(C) An identification of the approving authority for such expenditure.

(D) A justification why other authorities available to the Department could not be used for such expenditure.

(E) Any other matters the Secretary considers appropriate.

(e) DEFINITION OF CONGRESSIONAL INTELLIGENCE COMMITTEES.—In this section, the term ''congressional intelligence committees'' means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(Added Pub. L. 94–106, title VIII, §804(a), Oct. 7, 1975, 89 Stat. 538, §140; amended Pub. L. 98–94, title XII, §1268(2), Sept. 24, 1983, 97 Stat. 705; renumbered §127 and amended Pub. L. 99–433, title I, §§101(a)(3), 110(d)(4), Oct. 1, 1986, 100 Stat. 994, 1002; Pub. L. 103–160, div. A, title III, §361, Nov. 30, 1993, 107 Stat. 1627; Pub. L. 103–337, div. A, title III, §378, Oct. 5, 1994, 108 Stat. 2737; Pub. L. 104–106, div. A, title IX, §915, title XV, §1502(a)(5), Feb. 10, 1996, 110 Stat. 413, 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, §1031(a)(2), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 115–91, div. A, title X, §§1041(a)–(c), 1081(a)(4), Dec. 12, 2017, 131 Stat. 1552, 1553, 1594; Pub. L. 116–92, div. A, title X, §1012, title XVII, §1731(a)(5), Dec. 20, 2019, 133 Stat. 1577, 1812; Pub. L. 118–159, div. A, title XVI, §1614(e)(2), Dec. 23, 2024, 138 Stat. 2169.)

Editorial Notes

AMENDMENTS

2024—Subsec. (a). Pub. L. 118–159 inserted at end ''The authority to expend amounts made available for the

Military Intelligence Program for intelligence and counterintelligence objects of a confidential, extraordinary, or emergency nature is provided by section 429a of this title instead of this section.''

2019—Subsec. (c)(1). Pub. L. 116–92, §1731(a)(5), inserted ''the'' before ''congressional defense committees''.

Subsec. (d)(2). Pub. L. 116–92, §1012, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Each report required to be submitted under paragraph (1) shall include a detailed explanation, by category of activity and approving authority (the Secretary of Defense, the Inspector General of the Department of Defense, and the Secretary of a military department), of the expenditures during the preceding fiscal year.''

2017—Subsec. (c)(1). Pub. L. 115–91, §1081(a)(4), substituted ''congressional defense committees'' for ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives'' in introductory provisions.

Subsec. (c)(4). Pub. L. 115–91, §1041(a), added par. (4).

Subsec. (d). Pub. L. 115–91, §1041(b), designated existing provisions as par. (1), substituted ''submit—'' for ''submit to the congressional defense committees a report on expenditures during the preceding fiscal year under subsections (a) and (b).'', added subpars. (A) and (B) of par. (1), and added par. (2).

Subsec. (e). Pub. L. 115–91, §1041(c), added subsec. (e).

2003—Subsec. (d). Pub. L. 108–136 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In any case in which funds are expended under the authority of subsections (a) and (b), the Secretary of Defense shall submit a report of such expenditures on a quarterly basis to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

1999—Subsecs. (c)(1), (d). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c). Pub. L. 104–106, §915(2), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 104–106, §1502(a)(5), substituted ''Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of'' for ''Committees on Armed Services and Appropriations of the Senate and''.

Subsec. (d). Pub. L. 104–106, §915(1), redesignated subsec. (c), as amended by Pub. L. 104–106, §§1502(a)(5), 1506, as (d).

1994—Subsec. (c). Pub. L. 103–337 struck out par. (1) designation before ''In any case'' and struck out par. (2) which read as follows: ''The amount of funds expended by the Inspector General of the Department of Defense under subsections (a) and (b) during a fiscal year may not exceed $400,000.''

1993—Subsec. (a). Pub. L. 103–160, §361(1), inserted '', the Inspector General of the Department of Defense,'' after ''the Secretary of Defense'' and ''or the Inspector General'' after ''the Secretary concerned'' and after ''The Secretary concerned''.

Subsec. (b). Pub. L. 103–160, §361(2), inserted '', by the Inspector General to any person in the Office of the Inspector General,'' after ''the Department of Defense''.

Subsec. (c). Pub. L. 103–160, §361(3), designated existing provisions as par. (1) and added par. (2).

1986—Pub. L. 99–433 renumbered section 140 of this title as this section and substituted ''Emergency'' for ''Emergencies'' in section catchline.

1983—Subsec. (a). Pub. L. 98–94 struck out ''of this section'' after ''subsection (c)''.

Subsec. (c). Pub. L. 98–94 struck out ''of this section'' after ''subsections (a) and (b)''.

Statutory Notes and Related Subsidiaries

CONSTRUCTION AUTHORITY OF SECRETARY OF DEFENSE UNDER DECLARATION OF WAR OR NATIONAL EMERGENCY

Pub. L. 97–99, title IX, §903, Dec. 23, 1981, 95 Stat. 1382, which authorized the Secretary of Defense, in the event of a declaration of war or the declaration of a national emergency by the President, to undertake military construction without regard to any other provisions of law, was repealed and restated as section 2808 of this title by Pub. L. 97–214, §§2(a), 7(18), July 12, 1982, 96 Stat. 157, 174, effective Oct. 1, 1982.

§ 127a. Operations for which funds are not provided in advance: funding mechanisms

(a) IN GENERAL.—(1) The Secretary of Defense shall use the procedures prescribed by this section with respect to any operation specified in paragraph (2) that involves—

(A) the deployment (other than for a training exercise) of elements of the armed forces for a purpose other than a purpose for which funds have been specifically provided in advance; or

(B) the provision of humanitarian assistance, disaster relief, or support for law enforcement (including immigration control) for which funds have not been specifically provided in advance.

(2) This section applies to—

(A) any operation the incremental cost of which is expected to exceed $50,000,000; and

(B) any other operation the expected incremental cost of which, when added to the expected incremental costs of other operations that are currently ongoing, is expected to result in a cumulative incremental cost of ongoing operations of the Department of Defense in excess of $100,000,000.

Any operation the incremental cost of which is expected not to exceed $10,000,000 shall be disregarded for the purposes of subparagraph (B).

(3) This section does not provide authority for the President or the Secretary of Defense to carry out any operation, but establishes mechanisms for the Department of Defense by which funds are provided for operations that the armed forces are required to carry out under some other authority.

(b) WAIVER OF REQUIREMENT TO REIMBURSE SUPPORT UNITS.—(1) The Secretary of Defense shall direct that, when a unit of the armed forces participating in an operation described in subsection (a) receives services from an element of the Department of Defense that operates through the Defense Business Operations Fund (or a successor fund), such unit of the armed forces may not be required to reimburse that element for the incremental costs incurred by that element in providing such services, notwithstanding any other provision of law or any Government accounting practice.

(2) The amounts which but for paragraph (1) would be required to be reimbursed to an element of the Department of Defense (or a fund) shall be recorded as an expense attributable to the operation and shall be accounted for separately.

(c) TRANSFER AUTHORITY.—(1) Whenever there is an operation of the Department of Defense described in subsection (a), the Secretary of De-

fense may transfer amounts described in paragraph (3) to accounts from which incremental expenses for that operation were incurred in order to reimburse those accounts for those incremental expenses. Amounts so transferred shall be merged with and be available for the same purposes as the accounts to which transferred.

(2) The total amount that the Secretary of Defense may transfer under the authority of this section in any fiscal year is $200,000,000.

(3) Transfers under this subsection may only be made from amounts appropriated to the Department of Defense for any fiscal year that remain available for obligation, other than amounts within any operation and maintenance appropriation that are available for (A) an account (known as a budget activity 1 account) that is specified as being for operating forces, or (B) an account (known as a budget activity 2 account) that is specified as being for mobilization.

(4) The authority provided by this subsection is in addition to any other authority provided by law authorizing the transfer of amounts available to the Department of Defense. However, the Secretary may not use any such authority under another provision of law for a purpose described in paragraph (1) if there is authority available under this subsection for that purpose.

(5) The authority provided by this subsection to transfer amounts may not be used to provide authority for an activity that has been denied authorization by Congress.

(6) A transfer made from one account to another under the authority of this subsection shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

[(d) Repealed. Pub. L. 108–136, div. A, title X, §1031(a)(3), Nov. 24, 2003, 117 Stat. 1596.]

(e) LIMITATIONS.—(1) The Secretary may not restore balances in the Defense Business Operations Fund through increases in rates charged by that fund in order to compensate for costs incurred and not reimbursed due to subsection (b).

(2) The Secretary may not restore balances in the Defense Business Operations Fund or any other fund or account through the use of unobligated amounts in an operation and maintenance appropriation that are available within that appropriation for (A) an account (known as a budget activity 1 account) that is specified as being for operating forces, or (B) an account (known as a budget activity 2 account) that is specified as being for mobilization.

(f) SUBMISSION OF REQUESTS FOR SUPPLEMENTAL APPROPRIATIONS.—It is the sense of Congress that whenever there is an operation described in subsection (a), the President should, not later than 90 days after the date on which notification is provided pursuant to subsection (a)(3), submit to Congress a request for the enactment of supplemental appropriations for the then-current fiscal year in order to provide funds to replenish the Defense Business Operations Fund or any other fund or account of the Department of Defense from which funds for the incremental expenses of that operation were derived under this section and should, as necessary, submit subsequent requests for the enactment of such appropriations.

(g) INCREMENTAL COSTS.—For purposes of this section, incremental costs of the Department of Defense with respect to an operation are the costs of the Department that are directly attributable to the operation (and would not have been incurred but for the operation). Incremental costs do not include the cost of property or services acquired by the Department that are paid for by a source outside the Department or out of funds contributed by such a source.

(h) RELATIONSHIP TO WAR POWERS RESOLUTION.—This section may not be construed as altering or superseding the War Powers Resolution. This section does not provide authority to conduct any military operation.

(i) GAO COMPLIANCE REVIEWS.—The Comptroller General of the United States shall from time to time, and when requested by a committee of Congress, conduct a review of the defense funding structure under this section to determine whether the Department of Defense is complying with the requirements and limitations of this section.

(Added Pub. L. 103–160, div. A, title XI, §1108(a)(1), Nov. 30, 1993, 107 Stat. 1751; amended Pub. L. 104–106, div. A, title X, §1003(a)(1), Feb. 10, 1996, 110 Stat. 415; Pub. L. 108–136, div. A, title X, §1031(a)(3), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 111–383, div. A, title X, §1075(b)(2), Jan. 7, 2011, 124 Stat. 4369; Pub. L. 112–81, div. A, title X, §1061(1), Dec. 31, 2011, 125 Stat. 1583.)

Editorial Notes

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (h), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§1541 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

AMENDMENTS

2011—Subsec. (a)(1)(A). Pub. L. 111–383, §1075(b)(2)(A), substituted ''armed forces'' for ''Armed Forces''.

Subsec. (a)(3), (4). Pub. L. 112–81 redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''Whenever an operation to which this section applies is commenced or subsequently becomes covered by this section, the Secretary of Defense shall designate and identify that operation for the purposes of this section and shall promptly notify Congress of that designation (and of the identification of the operation).''

Subsec. (b)(1). Pub. L. 111–383, §1075(b)(2)(B), substituted ''armed forces'' for ''Armed Forces'' in two places.

2003—Subsec. (d). Pub. L. 108–136 struck out subsec. (d) which required Secretary of Defense, within 45 days after identifying an operation pursuant to subsec. (a)(2), to submit a report to Congress relating to the funding, objectives, duration, cost, and exit criteria of the operation.

1996—Pub. L. 104–106 substituted ''Operations for which funds are not provided in advance: funding mechanisms'' for ''Expenses for contingency operations'' as section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (h) relating to funding procedures for operations designated by the Secretary of Defense as National Contingency Operations.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title X, § 1003(b), Feb. 10, 1996, 110 Stat. 417, provided that: ''The amendment to section 127a of title 10, United States Code, made by subsection (a) shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to any operation of the Department of Defense that is in effect on or after that date, whether such operation is begun before, on, or after such date of enactment. In the case of an operation begun before such date, any reference in such section to the commencement of such operation shall be treated as referring to the effective date under the preceding sentence.''

INCREMENTAL CONTINGENCY OPERATIONS COST REPORT

Pub. L. 114–113, div. C, title VIII, § 8093, Dec. 18, 2015, 129 Stat. 2373, provided that: ''The Department of Defense shall continue to report incremental contingency operations costs for Operation Inherent Resolve, Operation Freedom's Sentinel, and any named successor operations, on a monthly basis and any other operation designated and identified by the Secretary of Defense for the purposes of section 127a of title 10, United States Code, on a semi-annual basis in the Cost of War Execution Report as prescribed in the Department of Defense Financial Management Regulation Department of Defense Instruction 7000.14, Volume 12, Chapter 23 'Contingency Operations', Annex 1, dated September 2005.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 113–235, div. C, title VIII, § 8097, Dec. 16, 2014, 128 Stat. 2276.

Pub. L. 113–76, div. C, title VIII, § 8092, Jan. 17, 2014, 128 Stat. 126.

§ 127b. Department of Defense rewards program

(a) AUTHORITY.—The Secretary of Defense may pay a monetary amount, or provide a payment-in-kind, to a person as a reward for providing United States Government personnel, or government personnel of allied forces participating in a combined operation with the armed forces, with information or nonlethal assistance that is beneficial to—

(1) an operation or activity of the armed forces, or of allied forces participating in a combined operation with the armed forces, conducted outside the United States against international terrorism; or

(2) force protection of the armed forces, or of allied forces participating in a combined operation with the armed forces.

(b) LIMITATION.—The amount or value of a reward provided under this section may not exceed $5,000,000.

(c) DELEGATION OF AUTHORITY.—(1) The authority of the Secretary of Defense under subsection (a) may be delegated only—

(A) to the Deputy Secretary of Defense and an Under Secretary of Defense, without further redelegation; and

(B) to the commander of a combatant command, but only for a reward in an amount or with a value not in excess of $1,000,000.

(2) A commander of a combatant command to whom authority to provide rewards under this section is delegated under paragraph (1) may further delegate that authority, but only for a reward in an amount or with a value not in excess of $10,000, except that such a delegation may be made to the commander's deputy commander, or to the commander of a command directly subordinate to that commander, without regard to such limitation. Such a delegation may be made to the commander of a command directly subordinate to the commander of a combatant command only with the approval of the Secretary of Defense, the Deputy Secretary of Defense, or an Under Secretary of Defense to whom authority has been delegated under subparagraph (1)(A).

(3)(A) Subject to subparagraph (B), an official who has authority delegated under paragraph (1) or (2) may use that authority, acting through government personnel of allied forces, to offer and make rewards.

(B) The Secretary of Defense shall prescribe policies and procedures for making rewards in the manner described in subparagraph (A), which shall include guidance for the accountability of funds used for making rewards in that manner. The policies and procedures shall not take effect until 30 days after the date on which the Secretary submits the policies and procedures to the congressional defense committees. Rewards may not be made in the manner described in subparagraph (A) except under policies and procedures that have taken effect.

(d) COORDINATION.—(1) The Secretary of Defense shall prescribe policies and procedures for the offering and making of rewards under this section and otherwise for administering the authority under this section. Such policies and procedures shall be prescribed in consultation with the Secretary of State and the Attorney General and shall ensure that the making of a reward under this section does not duplicate or interfere with the payment of a reward authorized by the Secretary of State or the Attorney General.

(2) The Secretary of Defense shall consult with the Secretary of State regarding the making of any reward under this section in an amount or with a value in excess of $2,000,000.

(e) PERSONS NOT ELIGIBLE.—The following persons are not eligible to receive a reward under this section:

(1) A citizen of the United States.

(2) An officer or employee of the United States.

(3) An employee of a contractor of the United States.

(f) ANNUAL REPORT.—(1) Not later than February 1 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the rewards program under this section during the preceding fiscal year.

(2) Each report for a fiscal year under this subsection shall include the following:

(A) Information on the total amount expended during that fiscal year to carry out the rewards program under this section during that fiscal year.

(B) Specification of the amount, if any, expended during that fiscal year to publicize the availability of rewards under this section.

(C) With respect to each reward provided during that fiscal year—

(i) the amount or value of the reward and whether the reward was provided as a monetary payment or in some other form;

(ii) the recipient of the reward and the recipient's geographic location; and

(iii) a description of the information or assistance for which the reward was paid, together with an assessment of the significance and benefit of the information or assistance.

(D) A description of the status of program implementation in each geographic combatant command, including in which countries the program is being operated.

(E) A description of efforts to coordinate and de-conflict the authority under subsection (a) with similar rewards programs administered by the United States Government.

(F) An assessment of the effectiveness of the program in meeting its objectives.

(3) The Secretary may submit the report in classified form if the Secretary determines that it is necessary to do so.

(g) DETERMINATIONS BY THE SECRETARY.—A determination by the Secretary under this section is final and conclusive and is not subject to judicial review.

(h) REPORT ON DESIGNATION OF COUNTRIES FOR WHICH REWARDS MAY BE PAID.—Not later than 15 days after the date on which the Secretary designates a country as a country in which an operation or activity of the armed forces is occurring in connection with which rewards may be paid under this section, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the designation. Each report shall include the following:

(1) The country so designated.

