

[FINAL DRAFT] Defense Acquisition Laws Reorganization Bill

May 8, 2019

This draft sets out the legislative text proposed by the Section 809 Panel for the reorganization, consolidation, and rationalization of the statutes relating to defense acquisition. The draft would relocate those statutes into the new structure in title 10, United States Code, created by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232). As the first step in the comprehensive defense acquisition laws reorganization (DALR) project, section 801 created a new Part V of Subtitle A of title 10, with a subpart and chapter structure for the subsequent relocation of defense acquisition laws. This document would carry out that relocation. Overall, the intent is to improve readability of defense acquisition provisions.

This document is a consolidation of drafts for the chapters of the new Part V that have been submitted over a period of months by the Section 809 Panel to the staff of the Committees on Armed Services of the Senate and House of Representatives and to DoD.

The reorganization addresses both acquisition provisions of title 10 itself and the numerous acquisition-related “note” sections in title 10, almost all of which are NDAA provisions.

There are **561 sections** in the proposed new Part V, organized into **55 chapters** and **9 subparts**.

There are 227 sections of current title 10 to be relocated into the new Part V, almost all of which are derived from 9 chapters of the current Part IV.

Of the 336 “note” sections considered, 230 are recommended for codification (of which 13 would be codified in title 10 outside the new Part V), 87 are proposed to be left as note sections, and 19 are proposed for consideration for repeal. The numerous note provisions under 10 USC 2431 that relate to missile defense programs were not considered for the reorganization.

An effective date of Feb. 1, 2020, is proposed in the last section. Conforming revisions have been made to reflect amendments in the FY2019 NDAA having an effective date of Jan 1, 2020, since those amendments will take effect before the proposed effective date.

In the draft, a bracketed citation after a section number in the new Part V refers to the provision of law from which that section is derived. When a bracketed citation includes a title 41 provision, the reference is to a counterpart section in title 41 (not the source law).

Text that is ~~stricken through~~ is current law that is proposed to be deleted. Text that is **bold italic** is generally proposed new or replacement text. Text that is **bold** is generally text to which attention is particularly directed. For complex amendatory provisions, boldface is used to identify for reviewers the key elements of the amendment text.

Reviewers are encouraged to review this document for technical accuracy. Concerns as to policy matters and opportunity for policy modifications should be pursued separately.

There are several matters that appear throughout:

1. There are numerous **side notes**. Many are intended as navigational aids. In the case of title 10 sections with counterpart title 41 provisions, there are side notes identifying wording differences between the title 10 and title 41 provisions. Some of the side notes (particularly for

Commented [CR1]: Changes to the text from the Discussion Draft of April 11 are NOT shown, but are accepted as part of the base text.

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“note” sections) identify wording changes made for conformity to standard title 10 usage. Other side notes propose wording changes as non-substantive readability improvements.

In addition, some of the side notes pose specific questions for the consideration of reviewers relating to the meaning of current provisions or possible text changes to ensure accuracy and readability.

2. This draft flags **references to the former Under Secretary of Defense for Acquisition, Technology, and Logistics**. There are 70 such references identified, of which 29 appear in title 10 provisions and 41 appear in NDAA provisions.

These references are revised to refer to the USD(A&S) or the USD(R&E) in accordance with the allocations set forth in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F), with each such revision identified as being made in accordance with the DoD report.

As to references in NDAA provisions, the DoD report only addresses NDAA provisions beginning with FY2008 (see Sec. 2, Inventory Methodology). There are 27 USD(AT&L) references in the draft derived from earlier NDAs; in those case, the reference is flagged with a query as to whether the reference should be changed to USD(A&S) or USD(R&E), or both.

3. This draft proposes to omit/delete the phrase “, **at a minimum**” wherever occurring. The phrase is used inconsistently and is unnecessary. Omission will enable a standard usage in the new Part V. There are 45 such instances.

Outline:

Short Title; table of contents.

TITLE I—GENERAL (PART V, SUBPART A)

TITLE II—ACQUISITION PLANNING (PART V, SUBPART B)

TITLE III—CONTRACTING METHODS AND CONTRACT TYPES (PART V, SUBPART C)

TITLE IV—GENERAL CONTRACTING PROVISIONS (PART V, SUBPART D)

TITLE V—RESEARCH AND ENGINEERING (PART V, SUBPART E)

TITLE VI—MAJOR SYSTEMS, MAJOR DEFENSE ACQUISITION PROGRAMS, AND WEAPON SYSTEMS DEVELOPMENT (PART V, SUBPART F)

TITLE VII—OTHER SPECIAL CATEGORIES OF CONTRACTING (PART V, SUBPART G)

TITLE VIII—CONTRACT MANAGEMENT (PART V, SUBPART H)

TITLE IX—DEFENSE INDUSTRIAL BASE (PART V, SUBPART I)

TITLE X—PROVISIONS OF CURRENT ACQUISITION CHAPTERS TO BE LOCATED OUTSIDE OF NEW PART V

TITLE XI—CONFORMING AMENDMENTS TO PART IV OF SUBTITLE A AND OTHER PROVISIONS OF LAW

TITLE XII—TRANSITION AND SAVINGS PROVISIONS; EFFECTIVE DATE

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A BILL

To amend title 10, United States Code, to *reorganize, consolidate, and rationalize the statutes relating to defense acquisition*, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the United States of America*

2 *in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “*Defense Acquisition Laws Reorganization Act*”.

5 **SEC. 2. TABLE OF CONTENTS.**

6 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—GENERAL (PART V, SUBPART A)

Sec. 101. Definitions.

Sec. 102. General matters.

Sec. 103. Defense acquisition system.

Sec. 104. Budgeting and appropriations.

Sec. 105. Operational Contract Support.

TITLE II—ACQUISITION PLANNING (PART V, SUBPART B)

Sec. 201. Planning and solicitation generally.

Sec. 202. Independent cost estimation and cost analysis.

Sec. 203. Other provisions relating to planning and solicitation generally.

Sec. 204. Planning and solicitation relating to particular items or services.

TITLE III—CONTRACTING METHODS AND CONTRACT TYPES (PART V, SUBPART C)

Sec. 301. Awarding of contracts.

Sec. 302. Specific types of contracts.

Sec. 303. Other matters relating to awarding of contracts.

Sec. 304. Undefined contractual actions.

Sec. 305. Task and delivery order contracts.

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- Sec. 306. Acquisition of commercial products and commercial services.
- Sec. 307. Multiyear contracts.
- Sec. 308. Simplified acquisition procedures.
- Sec. 309. Rapid acquisition procedures.
- Sec. 310. Contracting with or through other agencies.
- Sec. 311. Contracts for long-term lease or charter of vessels, aircraft, and combat vehicles.
- Sec. 312. Other types of contracts used for procurements for particular purposes.

TITLE IV—GENERAL CONTRACTING PROVISIONS (PART V, SUBPART D)

- Sec. 401. Cost or pricing data.
- Sec. 402. Allowable costs.
- Sec. 402. Proprietary contractor data and rights in technical data.
- Sec. 404. Contract financing.
- Sec. 405. Contractor audits and accounting.
- Sec. 406. Claims and disputes.
- Sec. 407. Foreign acquisitions.
- Sec. 408. Socioeconomic programs.

TITLE V—RESEARCH AND ENGINEERING (PART V, SUBPART E)

- Sec. 501. Research and engineering generally.
- Sec. 502. Innovation.
- Sec. 503. Department of Defense laboratories.
- Sec. 504. Research and development centers and facilities.
- Sec. 505. Test and evaluation.

TITLE VI—MAJOR SYSTEMS, MAJOR DEFENSE ACQUISITION PROGRAMS, AND WEAPON SYSTEMS DEVELOPMENT (PART V, SUBPART F)

- Sec. 601. General matters.
- Sec. 602. Major systems and major defense acquisition programs generally.
- Sec. 603. Life-cycle and sustainment.
- Sec. 604. Program status—Selected Acquisition Reports.
- Sec. 605. Cost growth—Unit Cost Reports (Nunn-Mecurdy).
- Sec. 606. Weapon systems development and related matters.

TITLE VII—OTHER SPECIAL CATEGORIES OF CONTRACTING (PART V, SUBPART G)

- Sec. 701. Acquisition of services generally.
- Sec. 702. Acquisition of services by contractors performing private security functions.
- Sec. 703. Acquisition of information technology.

TITLE VIII—CONTRACT MANAGEMENT (PART V, SUBPART H)

- Sec. 801. Contract administration.
- Sec. 802. Prohibitions and penalties.
- Sec. 803. Contractor workforce.
- Sec. 804. Other administrative matters.

TITLE IX—DEFENSE INDUSTRIAL BASE (PART V, SUBPART I)

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- Sec. 901. Defense Industrial Base Generally.
- Sec. 902. Policies and planning.
- Sec. 903. Development, application, and support of dual-use technologies.
- Sec. 904. Manufacturing technology.
- Sec. 905. Other Technology Base Policies and Programs.
- Sec. 906. Small business programs.
- Sec. 907. Procurement Technical Assistance Cooperative Agreement Program.
- Sec. 908. Loan guarantee programs.

TITLE X—PROVISIONS OF CURRENT ACQUISITION CHAPTERS TO BE LOCATED OUTSIDE OF NEW PART V

- Sec. 1001. Codification of section relating to multi-use sensitive compartmented information facilities.
- Sec. 1002. Provisions relating to acquisition workforce.
- Sec. 1003. Codification of provision relating to mission integration management.
- Sec. 1004. Codification of provision relating to contracts for commercial imaging satellite capacities.
- Sec. 1005. Codification of authority relating to agreements with foreign governments for development of land-based water resources in support of and in preparation for contingency operations.
- Sec. 1006. Codification of statute relating to contracting for morale, welfare, and recreation telephone services for military personnel serving in combat zones.
- Sec. 1007. Codification of Fiscal Year 2009 NDAA section in title 10 transportation chapter.
- Sec. 1008. Transfer of title 10 section relating to energy security.
- Sec. 1009. Codification of statute relating to advanced rotorcraft flight research and development.
- Sec. 1010. Codification of statute relating to long-term lease or charter authority for certain double-hull tankers and oceanographic vessels.
- Sec. 1011. Recodification of certain title 10 provisions relating to contract financing for certain Navy contracts.
- Sec. 1012. Codification of statute relating to government-wide payment protections for subcontractors and suppliers.

TITLE XI—CONFORMING AMENDMENTS TO PART IV OF SUBTITLE A AND OTHER PROVISIONS OF LAW

Subtitle A—Conforming Amendments to Part IV of Subtitle A

- Sec. 1101. Part IV heading.
- Sec. 1102. Repeal of chapters 137, 139, and 144.
- Sec. 1103. Revision of chapter 141.

Subtitle B—Conforming Amendments to Other Provisions of Law

- Sec. 1111. Central Intelligence Agency Act of 1949.
- Sec. 1112. Other provisions of law.

TITLE XII—TRANSITION AND SAVINGS PROVISIONS; EFFECTIVE DATE

- Sec. 1201. Transitional and savings provisions.
- Sec. 1202. Preservation of suspended status of laws suspended as of effective date.
- Sec. 1203. Preservation of pre-existing rights, duties, penalties, and proceedings.
- Sec. 1204. Effective date.

TITLE I—GENERAL (PART V, SUBPART A)

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1 SEC. 101. DEFINITIONS.

2 (a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by
3 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
4 (Public Law 115-232), is amended by striking chapter 201 and inserting the following:

5 “CHAPTER 201—DEFINITIONS

Subchapter Sec.
I. Definitions Relating to Defense Acquisition System Generally.....3001
II. Definitions Applicable to Procurement Generally3011
III. Definitions Relating to Major Systems and Major Defense Acquisition
Programs3041

6 SUBCHAPTER I— DEFINITIONS RELATING TO DEFENSE ACQUISITION

7 SYSTEM GENERALLY

- Sec.
3001 [2545(2), (3), (1)]. Defense acquisition system; elements of the defense acquisition system.
3002 [2302(6)]. Federal Acquisition Regulation.
3003 [New]. Defense Federal Acquisition Regulation Supplement.
3004 [2302(1)]. Head of an agency.
3005 [New]. Service chief concerned.
3006. [2545(4)]. Acquisition workforce.

8 §3001 [2545(2), (3), (1)]. Defense acquisition system; element of the defense acquisition
9 system

10 (a) [2545(2)] DEFENSE ACQUISITION SYSTEM.—In this part, the term “defense
11 acquisition system” means—

12 (1) the workforce engaged in carrying out the acquisition of property and services

13 for the Department of Defense;

14 (2) the management structure responsible for directing and overseeing the

15 acquisition of property and services for the Department of Defense; and

Commented [CR2]: The only current place this definition would apply where it does not now apply is 2443(a). OK? Or, should applicability to 2443(a) be excluded?
Note that part of this definition uses the term “acquisition”, defined in (c) below.
Commented [CR3]: As an observation, note that this reference is to “workforce” while (b)(1) below refers to “acquisition workforce”. The use here is broader, encompassing the generic workforce, while the AW is specified in (b)(1) as one element of the total.

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(3) the statutory, regulatory, and policy framework that guides the acquisition of property and services for the Department of Defense.

(b) [2545(3)] ELEMENTS OF THE DEFENSE ACQUISITION SYSTEM.—In this part, the term “element of the defense acquisition system” means an organization [of the Department of Defense] that—

- (1) employs members of the acquisition workforce;
(2) carries out acquisition functions; and
(3) focuses primarily on acquisition.

(c) [2545(1)] ACQUISITION.—In this section, the term “acquisition” has the meaning given that term in section 131 of title 41.

§3002 [2302(6)]. Federal Acquisition Regulation

In this part, the term “Federal Acquisition Regulation” means the single Government-wide procurement regulation, known as the Federal Acquisition Regulation, issued pursuant to section 1303(a)(1) of title 41.

§3003 [New]. Defense Federal Acquisition Regulation Supplement

In this part, the term “Defense Federal Acquisition Regulation Supplement” means the single Department of Defense-wide procurement regulation, known as the Defense Federal Acquisition Regulation Supplement, issued by the Secretary of Defense to implement and supplement the Federal Acquisition Regulation within the Department of Defense.

§3004. [2302(1)] Head of an agency

In this part, the term “head of an agency” means the following:

- (1) The Secretary of Defense.

Commented [CR4]: There are no current provisions that use this term outside of its current scope of ch. 149, so it would not apply anywhere it does not currently apply. (In ch. 149, the only places this term is used are 2546(b) & 2548.)

Commented [CR5]: Bracketed italic phrase “of the Department of Defense” is not in the original. Suggested for addition.

Commented [CR6]: In current law, the definition of “acquisition” in 2545(1) applies only to provisions of ch. 149. There are numerous other title 10 & NDAA provisions that currently use the term “acquisition” without a statutory definition. To preserve the current applicability of this definition in the reorganization, this definition should apply only as used in current law, i.e., to successor sections of ch. 149. The definitions in subsections (a) and (b) above, from that chapter, use the term “acquisition”, so the definition from 2545(1) is included here, for purposes of this section, to preserve applicability to those subsections. Note that this definition provides “In this section” rather than “In this part”. This definition will also be retained in ch. 205, the successor to ch. 149, for applicability to sections in that chapter.

Note the [detailed] definition in 41 USC 131. And note that 41 USC 131 is derived from the OFPP Act. Compare 41 USC 131 to the definition of “procurement” in 41 USC 111, derived from title III of the Federal Property & Admin Services Act of 1949, referenced below.

Commented [CR7]: In the original, this definition applies only to ch. 137. In this case, it seems that the definition can safely be applied to all of the provisions of the new Part V, including those that currently use this term without definition. Note that this is a definition in the sense of providing a technical reference for a well-known term and does not create new content.

Commented [CR8]: Unlike the definition of “[FAR]” above, there is no definition of “[DFARS]” in current law. The term [DFARS] is currently used in a number of instances in title 10 and NDAA provisions, but without context. This new definition is suggested as a useful, nonsubstantive addition. This addition, modeled on the FAR definition, would provide a baseline reference. Unlike the FAR, there is no statutory reference and no requirement in law for there to be a DFARS.

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- (2) The Secretary of the Army.
(3) The Secretary of the Navy.
(4) The Secretary of the Air Force.
(5) The Secretary of Homeland Security.
(6) The Administrator of the National Aeronautics and Space Administration.

§ 3005 [NEW]. Service chief concerned

'In this part, the term 'Service chief concerned' means—
(1) the Chief of Staff of the Army, with respect to matters concerning the Army;
(2) the Chief of Naval Operations, with respect to matters concerning the Navy;
(3) The Commandant of the Marine Corps, with respect to matters concerning the Marine Corps; and
(4) the Chief of Staff of the Air Force, with respect to matters concerning the Air Force.

§3006 [2545(4)]. Acquisition workforce

For the definition of the term 'acquisition workforce' for the purposes of this part, see section 101(a)(18) of this title.

SUBCHAPTER II—DEFINITIONS APPLICABLE TO PROCUREMENT

GENERALLY

- Sec.
3011 [2302(3)(A), (B)]. Procurement; procurement system.
3012 [2302(3)(D)]. Full and open competition.
3013 [2302(3)(E)]. Responsible source.
3014 [2302(3)(C)]. Standards.
3015 [2302(3)(F), (G), (H)]. Item; item of supply; supplies.
3016 [2302(3)(I)]. Commercial product; commercial service.
3017 [2302(3)(J), 2376(1)]. Nondevelopmental item.

Commented [CR9]: As a question of current practice, does 2302(1), in referring to the Secretary of Homeland Security, in practice apply only with respect to the Coast Guard, and NOT to other functions of DHS (as might be suggested on its face)?

The addition of that phrase, if nonsubstantive, would perhaps be a useful clarification.

As a historic note, sec. 9 of the Armed Services Procurement Act of 1947 provided 'The term 'agency head' shall mean the Commandant, United States Coast Guard, Treasury Department, ...'.

The codifier's note for sec. 2302 for the 1956 codification of title 10 states, 'The words "Secretary of the Treasury" are substituted for the words "Commandant, United States Coast Guard, Treasury Department", since the functions of the Coast Guard and its officers, while operating under the Department of the Treasury, were vested in the Secretary of the Treasury by 1950 Reorganization Plan No. 26, effective July 31, 1950, 64 Stat. 1280'.

Also, note that 10 USC 2303(a) in stating the agencies to which ch.137 applies, says 'The Coast Guard' [not the Dept of Homeland Security].

Commented [CR10]: This new definition of 'Service chief concerned' is proposed for uniformity and to avoid referring to the CNO and CMC as the 'Chief of Staff' of their services (which has occurred in several instances in current law). For comparison, see the definition of 'Secretary concerned' at 10 USC 101(a)(9).

Commented [CR11]: Section 2354(4), defining 'acquisition workforce' by reference to 101(a)(18), is not needed since 10 USC 101 applies on its own terms. The formulation in 2354(4) of 'has the meaning provided in...' is used to incorporate a definition that does not otherwise apply, which is not the case here. That definition could be omitted from the reorganization as redundant with 101(a)(18). However, to preserve a reference to the definition of 'acquisition workforce' in the reorganization, this section would be proposed in the form of an informational cross-reference.

Commented [CR12]: The definitions in subchapter II are from 10 USC 2302. As a historic reference back, the heading of this subchapter is derived from the heading for ch. 137, Procurement Generally. The definitions derived from 2302 apply in current law only to sections of current ch. 137 (2302-2339a), except where otherwise incorporated by reference. FYI, for a complete inventory of 2302, note that 2302(1) is 3004 above; 2302(5) is 3041 below, & 2302(6) is 3002 above.

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3018 [2302(3)(K), (L), 2376(1)]. Component; commercial component.
3019 [2302(2); 41 USC 132, 152]. Competitive procedures.
3020 [2302(4)]. Technical data.
3021 [2302(9)]. Nontraditional defense contractor.
3022 [2302(7); 41 USC 134 & 153]. Simplified acquisition threshold.
3023 [2302(8)]. Humanitarian or peacekeeping operation.

§3011 [2302(3)(A), (B)]. Procurement; procurement system

(a) [2302(3)(A)] PROCUREMENT.—In this part, the term “procurement” has the meaning given that term in section 111 of title 41.

~~(b) [2302(3)(B)] PROCUREMENT SYSTEM.—In this part, the term “procurement system” has the meaning given that term in section 112 of title 41.~~

§3012 [2302(3)(D)]. Full and open competition

In this part, the term “full and open competition” has the meaning given that term in section 107 of title 41.

§3013 [2302(3)(E)]. Responsible source

In this part, the term “responsible source” has the meaning given that term in section 113 of title 41.

§3014 [2302(3)(C)]. Standards

In this part, the term “standards” has the meaning given that term in section 114 of title 41.

§3015 [2302(3)(F), (G), (H)]. Item; item of supply; supplies

(a) ITEM AND ITEM OF SUPPLY.—In this part, the terms “item” and “item of supply”, when used with respect to a major system, have the meaning given those terms in section 108 of title 41.

Commented [CR13]: The term “procurement” is used outside of ch. 137 both in a number of title 10 sections and in a number of NDAA sections that are notes in the Code. In practice, is the definition from 41 USC 111 applied to those instances outside of ch. 137, as well as to the uses of the term in ch. 137? Is it OK to make this definition of “procurement” applicable to those instances where it does not currently apply as a matter of statute? Compare the definition of “acquisition” above, referring to 41 USC 131.