(2) The reason and justification for the designation of the country.

(3) An estimate of the amount or value of the rewards to be paid as monetary payment or payment-in-kind under this section.

(Added Pub. L. 107–314, div. A, title X, §1065(a), Dec. 2, 2002, 116 Stat. 2655; amended Pub. L. 109–163, div. A, title X, §1056(c)(2), Jan. 6, 2006, 119 Stat. 3439; Pub. L. 109–364, div. A, title XIV, §1401, Oct. 17, 2006, 120 Stat. 2433; Pub. L. 110–181, div. A, title X, §1033, Jan. 28, 2008, 122 Stat. 307; Pub. L. 111–84, div. A, title X, §1071, Oct. 28, 2009, 123 Stat. 2470; Pub. L. 111–383, div. A, title X, §1031, Jan. 7, 2011, 124 Stat. 4351; Pub. L. 112–81, div. A, title X, §§1033, 1064(3), Dec. 31, 2011, 125 Stat. 1572, 1587; Pub. L. 112–239, div. A, title X, §1021(a), Jan. 2, 2013, 126 Stat. 1911; Pub. L. 113–291, div. A, title X, §1031, Dec. 19, 2014, 128 Stat. 3491; Pub. L. 114–92, div. A, title X, §1042(a)–(d)(1), Nov. 25, 2015, 129 Stat. 976; Pub. L. 114–328, div. A, title X, §1063, Dec. 23, 2016, 130 Stat. 2408.)

Editorial Notes

AMENDMENTS

2016—Subsec. (h)(2). Pub. L. 114–328, §1063(1), inserted ''and justification'' after ''reason''.

Subsec. (h)(3). Pub. L. 114–328, §1063(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''A justification for the designation of the country for purposes of this section.''

2015—Pub. L. 114–92, §1042(d)(1), substituted ''Department of Defense rewards program'' for ''Assistance in combating terrorism: rewards'' in section catchline.

Subsec. (c)(3)(A). Pub. L. 114–92, §1042(a)(1), substituted ''subparagraph (B)'' for ''subparagraphs (B) and (C)''.

Subsec. (c)(3)(C), (D). Pub. L. 114–92, §1042(a)(2), struck out subpars. (C) and (D) which read as follows:

''(C) Rewards may not be made in the manner described in subparagraph (A) after September 30, 2015.

''(D) Not later than April 1, 2008, the Secretary of Defense shall submit to the congressional defense committees a report on the implementation of this paragraph. The report shall identify each reward made in the manner described in subparagraph (A) and, for each such reward—

''(i) identify the type, amount, and recipient of the reward;

''(ii) explain the reason for making the reward; and

''(iii) assess the success of the reward in advancing the effort to combat terrorism.''

Subsec. (f)(2)(D) to (G). Pub. L. 114–92, §1042(b), redesignated subpars. (E) to (G) as (D) to (F), respectively, inserted '', including in which countries the program is being operated'' before period at end of subpar. (D), and struck out former subpar. (D) which read as follows: ''Information on the implementation of paragraph (3) of subsection (c).''

Subsec. (h). Pub. L. 114–92, §1042(c), added subsec. (h).

2014—Subsec. (c)(3)(C). Pub. L. 113–291 substituted ''September 30, 2015'' for ''September 30, 2014''.

2013—Subsec. (c)(3)(C). Pub. L. 112–239 substituted ''September 30, 2014'' for ''September 30, 2013''.

2011—Subsec. (c)(3)(C). Pub. L. 112–81, §1033(1), substituted ''September 30, 2013'' for ''September 30, 2011''.

Pub. L. 111–383 substituted ''2011'' for ''2010''.

Subsec. (f)(1). Pub. L. 112–81, §1064(3), which directed the substitution of ''February 1'' for ''December 1'', could not be executed because of the intervening amendment by Pub. L. 112–81, §1033(2)(A). See note below.

Pub. L. 112–81, §1033(2)(A), substituted ''February'' for ''December''.

Subsec. (f)(2)(C)(ii). Pub. L. 112–81, §1033(2)(B)(i), inserted ''and the recipient's geographic location'' after ''reward''.

Subsec. (f)(2)(E) to (G). Pub. L. 112–81, §1033(2)(B)(ii), added subpars. (E) to (G).

2009—Subsec. (c)(3)(C). Pub. L. 111–84 substituted ''2010'' for ''2009''.

2008—Subsec. (a). Pub. L. 110–181, §1033(b)(1)(A), in introductory provisions, inserted '', or government personnel of allied forces participating in a combined operation with the armed forces,'' after ''United States Government personnel''.

Subsec. (a)(1). Pub. L. 110–181, §1033(b)(1)(B), inserted '', or of allied forces participating in a combined operation with the armed forces,'' after ''armed forces''.

Subsec. (a)(2). Pub. L. 110–181, §1033(b)(1)(C), inserted '', or of allied forces participating in a combined operation with the armed forces'' after ''armed forces''.

Subsec. (b). Pub. L. 110–181, §1033(a)(1), substituted ''$5,000,000'' for ''$200,000''.

Subsec. (c)(1)(B). Pub. L. 110–181, §1033(a)(2), substituted ''$1,000,000'' for ''$50,000''.

Subsec. (c)(3). Pub. L. 110–181, §1033(b)(2), added par. (3).

Subsec. (d)(2). Pub. L. 110–181, §1033(a)(3), substituted ''$2,000,000'' for ''$100,000''.

Subsec. (f)(2)(D). Pub. L. 110–181, §1033(c), added subpar. (D).

2006—Subsec. (c)(2). Pub. L. 109–364 substituted ''$10,000'' for ''$2,500'', inserted '', or to the commander of a command directly subordinate to that commander,'' after ''deputy commander'', and inserted at end ''Such a delegation may be made to the commander of a command directly subordinate to the commander of a combatant command only with the approval of the Secretary of Defense, the Deputy Secretary of Defense, or an Under Secretary of Defense to whom authority has been delegated under subparagraph (1)(A).''

Subsec. (d)(1). Pub. L. 109–163 substituted ''Such policies'' for ''Such polices''.

Statutory Notes and Related Subsidiaries

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (f) of this section requiring submittal of annual report to Congress, see section 1061 of Pub. L. 114–328, set out as a note under section 111 of this title.

§ 127c. Purchase of weapons overseas: force protection

(a) AUTHORITY.—When elements of the armed forces are engaged in ongoing military operations in a country, the Secretary of Defense may, for the purpose of protecting United States forces in that country, purchase weapons from any foreign person, foreign government, international organization, or other entity located in that country.

(b) LIMITATION.—The total amount expended during any fiscal year for purchases under this section may not exceed $15,000,000.

(c) SEMIANNUAL CONGRESSIONAL REPORT.—In any case in which the authority provided in subsection (a) is used during the period of the first six months of a fiscal year, or during the period of the second six months of a fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and Committee on Armed Services of the House of Representatives a report on the use of that authority during that six-month period. Each such report shall be submitted not later than 30 days after the end of the six-month period during which the authority is used. Each such report shall include the following:

(1) The number and type of weapons purchased under subsection (a) during that six-month period covered by the report, together with the amount spent for those weapons and the Secretary's estimate of the fair market value of those weapons.

(2) A description of the dispositions (if any) during that six-month period of weapons purchased under subsection (a).

(Added Pub. L. 109–163, div. A, title XII, § 1231(a), Jan. 6, 2006, 119 Stat. 3467.)

Editorial Notes

CODIFICATION

Another section 127c was renumbered section 127d of this title prior to being renumbered section 331 of this title.

§ 127d. Support of special operations for irregular warfare

(a) AUTHORITY.—The Secretary of Defense may, with the concurrence of the relevant Chief of Mission, expend up to $20,000,000 during any fiscal year to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing and authorized irregular warfare operations by United States Special Operations Forces.

(b) FUNDS.—Funds for support under this section in a fiscal year shall be derived from amounts authorized to be appropriated for that fiscal year for the Department of Defense for operation and maintenance.

(c) PROCEDURES.—

(1) IN GENERAL.—The authority in this section shall be exercised in accordance with such procedures as the Secretary shall establish for purposes of this section.

(2) ELEMENTS.—The procedures required under paragraph (1) shall establish, at a minimum, the following:

(A) Policy guidance for the execution of, and constraints within, activities under the authority in this section.

(B) The processes through which activities under the authority in this section are to be developed, validated, and coordinated, as appropriate, with relevant entities of the United States Government.

(C) The processes through which legal reviews and determinations are made to comply with the authority in this section and ensure that the exercise of such authority is consistent with the national security of the United States.

(D) The processes to ensure, to the extent practicable, that before a decision to provide support is made, the recipients of support do not pose a counterintelligence or force protection threat and have not engaged in gross violations of human rights.

(E) The processes by which the Department shall keep the congressional defense committees fully and currently informed of—

(i) the requirements for the use of the authority in this section; and

(ii) activities conducted under such authority.

(3) NOTICE TO CONGRESS ON PROCEDURES AND MATERIAL MODIFICATIONS.—The Secretary shall notify the congressional defense committees of the procedures established pursuant to this section before any exercise of the authority in this section, and shall notify such committee of any material modification of the procedures.

(d) CONSTRUCTION OF AUTHORITY.—Nothing in this section shall be construed to constitute a specific statutory authorization for any of the following:

(1) The conduct of a covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).

(2) The introduction of United States Armed Forces (including as such term is defined in section 8(c) of the War Powers Resolution (50 U.S.C. 1547(c))) into hostilities or into situations wherein hostilities are clearly indicated by the circumstances.

(3) The provision of support to regular forces, irregular forces, groups, or individuals for the conduct of operations that United States Special Operations Forces are not otherwise legally authorized to conduct themselves.

(4) The conduct or support of activities, directly or indirectly, that are inconsistent with the laws of armed conflict.

(e) LIMITATION ON DELEGATION.—The authority of the Secretary to make funds available under this section for support of a military operation may not be delegated.

(f) PROGRAMMATIC AND POLICY OVERSIGHT.—The Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict shall have primary programmatic and policy oversight within the Office of the Secretary of Defense of support to irregular warfare activities authorized by this section.

(g) NOTIFICATION.—

(1) IN GENERAL.—Not later than 15 days before exercising the authority in this section to make funds available to initiate support of an ongoing and authorized operation or changing the scope or funding level of any support under this section for such an operation by $500,000 or an amount equal to 10 percent of such funding level (whichever is less), the Secretary shall notify the congressional defense committees of the use of such authority with respect to such operation. Any such notification shall be in writing.

(2) ELEMENTS.—A notification required by this subsection shall include the following:

(A) The type of support to be provided to United States Special Operations Forces, and a description of the ongoing and authorized operation to be supported.

(B) A description of the foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating the ongoing and authorized operation that is to be the recipient of funds.

(C) The type of support to be provided to the recipient of the funds, and a description of the end-use monitoring to be used in connection with the use of the funds.

(D) The amount obligated under the authority to provide support.

(E) The duration for which the support is expected to be provided, and an identification of the timeframe in which the provision of support will be reviewed by the commander of the applicable combatant command for a determination with respect to the necessity of continuing such support.

(F) The determination of the Secretary that the provision of support does not constitute any of the following:

(i) An introduction of United States Armed Forces (including as such term is defined in section 8(c) of the War Powers Resolution (50 U.S.C. 1547(c))) into hostilities, or into situations where hostilities are clearly indicated by the circumstances, without specific statutory authorization within the meaning of section 5(b) of such Resolution (50 U.S.C. 1544(b)).

(ii) A covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).

(iii) An authorization for the provision of support to regular forces, irregular forces, groups, or individuals for the conduct of operations that United States Special Operations Forces are not otherwise legally authorized to conduct themselves.

(iv) The conduct or support of activities, directly or indirectly, that are inconsistent with the laws of armed conflict.

(h) NOTIFICATION OF SUSPENSION OR TERMINATION OF SUPPORT.—

(1) IN GENERAL.—Not later than 48 hours after suspending or terminating support to any foreign force, irregular force, group, or individual provided pursuant to the authority in this section, the Secretary shall submit to the congressional defense committees a written notice of such suspension or termination.

(2) ELEMENTS.—The written notice required by paragraph (1) shall include each of the following:

(A) A description of the reasons for the suspension or termination of such support.

(B) A description of any effect on regional, theater, or global campaign plan objectives anticipated to result from such suspension or termination.

(C) A plan for such suspension or termination, and, in the case of support that is planned to be transitioned to any other program of the Department of Defense or to a program of any other Federal department or agency, a detailed description of the transition plan, including the resources, equipment, capabilities, and personnel associated with such plan.

(i) BIANNUAL REPORTS.—

(1) REPORT ON PRECEDING FISCAL YEAR.—Not later than 120 days after the close of each fiscal year in which subsection (a) is in effect, the Secretary shall submit to the congressional defense committees a report on the support provided under this section during the preceding fiscal year.

(2) REPORT ON CURRENT CALENDAR YEAR.—Not later than 180 days after the submittal of each report required by paragraph (1), the Secretary shall submit to the congressional defense committees a report on the support provided under this section during the first half of the fiscal year in which the report under this paragraph is submitted.

(3) ELEMENTS.—Each report required by this subsection shall include the following:

(A) A summary of the ongoing irregular warfare operations, and associated authorized campaign plans, being conducted by United States Special Operations Forces that were supported or facilitated by foreign forces, irregular forces, groups, or individuals for which support was provided under this section during the period covered by such report.

(B) A description of the support or facilitation provided by such foreign forces, irregular forces, groups, or individuals to United States Special Operations Forces during such period.

(C) The type of recipients that were provided support under this section during such period, identified by authorized category (foreign forces, irregular forces, groups, or individuals).

(D) A detailed description of the support provided to the recipients under this section during such period.

(E) The total amount obligated for support under this section during such period, including budget details.

(F) The intended duration of support provided under this section during such period.

(G) An assessment of value of the support provided under this section during such period, including a summary of significant ac-

tivities undertaken by foreign forces, irregular forces, groups, or individuals to support irregular warfare operations by United States Special Operations Forces.

(H) The total amount obligated for support under this section in prior fiscal years.

(j) QUARTERLY BRIEFINGS.—

(1) IN GENERAL.—Not less frequently than quarterly, the Secretary shall provide to the congressional defense committees a briefing on the use of the authority provided by this section, and other matters relating to irregular warfare, with the primary purposes of—

(A) keeping the congressional defense committees fully and currently informed of irregular warfare requirements and activities, including emerging combatant commands requirements; and

(B) consulting with the congressional defense committees regarding such matters.

(2) ELEMENTS.—Each briefing required by paragraph (1) shall include the following:

(A) An update on irregular warfare activities within each geographic combatant command and a description of the manner in which such activities support the respective theater campaign plan and the National Defense Strategy.

(B) An overview of relevant authorities and legal issues, including limitations.

(C) An overview of irregular warfare-related interagency activities and initiatives.

(D) A description of emerging combatant command requirements for the use of the authority provided by this section.

(k) IRREGULAR WARFARE DEFINED.—Subject to subsection (d), in this section, the term ''irregular warfare'' means Department of Defense activities not involving armed conflict that support predetermined United States policy and military objectives conducted by, with, and through regular forces, irregular forces, groups, and individuals.

(Added Pub. L. 118–31, div. A, title XII, §1201(a), Dec. 22, 2023, 137 Stat. 437.)

Editorial Notes

PRIOR PROVISIONS

A prior section 127d was renumbered section 331 of this title.

§ 127e. Support of special operations to combat terrorism

(a) AUTHORITY.—The Secretary of Defense may, with the concurrence of the relevant Chief of Mission, expend up to $100,000,000 during any fiscal year to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating authorized ongoing military operations by United States special operations forces to combat terrorism.

(b) FUNDS.—Funds for support under this section in a fiscal year shall be derived from amounts authorized to be appropriated for that fiscal year for the Department of Defense for operation and maintenance.

(c) PROCEDURES.—

(1) IN GENERAL.—The authority in this section shall be exercised in accordance with such procedures as the Secretary shall establish for purposes of this section. The Secretary shall notify the congressional defense committees of any material change to such procedures.

(2) ELEMENTS.—The procedures required under paragraph (1) shall establish, at a minimum, each of the following:

(A) Policy, strategy, or other guidance for the execution of, and constraints within, activities conducted under this section.

(B) The processes through which activities conducted under this section are to be developed, validated, and coordinated, as appropriate, with relevant Federal entities.

(C) The processes through which legal reviews and determinations are made to comply with this section and ensure that the exercise of the authority in this section is consistent with the national security of the United States.

(d) NOTIFICATION.—

(1) IN GENERAL.—Not later than 15 days before exercising the authority in this section to make funds available to initiate support of an approved military operation or changing the scope or funding level of any support for such an operation by $1,000,000 or an amount equal to 20 percent of such funding level (whichever is less), or not later than 48 hours after exercising such authority if the Secretary determines that extraordinary circumstances that impact the national security of the United States exist, the Secretary shall notify the congressional defense committees of the use of such authority with respect to that operation. Any such notification shall be in writing.

(2) ELEMENTS.—A notification required by this subsection shall include the following:

(A) The type of support provided or to be provided to United States special operations forces and a description of the authorized ongoing operation.

(B) A description of the foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating the authorized ongoing operation who will receive support provided under this section.

(C) A detailed description of the support provided or to be provided to the recipient.

(D) The amount obligated under the authority to provide support.

(E) A detailed description of the legal and operational authorities related to the authorized ongoing operation, including relevant execute orders issued by the Secretary of Defense and combatant commanders related to the authorized ongoing operation, including an identification of operational activities United States Special Operations Forces are authorized to conduct under such execute orders.

(F) The duration for which the support is expected to be provided and an identification of the timeframe in which the provision of support will be reviewed by the combatant commander for a determination regarding the necessity of continuation of support.

(G) A description of the entities with which the recipients of support are engaged in hostilities and whether each such entity is covered under an authorization for use of military force.

(H) A description of the steps taken to ensure the support is consistent with United States national security objectives.

(I) A description of the steps taken to ensure that the recipients of support have not engaged in human rights violations.

(e) NOTIFICATION OF SUSPENSION OR TERMINATION OF SUPPORT.—

(1) IN GENERAL.—Not later than 48 hours after suspending or terminating support to any foreign force, irregular force, group, or individual under the authority in this section, the Secretary shall submit to the congressional defense committees a written notice of such suspension or termination.

(2) ELEMENTS.—Notice provided under paragraph (1) with respect to the suspension or termination of support shall include each of the following elements:

(A) A description of the reasons for the suspension or termination of such support.

(B) A description of any effects on regional, theatre, or global campaign plan objectives anticipated to result from the suspension or termination of such support.

(C) A plan for the suspension or termination of the support, and, in the case of support that is planned to be transitioned to another program of the Department of Defense or another Federal department or agency, a detailed description of the transition plan, including the resources, equipment, capabilities, and personnel associated with such plan.

(f) LIMITATION ON DELEGATION.—The authority of the Secretary to make funds available under this section for support of a military operation may not be delegated.

(g) CONSTRUCTION OF AUTHORITY.—Nothing in this section may be construed to constitute authority to conduct or provide statutory authorization for any of the following:

(1) A covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).

(2) An introduction of the armed forces, (including as such term is defined in section 8(c) of the War Powers Resolution (50 U.S.C. 1547(c)), into hostilities, or into situations where hostilities are clearly indicated by the circumstances, without specific statutory authorization within the meaning of section 5(b) of such Resolution (50 U.S.C. 1544(b)).

(3) Activities or support of activities, directly or indirectly, that are inconsistent with the laws of armed conflict.

(h) OVERSIGHT BY ASD FOR SOLIC.—The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall have primary responsibility within the Office of the Secretary of Defense for oversight of policies and programs for support authorized by this section.

(i) BIANNUAL REPORTS.—

(1) REPORT ON PRECEDING CALENDAR YEAR.—Not later than 120 days after the last day of each fiscal year, the Secretary shall submit to the congressional defense committees a report on the support provided under this section during the preceding calendar year.

(2) REPORT ON CURRENT CALENDAR YEAR.—Not later than six months after the date of the submittal of the report most recently submitted under paragraph (1), the Secretary shall submit to the congressional defense committees a report on the support provided under this section during the first half of the calendar year in which the report under this paragraph is submitted.

(3) ELEMENTS.—Each report required by this subsection shall include, for the period covered by such report, the following:

(A) A summary of the ongoing military operations by United States special operations forces to combat terrorism that were supported or facilitated by foreign forces, irregular forces, groups, or individuals for which support was provided under this section.

(B) A description of the support or facilitation provided by such foreign forces, irregular forces, groups, or individuals to United States special operations forces.

(C) The type of recipients that were provided support under this section, identified by authorized category (foreign forces, irregular forces, groups, or individuals).

(D) The total amount obligated for support under this section, including budget details.

(E) The total amount obligated in prior fiscal years under this section and applicable preceding authority.

(F) The intended duration of support provided under this section.

(G) A description of the support or training provided to the recipients of support under this section.

(H) A value assessment of the support provided under this section, including a summary of significant activities undertaken by foreign forces, irregular forces, groups, or individuals to support operations by United States special operations forces to combat terrorism.

(Added Pub. L. 114–328, div. A, title XII, §1203(a)(1), Dec. 23, 2016, 130 Stat. 2474; amended Pub. L. 115–91, div. A, title X, §1031, Dec. 12, 2017, 131 Stat. 1550; Pub. L. 116–92, div. A, title X, §1041, Dec. 20, 2019, 133 Stat. 1585; Pub. L. 116–283, div. A, title X, §§1051, 1081(a)(7), Jan. 1, 2021, 134 Stat. 3847, 3871.)

Editorial Notes

AMENDMENTS

2021—Subsec. (c). Pub. L. 116–283, §1051(1), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: ''The authority in this section shall be exercised in accordance with such procedures as the Secretary shall establish for purposes of this section. The Secretary shall notify the congressional defense committees of any material modification of such procedures.''

Subsec. (d)(2)(G) to (I). Pub. L. 116–283, §1051(2), added subpars. (G) to (I).

Subsecs. (e), (f). Pub. L. 116–283, §1051(3), (4), added subsec. (e) and redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 116–283, §1051(5), added subsec. (g) and struck out former subsec. (g). Prior to amendment, text read as follows: ''This section does not constitute authority to conduct a covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 3093(e)).''

Pub. L. 116–283, §1051(3), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 116–283, § 1081(a)(7), which directed the substitution of ''Low Intensity'' for ''Low-Intensity'' in subsec. (g) as redesignated by section 1051 of Pub. L. 116–283, was executed by making substitution in subsec. (h) as redesignated by section 1051, to reflect the probable intent of Congress.

Pub. L. 116–283, § 1051(3), reesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 116–283, § 1051(3), reesignated subsec. (h) as (i).

2019—Subsec. (a). Pub. L. 116–92, § 1041(1), inserted ''authorized'' before ''ongoing military operations''.

Subsec. (d)(2)(A). Pub. L. 116–92, § 1041(2)(A), inserted ''and a description of the authorized ongoing operation'' before period at end.

Subsec. (d)(2)(B) to (D). Pub. L. 116–92, § 1041(2)(B), (C), added subpars. (B) and (C), redesignated former subpar. (C) as (D), and struck out former subpar. (B) which read as follows: ''The type of support provided or to be provided to the recipient of the funds.''.

Subsec. (d)(2)(E), (F). Pub. L. 116–92, § 1041(2)(D), added subpars. (E) and (F).

2017—Subsecs. (g), (h). Pub. L. 115–91, § 1031(a), added subsec. (g) and redesignated former subsec. (g) as (h).

Subsec. (h)(1). Pub. L. 115–91, § 1031(b)(1), substituted ''120 days after the last day of each fiscal year'' for ''March 1 each year''.

Subsec. (h)(2). Pub. L. 115–91, § 1031(b)(2), substituted ''six months after the date of the submittal of the report most recently submitted under paragraph (1)'' for ''September 1 each year'' and inserted ''under this paragraph'' after ''in which the report''.

Statutory Notes and Related Subsidiaries

CHIEF OF MISSION CONCURRENCE

Pub. L. 117–81, div. E, title LVII, § 5703, Dec. 27, 2021, 135 Stat. 2382, provided that: ''In the course of a chief of mission providing concurrence to the exercise of the authority pursuant to section 127e of title 10, United States Code, or section 1202 of the National Defense Authorization Act for Fiscal Year 2018 [Pub. L. 115–91; 131 Stat. 1639]—

''(1) each relevant chief of mission shall inform and consult in a timely manner with relevant individuals at relevant missions or bureaus of the Department of State; and

''(2) the Secretary of State shall take such steps as may be necessary to ensure that such relevant individuals have the security clearances necessary and access to relevant compartmented and special programs to so consult in a timely manner with respect to such concurrence.''

§ 127f. Expenditure of funds for clandestine activities that support operational preparation of the environment and non-conventional assisted recovery capabilities

(a) AUTHORITY.—(1) Amounts appropriated or otherwise made available for the Department of Defense for operation and maintenance, Defense-wide, may be used for any purpose the Secretary of Defense determines to be proper—

(A) for operational preparation of the environment for operations of a confidential nature; or

(B) to establish, develop, and maintain non-conventional assisted recovery capabilities to facilitate the recovery of United States military and civilian personnel, or other individuals, who become isolated or separated.

(2) Such a determination is final and conclusive upon the accounting officers of the United States. The Secretary may certify the amount of any such expenditure authorized by the Secretary that the Secretary considers advisable not to specify, and the Secretary's certificate is sufficient voucher for the expenditure of that amount.

(b) AUTHORIZED ACTIVITIES.—Activities authorized by subsection (a) may, in limited and special circumstances as determined by the Secretary of Defense, include the provision of support to foreign forces, irregular forces, groups, or individuals to conduct operational preparation of the environment and to conduct or support operations to establish, develop, and maintain non-conventional assisted recovery capabilities to facilitate the recovery of United States military and civilian personnel, or other individuals, who become isolated or separated. Such support may include limited amounts of equipment, supplies, training, transportation, or other logistical support or funding.

(c) PROCEDURES.—

(1) IN GENERAL.—The authority in this section shall be exercised in accordance with such procedures as the Secretary of Defense shall establish for purposes of this section.

(2) ELEMENTS.—The procedures required under paragraph (1) shall establish, at a minimum, each of the following:

(A) Policy, strategy, or other guidance for the execution of, and constraints within, activities conducted under this section.

(B) The processes through which activities conducted under this section are to be developed, validated, and coordinated, as appropriate, with relevant Federal entities.

(C) The processes through which legal reviews and determinations are made to comply with the authority in this section and ensure that the exercise of such authority is consistent with the national security interests of the United States.

(D) The processes by which the Department of Defense shall keep the congressional defense committees fully and currently informed of—

(i) the requirements for the use of the authority in this section; and

(ii) activities conducted under such authority.

(3) NOTICE TO CONGRESS.—The Secretary shall notify the congressional defense committees of any material change to the procedures established under paragraph (1).

(d) LIMITATIONS.—The Secretary of Defense—

(1) may expend up to $40,000,000 in any fiscal year for the purposes described in subsection (a); and

(2) may not delegate the authority under this section with respect to any expenditure in excess of $250,000.

(e) EXCLUSION OF INTELLIGENCE ACTIVITIES.—(1) This section does not constitute authority to conduct, or expend funds for, intelligence, counterintelligence, or intelligence-related activities.

(2) In this subsection, the terms ''intelligence'' and ''counterintelligence'' have the meaning given those terms in section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(f) QUARTERLY BRIEFING.—On a quarterly basis, the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict,

in coordination with elements of the Department of Defense that the Assistant Secretary determines appropriate, shall provide to the congressional defense committees a briefing outlining the clandestine activities carried out pursuant to subsection (a) during the period covered by the briefing, including—

(1) an update on such activities carried out in each geographic combatant command and a description of how such activities support the respective theater campaign plan;

(2) an overview of the authorities and legal issues, including limitations, relating to such activities; and

(3) any other matters the Assistant Secretary considers appropriate.

(g) ANNUAL REPORT.—Not later than December 31 each year, the Secretary of Defense shall submit to the congressional defense committees a report on expenditures made under this section during the fiscal year preceding the year in which the report is submitted. Each report shall include, for each expenditure under this section during the fiscal year covered by such report—

(1) a description of activities carried out for the purposes described in subsection (a);

(2) the amount of such expenditures;

(3) an identification of the type of recipients to receive support, including foreign forces, irregular forces, groups or individuals, as appropriate;

(4) the total amount of funds obligated for such expenditures in prior fiscal years; and

(5) any other matters the Secretary considers appropriate.

(h) NON-CONVENTIONAL ASSISTED RECOVERY CAPABILITIES.—Funding used to establish, develop, and maintain non-conventional assisted recovery capabilities under this section may only be obligated and expended with the concurrence of the relevant Chief of Mission or Chiefs of Mission.

(i) OVERSIGHT BY ASSISTANT SECRETARY OF DEFENSE FOR SPECIAL OPERATIONS AND LOW INTENSITY CONFLICT.—The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict shall have primary responsibility within the Office of the Secretary of Defense for oversight of policies and programs authorized by this section.

(j) OPERATIONAL PREPARATION OF THE ENVIRONMENT DEFINED.—In this section, the term ''operational preparation of the environment'' means the conduct of activities in likely or potential operational areas to set conditions for mission execution.

(Added Pub. L. 116–283, div. A, title X, §1052(a), Jan. 1, 2021, 134 Stat. 3849; amended Pub. L. 117–81, div. A, title X, §1093(b), Dec. 27, 2021, 135 Stat. 1935; Pub. L. 117–263, div. A, title XVI, §1621, Dec. 23, 2022, 136 Stat. 2933; Pub. L. 118–31, div. A, title XII, §1221(a), Dec. 22, 2023, 137 Stat. 451.)

Editorial Notes

AMENDMENTS

2023—Pub. L. 118–31, §1221(a)(1), inserted ''and non-conventional assisted recovery capabilities'' after ''environment'' in section catchline.

Subsec. (a). Pub. L. 118–31, §1221(a)(2), substituted par. (1) for ''Subject to subsections (b) through (d), the Secretary of Defense may expend up to $15,000,000 in any fiscal year for clandestine activities for any purpose the Secretary determines to be proper for preparation of the environment for operations of a confidential nature.'' and designated remainder of subsec. (a) as par. (2).

Subsec. (b). Pub. L. 118–31, §1221(a)(3), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: ''Funds for expenditures under this section in a fiscal year shall be derived from amounts authorized to be appropriated for that fiscal year for operation and maintenance, Defense-wide.''

Subsec. (c). Pub. L. 118–31, §1221(a)(5), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 118–31, §1221(a)(6), substituted ''Limitations'' for ''Limitation on Delegation'' in heading and ''The Secretary of Defense—'', par. (1), and ''(2) may not delegate'' for ''The Secretary of Defense may not delegate'' in text.

Pub. L. 118–31, §1221(a)(4), redesignated subsec. (c) as (d).

Subsecs. (e) to (g). Pub. L. 118–31, §1221(a)(4), redesignated subsecs. (d) to (f) as (e) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (g)(1) to (5). Pub. L. 118–31, §1221(a)(7), added pars. (1) to (4), redesignated former par. (4) as (5), and struck out former pars. (1) to (3) which read as follows:

''(1) the amount and date of such expenditure;

''(2) a detailed description of the purpose for which such expenditure was made;

''(3) an explanation why other authorities available to the Department of Defense could not be used for such expenditure; and''.

Subsec. (h). Pub. L. 118–31, §1221(a)(4), redesignated subsec. (g) as (h).

Subsecs. (i), (j). Pub. L. 118–31, §1221(a)(8), added subsecs. (i) and (j).

2022—Subsecs. (e) to (g). Pub. L. 117–263 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

2021—Subsec. (f). Pub. L. 117–81 added subsec. (f).

§ 128. Control and physical protection of special nuclear material: limitation on dissemination of unclassified information

(a)(1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, the Secretary of Defense, with respect to special nuclear materials, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(A) illegal production of nuclear weapons, or

(B) theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the

likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in paragraph (1)—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) illegal production of nuclear weapons, or

(ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(b) Nothing in this section shall be construed to authorize the Secretary to withhold, or to authorize the withholding of, information from the appropriate committees of the Congress.

(c) Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5.

(d) Information that the Secretary prohibits to be disseminated pursuant to subsection (a) that is provided to a State or local government shall remain under the control of the Department of Defense, and a State or local law authorizing or requiring a State or local government to disclose such information shall not apply to such information.

(Added Pub. L. 100–180, div. A, title XI, §1123(a), Dec. 4, 1987, 101 Stat. 1149; amended Pub. L. 101–510, div. A, title XIII, §1311(1), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 108–136, div. A, title X, §1031(a)(4), Nov. 24, 2003, 117 Stat. 1596; Pub. L. 114–328, div. A, title XVI, §1662(a)(1), (2), Dec. 23, 2016, 130 Stat. 2614.)

Editorial Notes

PRIOR PROVISIONS

A prior section 128 was renumbered section 421 of this title.

AMENDMENTS

2016—Pub. L. 114–328, §1662(a)(2), substituted ''Control and physical protection'' for ''Physical protection'' in section catchline.

Subsec. (d). Pub. L. 114–328, §1662(a)(1), added subsec. (d).

2003—Subsec. (d). Pub. L. 108–136 struck out subsec. (d) which required the Secretary to prepare an annual report detailing the Secretary's application during the year of each regulation or order prescribed or issued under this section.

1990—Subsec. (d). Pub. L. 101–510 substituted ''on an annual basis'' for ''on a quarterly basis''.

§ 129. Civilian personnel management

(a) The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with (1) the total force management policies and procedures established under section 129a of this title, (2) the workload required to carry out the functions and activities of the department, and (3) the funds made available to the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense except in accordance with the requirements of this section and section 129a of this title.

(b) With respect to each budget activity within an appropriation for a fiscal year for operations and maintenance, the Secretary of Defense shall ensure that there are employed during that fiscal year employees in the number and with the combination of skills and qualifications that are necessary to carry out the functions within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.