Commented [CR14]: The term “procurement system” does not appear in title 10 at all and only appears in one note section, a 1984 statement of Congressional findings concerning defense procurement reform, sec. 1202 of P.L. 98-525 (10 U.S.C. 2302 note). It is generally not the practice in title 10 or other statutes to have a definition for a term that is then not used in the statute. Suggest that this definition from sec. 2302 be omitted, as shown. If used in the future, the definition could be provided then, as is usually the case. Also, consider whether there would be confusion from having both “defense acquisition system” (above) and “procurement system” (here)? As to the definition at 41 USC 112 that 2302 incorporates by reference, this term is used in a number of places in title 41, making the title 41 definition appropriate for that title.

Commented [CR15]: This term is used outside of ch 137 only in 2 note sections that are to be codified. Seems OK for general use in Part V.

Commented [CR16]: The term “responsible source” is only used in ch. 137, in secs 2302, 2304, & 2305, in a total of 4 instances. It should be OK for general use in Part V.

Commented [CR17]: The term “standards” is used in seven sections of ch. 137. In each case, does the current 2302 definition work? Was it intended? The term is a common word -- easy to have been used without awareness of the 2302 definition. The term also appears in a number of note sections, without definition. Would it be best to add this definition to each section to which it applies now, rather than stating it here?? Or, given that it has general applicability to ch. 137 in current law, it seems OK for general applicability in Part V.

Commented [CR18]: The word “item” is a common word used in many other context, such as “budget line item”. For clarity, the phrase in italics is suggested. Note that the incorporated definition from 41 USC 108 is limited to applicability to a major system.

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1 (b) SUPPLIES.—In this part, the term “supplies” has the meaning given that term in
2 section 115 of title 41.

Commented [CR19]: Note 10 USC 101(a)(14) which provides that, in title 10, the term “supplies” includes material, equipment, and stores of all kinds.

3 §3016 [2302(3)(i)]. Commercial product; commercial service

4 In this part, the terms “commercial product” and “commercial service” have the
5 meanings given those terms in sections 103 and 103a, respectively, of title 41.

6 §3017 [2302(3)(J), 2376(1)]. Nondevelopmental item

7 In this part, the term “nondevelopmental item” has the meaning given that term in
8 section 110 of title 41.

Commented [CR20]: The term “nondevelopmental item”, although defined at 2302(3)(J), is not used in ch. 137. It is defined identically at 2376(1) and is used in ch. 140. This term is also used in a few other instances, with references to 41 USC 110. Should be OK for general Part V applicability.

9 §3018 [2302(3)(K), (L), 2376(1)]. Component; ~~commercial component~~

10 (a) [2302(3)(K)] COMPONENT.—In this part, the term “component”, *when used with*
11 *respect to an item supplied to the Government*, has the meaning given that term in section 105
12 of title 41.

Commented [CR21]: Because the word “component” is used in title 10 in numerous instances to refer to organizational elements of the Dept of Defense, the phrase in bold italic, which is not in current law, is suggested for clarity. The phrase “an item supplied to the...” is from 41 USC 105.

13 ~~(b) [2302(3)(L)] COMMERCIAL COMPONENT.—In this part, the term “commercial~~
14 ~~component” has the meaning given that term in section 102 of title 41.~~

OK? It is noted that T41 has the same dual use of “component. See 1124, 1909, & 4105(i)

15 §3019 [2302(2); 41 USC 132, 152]. Competitive procedures

16 In this part, the term “competitive procedures” means procedures under which the head
17 of an agency enters into a contract pursuant to full and open competition. That term also includes
18 the following:

Commented [CR22]: In title 10, the term “commercial component” is defined identically at 2302(3)(L) & 2376(1), for purposes of ch. 137 & ch. 140, respectively. However, the term is not used in either chapter or anywhere else in title 10 or in a note section. As noted above for the term “procurement system”, it is generally not the practice in title 10 or other statutes to have a definition for a term that is then not used in the statute. Could this definition from sec. 2302 be omitted, as shown? (If a provision in the future uses that term, the definition could be added at that time, of course.)

19 (1) Procurement of architectural or engineering services conducted in accordance
20 with chapter 11 of title 40.

Commented [CR23]: The term “competitive procedures” is only used in 3 sections of ch. 137 and nowhere outside of ch. 137. It should be OK for general use in Part V.

Commented [CR24]: The title 10 definition is identical to the title 41 definition at 41 USC 152, with 2 exceptions noted below.

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(2) The competitive selection for award of science and technology proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals.

(3) The procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if—

(A) participation in the program has been open to all responsible sources; and

(B) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States.

(4) Procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete.

(5) A competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).

§3020 [2302(4)]. Technical data

In this part, the term “technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

§3021 [2302(9)]. Nontraditional defense contractor

Commented [CR25]: The phrase “for award” does not appear in the comparable T41 provision, at 152(2). Should they be the same?

Commented [CR26]: An amendment in the FY18 NDAA replaced of “basic research proposals” with “science and technology proposals”. A similar change was NOT made in 41 USC 152(2).

Commented [CR27]: This definition seems identical to 41 USC 116 other than for some punctuation differences. Any reason for this is to be set out separately, rather than by incorporating the title 41 definition by reference, as done above?

Commented [CR28]: The term “technical data” is used in title 10 outside of ch. 137 in 2366b, 2384, 2386, 2439, 2446b, 2548, & 7542.
OK for applicability to those sections and for general use in Part V?
Or OK for applicability to Part V except for those sections?

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1 In this part, the term “nontraditional defense contractor”, with respect to a procurement
2 or with respect to a transaction authorized under section 2371(a) 4002(a) or 2371b 4003 of this
3 title, means an entity that is not currently performing and has not performed, for at least the one-
4 year period preceding the solicitation of sources by the Department of Defense for the
5 procurement or transaction, any contract or subcontract for the Department of Defense that is
6 subject to full coverage under the cost accounting standards prescribed pursuant to section 1502
7 of title 41 and the regulations implementing that section.

Commented [CR29]: In ch. 137, this definition is used only in 2307. It is used in a number of other title 10 and NDAA sections, in each instance with a cross reference to this definition in 2302.

8 §3022 [2302(7); 41 USC 134 & 153]. Simplified acquisition threshold

9 In this part, the term “simplified acquisition threshold” has the meaning given that term
10 in section 134 of title 41, except that, in the case of a contract to be awarded and performed, or
11 purchase to be made, outside the United States in support of a contingency operation or a
12 humanitarian or peacekeeping operation, the term means the amount equal to two times the
13 amount specified for that term in that section.

Commented [CR30]: Should this reference to the cost accounting standards under title 41 be revised to add a reference to 10 USC 190, the new DoD Cost Accounting Standards Board? If so, and assuming that applicable cost accounting standards will be under either 41 USC 1502 OR 10 USC 190 (but not both), the change to update this section for 10 USC 190 could be to add at the end before the period the following: “or section 3849 of this title and the regulations implementing that section, as applicable”, with 3849 being the replacement section for 190.

Commented [CR31]: This section will need to be coordinated with the provisions of new ch. 251, Simplified Acquisition Procedures

14 §3023 [2302(8)]. Humanitarian or peacekeeping operation

15 In this part, the term “humanitarian or peacekeeping operation” means a military
16 operation in support of the provision of humanitarian or foreign disaster assistance or in support
17 of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. That
18 term does not include routine training, force rotation, or stationing.

Commented [CR32]: The term “humanitarian or peacekeeping operation” is used only in current 2302(7) & 2326(b)(4)(B). It should be OK for Part V-wide applicability, if desired. However, the term is not one that is acquisition-specific. Even if the only current uses are in ch. 137, should this term be considered as an addition to 10 USC 101, rather than in Part V? That is, assuming the definition is consistent with general DoD policy. Note that “contingency operation” is defined at 10 USC 101(a)(13).

19 SUBCHAPTER III—DEFINITIONS RELATING TO MAJOR SYSTEMS AND
20 MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.
3041 [2302(5); 2302d(a),(b); 41 USC 109]. Major system.
3042 [2430(a)]. Major defense acquisition program.

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3043 [2366a(d)(7), 2366b(g)(3)]. Milestone decision authority.
3044 [2431a(e)(3), 2366a(d)(1); 2431a(e)(4), 2366(e)(7), 2366a(d)(4), 2366b(g)(4); 2366(e)(8)]. Milestone A, Milestone B, and Milestone C approval.
3045 [2400(b)&(c)] Low-rate initial production.
3046 [2432(a)(4)] Full life-cycle cost; life cycle cost.
3047 [2442(b)(3)] Engineering and manufacturing development contract.

Commented [CR33]: The definitions in 3044-3047 in the original are applicable by their terms only to the sections within which they appear. They appear to be well established terms of art with definitions that are consistent with the general meaning of these terms. Any reason not to provide applicability for these terms to all of Part V, rather than just the successors to the sections in which they currently appear?

§3041 [2302(5); 2302d(a),(b); 41 USC 109]. Major system

(a) [2302(5) (1st & 2nd sentences)] IN GENERAL.—In this part, the term “major system” means a combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software or a combination of hardware, equipment, and software, but does not include construction or other improvements to real property.

Commented [CR34]: This term is used outside of ch. 137 only where there is a reference to the meaning provided in this section, except for three instances: FY07 NDAA P.L. 109–364, §832 (10 USC 2302 note) and 10 USC 2400 & 2410p. OK for this definition to apply in those three cases? Or should they be exempted from applicability of the definition? Otherwise OK for Part V-wide applicability.

(b) [2302(5) (3rd sentence)] SYSTEM CONSIDERED TO BE A MAJOR SYSTEM.—A system shall be considered to be a major system if—

- (1) the conditions of subsection (c) or (d), as applicable, are satisfied; or
(2) the head of the agency responsible for the system designates the system a major system.

(c) [2302d(a)] DEPARTMENT OF DEFENSE SYSTEMS.—

(1) [2302d(a)] IN GENERAL.—For purposes of subsection (b), a system for which the Department of Defense is responsible shall be considered a major system if—

- (A) [2302d(a)(1)] the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$115,000,000 (based on fiscal year 1990 constant dollars); or

Commented [CR35]: Given the parenthetical “based on fiscal year 1990 constant dollar”, the actual amount currently in effect under this provision is apparently different from (and higher than) the amount that appears in the statutory language. Could the value actually in effect be substituted for this dollar amount as a non-substantive updating (with a corresponding update to the fiscal year reference)? This would not be a new inflation adjustment, but merely to bring the statutory language into alignment with the amount actually being applied.

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(B) [2302d(a)(2)] the eventual total expenditure for procurement for the system is estimated to be more than \$540,000,000 (based on fiscal year 1990 constant dollars).

Commented [CR36]: Same as above as to updating the dollar amount.

(2) ADJUSTMENT AUTHORITY.—Authority to adjust amounts and fiscal years in effect under this subsection is provided in section 4202(b) of this title.

Commented [CR37]: Sec 2302d(c) is added to ch. 321 as new 4202(b), along with parallel authority to adjust thresholds for MDAPs.

(d) [2302d(b)] CIVILIAN AGENCY SYSTEMS.—For purposes of subsection (b), a system for which a civilian agency is responsible shall be considered a major system if total expenditures for the system are estimated to exceed the greater of—

(1) \$750,000 (based on fiscal year 1980 constant dollars); or

(2) the dollar threshold for a “major system” established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled “Major Systems Acquisitions”.

§3042 [2430(a)-(c)]. Major defense acquisition program

Commented [CR38]: Because the authority to increase thresholds [2430(b)] is more than what would one would expect to find in a definition, and because this definition is so integral to subpart F, it is proposed that— (1) the full definition from 2430 appear in subpart F (sec. 4201), rather than here; and (2) that this cross-reference be provided here for visibility throughout the new Part V.

For the definition of the term “major defense acquisition program” for purposes of this part, see section 4201 of this title.

§3043 [2366a(d)(7), 2366b(g)(3), 2431a(e)(5)]. Milestone decision authority

Commented [CR39]: See 2430(d). Any inconsistency?

In this part, the term “milestone decision authority”, with respect to a major defense acquisition program or a major subprogram, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program or subprogram, including authority to approve entry of the program or subprogram into the next phase of the acquisition process.

Commented [CR40]: The definition at 2366a(d)(7) has “or a major subprogram”. 2366b(g)(3) does not. 2431a(e)(5) does not cover major subprograms but does apply to MAISs and major systems. And compare 2430(d). Should there be a single definition? Or should the definition be revised so as preserve the distinctions above?

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1 §3044 [2431a(e)(3), 2366a(d)(1); 2431a(e)(4), 2366(e)(7), 2366a(d)(4), 2366b(g)(4);

2 2366(e)(8)]. Milestone A, Milestone B, and Milestone C approval

Commented [CR41]: Word "Milestone" used 3 times in heading to facilitate computer searches for a specific milestone.

3 In this part:

4 (1) [2431a(e)(3), 2366a(d)(1)] MILESTONE A APPROVAL.—The term "Milestone A
5 approval" means a decision to enter into technology maturation and risk reduction
6 pursuant to guidance prescribed by the Secretary of Defense for the management of
7 Department of Defense acquisition programs.

8 (2) [2431a(e)(4), 2366(e)(7), 2366a(d)(4), 2366b(g)(4)] MILESTONE B
9 APPROVAL.—The term "Milestone B approval" means a decision to enter into system
10 development and demonstration pursuant to guidance prescribed by the Secretary of
11 Defense for the management of Department of Defense acquisition programs.

Commented [CR42]: Note that 10 USC 2400(a)(2) has a definition of "milestone B decision" that is slightly different from this definition. Are they in substance the same?

12 (3) [2366(e)(8)] MILESTONE C APPROVAL.—The term "Milestone C approval"
13 means a decision to enter into production and deployment pursuant to guidance
14 prescribed by the Secretary of Defense for the management of Department of Defense
15 acquisition programs.

16 §3045 [2400(b)&(c)]. Low-rate initial production

17 (a) [2400(b)] LOW-RATE INITIAL PRODUCTION OF WEAPON SYSTEMS.—Except as
18 provided in subsection (b), low-rate initial production with respect to a new system is production
19 of the system in the minimum quantity necessary—

Commented [CR43]: Note that this provision does not have the format for a definition, "in this [unit], the term "xx" means ...". Rather it states that LRIP is something, without reference to a statutory unit.

- 20 (1) to provide production-configured or representative articles for operational
- 21 tests pursuant to section ~~2399~~ 4171 of this title;
- 22 (2) to establish an initial production base for the system; and

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(3) to permit an orderly increase in the production rate for the system sufficient to lead to full-rate production upon the successful completion of operational testing.

(b) [2400(c)] LOW-RATE INITIAL PRODUCTION OF NAVAL VESSEL AND SATELLITE PROGRAMS.—With respect to naval vessel programs and military satellite programs, low-rate initial production is production of items at the minimum quantity and rate that—

- (1) preserves the mobilization production base for that system; and
(2) is feasible, as determined pursuant to regulations prescribed by the Secretary of Defense.

§3046 [2432(a)(4), 2430a(d)(4)]. Full life-cycle cost; life cycle cost

In this part, the terms "full life-cycle cost" and "life cycle cost", with respect to a major defense acquisition program or a designated major subprogram, mean all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

Commented [CR44]: In original, the term "full life-cycle cost" applies in 2432 (SARS). Appears also in 2334 and one note section. OK for Part V-wide applicability?
In original, the term "life-cycle cost" [without "full"] appears in several section in addition to 2430a. OK to apply where not now applicable? Or leave as is in 2430a only?
The definitions of the 2 terms are the same except that one refers to MDAPs and the other to designated major subprograms.

§3047 [2442(b)(3)]. Engineering and manufacturing development contract

In this part, the term "engineering and manufacturing development contract" means a prime contract for the engineering and manufacturing development of a major defense acquisition program."

Commented [CR45]: In original, this term applies only in 2442 and is used only in 2442. Leave in that section or OK to include here for Part V-wide applicability?

(b) CONFORMING REPEAL.—Section 2302 of title 10, United States Code, is repealed.

(c) CROSS-REFERENCE AMENDMENTS.—

(1) HEAD OF AN AGENCY.—The following provisions of law are amended by striking "section 2302(1)" and inserting "section 3004":

- (A) Section 2218(k)(4) of title 10, United States Code.

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1 (B) Section 2646(c)(1) of title 10, United States Code.

2 (C) Section 811(c)(2)(A) of the National Defense Authorization Act for
3 Fiscal Year 2010 (Public Law 111-84; 41 U.S.C. 3304 note).

4 (2) **MAJOR SYSTEM.**—The following provisions of law are amended by striking
5 “**section 2302(5)**” and inserting “**section 3041(a) and (b)**”:

6 (A) Section 933(e)(1)(A) of the National Defense Authorization Act for
7 Fiscal Year 2013 (Public Law 112-239; 10 U.S.C. 2224 note).

8 (B) Section 932(b)(1) of the Ike Skelton National Defense Authorization
9 Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2224 note).

10 (C) Section 254(f)(1) of the Duncan Hunter National Defense
11 Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2302
12 note).

13 (D) Section 812(k) of the John Warner National Defense Authorization
14 Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2302 note).

15 (E) Section 4471(f)(1) of the National Defense Authorization Act for
16 Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2501 note).

17 (3) **NONTRADITIONAL DEFENSE CONTRACTOR.**—The following provisions of
18 law are amended by striking “**section 2302(9)**” or “**section 2302**”, as the case may be,
19 and inserting “**section 3021**”:

20 (A) Section 1110(b)(2) of the National Defense Authorization Act for
21 Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 1701 note).

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1 (B) Section 217(e)(2)(D) of the National Defense Authorization Act for
2 Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2222 note).

3 (C) Section 843(c)(4) of the John S. McCain National Defense
4 Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2302
5 note).

6 (D) Section 884(e)(1) of the National Defense Authorization Act for Fiscal
7 Year 2017 (Public Law 114-328; 10 U.S.C. 2302 note).

8 (E) Section 866(e)(3) of the Ike Skelton National Defense Authorization
9 Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2302 note).

10 (F) Section 831(n)(2)(H)(i) of the National Defense Authorization Act for
11 Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2302 note).

12 (4) **SIGNIFICANT NONMAJOR DEFENSE ACQUISITION PROGRAM.**—1737(a)(3) of
13 title 10, United States Code, is amended by striking “**section 2302(5)(A)**” both places it
14 appears and inserting “**section 3041(b)(1)**”.

15 (5) **MULTIPLE AWARD CONTRACT.**—Section 3302(a)(3)(A) of title 41, United
16 States Code, is amended by striking “**section 2302(2)(C)**” and inserting “**section**
17 **3019(3)**”.

18 (6) **SIMPLIFIED ACQUISITION THRESHOLD.**—

19 (A) Section 801(f)(4) of the National Defense Authorization Act for Fiscal
20 Year 2008 (Public Law 110-181; 10 U.S.C. 2304 note) is amended by striking
21 “**section 2302(7)**” and inserting “**section 3022**”:

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1 (B) Section 853(b) of the Homeland Security Act of 2002 (6 U.S.C.
2 423(b)) is amended by striking paragraphs (1), (2), and (3) and inserting the
3 following:
4 “(1) Section 134 of title 41, United States Code.
5 “(2) Section 153 of title 41, United States Code.
6 “(3) Section 3022 of title 10, United States Code.”

7 SEC. 102. GENERAL MATTERS.

8 (a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by
9 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
10 (Public Law 115-232), is amended by striking chapter 203 and inserting the following:

11 “CHAPTER 203—GENERAL MATTERS

- Sec.
3061 [Sec. 801 of FY18 NDAA, P.L. 115-91 (10 USC 2302 note)]. Statements of purpose for Department of Defense acquisition.
3062 [2202 (partial)]. Regulations.
3063 [2303(a) (partial)]. Covered agencies.
3064 [2303(a) (remainder); (b)]. Applicability of part.
3065 [2311(a)]. Assignment and delegation of procurement functions and responsibilities: delegation within agency.
3066 [2311(b)]. Assignment and delegation of procurement functions and responsibilities: procurements for or with other agencies.
3067 [2311(c)]. Approval required for military department termination or reduction in participation in joint acquisition programs.
3068 [2314 & 2315]. Inapplicability of certain laws.
3069 [2308]. Buy-to-budget acquisition: end items.
3070 [2213]. Limitation on acquisition of excess supplies.
3071 [Sec. 231 of FY08 NDAA, P.L. 110-181 (10 U.S.C. 1701 note)]. Coordination and management of human systems integration activities.
3072 [2229b]. Comptroller General assessment of acquisition programs and initiatives.”

12 (b) CODIFICATION OF FY2018 NDAA SECTION.—

Commented [CR46]: [NOTE: In sections 3064, 3065, & 3066, references to “this part” are in the original references to “this chapter”, meaning ch. 137 of title 10. As restated, those provisions will apply to all of the new Part V, not just the provisions derived from current ch. 137. Reviewers are requested to consider whether there could be any unintended result.]

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(1) IN GENERAL.—Chapter 203 of title 10, United States Code, as amended by subsection (a), is amended by adding after the table of sections the following new section:

“§ 3061 [Sec. 801 of FY18 NDAA, P.L. 115-91 (10 USC 2302 note)]. **Statements of purpose for Department of Defense acquisition**

The Secretary of Defense shall ensure that the Defense Federal Acquisition Regulation Supplement includes the following statements of purpose:

(1) The defense acquisition system ~~(as defined in section 2545 of this title)~~ exists to manage the investments of the United States in technologies, programs, and product support necessary to achieve the national security strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 3043) and to support the ~~United States Armed Forces~~ **armed forces**.