(c)(1) Not later than February 1 of each year—

(A) the Secretary of Defense shall submit to the congressional defense committees a report on the management of the civilian workforce of the Office of the Secretary of Defense and the Defense Agencies and Field Activities; and

(B) the Secretary of each military department shall submit to the congressional defense committees a report on the management of the civilian workforces under the jurisdiction of such Secretary.

(2) Each report under paragraph (1) shall contain, with respect to the civilian workforce under the jurisdiction of the official submitting the report, the following:

(A) An assessment of the projected size and associated cost of such civilian workforce in the current year and for each year in the future-years defense program.

(B) If the projected size and associated cost of such civilian workforce has changed from the previous year's projected size and associated cost, an explanation of the reasons for the increase or decrease from the previous projection, including an explanation of any efforts to reduce the overall costs of the total force of military, civilian, and contract workforces.

(C) In the case of a transfer of functions between military, civilian, and contractor workforces, an explanation of the reasons for the transfer and the steps that have been taken to control the overall cost of the function to the Department.

(Added Pub. L. 97–86, title IX, §904(a), Dec. 1, 1981, 95 Stat. 1114, §140b; renumbered §129, Pub. L. 99–433, title I, §101(a)(3), Oct. 1, 1986, 100 Stat. 994; amended Pub. L. 99–661, div. A, title V, §533, Nov. 14, 1986, 100 Stat. 3873; Pub. L. 102–190, div. A, title III, §312(b), Dec. 5, 1991, 105 Stat. 1335; Pub. L. 104–106, div. A, title X, §1031, Feb. 10, 1996, 110 Stat. 428; Pub. L. 104–201, div. A, title X, §1074(a)(1), title XVI, §1603, Sept. 23, 1996, 110

Stat. 2658, 2735; Pub. L. 105–85, div. A, title XI, §1101, Nov. 18, 1997, 111 Stat. 1922; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112–81, div. A, title IX, §932, Dec. 31, 2011, 125 Stat. 1543; Pub. L. 114–328, div. A, title XI, §1101(a), (b)(1), Dec. 23, 2016, 130 Stat. 2443; Pub. L. 116–92, div. A, title XI, §1103, Dec. 20, 2019, 133 Stat. 1596; Pub. L. 117–81, div. A, title XI, §1102, Dec. 27, 2021, 135 Stat. 1949.)

Editorial Notes

AMENDMENTS

2021—Subsec. (a). Pub. L. 117–81, in first sentence, substituted ''solely'' for ''primarily'' and, in second sentence, struck out ''solely'' after ''shall not be subject''.

2019—Subsec. (a). Pub. L. 116–92, §1103(1), in first sentence, substituted ''each fiscal year primarily'' for ''each fiscal year'', and in second sentence, substituted ''The management of such personnel in any fiscal year shall not be subject solely to any'' for ''Any'' and struck out ''shall be developed on the basis of those factors and shall be subject to adjustment solely for reasons of changed circumstances'' after ''number of employees''.

Subsec. (c)(2)(A). Pub. L. 116–92, §1103(2)(A), inserted ''and associated cost'' after ''projected size''.

Subsec. (c)(2)(B). Pub. L. 116–92, §1103(2), inserted ''and associated cost'' after ''projected size'' in two places and substituted ''to reduce the overall costs of the total force of military, civilian, and contract workforces.'' for ''that have been taken to identify offsetting reductions and avoid unnecessary overall growth in the size of the civilian workforce.''

2016—Pub. L. 114–328, §1101(b)(1), amended section catchline generally, substituting ''Civilian personnel management'' for ''Prohibition of certain civilian personnel management constraints''.

Subsec. (a). Pub. L. 114–328, §1101(a)(1), in first sentence, struck out ''solely'' before ''on the basis'', in second sentence, substituted ''Any'' for ''The management of such personnel in any fiscal year shall not be subject to any'' and inserted ''shall be developed on the basis of those factors and shall be subject to adjustment solely for reasons of changed circumstances'' after ''employees'', and in third sentence, substituted ''except in accordance with the requirements of this section and section 129a of this title.'' for ''unless such reduction is necessary due to a reduction in funds available to the Department or is required under a law that is enacted after February 10, 1996, and that refers specifically to this subsection.''

Subsec. (b). Pub. L. 114–328, §1101(a)(2), (3), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to the number of, and the amount of funds available to be paid to, indirectly funded Government employees of the Department of Defense.

Subsec. (c). Pub. L. 114–328, §1101(a)(2), (4), added subsec. (c) and struck out former subsec. (c) which defined the term ''indirectly funded Government employees''.

Subsecs. (d) to (f). Pub. L. 114–328, §1101(a)(2), (3), redesignated subsec. (d) as (b) and struck out subsecs. (e) and (f) which read as follows:

''(e) Subsections (a), (b), and (c) apply to the Major Range and Test Facility Base (MRTFB) at the installation level.

''(f)(1) Not later than February 1 of each year, the Secretary of each military department and the head of each Defense Agency shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the management of the civilian workforce under the jurisdiction of that official.

''(2) Each report of an official under paragraph (1) shall contain the following:

''(A) The official's certification (i) that the civilian workforce under the jurisdiction of the official is not subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees, and (ii) that, during the 12 months preceding the date on which the report is due, such workforce has not been subject to any such constraint or limitation.

''(B) A description of how the civilian workforce is managed.

''(C) A detailed description of the analytical tools used to determine civilian workforce requirements during the 12-month period referred to in subparagraph (A).''

2011—Subsec. (a). Pub. L. 112–81, §932(1), inserted ''the total force management policies and procedures established under section 129a of this title, (2)'' after ''(1)'' and substituted ''department, and (3)'' for ''department and (2)''.

Subsec. (d). Pub. L. 112–81, §932(2), substituted ''within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.'' for ''within that budget activity for which funds are provided for that fiscal year.''

Subsec. (e). Pub. L. 112–81, §932(3), struck out at end ''With respect to the MRTFB structure, the term 'funds made available' includes both direct appropriated funds and funds provided by MRTFB customers.''

1999—Subsec. (f)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (f). Pub. L. 105–85 added subsec. (f).

1996—Subsec. (a). Pub. L. 104–201, §1074(a)(1), substituted ''February 10, 1996,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

Pub. L. 104–106, §1031(1), substituted ''constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense unless such reduction is necessary due to a reduction in funds available to the Department or is required under a law that is enacted after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 and that refers specifically to this subsection.'' for ''man-year constraint or limitation.''

Subsec. (b)(2). Pub. L. 104–106, §1031(2), substituted ''any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees'' for ''any end-strength''.

Subsec. (c)(1). Pub. L. 104–201, §1603(1), inserted '', the Major Range and Test Facility Base,'' after ''industrial-type activities''.

Subsec. (d). Pub. L. 104–106, §1031(3), added subsec. (d).

Subsec. (e). Pub. L. 104–201, §1603(2), added subsec. (e).

1991—Subsec. (a). Pub. L. 102–190 substituted ''department and (2)'' for ''department, (2)'' and struck out '', and (3) the authorized end strength for the civilian personnel of the department for such fiscal year'' at end of first sentence.

1986—Pub. L. 99–661 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Pub. L. 99–433 renumbered section 140b of this title as this section.

§ 129a. General policy for total force management

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for determining the most appropriate and cost efficient mix of military, civilian, and contractor personnel to perform the mission of the Department of Defense.

(b) RISK MITIGATION OVER COST.—In establishing the policies and procedures under subsection (a), the Secretary shall clearly provide that attainment of a Department of Defense

workforce sufficiently sized and comprised of the appropriate mix of personnel necessary to carry out the mission of the Department and the core mission areas of the armed forces takes precedence over cost. The Secretary may not reduce the civilian workforce programmed full-time equivalent levels unless the Secretary conducts an appropriate analysis of the impacts of such reductions on workload, military force structure, lethality, readiness, operational effectiveness, stress on the military force, and fully burdened costs.

(c) DELEGATION OF RESPONSIBILITIES.—The Secretary shall delegate responsibility for implementation of the policies and procedures established under subsection (a) as follows:

(1) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for guidance to implement such policies and procedures.

(2) The Secretaries of the military departments and the heads of the Defense Agencies shall have overall responsibility for the requirements determination, planning, programming, and budgeting for such policies and procedures. The Secretary of Defense shall ensure that the requirements determination, planning, programming, and budgeting conducted under this paragraph considers all components of the total force (including active and reserve military, the civilian workforce, and contract support) in a holistic manner—

(A) to avoid duplication of efforts and waste of resources attributable to a component working outside the scope of its responsibilities; and

(B) to ensure that risk, cost, and mission validation and prioritization considerations are consistent with the national defense strategy.

(3) The Under Secretary of Defense for Acquisition and Sustainment shall be responsible for ensuring that the defense acquisition system, as defined in section 3001 of this title, is consistent with such policies and procedures and with implementation pursuant to paragraph (1).

(4) The Under Secretary of Defense (Comptroller) shall be responsible for ensuring that the budget for the Department of Defense is consistent with such policies and procedures. The Under Secretary shall notify the congressional defense committees of any deviations from such policies and procedures that are recommended in the budget.

(d) USE OF PLAN, INVENTORY, AND LIST.—The policies and procedures established by the Secretary under subsection (a) shall specifically require the Department of Defense to use the following when making determinations regarding the appropriate workforce mix necessary to perform its mission:

(1) The inventory of contracts for services required by section 4505(c) of this title.

(2) The list of activities required by the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note).

(e) CONSIDERATIONS IN CONVERTING PERFORMANCE OF FUNCTIONS.— If conversion of functions to performance by either Department of Defense civilian personnel or contractor personnel is considered, the Under Secretary of Defense for Personnel and Readiness shall ensure compliance with—

(1) section 2463 of this title (relating to guidelines and procedures for use of civilian employees to perform Department of Defense functions); and

(2) section 2461 of this title (relating to public-private competition required before conversion to contractor performance).

(f) CONSTRUCTION WITH OTHER REQUIREMENTS.—Nothing in this title may be construed as authorizing—

(1) a military department or Defense Agency to directly convert a function to contractor performance without complying with section 2461 of this title;

(2) the use of contractor personnel for functions that are inherently governmental even if there is a military or civilian personnel shortfall in the Department of Defense;

(3) restrictions on the use by a military department or Defense Agency of contractor personnel to perform functions closely associated with inherently governmental functions, provided that—

(A) there are adequate resources to maintain sufficient capabilities within the Department in the functional area being considered for performance by contractor personnel; and

(B) there is adequate Government oversight of contractor personnel performing such functions;

(4) the establishment of numerical goals or budgetary savings targets for the conversion of functions to performance by either Department of Defense civilian personnel or for conversion to performance by contractor personnel; or

(5) the imposition of a civilian hiring freeze that may inhibit the implementation of the policies and procedures established under subsection (a).

(g) PERFORMANCE OF CIVILIAN FUNCTIONS BY MILITARY PERSONNEL.—(1) Functions performed by civilian personnel should not be performed by military personnel except—

(A) if the Secretary of the military department concerned determines in writing based on mission requirements that the performance of such functions by military personnel is cost-effective, taking into account the fully-burdened costs of the civilian, military, and contractor workforces, including the impact of the performance of such functions on military career progression or when required by military necessity; or

(B) such functions may be performed by military personnel for a period that does not exceed one year if the Secretary of the military department concerned determines that—

(i) the performance of such functions by military personnel is required to address critical staffing needs resulting from a reduction in personnel or budgetary resources by reason of an Act of Congress; and

(ii) the military department concerned is in compliance with the policies, procedures,

and analysis required by this section and section 129 of this title.

(2) In determining the workforce mix between civilian and military personnel, the Secretary of a military department shall reserve military personnel for the performance of the functions that, in the estimation of the Secretary, are required to be performed by military personnel in order to achieve national defense goals or in order to enable the proper functioning of the military department. In making workforce decisions, the Secretary shall account for the relative budgetary impact of military versus civilian personnel in determining the functions required to be performed by military personnel.

(Added Pub. L. 101–510, div. A, title XIV, §1483(b)(2), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 112–81, div. A, title IX, §931(a), Dec. 31, 2011, 125 Stat. 1541; Pub. L. 114–328, div. A, title IX, §914, Dec. 23, 2016, 130 Stat. 2350; Pub. L. 115–91, div. A, title X, §§1051(a)(6)(B), 1081(a)(5), Dec. 12, 2017, 131 Stat. 1560, 1594; Pub. L. 115–232, div. A, title IX, §933, Aug. 13, 2018, 132 Stat. 1938; Pub. L. 116–92, div. A, title IX, §902(1), title XI, §1106, Dec. 20, 2019, 133 Stat. 1542, 1597; Pub. L. 116–283, div. A, title IX, §912, title XVIII, §§1808(d)(1), 1883(b)(2), Jan. 1, 2021, 134 Stat. 3802, 4160, 4294; Pub. L. 118–31, div. A, title IX, §911, Dec. 22, 2023, 137 Stat. 364.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(5) of this title, prior to repeal by Pub. L. 101–510, §1483(a).

AMENDMENTS

2023—Subsec. (c)(2). Pub. L. 118–31 inserted at end ''The Secretary of Defense shall ensure that the requirements determination, planning, programming, and budgeting conducted under this paragraph considers all components of the total force (including active and reserve military, the civilian workforce, and contract support) in a holistic manner—'' and added subpars. (A) and (B).

2021—Subsec. (b). Pub. L. 116–283, §912, inserted at end ''The Secretary may not reduce the civilian workforce programmed full-time equivalent levels unless the Secretary conducts an appropriate analysis of the impacts of such reductions on workload, military force structure, lethality, readiness, operational effectiveness, stress on the military force, and fully burdened costs.''

Subsec. (c)(3). Pub. L. 116–283, §1808(d)(1), substituted ''section 3001'' for ''section 2545''.

Subsec. (d)(1). Pub. L. 116–283, §1883(b)(2), substituted ''section 4505(c)'' for ''section 2330a(c)''.

2019—Subsec. (c)(3). Pub. L. 116–92, §902(1), substituted ''Under Secretary of Defense for Acquisition and Sustainment'' for ''Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (g)(1)(B). Pub. L. 116–92, §1106, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''if the performance of such functions by military personnel is required to address critical staffing needs resulting from a reduction in personnel or budgetary resources by reason of an Act of Congress, in which case such functions may not be performed by military personnel for a period in excess of one year.''

2018—Subsec. (g)(1)(A). Pub. L. 115–232 substituted ''is cost-effective, taking into account the fully-burdened costs of the civilian, military, and contractor workforces, including the impact of the performance of such functions on military career progression or when required by military necessity'' for '', including a permanent conversion of such functions to performance by military personnel, is cost-effective or required by a mission''.

2017—Subsec. (b). Pub. L. 115–91, §1081(a)(5), struck out ''(as identified pursuant to section 118b of this title)'' after ''armed forces''.

Subsec. (d). Pub. L. 115–91, §1051(a)(6)(B), redesignated pars. (3) and (4) as (1) and (2), respectively, and struck out former pars. (1) and (2) which read as follows:

''(1) The civilian strategic workforce plan (required by section 115b of this title).

''(2) The civilian positions master plan (required by section 1597(c) of this title).''

2016—Subsec. (g). Pub. L. 114–328 added subsec. (g).

2011—Pub. L. 112–81 amended section generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall use the least costly form of personnel consistent with military requirements and other needs of the Department. In developing the annual personnel authorization requests to Congress and in carrying out personnel policies, the Secretary shall—

''(1) consider particularly the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of a specified job; and

''(2) include in each manpower requirements report submitted under section 115a of this title a complete justification for converting from one form of personnel to another.''

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by sections 1808(d)(1) and 1883(b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

MANAGEMENT INNOVATION ACTIVITIES

Pub. L. 117–81, div. A, title IX, §908, Dec. 27, 2021, 135 Stat. 1875, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall carry out a set of activities to improve the effectiveness of management activities within the Department of Defense, with the goals of incorporating appropriate private sector management practices and technologies and enhancing the capabilities of the defense management workforce.

''(b) MANAGEMENT ACTIVITIES.—Subject to the total force management requirements under section 129a of title 10, United States Code, the activities carried out under subsection (a) may include the following:

''(1) Public-private partnerships with appropriate private sector and government organizations.

''(2) Personnel exchange programs with appropriate industry, academic, and government organizations to enhance the capabilities of the defense management workforce.

''(3) Research, development, and technology and business process prototyping activities to create new technological capabilities to support management missions, or development and testing of new management concepts and business transformation activities.

''(4) The designation of appropriate organizations to lead management innovation activities.

''(5) A process by which defense business process owners and other personnel of the Department of Defense can identify management and business process challenges and opportunities that could be addressed by activities carried out under this section.

''(6) Processes to develop, prototype, test, and field new business processes and practices to improve defense management capabilities.

''(7) Academic research and educational activities related to defense management missions to promote—

''(A) development of innovative management concepts;

''(B) analyses and addressing of appropriate management challenges; and

''(C) development of programs and activities to develop the defense management workforce.

''(8) Academic research and independent studies from federally funded research and development centers assessing lessons learned from previous Departmental management reform initiatives and whether legacy organizations exist and should be consolidated.

''(c) PLAN REQUIRED.—Not later than February 1, 2023, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for carrying out the activities under this section.

''(d) BRIEFINGS.—

''(1) INITIAL BRIEFING.—Not later than July 1, 2022, the Secretary of Defense shall provide to the congressional defense committees an initial briefing on the activities carried out and plans developed under this section.

''(2) SUBSEQUENT BRIEFING.—On a date occurring after the briefing under paragraph (1), but not later than July 1, 2023, the Secretary of Defense shall provide to the congressional defense committees a briefing on the activities carried out and plans developed under this section.''

STRATEGIC POLICY FOR THE RETROGRADE, RECONSTITUTION, AND REPLACEMENT OF OPERATING FORCES USED TO SUPPORT OVERSEAS CONTINGENCY OPERATIONS

Pub. L. 113–66, div. A, title III, § 324, Dec. 26, 2013, 127 Stat. 733, provided that:

''(a) ESTABLISHMENT OF POLICY.—

''(1) IN GENERAL.—The Secretary of Defense shall establish a policy setting forth the programs and priorities of the Department of Defense for the retrograde, reconstitution, and replacement of units and materiel used to support overseas contingency operations. The policy shall take into account national security threats, the requirements of the combatant commands, the current readiness of the operating forces of the military departments, and risk associated with strategic depth and the time necessary to reestablish required personnel, equipment, and training readiness in such operating forces.

''(2) ELEMENTS.—The policy required under paragraph (1) shall include the following elements:

''(A) Establishment and assignment of responsibilities and authorities within the Department for oversight and execution of the planning, organization, and management of the programs to reestablish the readiness of redeployed operating forces.

''(B) Guidance concerning priorities, goals, objectives, timelines, and resources to reestablish the readiness of redeployed operating forces in support of national defense objectives and combatant command requirements.

''(C) Oversight reporting requirements and metrics for the evaluation of Department of Defense and military department progress on restoring the readiness of redeployed operating forces in accordance with the policy required under paragraph (1).

''(D) A framework for joint departmental reviews of military services' annual budgets proposed for retrograde, reconstitution, or replacement activities, including an assessment of the strategic and operational risk assumed by the proposed levels of investment across the Department of Defense.

''(b) IMPLEMENTATION PLAN.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementation of the policy required under this section.

''(2) ELEMENTS.—The implementation plan required under paragraph (1) shall include the following elements:

''(A) The assignment of responsibilities and authorities for oversight and execution of the planning, organization, and management of the programs to reestablish the readiness of redeployed operating forces.

''(B) Establishment of priorities, goals, objectives, timelines, and resources to reestablish the readiness of redeployed operating forces in support of national defense objectives and combatant command requirements.

''(C) A description of how the plan will be implemented, including a schedule with milestones to meet the goals of the plan.

''(D) An estimate of the resources by military service and by year required to implement the plan, including an assessment of the risks assumed in the plan.

''(3) UPDATES.—Not later than one year after submitting the plan required under paragraph (1), and annually thereafter for two years, the Secretary of Defense shall submit to the congressional defense committees an update on progress toward meeting the goals of the plan.

''(c) COMPTROLLER GENERAL REPORT.—Not later than 120 days after the date of the enactment of this Act, and annually after the submittal of each update to the implementation plan under subsection (b), the Comptroller General of the United States shall review the implementation plan submitted under subsection (b) and the policy required by subsection (a), and submit to the congressional defense committees a report describing the findings of such review and progress made toward meeting the goals of the plan and including any additional information relating to the policy and plan that the Comptroller General determines appropriate.''

SAVINGS TO BE ACHIEVED IN CIVILIAN PERSONNEL WORKFORCE AND SERVICE CONTRACTOR WORKFORCE OF THE DEPARTMENT OF DEFENSE

Pub. L. 112–239, div. A, title IX, § 955, Jan. 2, 2013, 126 Stat. 1896, which related to efficiencies plan for the civilian personnel workforce and service contractor workforce of the Department of Defense, requiring specific savings, excluding certain expenses, setting reporting requirements, limiting transfers of functions, recommending application of certain funds saved to transition assistance for personnel separated from the Armed Forces, and providing definition of ''service contractor workforce'', was repealed by Pub. L. 114–328, div. A, title IX, § 915, Dec. 23, 2016, 130 Stat. 2350.

CONVERSION OF MILITARY POSITIONS TO CIVILIAN POSITIONS

Pub. L. 104–106, div. A, title X, § 1032, Feb. 10, 1996, 110 Stat. 429, as amended by Pub. L. 104–201, div. A, title XVI, § 1601, Sept. 23, 1996, 110 Stat. 2734, directed Secretary of Defense, by Sept. 30, 1996, to convert at least 3,000 military positions to civilian positions and, not later than Mar. 31, 1996, submit to Congress a plan for the implementation of conversion.

PROHIBITION ON USE OF FUNDS TO ASSIGN SUPERVISOR'S TITLE OR GRADE BASED UPON NUMBER OF PEOPLE SUPERVISED

Pub. L. 104–61, title VIII, § 8031, Dec. 1, 1995, 109 Stat. 658, provided that: ''None of the funds appropriated during the current fiscal year and hereafter, may be used by the Department of Defense to assign a supervisor's title or grade when the number of people he or she supervises is considered as a basis for this determination: *Provided*, That savings that result from this provision are represented as such in future budget proposals.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, § 8036, Sept. 30, 1994, 108 Stat. 2626.

Pub. L. 103–139, title VIII, § 8040, Nov. 11, 1993, 107 Stat. 1449.
Pub. L. 102–396, title IX, § 9053, Oct. 6, 1992, 106 Stat. 1914.
Pub. L. 102–172, title VIII, § 8055, Nov. 26, 1991, 105 Stat. 1184.
Pub. L. 101–511, title VIII, § 8063, Nov. 5, 1990, 104 Stat. 1888.
Pub. L. 101–165, title IX, § 9085, Nov. 21, 1989, 103 Stat. 1147.
Pub. L. 100–463, title VIII, § 8079, Oct. 1, 1988, 102 Stat. 2270–30.
Pub. L. 100–202, § 101(b) [title VIII, § 8105], Dec. 22, 1987, 101 Stat. 1329–43, 1329–81.

§ 129b. Authority to procure personal services

(a) AUTHORITY.—Subject to subsection (b), the Secretary of Defense and the Secretaries of the military departments may—

(1) procure the services of experts or consultants (or of organizations of experts or consultants) in accordance with section 3109 of title 5; and

(2) pay in connection with such services travel expenses of individuals, including transportation and per diem in lieu of subsistence while such individuals are traveling from their homes or places of business to official duty stations and return as may be authorized by law.

(b) CONDITIONS.—The services of experts or consultants (or organizations thereof) may be procured under subsection (a) only if the Secretary of Defense or the Secretary of the military department concerned, as the case may be, determines that—

(1) the procurement of such services is advantageous to the United States; and

(2) such services cannot adequately be provided by the Department of Defense.

(c) REGULATIONS.—Procurement of the services of experts and consultants (or organizations thereof) under subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense.

(d) ADDITIONAL AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—(1) In addition to the authority provided under subsection (a), the Secretary of Defense may enter into personal services contracts if the personal services—

(A) are to be provided by individuals outside the United States, regardless of their nationality, and are determined by the Secretary to be necessary and appropriate for supporting the activities and programs of the Department of Defense outside the United States;

(B) directly support the mission of a defense intelligence component or counter-intelligence organization of the Department of Defense; or

(C) directly support the mission of the special operations command of the Department of Defense.

(2) The contracting officer for a personal services contract under this subsection shall be responsible for ensuring that—

(A) the services to be procured are urgent or unique; and

(B) it would not be practicable for the Department to obtain such services by other means.

(3) The requirements of section 3109 of title 5 shall not apply to a contract entered into under this subsection.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(b)(1), Nov. 5, 1990, 104 Stat. 1704; amended Pub. L. 102–190, div. A, title X, § 1061(a)(2), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 108–136, div. A, title VIII, § 841(a), (b)(1), Nov. 24, 2003, 117 Stat. 1552.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9002, Nov. 21, 1989, 103 Stat. 1129, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(b)(3).

AMENDMENTS

2003—Pub. L. 108–136, § 841(b)(1), substituted ''Authority to procure personal services'' for ''Experts and consultants: authority to procure services of'' in section catchline.
Subsec. (d). Pub. L. 108–136, § 841(a), added subsec. (d).
1991—Pub. L. 102–190 inserted ''of'' after ''services'' in section catchline.

§ 129c. Medical personnel: limitations on reductions

(a) LIMITATION ON REDUCTION.—For any fiscal year, the Secretary of Defense may not make a reduction in the number of medical personnel of the Department of Defense described in subsection (b) unless the Secretary makes a certification for that fiscal year described in subsection (c).

(b) COVERED REDUCTIONS.—Subsection (a) applies to a reduction in the number of medical personnel of the Department of Defense as of the end of a fiscal year to a number that is less than—

(1) 95 percent of the number of such personnel at the end of the immediately preceding fiscal year; or

(2) 90 percent of the number of such personnel at the end of the third fiscal year preceding the fiscal year.

(c) CERTIFICATION.—A certification referred to in subsection (a) with respect to reductions in medical personnel of the Department of Defense for any fiscal year is a certification by the Secretary of Defense to Congress that—

(1) the number of medical personnel being reduced is excess to the current and projected needs of the Department of Defense; and

(2) such reduction will not result in an increase in the cost of health care services provided under the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of this title.

(d) POLICY FOR IMPLEMENTING REDUCTIONS.—Whenever the Secretary of Defense directs that there be a reduction in the total number of military medical personnel of the Department of Defense, the Secretary shall require that the reduction be carried out so as to ensure that the reduction is not exclusively or disproportionately borne by any one of the armed forces and is not exclusively or disproportionately borne by either the active or the reserve components.

(e) DEFINITION.—In this section, the term ''medical personnel'' means—

(1) the members of the armed forces covered by the term ''medical personnel'' as defined in section 115a(e)(2) of this title; and

(2) the civilian personnel of the Department of Defense assigned to military medical facilities.

(Added Pub. L. 104–106, div. A, title V, § 564(a)(1), Feb. 10, 1996, 110 Stat. 325; amended Pub. L. 105–85, div. A, title X, § 1073(a)(4), Nov. 18, 1997, 111 Stat. 1900.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–510, div. A, title VII, § 711, Nov. 5, 1990, 104 Stat. 1582, as amended, which was set out as a note under section 115 of this title, prior to repeal by Pub. L. 104–106, § 564(d)(1).

AMENDMENTS

1997—Subsec. (e)(1). Pub. L. 105–85 substituted ''section 115a(e)(2)'' for ''section 115a(g)(2)''.

Statutory Notes and Related Subsidiaries

LIMITATION ON REDUCTION OF MILITARY MEDICAL MANNING END STRENGTH: CERTIFICATION REQUIREMENT AND OTHER REFORMS

Pub. L. 117–263, div. A, title VII, § 741(a), (d), Dec. 23, 2022, 136 Stat. 2676, 2680, provided that:

''(a) LIMITATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), and in addition to the limitation under section 719 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 133 Stat. 1454), as most recently amended by section 731 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 135 Stat. 1795), during the five-year period beginning on the date of the enactment of this Act [Dec. 23, 2022], neither the Secretary of Defense nor a Secretary concerned may reduce military medical end strength authorizations, and following such period, neither may reduce such authorizations unless the Secretary of Defense issues a waiver pursuant to paragraph (6).

''(2) EXCEPTION.—The limitation under paragraph (1) shall not apply with respect to the following:

''(A) Administrative billets of a military department that have remained unfilled since at least October 1, 2018.

''(B) Billets identified as non-clinical in the budget of the President for fiscal year 2020 submitted to Congress pursuant to section 1105(a) of title 31, United States Code, except that the number of such billets may not exceed 1,700.

''(C) Medical headquarters billets of the military departments not assigned to, or providing direct support to, operational commands.

''(3) REPORT ON COMPOSITION OF MILITARY MEDICAL WORKFORCE REQUIREMENTS.—The Secretary of Defense, in coordination with the Secretaries of the military departments, shall conduct an assessment of current military medical manning requirements (taking into consideration factors including future operational planning, training, and beneficiary healthcare) and submit to the Committees on Armed Services of the House of Representatives and the Senate a report containing the findings of such assessment. Such assessment shall be informed by the following:

''(A) The National Defense Strategy submitted under section 113(g) of title 10, United States Code.

''(B) The National Military Strategy prepared under section 153(b) of such title.

''(C) The campaign plans of the combatant commands.

''(D) Theater strategies.

''(E) The joint medical estimate under section 732 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1817).

''(F) The plan of the Department of Defense on integrated medical operations, as updated pursuant to paragraph (1) of section 724(a) of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 135 Stat. 1793; 10 U.S.C. 1096 note).

''(G) The plan of the Department of Defense on global patient movement, as updated pursuant to paragraph (2) of such section 724(a).

''(H) The biosurveillance program of the Department of Defense established pursuant to Department of Defense Directive 6420.02 (relating to biosurveillance).

''(I) Requirements for graduate medical education.

''(J) The report of the COVID–19 Military Health System Review Panel under section 731 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 134 Stat. 3698).

''(K) The report of the Inspector General of the Department of Defense titled 'Evaluation of Department of Defense Military Medical Treatment Facility Challenges During the Coronavirus Disease-2019 (COVID-19) Pandemic in Fiscal Year 2021 (DODIG-2022-081)' and published on April 5, 2022.

''(L) Reports of the Comptroller General of the United States relating to military health system reforms undertaken on or after January, 1, 2017, including any such reports relating to military medical manning and force composition mix.

''(M) Such other reports as may be determined appropriate by the Secretary of Defense.

''(4) CERTIFICATION.—The Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate a certification containing the following:

''(A) A certification of the completion of a comprehensive review of military medical manning, including with respect to the medical corps (or other health- or medical-related component of a military department), designator, profession, occupation, and rating of medical personnel.

''(B) A justification for any proposed increase, realignment, reduction, or other change to the specialty or occupational composition of military medical end strength authorizations, which may include compliance with a requirement or recommendation set forth in a strategy, plan, or other matter specified in paragraph (3).

''(C) A certification that, in the case that any change to such specialty or occupational composition is required, a vacancy resulting from such change may not be filled with a position other than a health- or medical-related position until such time as there are no military medical billets remaining to fill the vacancy.

''(D) A risk analysis associated with the potential realignment or reduction of any military medical end strength authorizations.

''(E) An identification of any plans of the Department to backfill military medical personnel positions with civilian personnel.

''(F) A plan to address persistent vacancies for civilian personnel in health- or medical-related positions, and a risk analysis associated with the hiring, onboarding, and retention of such civilian personnel, taking into account provider shortfalls across the United States.

''(G) A comprehensive plan to mitigate any risk identified pursuant to subparagraph (D) or (F), including with respect to funding necessary for such mitigation across fiscal years.

''(5) PROCESS REQUIRED.—The Secretaries of the military departments, in coordination with the Sec-

retary of Defense and the Chairman of the Joint Chiefs of Staff, shall develop and submit to the Committees on Armed Services of the House of Representatives and the Senate a process for the authorization of proposed modifications to the composition of the medical manning force mix across the military departments while maintaining compliance with the limitation under paragraph (1). Such process shall—

''(A) take into consideration the funding required for any such proposed modification; and

''(B) include distinct processes for proposed increases and proposed decreases, respectively, to the medical manning force mix of each military department.

''(6) WAIVER.—

''(A) IN GENERAL.—Following the conclusion of the five-year period specified in paragraph (1), the Secretary of Defense may waive the prohibition under such subsection if—

''(i) the report requirement under paragraph (3), the certification requirement under paragraph (4), and the process requirement under paragraph (5) have been completed;

''(ii) the Secretary determines that the waiver is necessary and in the interests of the national security of the United States; and

''(iii) the waiver is issued in writing.

''(B) NOTIFICATION TO CONGRESS.—Not later than five days after issuing a waiver under subparagraph (A), the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate a notification of the waiver (including the text of the waiver and a justification for the waiver) and provide to such committees a briefing on the components of the waiver.

''(d) DEFINITIONS.—In this section:

''(1) The term 'medical personnel' has the meaning given such term in section 115a(e) of title 10, United States Code.

''(2) The term 'Secretary concerned' has the meaning given that term in section 101(a) of such title.

''(3) The term 'theater strategy' means an overarching construct outlining the vision of a combatant commander for the integration and synchronization of military activities and operations with other national power instruments to achieve the strategic objectives of the United States.''

PROHIBITION ON CONVERSION OF MILITARY MEDICAL AND DENTAL POSITIONS TO CIVILIAN MEDICAL AND DENTAL POSITIONS

Pub. L. 110–181, div. A, title VII, §721(a)–(d), Jan. 28, 2008, 122 Stat. 198, 199, as amended by Pub. L. 111–84, div. A, title VII, §701, Oct. 28, 2009, 123 Stat. 2372, prohibited the Secretary of a military department from converting any military medical or dental position to a civilian medical or dental position on or after Oct. 1, 2007, and required restoration of certain converted positions to military positions, prior to repeal by Pub. L. 114–328, div. A, title VII, §721(c), Dec. 23, 2016, 130 Stat. 2228.