Commented [CR47]: This definition will be made applicable to all of Part V on its own terms (in the Definitions chapter), so there will be no need to have a cross-reference here.

(2) The investment strategy of the Department of Defense shall be postured to support not only the current armed forces, but also future armed forces.

Commented [CR48]: Change due to 10 USC 101(a)(4)

(3) The primary objective of Department of Defense acquisition is to acquire quality products that satisfy user needs with measurable improvements to mission capability and operational support, in a timely manner, and at a fair and reasonable price.”

(2) **CONFORMING REPEAL.**—Section 801 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2302 note) is repealed.

(c) **SECTION 2202 OF TITLE 10 (PARTIAL).**—

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(1) IN GENERAL.—Chapter 203 of title 10, United States Code, is amended by

adding after section 3061, as added by subsection (b), the following new section:

“§ 3062 [2202 (partial)]. Regulations

The Secretary of Defense shall prescribe regulations governing the performance within the Department of Defense of the procurement functions, and related functions, of the Department of Defense.”.

Commented [CR49]: Note that, while the SecDef has inherent authority to prescribe regulations, the source provision in 10 U.S.C. 2202 is a requirement (“shall”) to prescribe regulations.

(2) CONFORMING AMENDMENTS.—

(A) Section 2202 of title 10, United States Code, is amended by striking

“procurement,”.

(B) The heading of such section, and the item relating to such section in the table of sections at the beginning of chapter 131 of such title, are each amended by striking the third word and the comma following that word.

(d) SECTION 2303 OF TITLE 10.—

(1) IN GENERAL.—Chapter 203 of title 10, United States Code, is amended by adding after section 3062, as added by subsection (c), the following new sections:

§ 3063 [2303]. Applicability of chapter

(a) APPLICABILITY.—This chapter applies to the procurement by any of the following agencies, for its use or otherwise, of all property (other than land) and all services for which payment is to be made from appropriated funds:

Commented [CR50]: The stricken-thru text is the current text of 2303(a).

(1) The Department of Defense.

(2) The Department of the Army.

(3) The Department of the Navy.

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- (4) The Department of the Air Force.
(5) The Coast Guard.
(6) The National Aeronautics and Space Administration.

§ 3063 [2303(a) (partial)]. Covered agencies

For purposes of any provision of law referring to this section, the agencies named in this section are the following:

- (1) The Department of Defense.
(2) The Department of the Army.
(3) The Department of the Navy.
(4) The Department of the Air Force.
(5) The Coast Guard.
(6) The National Aeronautics and Space Administration.

§ 3064 [2303(a) (remainder), 2302(b)]. Applicability of part

(a) [2303(a) (remainder)]. GENERAL APPLICABILITY.—This part applies to the procurement by an agency named in section 3063 of this title, for its use or otherwise, of all property (other than land) and all services for which payment is to be made from appropriated funds.

OR

(a) [2303(a) (partial)] Inapplicability TO CERTAIN MATTERS.—This part does not apply—

- (1) to the procurement of land; or
(2) to the procurement of property or services for which payment is to be made from funds other than appropriated funds.

Commented [CR51]: The following matter in italic would divide current 2303(a) into two sections. Since there are many references to 2303 for reference to the agencies named there, that would become one section (3063), as a stand-alone list. The second section (3064) would be the other elements of current 2303.

Commented [CR52]: This section from current 2303(a) should be OK for the new Part V

Commented [CR53]: See note at beginning of sec. 102 above.

Commented [CR54]: Under current practice, does the clause "for which payment is to be made from appropriated funds" apply to both property and services or just to services? Probably both, but would be desirable to confirm.

Commented [CR55]: Since each provision of ch. 137 seems to operate on its own terms, perhaps current 2303(a) is not an authority, but a limitation. What if the text were revised as follows: "This part does not apply to the procurement of land or to a procurement for which payment is not to be made from appropriated funds."

Commented [CR56]: Does the source provision for any provisions of Part V apply to a procurement made from funds other than appropriated funds?

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1 (b) [2303(b)] APPLICABILITY TO CONTRACTS FOR INSTALLATION AND ALTERATION.—The
2 provisions of this part that apply to the procurement of property apply also to contracts for its
3 installation or alteration.”

Commented [CR57]: See note at beginning of sec. 102 above.

4 (2) CONFORMING REPEAL.—Section 2303 of title 10, United States Code, is
5 repealed.

6 (e) SECTION 2311 OF TITLE 10.—

7 (1) IN GENERAL.—Chapter 203 of title 10, United States Code, is amended by
8 adding after section 3064, as added by subsection (d), the following new sections:

9 “§ 3065 [2311(a)]. Assignment and delegation of procurement functions and
10 responsibilities: delegation within agency

Commented [CR58]: Sec. 2311 has three subsections, which seem to be independent of each other. Here they are set out as 3 separate sections.

11 Except to the extent expressly prohibited by another provision of law, the head of an
12 agency may delegate, subject to his direction, to any other officer or official of that agency, any
13 power under this part. Any officer or official to whom such a delegation of power is made
14 remains subject to the direction of the head of the agency with respect to the power delegated.

Commented [CR59]: QUERY: Is this section [2311(a)] still needed? It seems self-evident and just to be stating a “true fact”. That is, what would be different without it? And see 10 USC 133(d), 7013(f), 8013(f), 9013(f). And surely there is no negative inference that the head of an agency may NOT delegate function in other chapters that do not have a provision like 2311(a).

15 “§ 3066 [2311(b)]. Assignment and delegation of procurement functions and
16 responsibilities: procurements for or with other agencies

Commented [CR60]: See note at beginning of sec. 102 above.

Commented [CR61]: This new 2nd sentence, beginning “Any officer”, replaces the phrase “subject to his direction” in the original. Query: is it needed at all? Note the codifier’s note in the Code under 2311, referring to the 1956 codification of the Armed Services Procurement Act of 1947, stating: The words “in his discretion and” ... are omitted as surplusage.”

17 Subject to section 3065 of this title, to facilitate the procurement of property and services
18 covered by this part by each agency named in section 2303 3063 of this title for any other
19 agency, and to facilitate joint procurement by those agencies—

Commented [CR62]: See note at beginning of sec. 102 above.

20 (1) the head of an agency may delegate functions and assign responsibilities
21 relating to procurement to any officer or employee within such agency;

Commented [CR63]: Does “any other agency” here mean ANY other agency (such as GSA)? Or in practice does it mean “any other such agency” – that is, another agency named in section 2303 of this title?

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(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

“§ 3067 [2311(c)]. **Approval required for military department termination or reduction in participation in joint acquisition programs**

(a) APPROVAL BY UNDER SECRETARY OF DEFENSE.—The Secretary of Defense shall prescribe regulations that prohibit *the Secretary of each* a military department participating in a joint acquisition program approved by the Under Secretary of Defense for ~~Acquisition, Technology, and Logistics~~ *Acquisition and Sustainment* from terminating or substantially reducing the participation of that military department in that program without the approval of the Under Secretary.

(b) REQUIRED JROC REVIEW.—The regulations under subsection (a) shall include a requirement that, before any such termination or substantial reduction in participation is approved, the proposed termination or reduction be reviewed by the Joint Requirements Oversight Council.

(c) CONTINUED FUNDING.—The regulations under subsection (a) shall include a provision that authorizes the Under Secretary of Defense for ~~Acquisition, Technology, and Logistics~~ *Acquisition and Sustainment* to require *the Secretary of* a military department whose participation in a joint acquisition program has been approved for termination or substantial

Commented [CR64]: Is there a better place for this section? In another chapter?

Commented [CR65]: Since the prohibition relates to an action (“terminating or substantially reducing ...”), the actor subject to the prohibition would be changed from a military department (i.e., an organization) to the Secretary of a military department (i.e., the official who is the head of the organization).

Commented [CR66]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR67]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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1 reduction to continue to provide some or all of the funding necessary for the acquisition program
2 to be continued in an efficient manner."

3 (2) CONFORMING REPEAL.—Section 2311 of title 10, United States Code, is
4 repealed.

5 (f) SECTIONS 2314 & 2315 OF TITLE 10.—

6 (1) IN GENERAL.—Chapter 203 of title 10, United States Code, is amended by
7 adding after section 3067, as added by subsection (e), the following new sections:

8 § 3068 [2314 & 2315]. Inapplicability of certain laws

9 (a) [2314] LAWS INAPPLICABLE TO AGENCIES NAMED IN SECTION 2303-3063.— The
10 following provisions of law do not apply to the procurement or sale of property or services by an
11 agency named in section 2303 3063 of this title:

12 (1) Section 6101 of title 41 (titled "Advertising requirement for Federal
13 Government purchases and sales").

14 (2) Section 6304 of title 41 (titled "Certain contracts limited to one-year term").

15 (b) [2315] LAW INAPPLICABLE TO PROCUREMENT OF AUTOMATIC DATA PROCESSING
16 EQUIPMENT AND SERVICES FOR CERTAIN DEFENSE PURPOSES.— For purposes of subtitle III of
17 title 40, the term "national security system", with respect to a telecommunications and
18 information system operated by the Department of Defense, has the meaning given that term by
19 section 3552(b)(6) of title 44."

20 (2) CONFORMING REPEALS.—Sections 2314 and 2315 of title 10, United States
21 Code, are repealed.

22 (g) TRANSFER OF TITLE 10 SECTIONS.—

Commented [CR68]: This section would combine two very short sections.

Commented [CR69]: Original 2314 is revised to change plural "the agencies" to singular "an agency" and to add parenthetical references to the titles of the title 41 sections.

Commented [CR70]: As an observation, current 2314 applies to the agencies named in 2303, while current 2315 applies to DoD. That is, in addition to DoD, 2314 applies to the CG & NASA, while 2315 does not.

Commented [CR71]: Would a better place for this provision be in ch. 345, the chapter on Acquisition of Information Technology?

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(1) SECTION 2308.—Section 2308 of title 10, United States Code, is transferred to chapter 203 of such title, inserted after section 3068, as added by subsection (f), redesignated as section 3069, and amended—

(A) by striking “, at a minimum,” in subsection (b); and

(B) by striking “section 2304” in subsection (b)(2) and inserting “sections 3201-3205”.

(2) SECTION 2213.—

(A) IN GENERAL.—Section 2213 of such title is transferred to chapter 203 of such title, inserted after section 3069, as transferred and redesignated by paragraph (1), and redesignated as section 3070.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 131 of such title is amended by striking the item relating to section 2213.

(h) CODIFICATION OF FY2008 NDAA SECTION.—

(1) IN GENERAL.—Chapter 203 of title 10, United States Code, is amended by adding after section 3070, as added by subsection (g), the following new section:

§ 3071. [Sec. 231 of FY08 NDAA, P.L. 110-181 (10 U.S.C. 1701 note)] Coordination and management of human systems integration activities

“The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall coordinate and manage human systems integration activities throughout the acquisition programs of the Department of Defense.”

(2) CONFORMING REPEAL.—Section 231 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 1701 note) is repealed.

Commented [CR72]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

Commented [CR73]: Subsections (b), (c), & (d) of this section were repealed by the FY19 NDAA, leaving only subsection (a), this text. This section was classified in the Code as a “note” under section 1701, apparently due to an impression that this is a personnel provision.

Commented [CR74]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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(i) TRANSFER OF SECTION 2229B.—

(1) IN GENERAL.—Section 2229b of title 10, United States Code, is transferred to chapter 203 of such title, inserted after section 3071, as added by subsection (h), and redesignated as section 3072.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 131 of such title is amended by striking the item relating to section 2229b.

[NOTE: Cross references to the title 10 sections included in this chapter have been checked. None were found external to the reorganization except 50 USC 3503(a), which has many references to ch. 137 sections and will need to be addressed separately.]

If necessary, a definition like this could be included in ch. 201:

In this part, the term "provisions derived from former chapter 137" means the following sections of this title: Sections 3002, 3004, 3011-3023, 3041, 3063, 3065-3069, 3134, 3151-3157, 3201-3208, 3221-3227, 3241, 3243, 3249, 3252, 3301-3309, 3321-3323, 3325, 3344, 3371-3375, 3377, 3401, 3403, 3405, 3406, 3501-3511, 3531-3535, 3571(1), 3572, 3573, 3575, 3701-3708, 3741-3750, 3761, 3771-3775, 3781-3787, 3791, 3795, 3801-3807, 3841, 3842, 3847, 3881, 3901, 3902, 4324, 4325, 4501, 4502, 4505, 4507, 4526, 4576, 4659, 4751, and 4752.

SEC. 103. DEFENSE ACQUISITION SYSTEM.

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapter 205 and inserting the following:

CHAPTER 205—DEFENSE ACQUISITION SYSTEM

- Sec. 3100 [2545]. Definition: acquisition.
3101 [2546a]. Customer-oriented acquisition system.
3102 [2546]. Defense acquisition system: civilian management.
3103 [2547]. Chiefs of the armed forces: acquisition-related functions.
3104 [2548(a)-(c)]. Elements of the defense acquisition system: performance assessments.
3105 [2548(d), (e)]. Elements of the defense acquisition system: performance goals.

Commented [CR75]: The beginning section number for ch 205 has been changed from 3051 in Part V as enacted to 3100 in order to allow more room for chapters 201 & 203.

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3106 [Sec. 810 of P.L. 114-92 (10 U.S.C. 2545 note)]. Time-based requirements process; acquisition and budgeting systems.
3107 [Sec. 201(a) of P.L. 111-23 (10 U.S.C. 2302 note)]. Consideration of trade-offs among cost, schedule, and performance objectives in acquisition programs.
3108 [Sec. 868 of P.L. 115-91 (10 U.S.C. 2302 note)]. Prototype projects to digitize defense acquisition regulations, policies, and guidance, and empower user tailoring of acquisition process.
3109 [Sec. 913 of P.L. 115-91 (10 U.S.C. 2302 note)]. Establishment of set of activities that use data analysis, measurement, and other evaluation-related methods to improve acquisition program outcomes.

§3100 [2545(1)]. Definition: acquisition

In this chapter, the term "acquisition" has the meaning provided given that term in section 131 of title 41.

(b) TRANSFER OF SECTION 2546a.—Section 2546a of such title is transferred to chapter 205, as amended by subsection (a), inserted after the section 3100, and redesignated as section 3101.

(c) REMAINDER OF SECTIONS DERIVED FROM CHAPTER 149.—Such chapter is further amended by adding after section 3101, as transferred and redesignated by subsection (b), the following new sections:

§ 3102 [2546]. Civilian management of the defense acquisition system Defense acquisition system: civilian management

(a) UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS ACQUISITION AND SUSTAINMENT.—Subject to the authority, direction and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment—

(1) shall be responsible for the management of the defense acquisition system;

and

Commented [CR76]: The definitions of "defense acquisition system" and "element of the defense acquisition system" are included in ch. 201, the general definitions chapter at the beginning of the new Part V for applicability to all of Part V.
The definition of "acquisition" is retained here for applicability only to provisions derived from ch. 149.

Commented [CR77]: Does the definition of "acquisition" in 41 U.S.C.131 work as well in this chapter when "acquisition" is used as an adjective, rather than a noun?
For example, acquisition function, acquisition-related functions, acquisition policies, acquisition program, acquisition system (when not used as part of "defense acquisition system"), acquisition concern,

Commented [CR78]: It is proposed that current 2546a appear before (rather than after) current 2546, so that current 2546 and 2547 appear as adjacent provisions (as in the original ch. 149). However, if the sections should retain their current order, it will be a simple adjustment to the text.

Commented [CR79]: In subsection (c), the phrase "on the acquisition program" appears. Looks unusual to have "on a program" rather than "of a program".
Original left as is, but wanted to flag it.
Same in new 3103(a)(2), below.

Commented [CR80]: References in this section to USD(AT&L) changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR81]: It may be worth considering how this section [derived from 10 U.S.C. 2546] relates to 10 U.S.C. 133b, which was enacted after sec 2546.
No changes are made her to 2546 (other than as shown); just noting it.
For convenience of reviewers, the text of 10 U.S.C. 133b is set out at the end of this chapter.

Commented [CR82]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR83]: Note that the word "management" does not appear in 133b.

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(2) shall exercise such control of the system and perform such duties as are necessary to ensure the successful and efficient operation of the defense acquisition system, including the duties enumerated and assigned to the Under Secretary under section 133b of this title and(?) elsewhere in this title and under other provisions of law(?).

(b) SERVICE ACQUISITION EXECUTIVES.—Subject to the direction of the Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment on matters pertaining to acquisition, and subject to the authority, direction, and control of the Secretary of the military department concerned, a the service acquisition executive of a military department—

(1) shall be responsible for the management of elements of the defense acquisition system in that military department; and

(2) shall exercise such control of the system and perform such duties as are necessary to ensure the successful and efficient operation of those elements of the defense acquisition system.

§ 3103 [2547]. Acquisition-related functions of chiefs of the armed forces Chiefs of the armed forces: acquisition-related functions

(a) PERFORMANCE OF CERTAIN ACQUISITION-RELATED FUNCTIONS.—The Secretary of Defense shall ensure that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps assist the Secretary of the military department concerned in the performance of the following acquisition-related functions of such department:

Commented [CR84]: Note that the words “successful” and “efficient” do not appear in 133b.

Commented [CR85]: Proposal is to omit “enumerated and” as unnecessary in light of “assigned”. And because the various duties are not “enumerated”.

Commented [CR86]: Would it be useful to insert “under section 133b of this title and” after “Under Secretary”, as shown? Would it be useful to add “and under other provisions of law” at the end, as shown? The reference to “duties assigned elsewhere in this title [i.e., title 10]” is surely not meant to exclude any duties assigned to the Under Secretary outside of title 10 (e.g., in an uncodified NDAA provision).

Commented [CR87]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR88]: Since there is only one SAE for a military department, this is changed from “a” to “the”. This is the same as in 133b(b)(6).

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1 (1) The development of requirements for equipping the armed force concerned
2 (subject, where appropriate, to validation by the Joint Requirements Oversight Council
3 pursuant to section 181 of this title).

4 (2) Decisions regarding the balancing of resources and priorities, and associated
5 trade-offs among cost, schedule, technical feasibility, and performance on major defense
6 acquisition programs.

7 (3) The coordination of measures to control requirements creep in the defense
8 acquisition system.

9 (4) The recommendation of trade-offs among life-cycle cost, schedule, and
10 performance objectives, and procurement quantity objectives, to ensure acquisition
11 programs deliver best value in meeting the approved military requirements.

12 (5) Termination of development or procurement programs for which life-cycle
13 cost, schedule, and performance expectations are no longer consistent with approved
14 military requirements and levels of priority, or which no longer have approved military
15 requirements.

16 (6) The development and management of career paths in acquisition for military
17 personnel (as required by section 1722a of this title).

18 (7) The assignment and training of contracting officer representatives when such
19 representatives are required to be members of the armed forces because of the nature of
20 the contract concerned.

21 ~~(8) ADHERENCE TO REQUIREMENTS IN MAJOR DEFENSE ACQUISITION PROGRAMS.~~

Commented [CR89]: This term is defined below. This is the only place where that term is used.

Commented [CR90]: This subsection fits better into the chapter on MDAPs, and has been moved there.

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~~(1) ROLE OF SERVICE CHIEFS IN PROGRAM CAPABILITY DOCUMENT APPROVAL.—~~

~~The Secretary of the military department concerned shall ensure that the program capability document supporting a Milestone B or subsequent decision for a major defense acquisition program may not be approved until the Chief of the armed force concerned determines in writing that the requirements in the document are necessary and realistic in relation to the program cost and fielding targets established under section 2448a(a) of this title.~~

~~(2) ROLE OF SERVICE CHIEFS IN MATERIAL DEVELOPMENT DECISION AND ACQUISITION SYSTEM MILESTONES.—Consistent with the performance of duties under subsection (a), the Chief of the armed force concerned, or in the case of a joint program the chiefs of the armed forces concerned, with respect to major defense acquisition programs, shall—~~

~~(A) concur with the need for a material solution as identified in the Material Development Decision Review prior to prior to entry into the Material Solution Analysis Phase under Department of Defense Instruction 5000.02;~~

~~(B) concur with the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program before Milestone A approval is granted under section 2366a of this title;~~

~~(C) concur that appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life cycle cost before Milestone B approval is granted under section 2366b of this title; and~~

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1 ~~(D)~~ concur that the requirements in the program capability document are
2 necessary and realistic in relation to program cost and fielding targets as required
3 by paragraph (1) before Milestone C approval is granted.

4 ~~(e)~~ (b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the
5 assignment of functions under section **7014(c)(1)(A)**, section **8014(c)(1)(A)**, or section
6 **9014(c)(1)(A)** of this title, except as explicitly provided in this section.

Commented [CR91]: This subsection applies to both subsections (a) and (b), so it will be left here and will also be copied to go with subsection (b) to the MDAPs package.

Commented [CR92]: These sections numbers are as redesignated effective Feb 1, 2019.

7 ~~(d)~~ (c) DEFINITIONS.—In this section:

8 (1) REQUIREMENTS CREEP.—The term “**requirements creep**” means the addition
9 of new technical or operational specifications after a **requirements document** is
10 approved by the appropriate validation authority for the requirements document.

Commented [CR93]: This term appears once, in (a)(3) above.

11 (2) REQUIREMENTS DOCUMENT.—The term “**requirements document**” means a
12 document produced in the requirements process—

Commented [CR94]: This term appears once, in the definition of “requirements creep” immediately above.

13 (A) that is provided for an acquisition program to guide the subsequent
14 development, production, and testing of the program; and

15 (B) that—

16 (i) justifies the need for a materiel approach, or an approach that is
17 a combination of materiel and non-materiel, to satisfy one or more specific
18 capability gaps;

19 (ii) details the information necessary to develop an increment of
20 militarily useful, logistically supportable, and technically mature
21 capability, including key performance parameters; or

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(iii) identifies production attributes required for a single increment

of a program.

(3) PROGRAM CAPABILITY DOCUMENT.— The term “program capability document”

has the meaning provided that term in section 2446a(b)(5) of this title.

§ 3104 [2548(a)-(c)]. Elements of the defense acquisition system: performance assessments

(a) [2548(a)] PERFORMANCE ASSESSMENTS REQUIRED.—

(1) PERIODIC INDEPENDENT ASSESSMENTS.—The Secretary of Defense shall issue guidance for the Department of Defense to provide for periodic independent performance assessments of elements of the defense acquisition system for the purpose of—

(A) determining the extent to which such elements of the defense acquisition system deliver value to the Department of Defense, taking into consideration the performance elements identified in subsection (b);

(B) assisting senior officials of the Department of Defense in identifying and developing lessons learned from best practices and shortcomings in the performance of such elements of the defense acquisition system; and

(C) assisting senior officials of the Department of Defense in developing acquisition workforce excellence under section 1701a of this title.

(2) OFFICERS THROUGH WHOM SECRETARY SHALL ACT.—The Secretary shall issue guidance under paragraph (1) acting through—

(A) the Under Secretary of Defense for Acquisition, Technology, and Logistics; Acquisition and Sustainment;

Commented [CR95]: This term appears only in subsection (b), so it is deleted here and inserted with subsection (b) in the MDPAs chapter.

Commented [CR96]: In this section, the headings below the subsection level are new.

Commented [CR97]: Certain internal subordinate clauses in the original are pulled out and set forth below as paragraphs (2) and (3).

Commented [CR98]: “of Defense” proposed to be omitted here and in (B) & (C) as unnecessary in light of reference to “Department of Defense” in the matter preceding subparagraph (A).

Commented [CR99]: In the original, the substance of this paragraph (2), beginning with “acting through”, appeared in paragraph (1) above immediately after “The Secretary of Defense”.

Commented [CR100]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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(B) the ~~Director of Procurement and Acquisition Policy~~ *Principal Director, Defense Pricing and Contracting*; and

(C) the ~~Director of the Office of Performance Assessment and Root Cause Analysis~~ *senior official designated under section 2438(a) of this title*.

(3) IMPLEMENTATION INSTRUCTIONS.—The guidance issued under paragraph (1) shall be issued with detailed implementation instructions.

(b) [2548(b)] AREAS TO BE CONSIDERED IN PERFORMANCE ASSESSMENTS.—

(1) AREAS REQUIRED TO BE CONSIDERED.—Each performance assessment of an element of the defense acquisition system conducted pursuant to subsection (a) shall consider, ~~at a minimum~~—

(A) the extent to which acquisitions conducted by that element of the defense acquisition system meet applicable cost, schedule, and performance objectives; and

(B) the staffing and quality of the acquisition workforce and the effectiveness of the management of the acquisition workforce, including workforce incentives and career paths.

(2) ADDITIONAL AREAS THAT MAY BE CONSIDERED.—The Secretary of Defense shall ensure that the performance assessments ~~required by this section~~ *conducted pursuant to subsection (a)* are appropriately tailored to reflect the ~~diverse~~ nature of the work performed by each element of the defense acquisition system. In addition to the ~~mandatory~~ areas under paragraph (1), a performance assessment may consider, as appropriate, specific areas of acquisition concern, such as the following:

Commented [CR101]: Note that the director of DPAP is not a statutory position. DPAP has been reorganized and renamed. Consider omitting the reference to DPAP as covered by the USD specification. If not, recommend that it be changed to "Principal Director, Defense Pricing and Contracting", per DoD. Note that the director of PARCA is not a statutory position. Recommend reference be changed to "the senior official designated under section 2438(a) of this title". See usage in 10 USC 131(b)(8)(I).

Commented [CR102]: The section # for 2438 will change in the MDAPs package, probably to 4273.

Commented [CR103]: In the original, the phrase "with detailed implementation instructions," appeared in paragraph (1) above immediately after "shall issue guidance".

Commented [CR104]: Phrase proposed to be omitted as part of general recommendation to delete "at a minimum," wherever appearing as being unnecessary.

Commented [CR105]: Consider omitting this word – does it add anything to "nature of the work"?

Commented [CR106]: Consider omitting this word since the areas under paragraph (1) are mandatory on their face ("shall consider ...").

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1 (A) SELECTION OF CONTRACTORS.—The selection of contractors,
2 including—
3 (i) the extent of competition and the use of exceptions to
4 competition requirements;
5 (ii) compliance with Department of Defense policies regarding the
6 participation of small business concerns and various categories of small
7 business concerns, including the use of contract bundling and the
8 availability of non-bundled contract vehicles;
9 (iii) the quality of market research;
10 (iv) the effective consideration of contractor past performance; and
11 (v) the number of bid protests, the extent to which such bid
12 protests have been successful, and the reasons for such success.
13 (B) NEGOTIATION OF CONTRACTS.—The negotiation of contracts,
14 including—
15 (i) the appropriate application of ~~section 2306a~~ *sections 3401-3708*
16 of this title (relating to truth in negotiations);
17 (ii) the appropriate use of contract types appropriate to specific
18 procurements;
19 (iii) the appropriate use of performance requirements;(iv) the
20 appropriate acquisition of technical data and other rights and assets
21 necessary to support long-term sustainment and follow-on procurement;
22 and

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(v) the timely definitization of any undefinitized contract actions.

(C) MANAGEMENT OF CONTRACTOR PERFORMANCE.—The management of contractor performance, including—

(i) the assignment of appropriately qualified contracting officer representatives and other contract management personnel;

(ii) the extent of contract disputes, the reasons for such disputes, and the extent to which they have been successfully addressed;

(iii) the appropriate consideration of long-term sustainment and energy efficiency objectives; and

(iv) the appropriate use of integrated testing.

(c) [2548(c) - partial] FREQUENCY OF PERFORMANCE ASSESSMENTS.—The guidance issued pursuant to subsection (a) shall ensure that each element of the defense acquisition system is subject to a performance assessment under this section not less often than once every four years.

(d) [2548(c) - partial] CONTENT OF GUIDANCE.—The guidance issued pursuant to subsection (a) shall address ~~at a minimum,~~ the following:

(1) The designation of elements of the defense acquisition system that are subject to performance assessment at an organizational level that ensures such assessments can be performed in an efficient and integrated manner.

(2) The frequency with which such performance assessments should be conducted.

Commented [CR107]: Phrase proposed to be omitted as part of general recommendation to delete "at a minimum," wherever appearing as being unnecessary.

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(3) Goals, standards, tools, and metrics for use in conducting performance assessments.

(4) The composition of the teams designated to perform performance assessments.

(5) Any phase-in requirements needed to ensure that qualified staff are available to perform performance assessments.

(6) Procedures for tracking the implementation of recommendations made pursuant to performance assessments.

(7) Procedures for developing and disseminating lessons learned from performance assessments.

(8) Procedures for ensuring that information from performance assessments are retained electronically and are provided in a timely manner to the Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment and the Director of the Office of Performance Assessment and Root Cause Analysis senior official designated under section 2438(a) of this title as needed to assist them in performing their responsibilities under this section.

§ 3105 [2548(d), (e)]. Elements of the defense acquisition system: performance goals

(a) [2548(d)] PERFORMANCE GOALS UNDER GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The annual performance plan prepared by the Department of Defense pursuant to section 1115 of title 31 shall include appropriate performance goals for elements of the defense acquisition system.

(b) [2548(e)] ANNUAL REPORTING REQUIREMENT.—The annual report prepared by the Secretary of Defense pursuant to section 1116 of title 31 shall address the success of the

Commented [CR108]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR109]: Note that the director of PARCA is not a statutory position or office. Recommend that the reference be changed as shown. Note wording in 2438(e). Same as in 3104(a)(2) above

Commented [CR110]: Does this mean "each element"? Or "the elements"? Or could it be satisfied by complying for some, but not all, elements? Note that "element of the [das]" is a defined term at the beginning of the chapter. Original left as is.

Commented [CR111]: 31 USC 1116 does not require a "report", but an "update on agency performance". A prior 1116 required an annual agency report and was repealed by P.L. 111-352, Jan. 4, 2011, virtually simultaneously with enactment of 2548. Propose to omit subsection (b) since DoD apparently does not track a reporting requirement for 10 U.S.C. 2548, 31 U.S.C. 1116, or section 861 of the FY11 NDAA, suggesting that the office of the ASD(LA) [the relevant office in DoD] does not view these provisions as having created reporting requirements. Note that this would not delete a current reporting requirement, but would remove a reference to a nonexistent reporting "requirement".

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Department of Defense in achieving performance goals established pursuant to that section for elements of the defense acquisition system.

(d) CODIFICATION OF FY2018 NDAA SECTION.—

(1) CODIFICATION.—Such chapter is further amended by adding after section 3105, as added by subsection (c), the following new section:

§ 3106 [Sec. 810 of P.L. 114-92 (10 U.S.C. 2545 note)]. Time-based requirements process; acquisition and budgeting systems

(a) [810(a)] TIME-BASED REQUIREMENTS PROCESS.—

(1) The Secretary of Defense and the Chairman of the Joint Chiefs of Staff, after conducting a review of the requirements process as described in paragraph (2), shall determine the advisability of providing a time-based or phased distinction between capabilities needed to be deployed—

- (A) urgently;
(B) within 2 years;
(C) within 5 years; and
(D) longer than 5 years.

(2) The review referred to in paragraph (1) is a review of the requirements process with the goal of establishing an agile and streamlined system that develops requirements that provide stability and foundational direction for acquisition programs.

(b) [810(b)] ACQUISITION AND BUDGETING SYSTEMS.—The Secretary of Defense shall review and ensure that the acquisition and budgeting systems of the Department of Defense are structured to meet time-based or phased requirements in a manner that—

Commented [CR112]: Subsection (a)(1) of sec. 810 of the FY16 NDAA appears to be a one-time review requirement and is proposed to be omitted as OBE. Subsec (a)(2) may have ongoing applicability. Rephrased so as not to appear to require a new report but, on the other hand to retain the "shall determine" part

Commented [CR113]: This does not have to be a new review; one already conducted per sec. 810(a) should qualify.

Commented [CR114]: Subsection (b) appears to be an ongoing provision, due to the verb "ensure".

Commented [CR115]: Suggest that "review and" is unnecessary and could be omitted.

Commented [CR116]: Heading in original says "Budgeting and Acquisition Systems". Text has the opposite order, "acquisition and budgeting". (See section heading above.) They should be consistent. Heading conformed to text.

Commented [CR117]: "of the [DoD]" proposed to be added for clarity.

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(1) is predictable, cost effective, and efficient; and

(2) takes advantage of emerging technological developments.”

(2) **CONFORMING REPEAL.**—Section 810 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; **10 U.S.C. 2545 note**) is repealed.

(e) **CODIFICATION OF WSARA SECTION.**—

(1) **CODIFICATION.**—Such chapter is further amended by adding after section 3106, as added by subsection (d), the following new section:

“§ 3107 [Sec. 201(a) of P.L. 111-23 (10 U.S.C. 2302 note)]. **Consideration of trade-offs among cost, schedule, and performance objectives in acquisition programs**

(a) **CONSIDERATION OF TRADE-OFFS.**—The Secretary of Defense shall ensure that mechanisms are developed and implemented to require consideration of trade-offs among cost, schedule, and performance objectives as part of the process for developing requirements for Department of Defense acquisition programs.

(b) **ELEMENTS.**—The mechanisms required under this section shall ensure, ~~at a minimum,~~ that—

(1) Department of Defense officials responsible for acquisition, budget, and cost estimating functions are provided an appropriate opportunity to develop estimates and raise cost and schedule matters before performance objectives are established for capabilities for which the Chairman of the Joint Requirements Oversight Council is the validation authority; and

(2) the process for developing requirements is structured to enable incremental, evolutionary, or spiral acquisition approaches, including the deferral of technologies that

Commented [CR118]: Phrase proposed to be omitted as part of general recommendation to delete “, at a minimum,” wherever appearing as being unnecessary.

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1 are not yet mature and capabilities that are likely to significantly increase costs or delay
2 production until later increments or spirals.”

3 (2) CONFORMING REPEAL.—Section 201(a) of the Weapon Systems Acquisition
4 Reform Act of 2009 (Public Law 111-23; 10 U.S.C. 2302 note) is repealed.

5 (f) CODIFICATION OF FY2018 NDAA SECTION.—

6 (1) CODIFICATION.—Such chapter is further amended by adding after section
7 3107, as added by subsection (e), the following new section:

8 “§ 3108 [Sec. 868 of P. L. 115-91, FY18 NDAA (10 U.S.C. 2302 note)]. **Prototype projects to**
9 **digitize defense acquisition regulations, policies, and guidance, and empower**
10 **user tailoring of acquisition process**

11 (a) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of
12 Defense for Research and Engineering, shall conduct development efforts to develop prototypes
13 to digitize defense acquisition regulations, policies, and guidance and to develop a digital
14 decision support tool that facilitates the ability of users to tailor programs in accordance with
15 existing laws, regulations, and guidance.

16 (b) ELEMENTS.—Under the prototype projects, the Secretary shall—

17 (1) convert existing acquisition policies, guides, memos, templates, and reports to
18 an online, interactive digital format to create a dynamic, integrated, and authoritative
19 knowledge environment for purposes of assisting program managers and the acquisition
20 workforce of the Department of Defense to navigate the complex lifecycle for each major
21 type of acquisition program or activity of the Department;

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1 (2) as part of ~~this digital environment~~ *the digital environment created under*
2 *paragraph (1)*, create a digital decision support capability that uses decision trees and
3 tailored acquisition models to assist users to develop strategies and facilitate coordination
4 and approvals; and

5 (3) as part of ~~this~~ *that digital* environment, establish a foundational data layer to
6 enable advanced data analytics on the acquisition enterprise of the Department, to include
7 business process reengineering to improve productivity.

8 (c) USE OF PROTOTYPES IN ACQUISITION ACTIVITIES.—The Under Secretary of Defense
9 for Research and Engineering shall encourage the use of ~~these prototypes~~ *the prototypes*
10 *developed under this section* to model, develop, and test any procedures, policies, instructions,
11 or other forms of direction and guidance that may be required to support acquisition training,
12 practices, and policies of the Department of Defense.

13 (d) FUNDING.—The Secretary may use the authority under section 1705(e)(4)(B) of this
14 title to develop acquisition support prototypes and tools under this program. **§**.

15 (2) CONFORMING REPEAL.—Section 868 of the National Defense Authorization
16 Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2302 note) is repealed.

17 (g) CODIFICATION OF FURTHER FY2018 NDAA SECTION.—

18 (1) CODIFICATION.—Such chapter is further amended by adding after section
19 3108, as added by subsection (f), the following new section:

20 “§ 3109 [Sec. 913 of P.L. 115-91, FY18 NDAA (10 U.S.C. 2302 note)]. Establishment of set
21 of activities that use data analysis, measurement, and other evaluation-
22 related methods to improve acquisition program outcomes

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1 (a) ESTABLISHMENT REQUIRED.—~~Not later than one year after the date of the enactment~~
2 ~~of this Act [Dec. 12, 2017].~~ The Secretary of Defense shall establish a set of activities that use
3 data analysis, measurement, and other evaluation-related methods to improve the acquisition
4 outcomes of the Department of Defense and enhance organizational learning.

5 (b) TYPES OF ACTIVITIES.—The set of activities established under subsection (a) may
6 include any or all of the following:

7 (1) Establishment of data analytics capabilities and organizations within an armed
8 force.

9 (2) Development of capabilities in Department of Defense laboratories, test
10 centers, and federally funded research and development centers to provide technical
11 support for data analytics activities that support acquisition program management and
12 business process re-engineering activities.

13 (3) Increased use of existing analytical capabilities available to acquisition
14 programs and offices to support improved acquisition outcomes.

15 (4) Funding of intramural and extramural research and development activities to
16 develop and implement data analytics capabilities in support of improved acquisition
17 outcomes.

18 (5) Publication, to the maximum extent practicable, and in a manner that protects
19 classified and proprietary information, of data collected by the Department of Defense
20 related to acquisition program costs and activities for access and analyses by the general
21 public or Department research and education organizations.

Commented [CR119]: NLT clause to be omitted as OBE.

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1 (6) Promulgation by the Chief of Staff of the Army, the Chief of Naval
2 Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine
3 Corps, in coordination with the Deputy Secretary of Defense, the Under Secretary of
4 Defense for Research and Engineering, and the Under Secretary for Acquisition and
5 Sustainment, of a consistent policy as to the role of data analytics in establishing budgets
6 and making milestone decisions for major defense acquisition programs.

7 (7) Continual assessment, in consultation with the private sector, of the efficiency
8 of current data collection and analyses processes, so as to minimize the requirement for
9 collection and delivery of data by, from, and to Government organizations.

10 (8) Promulgation of guidance to acquisition programs and activities on the
11 efficient use, quality, and sharing of enterprise data between programs and organizations
12 to improve acquisition program analytics and outcomes.

13 (9) Establishment of focused research and educational activities at the Defense
14 Acquisition University, and appropriate private sector academic institutions, to support
15 enhanced use of data management, data analytics, and other evaluation-related methods
16 to improve acquisition outcomes."

17 (2) **CONFORMING REPEAL.**—Section 913 of the National Defense Authorization
18 Act for Fiscal Year 2018 (Public Law 115-91; **10 U.S.C. 2302 note**) is repealed.

19 **(h) CONFORMING REPEAL OF CHAPTER 149.**—

20 (1) **REPEAL.**—Chapter 149 of title 10, United States Code, is repealed.

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1 (2) CLERICAL AMENDMENTS.—The tables of chapters at the beginning of subtitle
2 A, and at the beginning of part IV of subtitle A, of title 10, United States Code, are
3 amended by striking the item relating to chapter 149.

4 (i) CROSS-REFERENCE AMENDMENTS.—

5 (1) Section 129a(c)(3) of title 10, United States Code, is amended by striking
6 “section 2545” and inserting “section 3001”.

7 (2) Section 1701a of such title is amended by striking “chapter 149” and inserting
8 “chapter 205”.

9 (3) Section 308(c)(10)(B)(ii) of title 14, United States Code, is amended by
10 striking “section 2547(c)(1)” and inserting “section 3103(c)(1)”.

11 ~~(4) Section 801(1) of the National Defense Authorization Act for Fiscal Year~~
12 ~~2018 (Public Law 115-91; 10 U.S.C. 2302 note) is amended by striking “section 2545”~~
13 ~~and inserting “section 3100”.~~

Commented [CR120]: This amendment to title 14 relates more to ch. 205, Defense Acquisition System, than the chapter on MDAPs and should appear here. Sec 2547(c)(1) is now 2547(d)(1) after redesignation of (c) as (d) by sec 807(c)(1) of the FY2017 NDAA. 2547(d)(1) becomes 3103(c)(1) in chapter 205, “Defense Acquisition System”.

Commented [CR121]: Deleted as covered by the codification of this section in ch. 203, as sec. 3061.

For the information of reviewers, 10 U.S.C. 133b is as follows:

§133b. Under Secretary of Defense for Acquisition and Sustainment

(a) UNDER SECRETARY OF DEFENSE.—There is an Under Secretary of Defense for Acquisition and Sustainment, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Under Secretary shall be appointed from among persons who have an extensive system development, engineering, production, or management background and experience with managing complex programs. A person may not be appointed as Under Secretary within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) **DUTIES AND POWERS.**—Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary shall perform such duties and exercise such powers as the Secretary may prescribe, including—

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(1) serving as the chief acquisition and sustainment officer of the Department of Defense with the mission of delivering and sustaining timely, cost-effective capabilities for the armed forces (and the Department);

(2) establishing policies on, and supervising, all elements of the Department relating to acquisition (including system design, development, and production, and procurement of goods and services) and sustainment (including logistics, maintenance, and materiel readiness);

(3) establishing policies for access to, and maintenance of, the defense industrial base and materials critical to national security, and policies on contract administration;

(4) serving as—

(A) the principal advisor to the Secretary on acquisition and sustainment in the Department;

(B) the senior procurement executive for the Department for the purposes of section 1702(c) of title 41; and

(C) the Defense Acquisition Executive for purposes of regulations and procedures of the Department providing for a Defense Acquisition Executive;

(5) overseeing the modernization of nuclear forces and the development of capabilities to counter weapons of mass destruction, and serving as the chairman of the Nuclear Weapons Council and the co-chairman of the Council on Oversight of the National Leadership Command, Control, and Communications System;

(6) the authority to direct the Secretaries of the military departments and the heads of all other elements of the Department with regard to matters for which the Under Secretary has responsibility, except that the Under Secretary shall exercise advisory authority over service acquisition programs for which the service acquisition executive is the milestone decision authority; and

(7) to the extent directed by the Secretary, exercising overall supervision of all personnel (civilian and military) in the Office of the Secretary of Defense with regard to matters for which the Under Secretary has responsibility, unless otherwise provided by law.