REQUIREMENT TO CERTIFY AND REPORT ON CONVERSION OF MILITARY MEDICAL AND DENTAL POSITIONS TO CIVILIAN MEDICAL AND DENTAL POSITIONS

Pub. L. 109–364, div. A, title VII, §742, Oct. 17, 2006, 120 Stat. 2306, which prohibited the Secretary of a military department from converting any military medical or dental position to a civilian medical or dental position in a fiscal year until the Secretary submitted to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives with respect to that fiscal year a certification that the conversions within that department would not increase cost or decrease quality of care or access to care, was repealed by Pub. L. 110–181, div. A, title VII, §721(e), Jan. 28, 2008, 122 Stat. 199.

PROHIBITION ON CONVERSIONS OF MILITARY MEDICAL AND DENTAL POSITIONS TO CIVILIAN MEDICAL POSITIONS UNTIL SUBMISSION OF CERTIFICATION

Pub. L. 109–163, div. A, title VII, §744, Jan. 6, 2006, 119 Stat. 3360, provided that:

''(a) PROHIBITION ON CONVERSIONS.—

''(1) SUBMISSION OF CERTIFICATION.—A Secretary of a military department may not convert any military medical or dental position to a civilian medical or dental position until the Secretary submits to the Committees on Armed Services of the Senate and the House of Representatives a certification that the conversions within that department will not increase cost or decrease quality of care or access to care. Such a certification may not be submitted before June 1, 2006.

''(2) REPORT WITH CERTIFICATION.—A Secretary submitting such a certification shall include with the certification a written report that includes—

''(A) the methodology used by the Secretary in making the determinations necessary for the certification, including the extent to which the Secretary took into consideration the findings of the Comptroller General in the report under subsection (b)(3);

''(B) the results of a market survey in each affected area of the availability of civilian medical and dental care providers in such area in order to determine whether the civilian medical and dental care providers available in such area are adequate to fill the civilian positions created by the conversion of military medical and dental positions to civilian positions in such area; and

''(C) any action taken by the Secretary in response to recommendations in the Comptroller General report under subsection (b)(3).

''(b) REQUIREMENT FOR STUDY.—

''(1) IN GENERAL.—The Comptroller General shall conduct a study on the effect of conversions of military medical and dental positions to civilian medical or dental positions on the defense health program.

''(2) MATTERS COVERED.—The study shall include the following:

''(A) The number of military medical and dental positions, by grade and specialty, planned for conversion to civilian medical or dental positions.

''(B) The number of military medical and dental positions, by grade and specialty, converted to civilian medical or dental positions since October 1, 2004.

''(C) The ability of the military health care system to fill the civilian medical and dental positions required, by specialty.

''(D) The degree to which access to health care is affected in both the direct and purchased care system, including an assessment of the effects of any increased shifts in patient load from the direct care to the purchased care system, or any delays in receipt of care in either the direct or purchased care system because of lack of direct care providers.

''(E) The degree to which changes in military manpower requirements affect recruiting and retention of uniformed medical and dental personnel.

''(F) The degree to which conversion of the military positions meets the joint medical and dental readiness requirements of the uniformed services, as determined jointly by all the uniformed services.

''(G) The effect of the conversions of military medical positions to civilian medical and dental positions on the defense health program, including costs associated with the conversions, with a comparison of the estimated costs versus the actual costs incurred by the number of conversions since October 1, 2004.

''(H) The effectiveness of the conversions in enhancing medical and dental readiness, health care efficiency, productivity, quality, and customer satisfaction.

''(3) REPORT ON STUDY.—Not later than May 1, 2006, the Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the results of the study under this section.

''(c) DEFINITIONS.—In this section:

''(1) The term 'military medical or dental position' means a position for the performance of health care functions within the Armed Forces held by a member of the Armed Forces.

''(2) The term 'civilian medical or dental position' means a position for the performance of health care functions within the Department of Defense held by an employee of the Department or of a contractor of the Department.

''(3) The term 'affected area' means an area in which military medical or dental positions were converted to civilian medical or dental positions before October 1, 2004, or in which such conversions are scheduled to occur in the future.

''(4) The term 'uniformed services' has the meaning given that term in section 1072(1) of title 10, United States Code.''

SPECIAL TRANSITION RULE FOR FISCAL YEAR 1996

Pub. L. 104–106, div. A, title V, § 564(b), Feb. 10, 1996, 110 Stat. 326, provided that, for purposes of applying subsec. (b)(1) of this section during fiscal year 1996, the number against which the percentage limitation of 95 percent was to be computed would be the number of medical personnel of the Department of Defense as of the end of fiscal year 1994, rather than the number as of the end of fiscal year 1995.

§ 129d. Disclosure to litigation support contractors

(a) DISCLOSURE AUTHORITY.—An officer or employee of the Department of Defense may disclose sensitive information to a litigation support contractor if—

(1) the disclosure is for the sole purpose of providing litigation support to the Government in the form of administrative, technical, or professional services during or in anticipation of litigation; and

(2) under a contract with the Government, the litigation support contractor agrees to and acknowledges—

(A) that sensitive information furnished will be accessed and used only for the purposes stated in the relevant contract;

(B) that the contractor will take all precautions necessary to prevent disclosure of the sensitive information provided to the contractor;

(C) that such sensitive information provided to the contractor under the authority of this section shall not be used by the contractor to compete against a third party for Government or non-Government contracts; and

(D) that the violation of subparagraph (A), (B), or (C) is a basis for the Government to terminate the litigation support contract of the contractor.

(b) DEFINITIONS.—In this section:

(1) The term ''litigation support contractor'' means a contractor (including an expert or technical consultant) under contract with the Department of Defense to provide litigation support.

(2) The term ''sensitive information'' means confidential commercial, financial, or proprietary information, technical data, or other privileged information.

(Added Pub. L. 112–81, div. A, title VIII, § 802(a)(1), Dec. 31, 2011, 125 Stat. 1484.)

§ 130. Authority to withhold from public disclosure certain technical data

(a) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully outside the United States without an approval, authorization, or license under the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) or the Arms Export Control Act (22 U.S.C. 2751 et seq.). However, technical data may not be withheld under this section if regulations promulgated under either such Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations.

(b) Regulations under this section shall be published in the Federal Register for a period of no less than 30 days for public comment before promulgation. Such regulations shall address, where appropriate, releases of technical data to allies of the United States and to qualified United States contractors, including United States contractors that are small business concerns, for use in performing United States Government contracts.

(c) In this section, the term ''technical data with military or space application'' means any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used, or be adapted for use, to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.

(Added Pub. L. 98–94, title XII, § 1217(a), Sept. 24, 1983, 97 Stat. 690, § 140c; amended Pub. L. 99–145, title XIII, § 1303(a)(3), Nov. 8, 1985, 99 Stat. 738; renumbered § 130 and amended Pub. L. 99–433, title I, §§ 101(a)(3), 110(d)(6), Oct. 1, 1986, 100 Stat. 994, 1003; Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIV, § 1484(b)(1), Nov. 5, 1990, 104 Stat. 1715; Pub. L. 114–328, div. A, title X, § 1081(b)(3)(A), Dec. 23, 2016, 130 Stat. 2418.)

Editorial Notes

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (a), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to chapter 56 (§ 4601 et seq.) of Title 50, War and National Defense, prior to repeal by Pub. L. 115–232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232, except for sections 11A, 11B, and 11C thereof (50 U.S.C. 4611, 4612, 4613).

The Arms Export Control Act, referred to in subsec. (a), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–328 substituted ''(50 U.S.C. 4601 et seq.)'' for ''(50 U.S.C. App. 2401–2420)''.

1990—Subsecs. (b), (c). Pub. L. 101–510 substituted ''Regulations under this section'' for ''(1) Within 90 days after September 24, 1983, the Secretary of Defense shall propose regulations to implement this section. Such regulations'' in subsec. (b) and redesignated former subsec. (b)(2) as subsec. (c).

1987—Subsec. (b)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1986—Pub. L. 99–433 renumbered section 140c of this title as this section and substituted ''Authority'' for ''Secretary of Defense: authority'' in section catchline.

1985—Subsec. (b)(1). Pub. L. 99–145 substituted ''September 24, 1983'' for ''enactment of this section''.

§ 130a. Department of Defense support for funerals and memorial events for Members and former Members of Congress

(a) SUPPORT FOR FUNERALS.—Subject to subsection (b), the Secretary of Defense may provide such support as the Secretary considers appropriate for a funeral or memorial event for a Member or former Member of Congress, including support with respect to transportation to and from such a funeral or memorial event, in accordance with this section.

(b) REQUESTS FOR SUPPORT; SECRETARY DETERMINATION.—The Secretary may provide support under this section—

(1) upon request from the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the Senate, or the Minority Leader of the Senate; or

(2) if the Secretary determines such support is necessary to carry out duties or responsibilities of the Department of Defense.

(c) USE OF FUNDS.—The Secretary may use funds authorized to be appropriated for operation and maintenance to provide support under this section.

(Added Pub. L. 117–263, div. A, title X, §1042(a), Dec. 23, 2022, 136 Stat. 2770.)

Editorial Notes

PRIOR PROVISIONS

A prior section 130a, added Pub. L. 105–85, div. A, title IX, §911(a)(1), Nov. 18, 1997, 111 Stat. 1857; amended Pub. L. 106–65, div. A, title IX, §921(a)(1), Oct. 5, 1999, 113 Stat. 722; Pub. L. 106–398, §1 [[div. A], title IX, §941], Oct. 30, 2000, 114 Stat. 1654, 1654A–241; Pub. L. 108–375, div. A, title X, §1084(d)(2), Oct. 28, 2004, 118 Stat. 2061, related to major Department of Defense headquarters activities personnel, prior to repeal by Pub. L. 110–181, div. A, title IX, §901(a)(1), Jan. 28, 2008, 122 Stat. 272.

§ 130b. Personnel in overseas, sensitive, or routinely deployable units: nondisclosure of personally identifying information

(a) EXEMPTION FROM DISCLOSURE.—The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security may, notwithstanding section 552 of title 5, authorize to be withheld from disclosure to the public personally identifying information regarding—

(1) any member of the armed forces assigned to an overseas unit, a sensitive unit, or a routinely deployable unit; and

(2) any employee of the Department of Defense or of the Coast Guard whose duty station is with any such unit.

(b) EXCEPTIONS.—(1) The authority in subsection (a) is subject to such exceptions as the President may direct.

(2) Subsection (a) does not authorize any official to withhold, or to authorize the withholding of, information from Congress.

(c) DEFINITIONS.—In this section:

(1) The term ''personally identifying information'', with respect to any person, means the person's name, rank, duty address, and official title and information regarding the person's pay.

(2) The term ''unit'' means a military organization of the armed forces designated as a unit by competent authority.

(3) The term ''overseas unit'' means a unit that is located outside the United States and its territories.

(4) The term ''sensitive unit'' means a unit that is primarily involved in training for the conduct of, or conducting, special activities or classified missions, including—

(A) a unit involved in collecting, handling, disposing, or storing of classified information and materials;

(B) a unit engaged in training—

(i) special operations units;

(ii) security group commands weapons stations; or

(iii) communications stations; and

(C) any other unit that is designated as a sensitive unit by the Secretary of Defense or, in the case of the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security.

(5) The term ''routinely deployable unit'' means a unit that normally deploys from its permanent home station on a periodic or rotating basis to meet peacetime operational requirements that, or to participate in scheduled training exercises that, routinely require deployments outside the United States and its territories. Such term includes a unit that is alerted for deployment outside the United States and its territories during an actual execution of a contingency plan or in support of a crisis operation.

(Added Pub. L. 106–65, div. A, title X, §1044(a), Oct. 5, 1999, 113 Stat. 761; amended Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

Editorial Notes

AMENDMENTS

2002—Subsecs. (a), (c)(4)(C). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 130c. Nondisclosure of information: certain sensitive information of foreign governments and international organizations

(a) EXEMPTION FROM DISCLOSURE.—The national security official concerned (as defined in

subsection (h)) may withhold from public disclosure otherwise required by law sensitive information of foreign governments in accordance with this section.

(b) INFORMATION ELIGIBLE FOR EXEMPTION.—For the purposes of this section, information is sensitive information of a foreign government only if the national security official concerned makes each of the following determinations with respect to the information:

(1) That the information was provided by, otherwise made available by, or produced in cooperation with, a foreign government or international organization.

(2) That the foreign government or international organization is withholding the information from public disclosure (relying for that determination on the written representation of the foreign government or international organization to that effect).

(3) That any of the following conditions are met:

(A) The foreign government or international organization requests, in writing, that the information be withheld.

(B) The information was provided or made available to the United States Government on the condition that it not be released to the public.

(C) The information is an item of information, or is in a category of information, that the national security official concerned has specified in regulations prescribed under subsection (g) as being information the release of which would have an adverse effect on the ability of the United States Government to obtain the same or similar information in the future.

(c) INFORMATION OF OTHER AGENCIES.—If the national security official concerned provides to the head of another agency sensitive information of a foreign government, as determined by that national security official under subsection (b), and informs the head of the other agency of that determination, then the head of the other agency shall withhold the information from any public disclosure unless that national security official specifically authorizes the disclosure.

(d) LIMITATIONS.—(1) If a request for disclosure covers any sensitive information of a foreign government (as described in subsection (b)) that came into the possession or under the control of the United States Government before October 30, 2000, and more than 25 years before the request is received by an agency, the information may be withheld only as set forth in paragraph (3).

(2)(A) If a request for disclosure covers any sensitive information of a foreign government (as described in subsection (b)) that came into the possession or under the control of the United States Government on or after the date referred to in paragraph (1), the authority to withhold the information under this section is subject to the provisions of subparagraphs (B) and (C).

(B) Information referred to in subparagraph (A) may not be withheld under this section after—

(i) the date that is specified by a foreign government or international organization in a request or expression of a condition described in paragraph (1) or (2) of subsection (b) that is made by the foreign government or international organization concerning the information; or

(ii) if there are more than one such foreign governments or international organizations, the latest date so specified by any of them.

(C) If no date is applicable under subparagraph (B) to a request referred to in subparagraph (A) and the information referred to in that subparagraph came into possession or under the control of the United States more than 10 years before the date on which the request is received by an agency, the information may be withheld under this section only as set forth in paragraph (3).

(3) Information referred to in paragraph (1) or (2)(C) may be withheld under this section in the case of a request for disclosure only if, upon the notification of each foreign government and international organization concerned in accordance with the regulations prescribed under subsection (g)(2), any such government or organization requests in writing that the information not be disclosed for an additional period stated in the request of that government or organization. After the national security official concerned considers the request of the foreign government or international organization, the official shall designate a later date as the date after which the information is not to be withheld under this section. The later date may be extended in accordance with a later request of any such foreign government or international organization under this paragraph.

(e) INFORMATION PROTECTED UNDER OTHER AUTHORITY.—This section does not apply to information or matters that are specifically required in the interest of national defense or foreign policy to be protected against unauthorized disclosure under criteria established by an Executive order and are classified, properly, at the confidential, secret, or top secret level pursuant to such Executive order.

(f) DISCLOSURES NOT AFFECTED.—Nothing in this section shall be construed to authorize any official to withhold, or to authorize the withholding of, information from the following:

(1) Congress.

(2) The Comptroller General, unless the information relates to activities that the President designates as foreign intelligence or counterintelligence activities.

(g) REGULATIONS.—(1) The national security officials referred to in subsection (h)(1) shall each prescribe regulations to carry out this section. The regulations shall include criteria for making the determinations required under subsection (b). The regulations may provide for controls on access to and use of, and special markings and specific safeguards for, a category or categories of information subject to this section.

(2) The regulations shall include procedures for notifying and consulting with each foreign government or international organization concerned about requests for disclosure of information to which this section applies.

(h) DEFINITIONS.—In this section:

(1) The term ''national security official concerned'' means the following:

(A) The Secretary of Defense, with respect to information of concern to the Department of Defense, as determined by the Secretary.

(B) The Secretary of Homeland Security, with respect to information of concern to the Coast Guard, as determined by the Secretary, but only while the Coast Guard is not operating as a service in the Navy.

(C) The Secretary of Energy, with respect to information concerning the national security programs of the Department of Energy, as determined by the Secretary.

(2) The term ''agency'' has the meaning given that term in section 552(f) of title 5.

(3) The term ''international organization'' means the following:

(A) A public international organization designated pursuant to section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) as being entitled to enjoy the privileges, exemptions, and immunities provided in such Act.

(B) A public international organization created pursuant to a treaty or other international agreement as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs.

(C) An official mission, except a United States mission, to a public international organization referred to in subparagraph (A) or (B).

(Added Pub. L. 106–398, §1 [[div. A], title X, §1073(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–277; amended Pub. L. 107–107, div. A, title X, §1048(a)(3), (c)(1), Dec. 28, 2001, 115 Stat. 1222, 1226; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

Editorial Notes

REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (h)(3)(A), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

AMENDMENTS

2002—Subsec. (h)(1)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (b)(3)(C). Pub. L. 107–107, §1048(a)(3), substituted ''subsection (g)'' for ''subsection (f)''.

Subsec. (d)(1). Pub. L. 107–107, §1048(c)(1), substituted ''October 30, 2000,'' for ''the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§130d. Treatment under Freedom of Information Act of certain confidential information shared with State and local personnel

Confidential business information and other sensitive but unclassified homeland security information in the possession of the Department of Defense that is shared, pursuant to section 892 of the Homeland Security Act of 2002 (6 U.S.C. 482), with State and local personnel (as defined in such section) shall not be subject to disclosure under section 552 of title 5 by virtue of the sharing of such information with such personnel.