(c) PRECEDENCE IN DEPARTMENT OF DEFENSE.—

(1) PRECEDENCE IN MATTERS OF RESPONSIBILITY.—With regard to all matters for which the Under Secretary has responsibility by the direction of the Secretary of Defense or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary, the Deputy Secretary of Defense, the Chief Management Officer of the Department of Defense, and the Under Secretary of Defense for Research and Engineering.

(2) PRECEDENCE IN OTHER MATTERS.—With regard to all matters other than the matters for which the Under Secretary has responsibility by the direction of the Secretary or by law, the Under Secretary takes precedence in the Department of Defense after the Secretary, the Deputy Secretary, the Chief Management Officer, the Under Secretary of Defense for Research and Engineering, and the Secretaries of the military departments.

1 **SEC. 104. BUDGETING AND APPROPRIATIONS.**

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
2 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
3 (Public Law 115-232), is amended by striking chapter 207 and inserting the following:

4 **“CHAPTER 207—BUDGETING AND APPROPRIATIONS**

Sec.

- 3131 [2351]. Availability of appropriations: funds appropriated for research and development.
- 3132 [2395]. Availability of appropriations: funds appropriated for the procurement of technical military equipment and supplies.
- 3133 [2410a; 41 USC 3902]. Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property.
- 3134 [2309]. Allotment to other agencies of appropriations available for procurement.
- 3135 [2217]. Comparable budgeting for common procurement weapon systems.
- 3136 [2216]. Defense Modernization Account.
- 3137 [235]. Procurement of contract services: specification of amounts requested in budget.
- 3138 [2212]. Obligations for contract services: reporting in budget object classes.

Commented [CR122]: The beginning section number for the new ch 207 has been changed from 3001 in Part V as enacted to 3131 in order to allow more room for chapters 201 & 203.

5 (b) **TRANSFER OF SECTION 2351.**—Section 2351 of title 10, United States Code, is
6 **transferred** to chapter 207 of such title, as amended by subsection (a), **added** after the table of
7 sections, **redesignated** as section 3131, and **amended**—

8 (1) in the section heading, by striking “**appropriations**” and inserting

9 “**appropriations: funds appropriated for research and development**”;

10 (2) in subsection (a), by inserting “**TWO-YEAR PERIOD OF AVAILABILITY.—**” after

11 “(a)”;

12 (3) in subsection (b)—

13 (A) by inserting “**PURPOSES.—**” after “(b)”;

14 (B) in paragraph (1), by striking “section 2353” and inserting “section

15 4141”.

Commented [CR123]: Note in subsection (b)(2) the phrase “authorized in **other** appropriations of the Department of Defense”.

DoD:

Please comment on whether the word “other” in current 2351(b) is a mistake and should be omitted.

In referring to “other appropriations,” it would seem to imply that this provision is an appropriation.

Note that 2351(b) was a 1988 codification of an Appropriations GP from 1985. (2nd note under 2353)

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1 (c) **TRANSFER OF SECTION 2395.**—Section 2395 of title 10, United States Code, is
2 **transferred** to chapter 207 of such title, as amended by subsection (a), **added** after section 3131,
3 as transferred and redesignated by subsection (b), **redesignated** as section 3132, and **amended**
4 in the section heading by striking “**appropriations for**” and inserting “**appropriations: funds**
5 **appropriated for the**”.

6 (d) **TRANSFER OF SECTION 2410a.**—Section 2410a of title 10, United States Code, is
7 **transferred** to chapter 207 of such title, as amended by subsection (a), **added** after section 3132,
8 as transferred and redesignated by subsection (c), and **redesignated** as section 3133.

9 (e) **TRANSFER OF SECTION 2309.**—Section 2309 of title 10, United States Code, is
10 **transferred** to chapter 207 of such title, as amended by subsection (a), **added** after section 3133,
11 as transferred and redesignated by subsection (d), **redesignated** as section 3134, and **amended**—

12 (1) in the section heading, by striking “**Allocation of appropriations**” and
13 inserting “**Allotment to other agencies of appropriations available for procurement**”;

14 (2) in subsection (a)—
15 (A) by inserting “ADMINISTRATIVE ALLOTMENTS.—” after “(a)”; and
16 (B) by striking “named in section 2303” and inserting “named in section
17 **3063**”; and

18 (3) in subsection (b), by inserting “CERTIFIED VOUCHERS.—” after “(b)”.

19 (f) **TRANSFER OF SECTION 2217.**—

20 (1) **TRANSFER.**—Section 2217 of title 10, United States Code, is **transferred** to
21 chapter 207 of such title, as amended by subsection (a), **added** after section 3134, as
22 transferred and redesignated by subsection (e), and **redesignated** as section 3135.

Commented [CR124]: Note that 10 USC 2410a has a title 41 counterpart, at 41 USC 3902

Commented [CR125]: DoD: Any harm in this revision to the section heading? 10 USC 2309 doesn't mention allocation at all, just allotment.

Commented [CR126]: In 2309(a), note that the text says “... for procurement by any other agency ...”. DoD: Does “by any other agency” really mean any other agency? Or in practice does it mean any other agency named in 2303? That is, does it actually only apply to other DoD agencies and CG and NASA? IF the latter, should the phrase “named in that section” be inserted for clarity of the actual meaning after “by any other agency”?

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1 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter
2 131 of such title is amended by striking the item relating to section 2217.

3 (g) TRANSFER OF SECTION 2216.—

4 (1) TRANSFER.—Section 2216 of title 10, United States Code, is **transferred** to
5 chapter 207 of such title, as amended by subsection (a), **added** after section 3135, as
6 transferred and redesignated by subsection (f), **redesignated** as section 3136, and
7 **amended**—

8 (A) in subsection (h)(2), by striking “, at a minimum,”; and

9 (B) in subsection (i)(1), by striking “DEFINITIONS.—In this” and all that
10 follows through “(2) The term” and inserting “DEFINITION.—In this section, the
11 term”.

12 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter
13 131 of such title is amended by striking the item relating to section 2216.

14 (h) TRANSFER OF SECTION 235.—

15 (1) TRANSFER.—Section 235 of title 10, United States Code, is **transferred** to
16 chapter 207 of such title, as amended by subsection (a), **added** after section 3136, as
17 transferred and redesignated by subsection (g), **redesignated** as section 3137, and
18 **amended** by striking “section 2330a” in subsection (b)(2) and inserting “section 4505”.

19 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 9
20 of such title is amended by striking the item relating to section 235.

21 (3) CROSS-REFERENCE AMENDMENTS.—

Commented [CR127]: Phrase proposed to be omitted as part of general recommendation to delete “, at a minimum,” wherever appearing as being unnecessary.

Commented [CR128]: Since this section will now be in Part V and sec. 4201 provides that the definition of [MDAP] applies to all of Part V, the reference to the MDAP definition in (i)(1) is no longer needed and would be deleted by this amendment

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(A) Section 1061(c) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 111 note) is amended by striking "Section 235" in paragraph (65) and inserting "Section 3137".

Commented [CR129]: Note: this provision provides that any requirement under 10 U.S.C. 235 for DoD to submit a report to Congress terminates on 12/31/2021.

(B) Section 115a(a)(3) of title 10, United States Code, is amended by striking "section 235" and inserting "section 3137".

(C) Section 323(a) of Ike Skelton National Defense Authorization Act for Fiscal Year (Public Law 111-383; 10 U.S.C. 2463 note) is amended by striking "section 235" and inserting "section 3137".

Commented [CR130]: FYI, this section will not be affected by the reorganization but will be left "as is".

(i) TRANSFER OF SECTION 2212.—

(1) TRANSFER.—Section 2212 of title 10, United States Code, is transferred to chapter 207 of such title, as amended by subsection (a), added after section 3137, as transferred and redesignated by subsection (h), and redesignated as section 3138.

Commented [CR131]: Note that 2212(f)(4) includes a reference to USD(AT&L), but that this is a historical reference ["...and issued by the USD(AT&L) on Feb 10, 1992..."], so apparently should be left as is.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 131 of such title is amended by striking the item relating to section 2212.

SEC. 105. OPERATIONAL CONTRACT SUPPORT.

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapter 209 and inserting the following:

CHAPTER 209— OPERATIONAL CONTRACT SUPPORT

Table with 2 columns: Subchapter, Sec. I. Joint Policies on Requirements Definition, Contingency Program Management, and Contingency Contracting3151

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II. Other Provisions Relating to Operational Contract Support3171

1 "SUBCHAPTER I—JOINT POLICIES ON REQUIREMENTS DEFINITION,
2 CONTINGENCY PROGRAM MANAGEMENT, AND CONTINGENCY
3 CONTRACTING

- "Sec.
3151 [10 USC 2333(a)]. Joint policies required.
3152 [10 USC 2333(b)]. Joint policy for requirements definition.
3153 [10 USC 2333(c)]. Joint policy for contingency program management.
3154 [10 USC 2333(d)]. Joint policy for contingency contracting.
3155 [10 USC 2333(e)(1),(2)]. Training of military personnel outside acquisition workforce who are expected to have acquisition responsibility.
3156 [10 USC 2333(e)(3)]. Mission readiness exercises.
3157 [10 USC 2333(f)]. Definitions.

4 "§ 3151 [10 USC 2333(a)]. Joint policies required

5 (a) JOINT POLICY REQUIREMENTS.—The Secretary of Defense shall develop a joint
6 policy for each of the following:

- 7 (1) Requirements definition during combat operations and post-conflict
8 operations.
9 (2) Contingency program management during combat operations and post-conflict
10 operations.
11 (3) Contingency contracting during combat operations and post-conflict
12 operations.

13 (b) CONSULTATION WITH CJCS.—The joint policies required by subsection (a) shall be
14 developed in consultation with the Chairman of the Joint Chiefs of Staff.

15 § 3152 [10 USC 2333(b)]. Joint policy for requirements definition

Commented [CR132]: Subchapter I is derived from 10 USC 2333

Commented [CR133]: Requirement for consultation with CJCS moved to become subsection (b) below.

Commented [CR134]: In the original, subsections (b), (c), and (d) make it clear that there is a single "joint policy" [singular] for each of the three elements. ("THE joint policy ... required by ...".) For clarity, the reference here in subsection (a) is changed from "joint policies for ..." to "a joint policy for each of ...". Given the importance of the three elements to all that follows, they are displayed here separately in list form, rather than in the form in the original. The list form also allows structural clarification that the clause "during combat operations and post-conflict operations" applies to all three joint policies, not just the third.

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1 The joint policy for requirements definition required by section 3151 of this title shall, at
2 a minimum, provide for the following:

3 (1) The assignment of a senior commissioned officer or civilian member of the
4 Senior Executive Service, with appropriate experience and qualifications related to the
5 definition of requirements to be satisfied through acquisition contracts (such as for
6 delivery of products or services, performance of work, or accomplishment of a project),
7 to act as head of requirements definition and coordination during combat operations,
8 post-conflict operations, and contingency operations, if required, including leading a
9 requirements review board involving all organizations concerned.

10 (2) An organizational approach to requirements definition and coordination
11 during combat operations, post-conflict operations, and contingency operations that is
12 designed to ensure that requirements are defined in a way that effectively implements
13 United States Government and Department of Defense objectives, policies, and decisions
14 regarding the allocation of resources, coordination of interagency efforts in the theater of
15 operations, and alignment of requirements with the proper use of funds.

16 § 3153 [10 USC 2333(c)]. Joint policy for contingency program management

17 The joint policy for contingency program management required by section 3151 of this
18 title shall, at a minimum, provide for the following:

19 (1) The assignment of a senior commissioned officer or civilian member of the
20 Senior Executive Service, with appropriate program management experience and
21 qualifications, to act as head of program management during combat operations, post-
22 conflict operations, and contingency operations, including stabilization and

Commented [CR135]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

Commented [CR136]: The word “civilian”, in current law, seems unnecessary since members of the SES are always civilians. In fact, it seems unhelpful to suggest that there could be a member of the SES who is not a civilian.

Commented [CR137]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

Commented [CR138]: Same note as in 3152(1) above

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1 reconstruction operations involving multiple United States Government agencies and
2 international organizations, if required.

3 (2) A preplanned organizational approach to program management during combat
4 operations, post-conflict operations, and contingency operations that is designed to ensure
5 that the Department of Defense is prepared to conduct such program management.

6 (3) Identification of a deployable cadre of experts, with the appropriate tools and
7 authority, and trained in processes under paragraph (6).

8 (4) Utilization of the hiring and appointment authorities necessary for the rapid
9 deployment of personnel to ensure the availability of key personnel for sufficient lengths
10 of time to provide for continuing program and project management.

11 (5) A requirement to provide training (including training under a program to be
12 created by the Defense Acquisition University) to program management personnel in—

13 (A) the use of laws, regulations, policies, and directives related to program
14 management in combat or contingency environments;

15 (B) the integration of cost, schedule, and performance objectives into
16 practical acquisition strategies aligned with available resources and subject to
17 effective oversight; and

18 (C) procedures of the Department of Defense related to funding
19 mechanisms and contingency contract management.

20 (6) Appropriate steps to ensure that training is maintained for such personnel even
21 when they are not deployed in a contingency operation.

Commented [CR139]: Should this be a reference to paragraph (5) rather than (6)? Neither (5) nor (6) actually contains the word "processes". Current law is (6).
DoD, please advise.

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(7) Such steps as may be needed to ensure jointness and cross-service coordination in the area of program management during contingency operations.

§ 3154 [10 USC 2333(d)]. Joint policy for contingency contracting

(a) IN GENERAL.—The joint policy for contingency contracting required by section 3151 of this title shall, ~~at a minimum,~~ provide for the following:

(1) The designation of a senior commissioned officer or ~~civilian~~ member of the Senior Executive Service in each military department with the responsibility for administering the policy.

(2) The assignment of a senior commissioned officer with appropriate acquisition experience and qualifications to act as head of contingency contracting during combat operations, post-conflict operations, and contingency operations, who shall report directly to the commander of the combatant command in whose area of responsibility the operations occur.

(3) A sourcing approach to contingency contracting that is designed to ensure that each military department is prepared to conduct contingency contracting during combat operations, post-conflict operations, and contingency operations, including stabilization and reconstruction operations involving interagency organizations, if required.

(4) A requirement to provide training (including training under a program to be created by the Defense Acquisition University) to contingency contracting personnel in—

(A) the use of law, regulations, policies, and directives related to contingency contracting operations;

Commented [CR140]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

Commented [CR141]: Same note as in 3152(1) above

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1 (B) the appropriate use of rapid acquisition methods, including the use of
2 exceptions to competition requirements under ~~section 2304~~ *sections 3201-3205 of*
3 *this title* of this title, sealed bidding, letter contracts, indefinite delivery-indefinite
4 quantity task orders, set asides under section 8(a) of the Small Business Act (15
5 U.S.C. 637(a)), undefinitized contract actions, and other tools available to
6 expedite the delivery of goods and services during combat operations or post-
7 conflict operations;

8 (C) the appropriate use of rapid acquisition authority, commanders'
9 emergency response program funds, and other tools unique to contingency
10 contracting; and

11 (D) instruction on the necessity for the prompt transition from the use of
12 rapid acquisition authority to the use of full and open competition and other
13 methods of contracting that maximize transparency in the acquisition process.

14 (5) Appropriate steps to ensure that training is maintained for such personnel even
15 when they are not deployed in a contingency operation.

16 (6) Such steps as may be needed to ensure jointness and cross-service
17 coordination in the area of contingency contracting.

18 (b) INTERAGENCY PLANS.—To the extent practicable, the joint policy for contingency
19 contracting required by section 3151 of this title should be taken into account in the development
20 of interagency plans for stabilization and reconstruction operations, consistent with the report
21 submitted by the President under section 1035 of the John Warner National Defense

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1 Authorization Act for Fiscal Year 2007 (Public Law 109-364; 120 Stat. 2388) on interagency
2 operating procedures for the planning and conduct of stabilization and reconstruction operations.

3 § 3155 [10 USC 2333(e)(1),(2)]. Training of military personnel outside acquisition
4 workforce who are expected to have acquisition responsibility

5 (a) REQUIRED TRAINING.—The joint policy policies for requirements definition,
6 contingency program management, and contingency contracting required by section 3151 of this
7 title shall provide for training of military personnel outside the acquisition workforce (including
8 operational field commanders and officers performing key staff functions for operational field
9 commanders) who are expected to have acquisition responsibility (including oversight duties
10 associated with contracts or contractors) during combat operations, post-conflict operations, and
11 contingency operations.

12 (b) SCOPE OF TRAINING.—Training under subsection (a) shall be sufficient to ensure that
13 the military personnel referred to in that subsection—

14 (1) understand the scope and scale of contractor support they will experience in
15 contingency operations; and

16 (2) are prepared for their roles and responsibilities with regard to—

17 (A) requirements definition;

18 (B) contingency program management (including contractor oversight);

19 and

20 (C) contingency contracting.

21 § 3156 [10 USC 2333(e)(3)]. Mission readiness exercises

Commented [CR142]: Subsection heading for (a) revised for parallelism with the heading in (b), below. Wording from former heading of (a) moved up into the section header.

Commented [CR143]: Changed from singular to plural because there are clearly three policies required by 3151 [current 2333(a)].

Commented [CR144]: This "including" clause is changed from being offset by commas to a parenthetical for readability, so as to reduce the number of commas and to make it easier to see the connection between "responsibility" and "during".

Commented [CR145]: "contingency" added here for consistency throughout. Note the definitions below.

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1 The joint ~~policy~~ *policies* required by section 3151 of this title shall ~~also~~ provide for the
2 incorporation of contractors and contract operations in mission readiness exercises for operations
3 that will include contracting and contractor support.

Commented [CR146]: Same note as in 3155(a) above

Commented [CR147]: "also" to be omitted as unnecessary, especially when stated in a separate section.

4 **§ 3157 [10 USC 2333(f)]. Definitions**

5 In this subchapter:

6 (1) ~~[2333(f)(6)] REQUIREMENTS DEFINITION.—The term "requirements definition"~~
7 means the process of translating policy objectives and mission needs into specific
8 requirements, the description of which will be the basis for awarding acquisition
9 contracts for projects to be accomplished, work to be performed, or products to be
10 delivered.

Commented [CR148]: The order of the paragraphs is revised from alphabetical to the sequence in which the terms appear.

11 (2) ~~[2333(f)(5)] CONTINGENCY PROGRAM MANAGEMENT.—The term~~
12 "contingency program management" means the process of planning, organizing, staffing,
13 controlling, and leading the combined efforts of participating civilian and military
14 personnel and organizations for the management of a specific defense acquisition
15 program or programs during combat operations, post-conflict operations, and
16 contingency operations.

17 (3) ~~[2333(f)(2)] CONTINGENCY CONTRACTING.—The term "contingency~~
18 contracting" means all stages of the process of acquiring property or services by the
19 Department of Defense during a contingency operation.

20 (4) ~~[2333(f)(1)] CONTINGENCY CONTRACTING PERSONNEL.—The term~~
21 "contingency contracting personnel" means members of the armed forces and civilian
22 employees of the Department of Defense who are members of the defense acquisition

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workforce and, as part of their duties, are assigned to provide support to contingency operations (whether deployed or not).

(5) [2333(f)(4)] ACQUISITION SUPPORT AGENCIES. The term "acquisition support agencies" means Defense Agencies and Department of Defense Field Activities that carry out and provide support for acquisition related activities.

Commented [CR149]: Since the defined term is not used in the section, the definition could/should be omitted.

(6) [2333(f)(3)] CONTINGENCY OPERATION. The term "contingency operation" has the meaning provided in section 101(a)(13) of this title.

Commented [CR150]: This definition is not needed here. 10 USC 101 works on its own. The Code, including title 10, does not generally refer back to a definition that is applicable by its own terms. It is an anomaly that this definition currently appears in this title 10 provision. There is also a risk to inconsistency across provisions of title 10. If this reference back is necessary here, what does that imply about the many other instances where the same term is used in other parts of title 10?

"SUBCHAPTER II—OTHER PROVISIONS RELATING TO OPERATIONAL CONTRACT SUPPORT

"Sec. 3171 [Sec. 844(a), (b) of P.L. 112-81, FY12 NDAA (10 USC 2302 note)]. Contracts for property or services in support of a contingency operation: competition and review 3172 [Sec. 843 of P.L. 112-239, FY13 NDAA (10 USC 2302 note)]. Operational contract support: chain of authority and responsibility within Department of Defense."

(b) CODIFICATION OF NDAA SECTIONS IN NEW CHAPTER.—

(1) CODIFICATION BY TRANSFER AND AMENDMENT.—Subchapter II of chapter 209 of title 10, United States Code, as added by subsection (a), is amended by inserting after the table of sections a new section 3171 consisting of—

(A) a heading as follows:

"§ 3171 [Sec. 844(a), (b) of P.L. 112-81, FY12 NDAA (10 USC 2302 note)]. Contracts for property or services in support of a contingency operation: competition and review"; and

(B) a text consisting of subsections (a) and (b) of section 844 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10

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U.S.C. 2302 note), revised by striking “Not later than 90 days after the date of the enactment of this Act, the” in subsection (a) and inserting “The”.

Commented [CR151]: NLT clause deleted as OBE.

(2) CODIFICATION BY RESTATEMENT.—Subchapter II of chapter 209 of title 10, United States Code, as added by subsection (a), is amended by inserting after section 3171, as added by paragraph (1), the following new section:

“§ 3172 [Sec. 843 of P.L. 112-239, FY13 NDAA (10 USC 2302 note)]. Operational contract support: chain of authority and responsibility within Department of Defense

(a) [Sec. 843(a)] GUIDANCE REQUIRED.—The Secretary of Defense shall issue guidance establishing the chain of authority and responsibility within the Department of Defense for policy, planning, and execution of operational contract support.

Commented [CR152]: The original said, “Not later than one year after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall develop and issue ...”. The NLT clause and the phrase “develop and” are omitted as OBE. Note that, as a general matter, title 10/NDAA usage is to just say “issue” [one verb] since regs/guidance, etc. cannot be issued unless/until they have been developed. That is, “develop and” is subsumed within “issue”. The same applies to reports – T10/NDAA (generally) don’t say “prepare and submit” a report, but “submit” a report.

(b) [843(b)(1), (3)] ELEMENTS OF GUIDANCE.—The guidance under subsection (a) shall, at a minimum—

Commented [CR153]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

(1) [843(b)(1)] specify the officials, offices, and components of the Department within the chain of authority and responsibility described in subsection (a) and identify, for each such official, office, and component, the matters required under subsection (c); and

(2) [843(b)(3)] ensure that the chain of authority and responsibility described in subsection (a) is appropriately aligned with, and appropriately integrated into, the structure of the Department for the conduct of overseas contingency operations, including the military departments, the Joint Staff, and the commanders of the unified combatant commands.

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1 (c) [843(b)(2)] REQUIREMENTS.—For each official, office, and component of the
2 Department of Defense specified under subsection (b)(1) as being within the chain of authority
3 and responsibility described in subsection (a), the guidance under subsection (a) shall identify the
4 following:

Commented [CR154]: Reference under (b)(1) above is just to "the Department" [without "of Defense"]. Proposed to be the same here for consistency.

5 (1) [843(b)(2)(A)] Requirements for policy, planning, and execution of contract
6 support for operational contract support, including, at a minimum, requirements in
7 connection with—

Commented [CR155]: This is the wording from 843(b)(2)(A) of PL 112-239. Is "contract support for operational contract support" correct? It seems odd. DoD, is this wording correct?

8 (A) coordination of functions, authorities, and responsibilities related to
9 operational contract support, including coordination with relevant Federal
10 agencies;

Commented [CR156]: Phrase ", at a minimum" proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

11 (B) assessments of total force data in support of Department force
12 planning scenarios, including the appropriateness of, and necessity for, the use of
13 contractors for identified functions;

14 (C) determinations of capability requirements for nonacquisition
15 community operational contract support, and identification of resources required
16 for planning, training, and execution to meet such requirements; and

17 (D) determinations of policy regarding the use of contractors by function
18 and identification of the training exercises that will be required for operational
19 contract support (including an assessment of whether or not those exercises will
20 include contractors).

Commented [CR157]: The word "of" is not in the original. Suggest it be added for readability.

21 (2) [843(b)(2)(B)] Roles, authorities, responsibilities, and lines of supervision for
22 the achievement of the requirements identified under paragraph (1)."

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(c) CONFORMING REPEALS.—The following provisions of law are repealed:

(1) Section 2333 of title 10, United States Code.

(2) Subsections (a) and (b) of section 844 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 2302 note).

(3) Section 843 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 10 U.S.C. 2302 note).

TITLE II—ACQUISITION PLANNING (PART V, SUBPART B)

Note: Subpart B (Acquisition Planning) of Part V, as enacted, had 2 chapters, 221 & 223. Ch. 221 was originally prepared with three subchapters. To provide greater visibility to the different elements of Part V, it is now proposed that the three draft subchapters of ch 221 each be made a separate chapter, as 221, 222, and 223. The original 223 would be renumbered as 225.

SEC. 201. PLANNING AND SOLICITATION GENERALLY.

(a) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part V of subtitle A (as added by section 801 of Public Law 115-232), of title 10, United States Code, are amended by striking the items relating to chapters 221 and 223 and inserting the following:

Table listing chapters: "221. Planning and Solicitation Generally – Competition in Contracting ...3201", "222. Independent Cost Estimation and Cost Analysis ...3221", "223. Other Provisions Relating to Planning and Solicitation Generally ...3241", "225. Planning and Solicitation Relating to Particular Items or Services ...3271".

(b) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapters 221 and 223 and inserting the following:

Commented [CR158]: Many of the numerous comments in this section are "roadmap" type comments to identify differences in wording from parallel T41 provisions.

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CHAPTER 221 PLANNING AND SOLICITATION GENERALLY

COMPETITION IN CONTRACTING

Sec.

- 3201 [2304(a),(j),(d),(h), (k); 41 U.S.C. 3301, 3105(partial)]. Full and open competition.
3202 [Reserved].
3203 [2304(b); 41 U.S.C. 3303]. Exclusion of particular source or restriction of solicitation to small business concerns.
3204 [2304(c),(d),(e),(f),(l),(i); 41 U.S.C. 3304]. Use of procedures other than competitive procedures.
3205 [2304(g); 41 U.S.C. 3305]. Simplified procedures for small purchases.
3206 [2305(a), (c); 41 U.S.C. 3306]. Planning and solicitation requirements.
3207 [Reserved].
3208 [2305(d); 41 U.S.C. 3308]. Planning for future competition in contracts for major systems.
3209 [Sec. 913 of FY86 DoD Auth, P.L. 99-145 (10 USC 2302 note)]. Minimum percentage of competitive procurements: annual goal.

§ 3201 [2304(a),(j),(d),(h), (k); 41 U.S.C. 3301, 3305(partial)]. Full and open competition

(a) [2304(a)(1); 41 U.S.C. 3301(a)] IN GENERAL.— Except as provided in subsections (b), (c), and (g) sections 3203, 3204(a), and 3205 of this title and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(1) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the Federal Acquisition Regulation; and

(2) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(b) [2304(a)(2); 41 U.S.C. 3301(b)(1)] DETERMINATION OF APPROPRIATE COMPETITIVE PROCEDURES.—In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(1) shall solicit sealed bids if—

Commented [CR159]: New chapter 221 is organized so as to be generally parallel with ch. 33 of T41.

Commented [CR160]: Headings in this chapter, for both section headings and internal side headings, are drawn from the parallel T41 provision.

Commented [CR161]: CICA is widely cited in general usage but the term itself does not appear in title 10. Secs. 2304 & 2305 are part of what is referred to as CICA. So, the proposal here is to use that term for the heading for this chapter. Same for ch. 241.

Commented [CR162]: The chapter is derived from 10 USC 2304 and a portion of 2305. The restatement of those section in this chapter follows the organization of parallel provisions of title 41 so as to achieve, to the extent possible, parallelism in citation to parallel provisions. Sections 3201-3205 are the successor provisions for section 2304.

Commented [CR163]: In T41, "shall" is moved from here and from the beginning of (2) below to appear in the stem above before the dash (i.e., "... property or services shall—"). That saves a word, but splitting the verb at the beginning of (1) & (2) may not be an improvement in readability.

Commented [CR164]: Reference is to ch. 137. Must be updated to reflect successor provisions. DoD: Is it possible to identify the specific section of ch. 137 that require "full and open completion through the use of competitive procedures"?

Commented [CR165]: Note: T41 has a paragraph (2) of 41 U.S.C. 3301(b) for which T10 does not have a parallel. However, that paragraph appears to be moot, as it refers to a section of T23 that no longer exists. IF para (2) is moot, perhaps consideration might be given (in the appropriate vehicle) to deleting para (2) from 41 USC 3301(b) and modifying para (1) of that section so as to appear as shown here for the parallel T10 provision.

Commented [CR166]: "Determination of" added here to the header from T41.

Commented [CR167]: Same comment on location of "shall" as in subsection (b) above. In T41, "shall" is moved from here and from the beginning of (2) below to appear in the stem above before the dash (i.e., "... head of an agency shall—"). That saves a word, but splitting the verb at the beginning of (1) & (2) may not be an improvement in readability.

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1 (A) time permits the solicitation, submission, and evaluation of sealed
2 bids;
3 (B) the award will be made on the basis of price and other price-related
4 factors;
5 (C) it is not necessary to conduct discussions with the responding sources
6 about their bids; and
7 (D) there is a reasonable expectation of receiving more than one sealed
8 bid; and
9 (2) shall request competitive proposals if sealed bids are not appropriate under
10 paragraph (1).

11 (c) [2304(j); 41 U.S.C. 3301(c)] EFFICIENT FULFILLMENT OF GOVERNMENT
12 REQUIREMENTS.—The Federal Acquisition Regulation shall ensure that the requirement to obtain
13 full and open competition is implemented in a manner that is consistent with the need to
14 efficiently fulfill the Government's requirements.

15 (d) [2304(h); no T41 sec.] CERTAIN PURCHASES OR CONTRACTS TO BE TREATED AS IF
16 MADE WITH SEALED-BID PROCEDURES.—For the purposes of the following, purchases or
17 contracts awarded after using procedures other than sealed-bid procedures shall be treated as if
18 they were made with sealed-bid procedures:

- 19 (1) Chapter 65 of title 41.
20 (2) Sections 3141–3144, 3146, and 3147 of title 40.

21 (e) [2304(k); 41 U.S.C. 3105 (PARTIAL)]. NEW CONTRACTS AND MERIT-BASED
22 SELECTION PROCEDURES.—

Commented [CR168]: Sub (j) of 2304 moved up here after (c) for parallelism w organization of sec. 3301 of T41.

Commented [CR169]: Subsection (e) was sec. 3307 in a previous draft. The counterpart provision to 2304(k) is 41 U.S.C. 3105, as it relates to contracts. Note that in T41, what were originally two separate provisions, one relating to contracts and the other to R&D grants, were combined into a single section, 3105, in the T41 codification. In current title 10, the parallel provisions are 2304(k) (contracts) and 2374 (R&D). They could be restated separately, as in T10 currently, or together, as in T41. At this point, they are restated separately, as in current law. 2304(k) (contracts) is shown here. 2374 (R&D) is currently proposed as new 4008 in new ch. 301, R&E Generally.

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(1) [2304(k)(1); 41 U.S.C. 3105(a)] CONGRESSIONAL POLICY.—It is the policy of Congress that an agency named in section 2303(a) 3063 of this title should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

(2) [2304(k)(3); 41 U.S.C. 3105(b)] NEW CONTRACT DESCRIBED.—For purposes of this section, a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract.

(3) [2304(k)(2); 41 U.S.C. 3105(c)] REQUIREMENTS FOR AWARDING NEW CONTRACT.—A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

(A) specifically refers to this section;

(B) specifically identifies the particular non-Federal Government entity involved; and

(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in subsection (a).

(4) [2304(k)(4); 41 U.S.C. 3105(d)] EXCEPTION.—This subsection shall not apply with respect to any contract that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) 3063 of this title and to report on such those matters to the Congress or any agency of the Federal Government.

§ 3202 [Reserved].

Commented [CR170]: T41 has "does not". Original T10 wording retained here.

Commented [CR171]: T41 has "to a contract" rather than "with respect to any contract". T10 wording retained here.

Commented [CR172]: T41 has "on" rather than "upon". T10 wording retained.

Commented [CR173]: T10 use of "any" retained rather than follow the T41 use of "a" in several instances.

Commented [CR174]: T10 does not seem to have a parallel provision to 41 U.S.C. 3302. To allow for parallel numbering with T41 in the following sections, this section would be left unassigned.

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§ 3203 [2304(b); 41 U.S.C. 3303]. Exclusion of particular source or restriction of solicitation to small business concerns

(a) [2304(b)(1),(4); 41 U.S.C. 3303(a)] EXCLUSION OF PARTICULAR SOURCE.—

(1) [2304(b)(1); 41 U.S.C. 3303(a)(1)] CRITERIA FOR EXCLUSION.—The head of an agency may provide for the procurement of property or services covered by this chapter TBD using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of the property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(D) would ensure the continuous availability of a reliable source of supply of such the property or service;

(E) would satisfy projected needs for such the property or service determined on the basis of a history of high demand for the property or service; or

Commented [CR175]: Note that the T41 provision says "covered by section 3301 of this title", rather than referring to the whole chapter. The parallel reference here would be to refer to section 3201. T10 original has "this chapter", meaning chapter 137, which would need to be updated.

Commented [CR176]: T41 does not have "in order to" but just "to". LRC may consider "in order" before "to" to be surplusage. T10 retained as in original.

Commented [CR177]: T41 has "the" here; T10 does not. Adding "the" seems to make sense, as it seems to apply specifically to the property or services referred to in the stem at the beginning and not to any property or services. And note (D) and (E) below.

Commented [CR178]: In T41, "would" is deleted from each of (A)-(F) and moved to the top, immediately before the dash, so the lead-in text ends with, "... if the head of the agency determines that to do so would—". Although that saves a few words, it is not necessarily an improvement in readability to split the verb in each item.

Commented [CR179]: T41 has "Federally" [upper case].

Commented [CR180]: Changed from "such" to "the" for parallelism with T41. The reference seems clear either way, pointing to the property or services in the stem at the beginning for which an alternative source of supply is being sought.

Commented [CR181]: Same as above. And note "the" later in subparagraph (E).

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1 (F) in the case of medical supplies, safety supplies, or emergency supplies,
2 would satisfy a critical need for such supplies.

Commented [CR182]: (F) appears as in the T10 original. In T41 it is revised to read: "satisfy a critical need for medical, safety, or emergency supplies".

3 (2) [2304(b)(4); 41 U.S.C. 3303(a)(2)] DETERMINATION FOR CLASS
4 DISALLOWED.—A determination under paragraph (1) may not be made for a class of
5 purchases or contracts.

6 (b) [2304(b)(2); 41 U.S.C. 3303(b)] EXCLUSION OF OTHER THAN SMALL BUSINESS
7 CONCERNS.—The head of an agency may provide for the procurement of property or services
8 covered by this section section 3201 of this title using competitive procedures, but excluding
9 concerns other than small business concerns in furtherance of sections 9 and 15 of the Small
10 Business Act (15 U.S.C. 638, 644).

Commented [CR183]: T10 has "concerns other than small business concerns", as shown; T41 has "other than small business concerns" [without "concerns" before "other"]. T10 wording retained here.

11 (c) [2304(b)(3); 41 U.S.C. 3303(c)] INAPPLICABILITY OF JUSTIFICATION AND APPROVAL
12 REQUIREMENTS.—A contract awarded pursuant to the competitive procedures referred to in
13 subsections (a) and (b) shall not be is not subject to the justification and approval required by
14 subsection (f)(1) section 3204(e)(1) of this title.

Commented [CR184]: "Inapplicability" used here in preference to "Nonapplication", used in T41.

15 § 3204 [2304(c),(d),(e),(f),(l),(i); 41 U.S.C. 3304]. Use of procedures other than competitive
16 procedures

Commented [CR185]: "shall not be" changed to "is not" for parallelism w T41 (which seems OK in this case).

17 (a) [2304(c),(d)(2); 41 U.S.C. 3304(a)] WHEN PROCEDURES OTHER THAN COMPETITIVE
18 PROCEDURES MAY BE USED.—The head of an agency may use procedures other than competitive
19 procedures only when—

Commented [CR186]: FYI, this section header and the header for (a) immediately below do not follow the T41 wording. T41 uses "noncompetitive procedures", rather than "procedures other than competitive procedures". Since "competitive procedures" is a defined term and "noncompetitive procedures" is not defined, the use of "procedures other than competitive procedures" seems a more precise characterization of the substance of the provision, and deviation from T41 here seems warranted.

20 (1) the property or services needed by the agency are available from only one
21 responsible source or only from a limited number of responsible sources and no other
22 type of property or services will satisfy the needs of the agency;

Commented [CR187]: T41 does not have "or only from a limited number of responsible sources".

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(2) the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order

(A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization;

(B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center; or

(C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such that government, have the effect of requiring the use of procedures other than competitive procedures;

Commented [CR188]: T41 does not have "or sources". Note: OLCRC probably made the change to omit "or sources" in codifying T41 in reliance on 1 U.S.C. 1, which provides that "In determining the meaning of any Act of Congress, unless the context indicates otherwise - words importing the singular include and apply to several persons, parties, or things;".

Commented [CR189]: T41 does not have "in order".

Commented [CR190]: T41 has "Federally" [upper case].

Commented [CR191]: In T41, the "or to procure" clause highlighted was pulled out and made a separate subparagraph (D).

Commented [CR192]: T41 does not have "a" here, before "treaty".

Commented [CR193]: T41 has "an" before "international organization".

Commented [CR194]: With the 2 differences immediately above, there may be a slightly different meaning between T10 and T41. In T10 (and the T41 original), it looks like the reference is to (1) an international agreement, or (2) a treaty between the US and a foreign government or int'l org. As revised in the codified T41, it looks like the reference is to an international agreement or treaty between the US and a FG or IO. If the correct meaning is the 2d, then the wording changes in T41 perhaps should be adopted here.

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(5) subject to ~~subsection (k)~~ section 3201(e) of this title, a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source, or the agency's need is for a brand-name commercial product for authorized resale;

(6) the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the agency (who may not delegate the authority under this paragraph)—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned; and

(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

(b) [2304(d)(1); 41 U.S.C. 3304(b)] PROPERTY OR SERVICES DEEMED AVAILABLE FROM ONLY ONE SOURCE.—For the purposes of applying subsection (a)(1)—

(1) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a concept—

(A) that is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability of the source to provide the service; and

Commented [CR195]: The limitation on delegation is (d)(2) in the T10 original. It is moved here as a parenthetical for parallelism with T41.

Commented [CR196]: T41 does not have "the" before "Congress". Use of "the" before "Congress" is consistent thru T10.

Commented [CR197]: T41 does not have "applying".

Commented [CR198]: T41 moved "in the case of" from the beginning of both (1) and (2) below to appear in the stem here just before the dash. T10 wording retained for readability, especially in (2).

Commented [CR199]: T41 has "are deemed" rather than "shall be considered".

Commented [CR200]: In T41, the wording in para (1) after "demonstrates" is arranged differently. Probably not a substantive difference, but T10 wording is retained here.

Commented [CR201]: The clause relating to a unique capability to provide a service does not appear in T41.

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1 (B) the substance of which is not otherwise available to the United States,
2 and does not resemble the substance of a pending competitive procurement; and

3 (2) in the case of a follow-on contract for the continued development or
4 production of a major system or highly specialized equipment, or the continued provision
5 of highly specialized services, such property or services may be deemed to be available
6 only from the original source and may be procured through procedures other than
7 competitive procedures when it is likely that award to a source other than the original
8 source would result in—

9 (A) substantial duplication of cost to the United States which that is not
10 expected to be recovered through competition; or

11 (B) unacceptable delays in fulfilling the agency's needs.

12 (c) [2304(d)(3); 41 U.S.C. 3304(c)] PROPERTY OR SERVICES NEEDED WITH UNUSUAL
13 AND COMPELLING URGENCY.—

14 (1) ALLOWABLE CONTRACT PERIOD.—The contract period of a contract described
15 in paragraph (2) that is entered into by an agency pursuant to the authority provided
16 under subsection (a)(2)—

17 (A) may not exceed the time necessary—

18 (i) to meet the unusual and compelling requirements of the work to
19 be performed under the contract; and

20 (ii) for the agency to enter into another contract for the required
21 goods or services through the use of competitive procedures; and

Commented [CR202]: T41 does not have the clause on highly specialized services.

Commented [CR203]: T41 has "delay" [singular]. Probably no difference in meaning.

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(B) may not exceed one year unless the head of the agency entering into such the contract determines that exceptional circumstances apply.

(2) APPLICABILITY OF ALLOWABLE CONTRACT PERIOD.—This subsection applies to any contract in an amount greater than the simplified acquisition threshold.

(d) [2304(e); 41 U.S.C. 3304(d)] OFFER REQUESTS TO POTENTIAL SOURCES.—The head of an agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (e)(2) or (e)(6) paragraph (2) or (6) of subsection (a) shall request offers from as many potential sources as is practicable under the circumstances.

(e) [2304(f); 41 U.S.C. 3304(e)] JUSTIFICATION FOR USE OF PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—

(1) [2304(f)(1); 41 U.S.C. 3304(e)(1)] PREREQUISITES FOR AWARDED CONTRACT.—Except as provided in paragraphs (3), (4), and (7), the head of an agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of such those procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved—

(i) in the case of a contract for an amount exceeding \$500,000 but equal to or less than \$10,000,000, by the competition advocate advocate for competition for the procuring activity (without further delegation) or by an official referred to in clause (ii) or (iii);

Commented [CR204]: Form of citation changed for parallelism with T41.

Commented [CR205]: T41 header has "Noncompetitive Procedures". As above, the wording here tracks more closely with the content.

Commented [CR206]: T41 has "in the case of a contract for an amount" here, after "is approved". T10 wording left as is, with the "in the case of" clause at the beginning of each of (i), (ii), and (iii).

Commented [CR207]: In T10 original, the "but equal to or less than" clauses in both (i) and (ii) were set off in parentheses. The parentheses were removed here for parallelism with T41.

Commented [CR208]: Change for parallelism with T41. And see 10 USC 2318 and 41 USC 1705 for use of "advocate for competition" rather than "competition advocate".