(Added Pub. L. 109–364, div. A, title XIV, §1405(a), Oct. 17, 2006, 120 Stat. 2436.)

§130e. Treatment under Freedom of Information Act of certain critical infrastructure security information

(a) EXEMPTION.—The Secretary of Defense may exempt Department of Defense critical infrastructure security information from disclosure pursuant to section 552(b)(3) of title 5, upon a written determination that—

(1) the information is Department of Defense critical infrastructure security information; and

(2) the public interest consideration in the disclosure of such information does not outweigh preventing the disclosure of such information.

(b) DESIGNATION OF DEPARTMENT OF DEFENSE CRITICAL INFRASTRUCTURE SECURITY INFORMATION.—In addition to any other authority or requirement regarding protection from dissemination of information, the Secretary may designate information as being Department of Defense critical infrastructure security information, including during the course of creating such information, to ensure that such information is not disseminated without authorization. Information so designated is subject to the determination process under subsection (a) to determine whether to exempt such information from disclosure described in such subsection.

(c) INFORMATION PROVIDED TO STATE AND LOCAL GOVERNMENTS.—(1) Department of Defense critical infrastructure security information covered by a written determination under subsection (a) or designated under subsection (b) that is provided to a State or local government shall remain under the control of the Department of Defense.

(2)(A) A State or local law authorizing or requiring a State or local government to disclose Department of Defense critical infrastructure security information that is covered by a written determination under subsection (a) shall not apply to such information.

(B) If a person requests pursuant to a State or local law that a State or local government disclose information that is designated as Department of Defense critical infrastructure security information under subsection (b), the State or local government shall provide the Secretary an opportunity to carry out the determination process under subsection (a) to determine whether to exempt such information from disclosure pursuant to subparagraph (A).

(d) TRANSPARENCY.—Each determination of the Secretary under subsection (a) shall be made in writing and accompanied by a statement of the basis for the determination. All such determinations and statements of basis shall be available to the public, upon request.

(e) DEFINITION.—In this section, the term ''Department of Defense critical infrastructure security information'' means sensitive but unclassified information that, if disclosed, would reveal vulnerabilities in Department of Defense critical infrastructure that, if exploited, would likely result in the significant disruption, destruction, or damage of or to Department of Defense operations, property, or facilities, including information regarding the securing and safeguarding of explosives, hazardous chemicals, or pipelines, related to critical infrastructure or protected systems owned or operated by or on behalf of the Department of Defense, including vulnerability assessments prepared by or on behalf of the Department of Defense, explosives safety information (including storage and handling), and other site-specific information on or relating to installation security.

(Added Pub. L. 112–81, div. A, title X, §1091(a), Dec. 31, 2011, 125 Stat. 1604; amended Pub. L. 114–92, div. A, title X, §1081(a)(2), Nov. 25, 2015, 129 Stat. 1000; Pub. L. 114–328, div. A, title XVI, §1662(b), Dec. 23, 2016, 130 Stat. 2614; Pub. L. 118–31, div. A, title IX, §901(e)(1), Dec. 22, 2023, 137 Stat. 355.)

Editorial Notes

AMENDMENTS

2023—Subsecs. (d) to (f). Pub. L. 118–31 redesignated subsecs. (e) and (f) as (d) and (e), respectively; struck out '', or the Secretary's designee,'' after ''of the Secretary'' and '', through the Office of the Director of Administration and Management'' after ''upon request'' in subsec. (d) as redesignated; and struck out former subsec. (d). Prior to amendment, text of subsec. (d) read as follows: ''The Secretary of Defense may delegate the authority to make a determination under subsection (a) to the Director of Administration and Management.''

2016—Subsecs. (b), (c), (f). Pub. L. 114–328 added subsecs. (b) and (c), redesignated former subsec. (c) as (f), and struck out former subsec. (b). Prior to amendment, text of subsec. (b) read as follows: ''Department of Defense critical infrastructure security information covered by a written determination under subsection (a) that is provided to a State or local government shall remain under the control of the Department of Defense.''

2015—Pub. L. 114–92 substituted ''Treatment under Freedom of Information Act of certain critical infrastructure security information'' for ''Treatment under Freedom of Information Act of critical infrastructure security information'' in section catchline.

§ 130f. Notification requirements for sensitive military operations

(a) IN GENERAL.—The Secretary of Defense shall promptly submit to the congressional defense committees notice in writing of any sensitive military operation conducted under this title no later than 48 hours following such operation.

(b) PROCEDURES.—(1) The Secretary of Defense shall establish and submit to the congressional defense committees procedures for complying with the requirements of subsection (a) consistent with the national security of the United States and the protection of operational integrity. The Secretary shall promptly notify the congressional defense committees in writing of any changes to such procedures at least 14 days prior to the adoption of any such changes.

(2) The congressional defense committees shall ensure that committee procedures designed to protect from unauthorized disclosure classified information relating to national security of the United States are sufficient to protect the information that is submitted to the committees pursuant to this section.

(3) In the event of an unauthorized disclosure of a sensitive military operation covered by this section, the Secretary shall ensure, to the maximum extent practicable, that the congressional defense committees are notified immediately of the sensitive military operation concerned. The notification under this paragraph may be verbal or written, but in the event of a verbal notification a written notification shall be provided by not later than 48 hours after the provision of the verbal notification.

(c) BRIEFING REQUIREMENT.—The Secretary of Defense shall periodically brief the congressional defense committees on Department of Defense personnel and equipment assigned to sensitive military operations, including Department of Defense support to such operations conducted under the National Security Act of 1947 (50 U.S.C. 3001 et seq.).

(d) SENSITIVE MILITARY OPERATION DEFINED.—In this section, the term ''sensitive military operation'' means—

(1) a lethal operation or capture operation conducted by the armed forces or conducted by a foreign partner in coordination with the armed forces that targets a specific individual or individuals;

(2) an operation conducted by the armed forces in self-defense or in defense of foreign partners, including during a cooperative operation; or

(3) an operation conducted by the armed forces to free an individual from the control of hostile foreign forces.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to provide any new authority or to alter or otherwise affect the War Powers Resolution (50 U.S.C. 1541 et seq.), the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note), or any requirement under the National Security Act of 1947 (50 U.S.C. 3001 et seq.).

(f) COLLECTIVE SELF-DEFENSE NOTIFICATION REQUIREMENT.—Not later than 48 hours after the date on which a foreign partner force has been designated as eligible for the provision of collective self-defense by the armed forces for the purposes of subsection (d)(1)(B), the Secretary of Defense shall provide to the congressional defense committees notice in writing of such designation.

(Added Pub. L. 113–66, div. A, title X, §1041(a)(1), Dec. 26, 2013, 127 Stat. 856; amended Pub. L. 114–92, div. A, title X, §1043, Nov. 25, 2015, 129 Stat. 977; Pub. L. 114–328, div. A, title X, §1036(a)–(f)(1), Dec. 23, 2016, 130 Stat. 2391, 2392; Pub. L. 115–91, div. A, title X, §1081(a)(6), Dec. 12, 2017, 131 Stat. 1594; Pub. L. 115–232, div. A, title X, §1031(a), (b), Aug. 13, 2018, 132 Stat. 1953; Pub. L. 117–81, div. A, title X, §1042, Dec. 27, 2021, 135 Stat. 1903.)

Editorial Notes

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsecs. (c) and (e), is act July 26, 1947, ch. 343, 61 Stat. 495, which is classified principally to chapter 44 (§3001 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

The War Powers Resolution, referred to in subsec. (e), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§1541 et seq.) of Title 50, War and National Defense. For complete classification of this Resolution to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

AMENDMENTS

2021—Subsec. (d). Pub. L. 117–81, §1042(1)–(3), substituted ''In'' for ''(1) Except as provided in paragraph (2), in'', redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows: ''For purposes of this section, the term 'sensitive military operation' does not include any operation conducted within Afghanistan, Syria, or Iraq.''

Subsec. (d)(3). Pub. L. 117–81, §1042(4)–(6), added par. (3).

2018—Subsec. (d). Pub. L. 115–232, §1031(a), amended subsec. (d) generally. Prior to amendment, text read as follows: ''The term 'sensitive military operation' means the following:

''(1) A lethal operation or capture operation—

''(A) conducted by the armed forces outside a declared theater of active armed conflict; or

''(B) conducted by a foreign partner in coordination with the armed forces that targets a specific individual or individuals.

''(2) An operation conducted by the armed forces outside a declared theater of active armed conflict in self-defense or in defense of foreign partners, including during a cooperative operation.''

Subsec. (f). Pub. L. 115–232, §1031(b), added subsec. (f).

2017—Subsec. (b)(1). Pub. L. 115–91 inserted period at end.

2016—Pub. L. 114–328, §1036(f)(1), amended section catchline generally, substituting ''Notification requirements for sensitive military operations'' for ''Congressional notification of sensitive military operations''.

Subsec. (a). Pub. L. 114–328, §1036(a), (c)(1), inserted ''no later than 48 hours'' before ''following such operation'' and struck out at end ''Department of Defense support to operations conducted under the National Security Act of 1947 (50 U.S.C. 3001 et seq.) is addressed in the classified annex prepared to accompany the National Defense Authorization Act for Fiscal Year 2014.''

Subsec. (b)(1). Pub. L. 114–328, §1036(b)(1), inserted at end ''The Secretary shall promptly notify the congressional defense committees in writing of any changes to such procedures at least 14 days prior to the adoption of any such changes''.

Subsec. (b)(3). Pub. L. 114–328, §1036(b)(2), added par. (3).

Subsec. (c). Pub. L. 114–328, §1036(c)(2), inserted before period at end '', including Department of Defense support to such operations conducted under the National Security Act of 1947 (50 U.S.C. 3001 et seq.)''.

Subsec. (d). Pub. L. 114–328, §1036(d), substituted ''means the following:'' and pars. (1) and (2) for ''means a lethal operation or capture operation conducted by the armed forces outside the United States and outside a theater of major hostilities pursuant to—

''(1) the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note); or

''(2) any other authority except—

''(A) a declaration of war; or

''(B) a specific statutory authorization for the use of force other than the authorization referred to in paragraph (1).''

Subsecs. (e), (f). Pub. L. 114–328, §1036(e), redesignated subsec. (f) as (e) and struck out former subsec. (e) which provided exception to notification requirement.

2015—Subsec. (e). Pub. L. 114–92 designated existing provisions as par. (1) and added par. (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 113–66, div. A, title X, §1041(b), Dec. 26, 2013, 127 Stat. 857, provided that: ''Section 130f of title 10, United States Code, as added by subsection (a), shall apply with respect to any sensitive military operation (as defined in subsection (d) of such section) executed on or after the date of the enactment of this Act [Dec. 26, 2013].''

COMPREHENSIVE DEPARTMENT OF DEFENSE POLICY ON COLLECTIVE SELF-DEFENSE

Pub. L. 116–92, div. A, title XVII, §1754, Dec. 20, 2019, 133 Stat. 1853, provided that:

''(a) COMPREHENSIVE POLICY REQUIRED.—The Secretary of Defense shall prescribe a comprehensive written policy for the Department of Defense on the issuance of authorization for, and the provision by members and units of the United States Armed Forces of, collective self-defense to designated foreign nationals, their facilities, and their property.

''(b) ELEMENTS.—The policy required by subsection (a) shall address the following:

''(1) Each basis under domestic and international law pursuant to which a member or unit of the United States Armed Forces has been or may be authorized to provide collective self-defense to designated foreign nationals, their facilities, or their property under each circumstance as follows:

''(A) Inside an area of active hostilities, or in a country or territory in which United States forces are authorized to conduct or support direct action operations.

''(B) Outside an area of active hostilities, or in a country or territory in which United States forces are not authorized to conduct direct action military operations.

''(C) When United States personnel, facilities, or equipment are not threatened, including both as described in subparagraph (A) and as described in subparagraph (B).

''(D) When members of the United States Armed Forces are not participating in a military operation as part of an international coalition.

''(E) Any other circumstance not encompassed by subparagraphs (A) through (D) in which a member or unit of the United States Armed Forces has been or may be authorized to provide such collective self-defense.

''(2) A list and explanation of any limitations imposed by law or policy on the provision of collective self-defense to designated foreign nationals, their facilities, and their property under any of the bases in domestic or international law in the circumstances enumerated in paragraph (1), and the conditions under which any such limitation applies.

''(3) The procedure by which a proposal that any member or unit of the United States Armed Forces provide collective self-defense in support of designated foreign nationals, their facilities, and their property is to be submitted, processed, and endorsed through offices, officers, and officials of the Department to the applicable approval authority for final decision, and a list of any information, advice, or opinion to be included with such proposal in order to inform appropriate action on such proposal by such approval authority.

''(4) The title and duty position of any officers and officials of the Department empowered to render a final decision on a proposal described in paragraph (3), and the conditions applicable to, and limitations on, the exercise of such decisionmaking authority by each such officer or official.

''(5) A description of the Rules of Engagement applicable to the provision of collective self-defense to

designated foreign nationals, their facilities, and their property under any of the bases in domestic or international law in the circumstances enumerated in paragraph (1), and the conditions under which any such Rules of Engagement would be modified.

''(6) A description of the process through which policy guidance pertaining to the authorization for, and the provision by members of the United States Armed Forces of, collective self-defense to designated foreign nationals, their facilities, and their property is to be disseminated to the level of tactical execution.

''(7) Such other matters as the Secretary considers appropriate.

''(c) REPORT ON POLICY.—

''(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth the policy required by subsection (a).

''(2) DOD GENERAL COUNSEL STATEMENT.—The Secretary shall include in the report under paragraph (1) a statement by the General Counsel of the Department of Defense as to whether the policy prescribed pursuant to subsection (a) is consistent with domestic and international law.

''(3) FORM.—The report required by paragraph (1) may be submitted in classified form.

''(d) BRIEFING ON POLICY.—Not later than 30 days after the date of the submittal of the report required by subsection (c), the Secretary shall provide the congressional defense committees a classified briefing on the policy prescribed pursuant to subsection (a). The briefing shall make use of vignettes designated to illustrate real world application of the policy in each [of] the circumstances enumerated in subsection (b)(1).''

DEADLINE FOR SUBMITTAL OF PROCEDURES

Pub. L. 113–66, div. A, title X, §1041(c), Dec. 26, 2013, 127 Stat. 857, provided that: ''The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the procedures required under section 130f(b) of title 10, United States Code, as added by subsection (a), by not later than 60 days after the date of the enactment of this Act [Dec. 26, 2013].''

[§ 130g. Renumbered § 394]

[§ 130h. Repealed. Pub. L. 118–159, div. A, title XVI, § 1649(b)(1), Dec. 23, 2024, 138 Stat. 2199]

Section, added Pub. L. 114–92, div. A, title XVI, §1671(a)(1), Nov. 25, 2015, 129 Stat. 1129; amended Pub. L. 114–328, div. A, title X, §1081(a)(1), title XVI, §1682(a)(1), (b), Dec. 23, 2016, 130 Stat. 2417, 2623, 2624; Pub. L. 115–232, div. A, title XVI, §1678, Aug. 13, 2018, 132 Stat. 2161; Pub. L. 116–283, div. A, title XVI, §1642, Jan. 1, 2021, 134 Stat. 4062; Pub. L. 117–263, div. A, title XVI, §1653, Dec. 23, 2022, 136 Stat. 2949, prohibited the Department of Defense from using appropriated funds to provide the Russian Federation with ''hit-to-kill'' technology and telemetry data for missile defense interceptors or target vehicles and other sensitive missile defense information. See section 5551 of this title.

§ 130i. Protection of certain facilities and assets from unmanned aircraft

(a) AUTHORITY.—Notwithstanding section 46502 of title 49, or any provision of title 18, the Secretary of Defense may take, and may authorize members of the armed forces and officers and civilian employees of the Department of Defense with assigned duties that include safety, security, or protection of personnel, facilities, or assets, to take, such actions described in subsection (b)(1) that are necessary to mitigate the threat (as defined by the Secretary of Defense, in consultation with the Secretary of Transportation) that an unmanned aircraft system or unmanned aircraft poses to the safety or security of a covered facility or asset.

(b) ACTIONS DESCRIBED.—(1) The actions described in this paragraph are the following:

(A) Detect, identify, monitor, and track the unmanned aircraft system or unmanned aircraft, without prior consent, including by means of intercept or other access of a wire communication, an oral communication, or an electronic communication used to control the unmanned aircraft system or unmanned aircraft.

(B) Warn the operator of the unmanned aircraft system or unmanned aircraft, including by passive or active, and direct or indirect physical, electronic, radio, and electromagnetic means.

(C) Disrupt control of the unmanned aircraft system or unmanned aircraft, without prior consent, including by disabling the unmanned aircraft system or unmanned aircraft by intercepting, interfering, or causing interference with wire, oral, electronic, or radio communications used to control the unmanned aircraft system or unmanned aircraft.

(D) Seize or exercise control of the unmanned aircraft system or unmanned aircraft.

(E) Seize or otherwise confiscate the unmanned aircraft system or unmanned aircraft.