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(ii) in the case of a contract for an amount exceeding \$10,000,000 but equal to or less than \$75,000,000, by the head of the procuring activity (or the head of the procuring activity's delegate designated pursuant to paragraph (6)(A)); or

(iii) in the case of a contract for an amount exceeding \$75,000,000, by the senior procurement executive of the agency designated pursuant to section 1702(c) of title 41 (without further delegation) or in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics

Acquisition and Sustainment, acting in his the Under Secretary's capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(B); and

(C) any required notice has been published with respect to such the contract pursuant to section 1708 of title 41 and all bids or proposals received in response to that notice have been considered by the head of the agency.

(2) [2304(f)(3); 41 U.S.C. 3304(e)(2)] ELEMENTS OF JUSTIFICATION.—The justification required by paragraph (1)(A) shall include—

- (A) a description of the agency's needs;
(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

Commented [CR209]: The amount in clauses (ii) and (iii) was increased from \$50M to \$75M by P.L. 108-375, NDAA for FY05. In T41, this amount is \$50M.

Commented [CR210]: In T41, the specification of the delegate is included in (ii) itself, rather than in another paragraph.

Commented [CR211]: T10 original has (6)(A). However, the delegation provision is actually (5)(A). Old (5) & (6) were redesignated as (4) & (5) in 2008 without a conforming amendment to this provision. But, this remains (6) because old (5) becomes (6) below. Same for reference in (iii).

Commented [CR212]: T41 stops here, at "(without further delegation)". Separate rule for DoD USD(AT&L) appears only in T10.

Commented [CR213]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR214]: T41 flips this around so it would say "... and the head of the agency has considered all bids or proposals received in response to that notice". T10 wording left as is.

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(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

(F) a statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such those needs.

(3) [2304(f)(2) 1st sent; 41 U.S.C. 3304(e)(3)] JUSTIFICATION ALLOWED AFTER CONTRACT AWARDED.—In the case of a procurement permitted by subsection (a)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded.

(4) [2304(f)(2) 2nd sent; 41 U.S.C. 3304(e)(4)] JUSTIFICATION NOT REQUIRED.—The justification and approval required by paragraph (1) is not required—

(A) when a statute expressly requires that the procurement be made from a specified source;

(B) when the agency's need is for a brand-name commercial product for authorized resale;

(C) in the case of a procurement permitted by subsection (a)(7);

(D) in the case of a procurement conducted under chapter 85 of title 41 or section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

Commented [CR215]: T41 has "any sources" rather than "the sources, if any."

Commented [CR216]: T41 has "any actions" rather than "the actions, if any."

Commented [CR217]: T41 has "a barrier" rather than "any barrier".

Commented [CR218]: T41 has "are" rather than "is". T10 language left as is, with "is". ("justification and approval" is a term of art in contracting world.)

Commented [CR219]: T41 has "if" after "not required", deletes "when" in (A) & (B), and changes "in the case of a procurement" in (C) & (D) to "the procurement is". T10 wording retained.

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(E) in the case of a procurement permitted by subsection (a)(4), but only if the head of the contracting activity prepares a document in connection with such procurement that describes the terms of an agreement or treaty, or the written directions, referred to in that subsection that have the effect of requiring the use of procedures other than competitive procedures.

Commented [CR220]: T41 does not have a counterpart to (E).

(5) [2304(f)(4); 41 U.S.C. 3304(e)(5)] RESTRICTIONS ON AGENCIES.—

(A) Contracts and procurement of property or services.—In no case may the head of an agency—

(i) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

Commented [CR221]: T41 does not have "of funds". (Probably thought to be surplusage after "amount".)

(ii) procure property or services from another agency unless such the other agency complies fully with the requirements of this chapter in its procurement of such the property or services.

(B) ADDITIONAL RESTRICTION.—The restriction contained set out in subparagraph (A)(ii) is in addition to, and not in lieu of, any other restriction provided by law.

Commented [CR222]: T41 does not have ", and not in lieu of,". Probably thought to be surplusage after "in addition to".

(6) [2304(f)(5)] DELEGATION UNDER PARAGRAPH (1)(B).—(A) The authority of the head of a procuring activity under paragraph (1)(B)(ii) may be delegated only to an officer or employee who—

Commented [CR223]: The T41 counterpart to subpara (A) is in (1)(B)(iii).

(i) if a member of the armed forces, is a general or flag officer; or

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(ii) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of brigadier general or rear admiral (lower half).

Commented [CR224]: In T41, the requirement for a civilian is one who is "serving in a position in which the individual is entitled to receive the daily equivalent of the maximum annual rate of basic pay payable for level IV of the Executive Schedule (or in a comparable or higher position under another schedule)"

~~(B) The authority of the Under Secretary of Defense for Acquisition, Technology, and Logistics~~ **Acquisition and Sustainment** under paragraph (1)(B)(iii) may be delegated only to—

Commented [CR225]: There is no T41 counterpart to (B).

Commented [CR226]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

(i) an Assistant Secretary of Defense; or

(ii) with respect to the element of the Department of Defense (as specified in section 111(b) of this title), other than a military department, carrying out the procurement action concerned, an officer or employee serving in or assigned or detailed to that element who—

(I) if a member of the armed forces, is serving in a grade above brigadier general or rear admiral (lower half); or

(II) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

(7) **[2304(f)(6)]** JUSTIFICATION AND APPROVAL NOT REQUIRED FOR PHASE III SBIR AWARD.—The justification and approval required by paragraph (1) is not required in the case of a Phase III award made pursuant to section 9(r)(4) of the Small Business Act (15 U.S.C. 638(r)(4)).

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(f) [2304(i); 41 U.S.C. 3304(f)] PUBLIC AVAILABILITY OF JUSTIFICATION AND APPROVAL REQUIRED FOR USING PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—

(1) TIME REQUIREMENT.—

(A) WITHIN 14 DAYS AFTER CONTRACT AWARD.—Except as provided in subparagraph (B), in the case of a procurement permitted by subsection (a), the head of an agency shall make publicly available, within 14 days after the award of the contract, the documents containing the justification and approval required by subsection (e)(1) with respect to the procurement.

(B) WITHIN 30 DAYS AFTER CONTRACT AWARD.—In the case of a procurement permitted by subsection (a)(2), subparagraph (A) shall be applied by substituting "30 days" for "14 days".

(2) AVAILABILITY ON WEBSITES.—The documents referred to in subparagraph (A) of paragraph (1) shall be made available on the website of the agency and through a Government-wide website selected by the Administrator for Federal Procurement Policy.

(3) EXCEPTION TO AVAILABILITY AND APPROVAL REQUIREMENT.—This subsection does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5.

(g) [2304(i); no T41 sec.] REGULATIONS WITH RESPECT TO NEGOTIATION OF PRICES.—

(1) The Secretary of Defense shall prescribe by regulation the manner in which the Department of Defense negotiates prices for supplies to be obtained through the use of procedures other than competitive procedures, as defined in section 2302(2) of this title.

Commented [CR227]: Subsection (l) moved up to (f) for parallelism with T41.

Commented [CR228]: Again, "Procedures Other Than Competitive Procedures" used in the header here rather than "Noncompetitive Procedures" as in the T41 provision.

Commented [CR229]: T41 has the "referred to in" clause. Added here for parallelism with T41. Seems a good addition.

Commented [CR230]: T10 original has "government" [lower case]. Capitalized here for parallelism with T41 and for general statutory style.

Commented [CR231]: Proposed to be omitted as covered by ch. 201, sec. 3019.

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(1) The regulations required by paragraph (1) shall—

(A) specify the incurred overhead a contractor may appropriately allocate to supplies referred to in that paragraph; and

(B) require the contractor to identify those supplies which it did not manufacture or to which it did not contribute significant value.

(3) Such regulations shall not apply to an item of supply included in a contract or subcontract for which the price is based on established catalog or market prices of commercial products sold in substantial quantities to the general public.

§3205. [2304(g); 41 U.S.C. 3305] Simplified procedures for small purchases

(a) [2304(g)(1); 41 U.S.C. 3305(a)] AUTHORIZATION.—In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for—

(1) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

(2) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than \$5,000,000

with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial products or commercial services.

(b) [2304(g)(2); 41 U.S.C. 3305(c)] PROHIBITION ON DIVIDING CONTRACTS.—A proposed purchase or contract for an amount above the simplified acquisition threshold may not

Commented [CR232]: T41 has "To" rather than "In order to". T10 language retained.

Commented [CR233]: T41 has this phrase, which appears at the beginning of both (1) & (2), in the lead-in text above, after "shall provide for", rather than in (1) & (2). T10 language & structure retained here.

Commented [CR234]: T41 has "for which" rather than "with respect to which". T10 wording retained here.

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1 be divided into several purchases or contracts for lesser amounts in order to use the simplified
2 procedures required by subsection (a).

Commented [CR235]: T41 has "to" rather than "in order to". T10 language retained.

3 (c) [2304(g)(3); 41 U.S.C. 3305(d)] PROMOTION OF COMPETITION.—In using simplified
4 procedures, the head of an agency shall promote competition to the maximum extent practicable.

Commented [CR236]: T41 has "the" before "simplified procedures"; T10 does not. T10 wording retained.

5 (d) [2304(g)(4); 41 U.S.C. 3305(e)] COMPLIANCE WITH SPECIAL REQUIREMENTS OF
6 FEDERAL ACQUISITION REGULATION.—The head of an agency shall comply with the Federal
7 Acquisition Regulation provisions referred to in section 1901(e) of title 41.

8 "§ 3206 [2305(a), (c); 41 USC 3306]. Planning and solicitation requirements

9 (a) [2305(a)(1); 41 USC 3306(a)] PLANNING AND SPECIFICATIONS.—

10 (1) PREPARING FOR PROCUREMENT.—In preparing for the procurement of property
11 or services, the head of an agency shall—

12 (A) specify the agency's needs and solicit bids or proposals in a manner
13 designed to achieve full and open competition for the procurement;

14 (B) use advance procurement planning and market research; and

15 (C) develop specifications in such manner as is necessary to obtain full
16 and open competition with due regard to the nature of the property or services to
17 be acquired.

Commented [CR237]: T41 has "in the manner necessary". T10 wording retained here.

18 (2) REQUIREMENTS OF SPECIFICATIONS.—Each solicitation under this chapter

19 TBA shall include specifications which that—

Commented [CR238]: What specific sections of current ch. 137 does this refer to?

20 (A) consistent with the provisions of this chapter TBA, permit full and
21 open competition; and

Commented [CR239]: Are there some sections of current ch. 137 that are invoked here and others that are irrelevant?

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(B) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(3) TYPES OF SPECIFICATIONS.—For the purposes of paragraphs (1) and (2), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy ~~such~~ *those* needs. Subject to ~~such~~ *those* needs, specifications may be stated in terms of—

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(C) design requirements.

(b) [2305(a)(2); 41 USC 3306(b)] CONTENTS OF SOLICITATION.—In addition to the specifications described in subsection (a), a solicitation for sealed bids or competitive proposals (other than for a procurement for commercial products or commercial services using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(1) a statement of—

(A) all significant factors and significant subfactors which the head of the agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

Commented [CR240]: T41 has “each” rather than “a”. T10 wording retained.

Commented [CR241]: Phrase “at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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(B) the relative importance assigned to each of those factors and subfactors; and

(2)(A) in the case of sealed bids—

(i) a statement that sealed bids will be evaluated without discussions with the bidders; and

(ii) the time and place for the opening of the sealed bids; or

(B) in the case of competitive proposals—

(i) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(ii) the time and place for submission of proposals.

(c) [2305(a)(3); 41 USC 3306(c)] EVALUATION FACTORS.—

(1) [2305(a)(3)(A); 41 USC 3306(c)(1)] IN GENERAL.—In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

(A) shall (except as provided in paragraph (3)) clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

Commented [CR242]: T41 has "and THE award made", rather than "and award made". T10 wording retained.

Commented [CR243]: Same as immediately above.

Commented [CR244]: T41 has "shall" in the stem at the beginning, after "an agency" rather than at the beginning of (1), (2), & (3).

Commented [CR245]: T41 does not have the "except as" clause here and does have it in (C), where T10 does not.

Commented [CR246]: T41 has "establish clearly" rather than "clearly establish".

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(B) shall (except as provided in paragraph (3)) include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(C) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

- (i) significantly more important than cost or price;
(ii) approximately equal in importance to cost or price; or
(iii) significantly less important than cost or price.

(2) [2305(a)(3)(B); 41 USC 3306(e)(2)] RESTRICTION ON IMPLEMENTING REGULATIONS.—The regulations implementing paragraph (1)(C) may not define the terms "significantly more important" and "significantly less important" as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

Commented [CR247]: T41 does not have "The" before "regulations" but begins with "Regulations".

(3) [2305(a)(3)(C); 41 USC 3306(e)(3)] EXCEPTIONS FOR CERTAIN MULTIPLE TASK OR DELIVERY ORDER CONTRACTS.—If the head of an agency issues a solicitation for multiple task or delivery order contracts under section 2304(d)(1)(B) 3403(d)(1)(B) of this title for the same or similar services and intends to make a contract award to each qualifying offeror—

Commented [CR248]: Paragraph (3) differs in a number of respects from the T41 provision. T10 wording is retained.

(A) cost or price to the Federal Government need not, at the Government's discretion, be considered under paragraph (1)(B) as an evaluation factor for the contract award; and

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(B) if, pursuant to subparagraph (A), cost or price to the Federal Government is not considered as an evaluation factor for the contract award—

(i) the disclosure requirement of paragraph (1)(C) shall not apply;

and

(ii) cost or price to the Federal Government shall be considered in conjunction with the issuance pursuant to section ~~2304(e)~~ 3406(c) of this title of a task or delivery order under any contract resulting from the solicitation.

(4) [2305(a)(3)(D); 41 USC 3306(c)(4)] DEFINITION.—In paragraph (3), the term "qualifying offeror" means an offeror that—

(A) is determined to be a responsible source;

(B) submits a proposal that conforms to the requirements of the solicitation; and

(C) the contracting officer has no reason to believe would likely offer other than fair and reasonable pricing.

(5) [2305(a)(3)(E); no T41 sec.] Paragraph (3) shall not apply to multiple task or delivery order contracts if the solicitation provides for sole source task or delivery order contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(d) [2305(a)(4); 41 USC 3306(d)] ADDITIONAL INFORMATION IN SOLICITATION.—

Nothing in this subsection prohibits an agency from—

(1) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

Commented [CR249]: T41 has "This section does not prohibit" rather than "Nothing in this section prohibits". T10 wording retained here.

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1 (2) stating in a solicitation that award will be made to the offeror that meets the
2 solicitation's mandatory requirements at the lowest cost or price.

3 (e) [2305(a)(5); 41 USC 3306(e)] LIMITATION ON EVALUATION OF PURCHASE

4 OPTIONS.—The head of an agency, in issuing a solicitation for a contract to be awarded using
5 sealed bid procedures, may not include in ~~such~~ *the* solicitation a clause providing for the
6 evaluation of prices for options to purchase additional property or services under the contract
7 unless the head of the agency has determined that there is a reasonable likelihood that the options
8 will be exercised.

9 (f) [2305(c); no T41 provision] ASSESSMENT BEFORE CONTRACT FOR ACQUISITION OF
10 SUPPLIES IS ENTERED INTO.—The Secretary of Defense shall ensure that before a contract for the
11 delivery of supplies to the Department of Defense is entered into—

12 (1) when the appropriate officials of the Department are making an assessment of
13 the most advantageous source for acquisition of the supplies (considering quality, price,
14 delivery, and other factors), there is a review of the availability and cost of each item of
15 supply—

16 (A) through the supply system of the Department of Defense; and

17 (B) under standard Government supply contracts, if the item is in a
18 category of supplies defined under regulations of the Secretary of Defense as
19 being potentially available under a standard Government supply contract; and

20 (2) there is a review of both the procurement history of the item and a description
21 of the item, including, when necessary for an adequate description of the item, a picture,
22 drawing, diagram, or other graphic representation of the item.

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1 “§ 3207 [Reserved].

2 §3208. [2305(d); 41 USC 3308] Planning for future competition in contracts for major
3 systems

4 (a) [2305(d)(1); 41 USC 3308(a)] DEVELOPMENT CONTRACT.—

5 (1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—The Secretary of

6 Defense shall ensure that, in preparing a solicitation for the award of a development
7 contract for a major system, the head of an agency consider requiring in the solicitation
8 that an offeror include in its offer proposals described in paragraph (2). In determining
9 whether to require such proposals, the head of the agency shall give due consideration to
10 the purposes for which the system is being procured and the technology necessary to
11 meet the system's required capabilities. If such proposals are required, the head of the
12 agency shall consider them in evaluating the offeror's price.

13 (2) CONTENTS OF PROPOSALS.—Proposals referred to in the first sentence of
14 paragraph (1) are the following:

15 (A) Proposals to incorporate in the design of the major system items which
16 that are currently available within the supply system of the Federal agency
17 responsible for the major system, available elsewhere in the national supply
18 system, or commercially available from more than one source.

19 (B) With respect to items that are likely to be required in substantial
20 quantities during the system's service life, proposals to incorporate in the design
21 of the major system items which that the United States will be able to acquire
22 competitively in the future.

Commented [CR250]: In T41, sec. 3307 is “Preference for commercial items.” The T10 counterpart to 41 USC 3307 is 2375(a)(1) and 2377. These are currently in ch. 140, Procurement of Commercial Items, and are currently proposed to remain in that chapter, as transferred to Part V. So, 3307 will be left unassigned.

Commented [CR251]: In T41, there is no counterpart to “The Secretary of Defense shall ensure that,”. The T41 provision is “In preparing a....., the head of an agency shall consider ...”.

Commented [CR252]: Highlighted language is different in T41, although the meaning seems the same. T10 language here is unchanged from original.

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1 (b) [2305(d)(2); 41 USC 3308(b)] PRODUCTION CONTRACT.—

Commented [CR253]: Same comments apply to paragraphs (1) & (2) here as in (1) & (2) immediately above.

2 (1) DETERMINING WHETHER PROPOSALS ARE NECESSARY.—The Secretary of
3 Defense shall ensure that, in preparing a solicitation for the award of a production
4 contract for a major system, the head of an agency consider requiring in the solicitation
5 that an offeror include in its offer proposals described in paragraph (2). In determining
6 whether to require such proposals, the head of the agency shall give due consideration to
7 the purposes for which the system is being procured and the technology necessary to
8 meet the system's required capabilities. If such proposals are required, the head of the
9 agency shall consider them in evaluating the offeror's price.

10 (2) CONTENT OF PROPOSALS.—Proposals referred to in the first sentence of
11 paragraph (1) are proposals identifying opportunities to ensure that the United States will
12 be able to obtain on a competitive basis items procured in connection with the system that
13 are likely to be reprocured in substantial quantities during the service life of the system.
14 Proposals submitted in response to such requirement may include the following:

15 (A) Proposals to provide to the United States the right to use technical data
16 to be provided under the contract for competitive reprocurement of the item,
17 together with the cost to the United States, if any, of acquiring such technical data
18 and the right to use such data.

19 (B) Proposals for the qualification or development of multiple sources of
20 supply for the item.

21 (c) [2305(d)(3); 41 USC 3308(c)] CONSIDERATION OF FACTORS AS OBJECTIVES IN
22 NEGOTIATIONS.—If the head of an agency is making a noncompetitive award of a development

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1 contract or a production contract for a major system, the factors specified in subsections (a) and
2 (b) to be considered in evaluating an offer for a contract may be considered as objectives in
3 negotiating the contract to be awarded. Such objectives may not impair the rights of prospective
4 contractors or subcontractors otherwise provided by law.

Commented [CR254]: The second sentence, beginning "Such objectives" does not appear in the T41 provision.

5 (d) [2305(d)(4); no T41 sec.] ITEMS DEVELOPED EXCLUSIVELY AT PRIVATE EXPENSE.—

6 (1) LIMITATION.—Whenever the head of an agency requires that proposals
7 described in subsection (a)(2) or (b)(2) be submitted by an offeror in its offer, the offeror
8 shall not be required to provide a proposal that enables the United States to acquire
9 competitively in the future an identical item if the item was developed exclusively at
10 private expense unless the head of the agency determines that—

11 (A) the original supplier of such item will be unable to satisfy program
12 schedule or delivery requirements; or

13 (B) proposals by the original supplier of such item to meet the
14 mobilization requirements are insufficient to meet the agency's mobilization
15 needs.

16 (2) EVALUATION.—In considering offers in response to a solicitation requiring
17 proposals described in subsection (a)(2) or (b)(2), the head of an agency shall base any
18 evaluation of items developed exclusively at private expense on an analysis of the total
19 value, in terms of innovative design, life-cycle costs, and other pertinent factors, of
20 incorporating such items in the system.

21 § 3209 [Sec. 913 of FY86 DoD Auth, P.L. 99-145 (10 USC 2302 note)]. Minimum percentage
22 of competitive procurements: annual goal

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(a) ANNUAL GOAL.—The Secretary of Defense shall establish for each fiscal year a goal for the percentage of defense procurements to be made during that year (expressed in total dollar value of contracts entered into) that are to be competitive procurements.

(b) DEFINITION.—In this section, the term 'competitive procurements' means procurements made by the Department of Defense through the use of competitive procedures, as defined in section 2304 sections 3201-3205 of this title.

(c) CONFORMING REPEAL.—The following provisions of law are repealed.