(F) Use reasonable force to disable, damage, or destroy the unmanned aircraft system or unmanned aircraft.

(2) The Secretary of Defense shall develop the actions described in paragraph (1) in coordination with the Secretary of Transportation.

(c) FORFEITURE.—Any unmanned aircraft system or unmanned aircraft described in subsection (a) that is seized by the Secretary of Defense is subject to forfeiture to the United States.

(d) REGULATIONS AND GUIDANCE.—(1) The Secretary of Defense and the Secretary of Transportation may prescribe regulations and shall issue guidance in the respective areas of each Secretary to carry out this section.

(2)(A) The Secretary of Defense and the Secretary of Transportation shall coordinate in the development of guidance under paragraph (1).

(B) The Secretary of Defense shall coordinate with the Secretary of Transportation and the Administrator of the Federal Aviation Administration before issuing any guidance or otherwise implementing this section if such guidance or implementation might affect aviation safety, civilian aviation and aerospace operations, aircraft airworthiness, or the use of airspace.

(e) PRIVACY PROTECTION.—The regulations prescribed or guidance issued under subsection (d) shall ensure that—

(1) the interception or acquisition of, or access to, communications to or from an unmanned aircraft system under this section is conducted in a manner consistent with the fourth amendment to the Constitution and applicable provisions of Federal law;

(2) communications to or from an unmanned aircraft system are intercepted, acquired, or

accessed only to the extent necessary to support a function of the Department of Defense;

(3) records of such communications are not maintained for more than 180 days unless the Secretary of Defense determines that maintenance of such records—

(A) is necessary to support one or more functions of the Department of Defense; or

(B) is required for a longer period to support a civilian law enforcement agency or by any other applicable law or regulation; and

(4) such communications are not disclosed outside the Department of Defense unless the disclosure—

(A) would fulfill a function of the Department of Defense;

(B) would support a civilian law enforcement agency or the enforcement activities of a regulatory agency of the Federal Government in connection with a criminal or civil investigation of, or any regulatory action with regard to, an action described in subsection (b)(1); or

(C) is otherwise required by law or regulation.

(f) BUDGET.—The Secretary of Defense shall submit to Congress, as a part of the defense budget materials for each fiscal year after fiscal year 2018, a consolidated funding display that identifies the funding source for the actions described in subsection (b)(1) within the Department of Defense. The funding display shall be in unclassified form, but may contain a classified annex.

(g) SEMIANNUAL BRIEFINGS.—(1) On a semiannual basis during the five-year period beginning March 1, 2018, the Secretary of Defense and the Secretary of Transportation, shall jointly provide a briefing to the appropriate congressional committees on the activities carried out pursuant to this section. Such briefings shall include—

(A) policies, programs, and procedures to mitigate or eliminate impacts of such activities to the National Airspace System;

(B) a description of instances where actions described in subsection (b)(1) have been taken;

(C) how the Secretaries have informed the public as to the possible use of authorities under this section; and

(D) how the Secretaries have engaged with Federal, State, and local law enforcement agencies to implement and use such authorities.

(2) Each briefing under paragraph (1) shall be in unclassified form, but may be accompanied by an additional classified briefing.

(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed to—

(1) vest in the Secretary of Defense any authority of the Secretary of Transportation or the Administrator of the Federal Aviation Administration under title 49; and

(2) vest in the Secretary of Transportation or the Administrator of the Federal Aviation Administration any authority of the Secretary of Defense under this title.

(i) PARTIAL TERMINATION.—(1) Except as provided by paragraph (2), the authority to carry out this section with respect to the covered facilities or assets specified in clauses (iv) through (viii) of subsection (j)(3)(C) shall terminate on December 31, 2026.

(2) The President may extend by 180 days the termination date specified in paragraph (1) if before November 15, 2026, the President certifies to Congress that such extension is in the national security interests of the United States.

(j) DEFINITIONS.—In this section:

(1) The term ''appropriate congressional committees'' means—

(A) the congressional defense committees;

(B) the Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Commerce, Science, and Transportation of the Senate; and

(C) the Permanent Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) The term ''budget'', with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(3) The term ''covered facility or asset'' means any facility or asset that—

(A) is identified by the Secretary of Defense, in consultation with the Secretary of Transportation with respect to potentially impacted airspace, through a risk-based assessment for purposes of this section;

(B) is located in the United States (including the territories and possessions of the United States); and

(C) directly relates to the missions of the Department of Defense pertaining to—

(i) nuclear deterrence, including with respect to nuclear command and control, integrated tactical warning and attack assessment, and continuity of government;

(ii) missile defense;

(iii) national security space;

(iv) assistance in protecting the President or the Vice President (or other officer immediately next in order of succession to the office of the President) pursuant to the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note);

(v) air defense of the United States, including air sovereignty, ground-based air defense, and the National Capital Region integrated air defense system;

(vi) combat support agencies (as defined in paragraphs (1) through (4) of section 193(f) of this title);

(vii) special operations activities specified in paragraphs (1) through (9) of section 167(k) of this title;

(viii) production, storage, transportation, or decommissioning of high-yield explosive munitions, by the Department; or

(ix) a Major Range and Test Facility Base (as defined in section 4173 of this title).

(4) The term ''defense budget materials'', with respect to a fiscal year, means the materials submitted to Congress by the Secretary

of Defense in support of the budget for that fiscal year.

(5) The terms ''electronic communication'', ''intercept'', ''oral communication'', and ''wire communication'' have the meanings given those terms in section 2510 of title 18.

(6) The terms ''unmanned aircraft'' and ''unmanned aircraft system'' have the meanings given those terms in section 44801 of title 49.

(Added Pub. L. 114–328, div. A, title XVI, §1697(a), Dec. 23, 2016, 130 Stat. 2639; amended Pub. L. 115–91, div. A, title XVI, §1692, Dec. 12, 2017, 131 Stat. 1788; Pub. L. 116–92, div. A, title XVI, §1694, title XVII, §1731(a)(6), Dec. 20, 2019, 133 Stat. 1791, 1812; Pub. L. 116–283, div. A, title X, §1081(a)(8), title XVIII, §1845(c)(4), Jan. 1, 2021, 134 Stat. 3871, 4247; Pub. L. 118–31, div. A, title XVI, §1681, Dec. 22, 2023, 137 Stat. 611; Pub. L. 118–159, div. A, title XVII, §1701(a)(2), div. B, title XXVIII, §2871(c)(1), Dec. 23, 2024, 138 Stat. 2203, 2281.)

Editorial Notes

References in Text

The Presidential Protection Assistance Act of 1976, referred to in subsec. (j)(3)(C)(iv), is Pub. L. 94–524, Oct. 17, 1976, 90 Stat. 2475, which enacted and amended provisions set out as notes under section 3056 of Title 18, Crimes and Criminal Procedure. For complete classification of this Act to the Code, see Tables.

Amendments

2024—Subsec. (j)(3)(C)(ix). Pub. L. 118–159, §2871(c)(1), which directed substitution of ''section 4173'' for ''sections 4173(i)'', was executed by making the substitution for ''section 4173(i)'', to reflect the probable intent of Congress and the intervening amendment by Pub. L. 118–159, §1701(a)(2). See below and see section 1701(h) of Pub. L. 118–159, set out as a Coordination of Certain Sections of an Act With Other Provisions of That Act under section 101 of this title.

Pub. L. 118–159, §1701(a)(2), substituted ''section'' for ''sections''.

2023—Subsec. (i). Pub. L. 118–31 substituted ''2026'' for ''2023'' in pars. (1) and (2).

2021—Subsec. (i)(1). Pub. L. 116–283, §1081(a)(8)(A), substituted ''of subsection (j)(3)(C) shall'' for ''of subsection (j)(3)(C) shall'', resulting in no change in text. See 2019 Amendment notes and Coordination of Amendments by Pub. L. 116–92 note below.

Subsec. (j)(3)(C)(ix). Pub. L. 116–283, §1845(c)(4), substituted ''sections 4173(i)'' for ''section 196(i)''.

Subsec. (j)(6). Pub. L. 116–283, §1081(a)(8)(B), inserted a period at end.

2019—Subsec. (i). Pub. L. 116–92, §1694(a), substituted ''2023'' for ''2020'' in two places.

Subsec. (i)(1). Pub. L. 116–92, §1731(a)(6)(A), inserted ''(C)'' after ''subsection (j)(3)''.

Pub. L. 116–92, §1694(b)(1), which directed substitution of ''of subsection (j)(3)(C)'' for ''of subsection (j)(3)'', resulted in no change in text because of prior execution of amendment by Pub. L. 116–92, §1731(a)(6)(A). See Amendment note above and Coordination of Amendments by Pub. L. 116–92 note below.

Subsec. (j)(6). Pub. L. 116–92, §1731(a)(6)(B), substituted ''44802'' for ''40101''.

Pub. L. 116–92, §1694(b)(2), substituted ''in section 44801 of title 49'' for ''in section 331 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 44802 note).''

2017—Pub. L. 115–91 amended section generally. Prior to amendment, section related to protection of certain facilities and assets from unmanned aircraft and consisted of provisions relating to authority of Secretary of Defense, authorized actions, forfeiture, regulations, and definitions.

Statutory Notes and Related Subsidiaries

Effective Date of 2021 Amendment

Amendment by section 1845(c)(4) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

Counter Unmanned Aerial System Threat Library

Pub. L. 118–159, div. A, title III, §353, Dec. 23, 2024, 138 Stat. 1858, provided that:

''(a) In General.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2024], the Secretary of the Army, through the Joint Counter-Small Unmanned Aircraft Systems Office, shall establish and maintain a threat library, or expand and maintain an existing threat library, to coordinate efforts across the Department of Defense to counter unmanned aircraft systems.

''(b) Information To Be Included.—The threat library required under subsection (a) shall include—

''(1) classified and unclassified information relating to known or suspected threats from unmanned aircraft systems;

''(2) proposed solutions for countering such known threats; and

''(3) a comprehensive listing of global incursions from unmanned aircraft systems at installations of the Department of Defense.

''(c) Dissemination.—The Secretary of the Army, through the Joint Counter-Small Unmanned Aircraft Systems Office, shall establish a framework to share the information contained in the threat library required under subsection (a) with the military departments, the combatant commands, other Federal agencies, and relevant industries, as determined by the Secretary of the Army, in order to maintain technological superiority in aerial defense.''

Counter Unmanned Aerial Systems Task Force

Pub. L. 118–159, div. A, title IX, §925, Dec. 23, 2024, 138 Stat. 2041, provided that:

''(a) In General.—Not later than 30 days after the date of the enactment of this Act [Dec. 23, 2024], the Secretary of Defense shall establish, or designate from existing organizations and personnel of the Department of Defense, a counter unmanned aerial systems task force, to be known as the 'C-UAS Task Force'.

''(b) Review of Memoranda and Directives.—

''(1) In general.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, acting through the C-UAS Task Force, shall review and, if necessary, consolidate and update all Department of Defense memoranda and directives related to the countering of unmanned aircraft systems in United States airspace to provide clarity to and an expedited decision-making process for commanders with respect to effectively countering unmanned aircraft systems or unmanned aircraft incursions at military installations in the United States.

''(2) Included memoranda and directives.—The memoranda and directives required to be reviewed and, if necessary, consolidated and updated under paragraph (1) include the following:

''(A) The Counter-Small Unmanned Aircraft Systems Strategy of the Department of Defense, dated January 7, 2021.

''(B) The Deputy Secretary of Defense Memorandum entitled 'Risk-based Assessment in Support of Counter-Unmanned Aircraft Activities to Protect DOD Facilities and Assets' and dated May 7, 2020.

''(C) Deputy Secretary of Defense Policy Memorandum 16–003, entitled 'Interim Guidance for Countering Unmanned Aircraft' and dated August 18, 2016.

''(D) Deputy Secretary of Defense Policy Memorandum 17–00X, entitled 'Supplemental Guidance

for Countering Unmanned Aircraft' and dated July 5, 2017.

''(E) Chairman of the Joint Chiefs of Staff Notice 3124, entitled 'Interim Guidance for Countering Unmanned Aircraft' and dated February 8, 2017.

''(F) Other related general administrative notices of the Joint Staff.

''(G) Any other associated memoranda or directives of the Department of Defense relating to unmanned aircraft systems, as the Secretary of Defense and the Chairman of the Joint Chiefs of Staff determine necessary.

''(c) ISSUANCE OF UPDATED GUIDANCE.—

''(1) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall issue new memoranda, directives, and guidance related to authorities to counter unmanned aircraft systems.

''(2) DISSEMINATION TO INSTALLATION COMMANDERS.—The Secretary of Defense shall ensure that memoranda, directives, and guidance issued under paragraph (1), and any subsequent memoranda, directives and guidance, are included in pre-briefings for any officers that assume command of a military installation in the United States on or after July 1, 2025.

''(3) STANDARD OPERATING PROCEDURES FOR MILITARY INSTALLATIONS.—

''(A) IN GENERAL.—Not later than 60 days after the issuance of the memoranda, directives, and guidance required by paragraph (1), each commander of a military installation shall issue operating procedures specific to their military installation for countering unmanned aircraft systems at the installation.

''(B) EXTENSION DURING CHANGES IN COMMAND.—If there is a change of command of a military installation during the 60-day period described in subparagraph (A), the incoming commander of the installation shall issue operating procedures specific to their military installation required by that subparagraph not later than 60 days after receiving the pre-briefing described in paragraph (2).

''(d) REPORT ON EXISTING TRAINING EFFORTS.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the counter-unmanned aircraft systems training efforts of the Department of Defense in effect as of the date of the enactment of this Act. The report shall include—

''(1) a description of any training that is commonly provided to members of the Armed Forces on countering threats posed by unmanned aircraft systems; and

''(2) a summary of the training curriculum that is provided for installation commanders and deployed forces to counter unmanned aircraft systems.''

ASSESSMENT AND STRATEGY FOR FIELDING CAPABILITIES TO COUNTER THREATS POSED BY UNMANNED AERIAL SYSTEM SWARMS

Pub. L. 117–263, div. A, title I, §162, Dec. 23, 2022, 136 Stat. 2462, provided that:

''(a) ASSESSMENT, ANALYSIS, AND REVIEW.—The Secretary of Defense shall conduct—

''(1) an assessment of the threats posed by unmanned aerial system swarms and unmanned aerial systems with swarm capabilities to installations and deployed Armed Forces;

''(2) an analysis of the use or potential use of unmanned aerial system swarms by adversaries, including the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of North Korea, and non-state actors;

''(3) an analysis of the national security implications of swarming technologies such as autonomous intelligence and machine learning;

''(4) a review of the capabilities used by the Department of Defense to counter threats posed by unmanned aerial systems and an assessment of the effectiveness of such capabilities at countering the threat of unmanned aerial system swarms; and

''(5) an overview of the efforts of the Department of Defense to develop and field test technologies that offer scalable, modular, and rapidly deployable capabilities with the ability to counter unmanned aerial system swarms.

''(b) STRATEGY DEVELOPMENT AND IMPLEMENTATION REQUIRED.—

''(1) IN GENERAL.—The Secretary of Defense shall develop and implement a strategy to field capabilities to counter threats posed by unmanned aerial system swarms.

''(2) ELEMENTS.—The strategy required by paragraph (1) shall include the following:

''(A) The development of a comprehensive definition of 'unmanned aerial system swarm'.

''(B) A plan to establish and incorporate requirements for the development, testing, and fielding of technologies and capabilities to counter unmanned aerial system swarms.

''(C) A plan to acquire and field adequate capabilities to counter unmanned aerial system swarms in defense of the Armed Forces, infrastructure, and other assets of the United States across land, air, and maritime domains.

''(D) An estimate of the resources needed by each Armed Force to implement the strategy.

''(E) An analysis, determination, and prioritization of legislative action required to ensure the Department of Defense has the ability to counter the threats posed by unmanned aerial system swarms.

''(F) Such other matters as the Secretary determines to be relevant to the strategy.

''(3) INCORPORATION INTO EXISTING STRATEGY.—The Secretary of Defense may incorporate the strategy required by paragraph (1) into a comprehensive strategy of the Department of Defense to counter the threat of unmanned aerial systems.

''(c) INFORMATION TO CONGRESS.—Not later than 270 days after the date of the enactment of this Act [Dec. 23, 2022], the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on—

''(1) the findings of the Secretary under subsection (a); and

''(2) the strategy developed and implemented by the Secretary under subsection (b).''

COORDINATION OF AMENDMENTS BY PUB. L. 116–92

Amendments to this section by section 1731 of Pub. L. 116–92 to be treated as having been enacted immediately before amendments by other provisions of Pub. L. 116–92, see section 1731(f) of Pub. L. 116–92, set out as a Coordination of Certain Sections of an Act With Other Provisions of That Act note under section 101 of this title.

[§§ 130j, 130k. Renumbered §§ 395, 396]

CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE

Sec.
131. Office of the Secretary of Defense.
132. Deputy Secretary of Defense.
132a. Performance improvement officer.[1]
[133. Repealed.]
133a. Under Secretary of Defense for Research and Engineering.
133b. Under Secretary of Defense for Acquisition and Sustainment.
134. Under Secretary of Defense for Policy.

[1] So in original. Probably should be capitalized as ''Performance Improvement Officer''.