- (1) Section 2304 of title 10, United States Code,.
(2) Subsections (a), (c), and (d) of section 2305 of title 10, United States Code.
(3) Section 913 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 10 U.S.C. 2302 note).

SEC. 202. INDEPENDENT COST ESTIMATION AND COST ANALYSIS.

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by inserting after chapter 221, as added by section 201, the following new chapter:

CHAPTER 222 INDEPENDENT COST ESTIMATION AND COST ANALYSIS

- Sec. 3221 [2334(a), (h)]. Director of Cost Assessment and Program Evaluation.
3222 [2334(b)]. Independent cost estimate required before approval.
3223 [2334(c)]. Director: review of cost estimates, cost analyses, and records.
3224 [2334(d)]. Director: participation, concurrence, and approval in cost estimation.
3225 [2334(e)]. Discussion of risk in cost estimates.
3226 [2334(f)]. Estimates for program baseline and analyses and targets for contract negotiation purposes.
3227 [2334(g)]. Guidelines and collection method for acquisition cost data.

Commented [CR255]: Original refers to 10 USC 2304. But the term "competitive procedures" is not defined in 2304 but 2302(1). Should this refer to the 2302(1) definition? Or, should it say "... through the use of competitive procedures under this chapter", with "this chapter" replacing 2304, with "under" replacing "as defined in".

Commented [CR256]: This chapter is derived from 10 U.S.C. 2334

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “§3221 [2334(a), (h)]. Director of Cost Assessment and Program Evaluation

2 (a) [2334(a) 1st sentence] IN GENERAL.—The Director of Cost Assessment and Program
3 Evaluation shall ensure that the cost estimation and cost analysis processes of the Department of
4 Defense provide accurate information and realistic estimates of cost for the acquisition programs
5 of the Department of Defense.

6 (b) [2334(a) 2nd sentence] FUNCTIONS.—In carrying out ~~that responsibility~~ *the*
7 *responsibility of the Director under subsection (a)*, the Director shall *do the following*:

8 (1) ~~Prescribe~~ *Prescribe*, by authority of the Secretary of Defense, policies and procedures
9 for the conduct of cost estimation and cost analysis for the acquisition programs of the
10 Department of Defense.

11 (2) *With respect to cost estimation in the Department of Defense in general and*
12 *with respect to specific cost estimates and cost analyses to be conducted in connection*
13 *with a major defense acquisition program or major subprogram under ~~chapter 144~~*
14 *chapters 321-325 of this title*, provide guidance to and consult with—

15 (A) the Secretary of Defense;

16 (B) the Under Secretary of Defense for ~~Acquisition, Technology, and~~
17 ~~Logistics~~ *Acquisition and Sustainment and, for a major defense acquisition*
18 *program under the purview of the Under Secretary of Defense for Research and*
19 *Engineering, that Under Secretary;*

20 (C) the Under Secretary of Defense (Comptroller);

21 (D) the Secretaries of the military departments; and

Commented [CR257]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F, incl Note 3).

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (E) the heads of the Defense Agencies ~~with respect to cost estimation in~~
2 ~~the Department of Defense in general and with respect to specific cost estimates~~
3 ~~and cost analyses to be conducted in connection with a major defense acquisition~~
4 ~~program or major subprogram under chapter 144 *chapters 321–325* of this title.~~

5 (3) ~~i~~Issue guidance relating to the proper discussion of risk in cost estimates
6 generally, and specifically, for the proper discussion of risk in cost estimates for major
7 defense acquisition programs and major subprograms.

8 (4) ~~i~~Issue guidance relating to full consideration of life-cycle management and
9 sustainability costs in major defense acquisition programs and major subprograms.

10 (5) ~~r~~Review all cost estimates and cost analyses conducted in connection with
11 major defense acquisition programs and major subprograms.

12 (6) ~~e~~Conduct or approve independent cost estimates and cost analyses for all
13 major defense acquisition programs and major subprograms—

14 (A) in advance of—

15 (i) any decision to grant milestone approval pursuant to ~~section~~
16 ~~2366a or 2366b~~ *section 4251 or 4252* of this title;

17 (ii) any decision to enter into low-rate initial production or full-rate
18 production; *and*

19 (iii) any certification under section ~~2433a~~ *4376* of this title; ~~and~~.

20 (iv) ~~any report under section 2445c(f) of this title; and~~

21 (B) at any other time considered appropriate by the Director, upon—

22 (i) the request of—

Commented [CR258]: 10 U.S.C. 2445 was repealed effective 9/30/2017 by sec 846 of the FY2017 NDAA, along with the rest of ch. 144A, relating to major automated information systems.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (I) the Under Secretary of Defense for Acquisition,
2 Technology, and Logistics Acquisition and Sustainment; or
3 (II) the Under Secretary of Defense for Research and
4 Engineering, for a major defense acquisition program under the
5 purview of that Under Secretary; or
6 (ii) upon the request of the milestone decision authority.

7 (7) Periodically assess and update the cost indexes used by the Department to
8 ensure that such indexes have a sound basis and meet the Department's needs for realistic
9 cost estimation.

10 (8) Annually review the cost and associated information required to be included,
11 by section 2432(e)(1) 4353(a) of this title, in the Selected Acquisition Reports required by
12 that section.

13 (c) [2334(h)] STAFF.—The Secretary of Defense shall ensure that the Director of Cost
14 Assessment and Program Evaluation has sufficient professional staff of military and civilian
15 personnel to enable the Director to carry out the duties and responsibilities of the Director under
16 this chapter.

17 §3222 [2334(b)]. Independent cost estimate required before approval

18 (a) [2324(b)(1)] REQUIREMENT.— A milestone decision authority may not approve
19 entering a milestone phase of a major defense acquisition program or major subprogram unless
20 an independent cost estimate has been conducted or approved by the Director of Cost
21 Assessment and Program Evaluation and considered by the milestone decision authority that—

Commented [CR259]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F, incl Note 3).

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1 (1) for the technology maturation and risk reduction phase, includes the
2 identification and sensitivity analysis of key cost drivers that may affect life-cycle costs
3 of the program or subprogram; and

4 (2) for the engineering and manufacturing development phase, or production and
5 deployment phase, includes a cost estimate of the full life-cycle cost of the program or
6 subprogram.

7 (b) [2324(b)(2)] REGULATIONS.—The regulations governing the content and submission
8 of independent cost estimates required by section 3221 of this title shall require that the
9 independent cost estimate of the full life-cycle cost of a program or subprogram include—

10 (1) all costs of development, procurement, military construction, operations and
11 support, and trained manpower to operate, maintain, and support the program or
12 subprogram upon full operational deployment, without regard to funding source or
13 management control; and

14 (2) an analysis to support decisionmaking that identifies and evaluates alternative
15 courses of action that may reduce cost and risk, and result in more affordable programs
16 and less costly systems.

17 **“§3223 [2334(c)]. Director: review of cost estimates, cost analyses, and records**

18 The Secretary of Defense shall ensure that the Director of Cost Assessment and Program
19 Evaluation—

20 (1) promptly receives the results of all cost estimates and cost analyses conducted
21 by the military departments and Defense Agencies, and all studies conducted by the
22 military departments and Defense Agencies in connection with such cost estimates and

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 cost analyses, for major defense acquisition programs and major subprograms of the
2 military departments and Defense Agencies; and

3 (2) has timely access to any records and data in the Department of Defense
4 (including the records and data of each military department and Defense Agency and
5 including classified and proprietary information) that the Director considers necessary to
6 review in order to carry out any duties under this chapter.

7 **“§3224 [2334(d)]. Director: participation, concurrence, and approval in cost estimation**

8 The Director of Cost Assessment and Program Evaluation may—

9 (1) participate in the discussion of any discrepancies between an independent cost
10 estimate and the cost estimate of a military department or Defense Agency for a major
11 defense acquisition program or major subprogram of the Department of Defense;

12 (2) comment on deficiencies in the methodology or execution of any cost estimate
13 or cost analysis developed by a military department or Defense Agency for a major
14 defense acquisition program or major subprogram;

15 (3) concur in the choice of a cost estimate within the baseline description or any
16 other cost estimate (including the discussion of risk for any such cost estimate) for use at
17 any event specified in section 3221(b)(6) of this title; and

18 (4) participate in the consideration of any decision to request authorization of a
19 multiyear procurement contract for a major defense acquisition program or major
20 subprogram.

21 **“§3225 [2334(e)]. Discussion of risk in cost estimates**

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 The Director of Cost Assessment and Program Evaluation, and the Secretary of the
2 military department concerned or the head of the Defense Agency concerned (as applicable),
3 shall each—

4 (1) issue guidance requiring a discussion of risk, the potential impacts of risk on
5 program costs, and approaches to mitigate risk in cost estimates for major defense
6 acquisition programs and major subprograms;

7 (2) ensure that cost estimates are developed, to the extent practicable, based on
8 historical actual cost information that is based on demonstrated contractor and
9 Government performance and that such estimates provide a high degree of confidence
10 that the program or subprogram can be completed without the need for significant
11 adjustment to program budgets; and

12 (3) include the information required in the guidance under paragraph (1)—

13 (A) in any decision documentation approving a cost estimate within the
14 baseline description or any other cost estimate for use at any event specified in in
15 section 3221(b)(6) of this title; and

16 (B) in the next Selected Acquisition Report pursuant to ~~section 2432~~
17 *sections 4351-4358* of this title in the case of a major defense acquisition program
18 or major subprogram, ~~or the next quarterly report pursuant to section 2445e of this~~
19 ~~title in the case of a major automated information system program.~~

20 “§3226 [2334(f)]. Estimates for program baseline and analyses and targets for contract
21 negotiation purposes

Commented [CR260]: 10 U.S.C. 2445 was repealed effective 9/30/2017 by sec 846 of the FY2017 NDAA, along with the rest of ch. 144A, relating to major automated information systems.

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1 (a) [2334(f)(1)] COST ESTIMATES DEVELOPED FOR SPECIFIED PURPOSES NOT TO BE USED
2 FOR CONTRACT NEGOTIATIONS OR OBLIGATION OF FUNDS.—The policies, procedures, and
3 guidance issued by the Director of Cost Assessment and Program Evaluation in accordance with
4 the requirements of section 3221 of this title shall provide that cost estimates developed for
5 baseline descriptions and other program purposes conducted pursuant to section 3221(b)(6) of
6 this title are not to be used for the purpose of contract negotiations or the obligation of funds.

7 (b) [2334(f)(2)] BASIS FOR COST ANALYSES AND TARGETS DEVELOPED FOR CONTRACT
8 NEGOTIATIONS AND OBLIGATION OF FUNDS.—The Under Secretary of Defense for ~~Acquisition,~~
9 ~~Technology, and Logistics~~ *Acquisition and Sustainment*, shall, in consultation with the Director
10 of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to
11 ensure that cost analyses and targets developed for the purpose of contract negotiations and the
12 obligation of funds are based on the Government's reasonable expectation of successful
13 contractor performance in accordance with the contractor's proposal and previous experience.

14 (c) [2334(f)(3)] PROGRAM MANAGER AND CONTRACTING OFFICER.—The ~~program~~
15 ~~manager~~ and contracting officer for each major defense acquisition program and major
16 subprogram shall ensure that cost analyses and targets developed for the purpose of contract
17 negotiations and the obligation of funds are carried out in accordance with the requirements of
18 subsection (a) and the policies, procedures, and guidance issued by the Under Secretary of
19 Defense for ~~Acquisition, Technology, and Logistics~~ *Acquisition and Sustainment* under
20 subsection (b).

21 (d) [2334(f)(4), (5)] AVAILABILITY OF EXCESS FUNDS.—

Commented [CR261]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR262]: "Program Manager" (upper case) changed to "program manager" (lower case).

Commented [CR263]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

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1 (1) [2334(f)(4)] Funds that are made available for a major defense acquisition
2 program or major subprogram in accordance with a cost estimate conducted pursuant to
3 section 3221(b)(6) of this title, but are excess to a cost analysis or target developed
4 pursuant to subsection (b), shall remain available for obligation in accordance with the
5 terms of applicable authorization and appropriations Acts.

6 (2) [2334(f)(5)] Funds described in paragraph (1)—

7 (A) may be used—

8 (i) to cover any increased program costs identified by a revised
9 cost analysis or target developed pursuant to subsection (b);

10 (ii) to acquire additional end items in accordance with the
11 requirements of section ~~2308~~ 3069 of this title; or

12 (iii) to cover the cost of risk reduction and process improvements;

13 and

14 (B) may be reprogrammed, in accordance with established procedures,
15 only if determined to be excess to program needs on the basis of a cost estimate
16 developed with the concurrence of the Director of Cost Assessment and Program
17 Evaluation.

18 **“§3227 [2334(g)]. Guidelines and collection method for acquisition cost data**

19 (a) DIRECTOR OF CAPE TO DEVELOP GUIDELINES AND COLLECTION METHOD.—The

20 Director of Cost Assessment and Program Evaluation shall, in consultation with the Under

21 Secretary of Defense for ~~Acquisition, Technology, and Logistics~~ **Acquisition and Sustainment,**

Commented [CR264]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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1 develop policies, procedures, guidance, and a collection method to ensure that quality acquisition
2 cost data are collected to facilitate cost estimation and comparison across acquisition programs.

3 (b) APPLICABILITY TO ACQUISITION PROGRAMS IN AMOUNT GREATER THAN SPECIFIED
4 THRESHOLD.—The program manager and contracting officer for each acquisition program in an
5 amount greater than \$100,000,000, in consultation with the cost estimating component of the
6 relevant military department or Defense Agency, shall ensure that cost data are collected in
7 accordance with the requirements of subsection (a).

8 (c) WAIVER AUTHORITY.—The requirement under subsection (a) may be waived only by
9 the Director of Cost Assessment and Program Evaluation.

10 (b) CONFORMING REPEAL.—Section 2334 of title 10, United States Code, is repealed.

11 SEC. 203. OTHER PROVISIONS RELATING TO PLANNING AND SOLICITATION
12 GENERALLY.

13 (a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by
14 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
15 (Public Law 115-232), is amended by inserting after chapter 222, as added by section 202, the
16 following new chapter:

17 “CHAPTER 223—OTHER PROVISIONS RELATING TO PLANNING
18 AND SOLICITATION GENERALLY

- Sec. 3241 [2305a; 41 USC 3309]. Design-build selection procedures.
3242 [2384a; 41 USC 3310]. Supplies: economic order quantities.
3243 [2319; 41 USC 3311]. Encouragement of new competitors Qualification requirement.
3244 [Sec. 875 of P. L. 114-328 (10 USC 2305 note)] Use of commercial or non-government standards in lieu of military specifications and standards.
3245 [Sec 888(a) of P.L. 114-328 (10 USC 2305 note)]. Requirement and review relating to use of brand names or brand-name or equivalent descriptions in solicitations.

Commented [CR265]: The original refers to (a) (which is (g)(1) in the original), as shown. However, it appears that the reference perhaps should be to (b) rather than (a). That is, does the waiver limitation in (c) apply to the requirement in (a) to develop procedures, etc. OR to the requirement in (b) that those procedures be followed for each acquisition program over a threshold? A waiver authority more typically applies to an exception from a particular program rather than to a requirement to develop generally applicable procedures. The language here follows current law, but please consider the above.

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3246 [Sec. 813 of P.L. 114-328 (10 USC 2305 note)] Use of lowest price technically acceptable source selection process.
3247 [2381]. Contracts: regulations for bids.
3248 [Sec. 824 of P.L. 113-291 (10 USC 2304 note)]. Matters relating to reverse auctions.
3249 [2318]. Advocates for competition.
3250 [Sec. 820 of P.L. 111-84 (10 USC 2304 note)]. Publication of notification of bundling of contracts of the Department of Defense Bundling of contracts: publication of notification before release of solicitation.
3251 [Sec. 807 of P.L. 115-91 (10 USC 2302 note)]. Process for enhanced supply chain scrutiny.
3252 [2339a]. Requirements for information relating to supply chain risk.
3253 [Sec. 890 of P.L. 110-181 (10 USC 2302 note)]. Prevention of export control violations..

Commented [CR266]: Heading revised from the NDAA section heading.

(b) SECTION 2305a OF TITLE 10.—

(1) IN GENERAL.—Chapter 223 of title 10, United States Code, as added by subsection (a), is amended by inserting after the table of sections the following:

“§3241. [2305a(a)-(e)]; 41 USC 3309] Design-build selection procedures

Commented [CR267]: 2305a has a subsection (f) that expired 9/30/2008 and is omitted as OBE.

(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under chapter 11 of title 40 is used or another acquisition procedure authorized by law is used, the head of an agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

Commented [CR268]: T41 has “sections 1101 to 1104” rather than “chapter 11”.

Commented [CR269]: T41 omits “is used” here, relying on “is used” on the next line, after “authorized by law”, to do double duty. T10 wording retained.

(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when—

Commented [CR270]: Organization of the text into a numbered list form is a change to the T10 original, for readability and for parallelism with T41.

- (1) the contracting officer anticipates that three or more offers will be received for such the contract;
(2) design work must be performed before an offeror can develop a price or cost proposal for such the contract;

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1 (3) the offeror will incur a substantial amount of expense in preparing the offer;
2 and
3 (4) the contracting officer has considered information such as the following:
4 (A) The extent to which the project requirements have been adequately
5 defined.
6 (B) The time constraints for delivery of the project.
7 (C) The capability and experience of potential contractors.
8 (D) The suitability of the project for use of the two-phase selection
9 procedures.
10 (E) The capability of the agency to manage the two-phase selection
11 process.
12 (F) Other criteria established by the agency.
13 (c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:
14 (1) DEVELOPMENT OF SCOPE OF WORK STATEMENT.—The agency develops, either
15 in-house or by contract, a scope of work statement for inclusion in the solicitation that
16 defines the project and provides prospective offerors with sufficient information
17 regarding the Government's requirements (which may include criteria and preliminary
18 design, budget parameters, and schedule or delivery requirements) to enable the offerors
19 to submit proposals ~~which~~ *that* meet the Government's needs. If the agency contracts for
20 development of the scope of work statement, the agency shall contract for architectural
21 and engineering services as defined by and in accordance with **chapter 11** of title 40.

Commented [CR271]: T41 has "sections 1101 to 1104".

[FINAL DRAFT]

DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (2) SOLICITATION OF PHASE-ONE PROPOSALS.—The contracting officer solicits
2 phase-one proposals that—

3 (A) include information on the offeror's—

- 4 (i) technical approach; and
- 5 (ii) technical qualifications; and

6 (B) do not include—

- 7 (i) detailed design information; or
- 8 (ii) cost or price information.

9 (3) EVALUATION FACTORS.

10 (A) EVALUATION FACTORS TO BE USED.—The evaluation factors to be used
11 in evaluating phase-one proposals are stated in the solicitation and include—

- 12 (i) specialized experience and technical competence;
- 13 (ii) capability to perform;
- 14 (iii) past performance of the offeror's team (including the architect-
15 engineer and construction members of the team); and
- 16 (iv) other appropriate factors, except that cost-related or price-
17 related evaluation factors are not permitted.

18 (B) RELATIVE IMPORTANCE OF EVALUATION FACTORS.—Each solicitation
19 establishes the relative importance assigned to the evaluation factors and
20 subfactors that must be considered in the evaluation of phase-one proposals.

Commented [CR272]: Paragraph (3) of the T10 original is divided into subparagraphs and into list format for readability.

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1 (C) EVALUATION OF PROPOSALS.—The agency evaluates phase-one
2 proposals on the basis of the phase-one evaluation factors set forth in the
3 solicitation.

4 (4) SELECTION BY CONTRACTING OFFICER.—

5 (A) NUMBER OF OFFERORS SELECTED AND WHAT IS TO BE EVALUATED.—
6 The contracting officer selects as the most highly qualified the number of offerors
7 specified in the solicitation to provide the property or services under the contract
8 and requests the selected offerors to submit phase-two competitive proposals that
9 include technical proposals and cost or price information. Each solicitation
10 establishes with respect to phase two—

11 (i) the technical submission for the proposal, including design
12 concepts or proposed solutions to requirements addressed within the scope
13 of work, or both; and

14 (ii) the evaluation factors and subfactors, including cost or price,
15 that must be considered in the evaluations of proposals in accordance with
16 subsections (b) to (d) of section 3206 of this title.

17 (B) SEPARATE EVALUATIONS.— The contracting officer separately
18 evaluates the submissions described in clauses (i) and (ii) of subparagraph (A).

19 (5) AWARDED OF CONTRACT.—The agency awards the contract in accordance
20 with section ~~2305(b)(4)~~ **3303** of this title.

21 (d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO
22 REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures

Commented [CR273]: T10 original had "(or both)" (in parentheses). Changed to ", or both" for parallelism w T41.

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1 described in subsection (c) shall state the maximum number of offerors that are to be selected to
2 submit competitive proposals pursuant to subsection (c)(4). If the contract value exceeds
3 \$4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless—

4 (1) the solicitation is issued pursuant to an indefinite delivery-indefinite quantity
5 contract for design-build construction; or

6 (2)(A) the head of the contracting activity, delegable to a level no lower than the
7 senior contracting official within the contracting activity, approves the contracting
8 officer's justification with respect to an individual solicitation that a maximum number
9 greater than 5 is in the interest of the Federal Government; and

10 (B) the contracting officer provides written documentation of how a maximum
11 number greater than 5 is consistent with the purposes and objectives of the two-phase
12 selection procedures.

13 (e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition
14 Regulation shall include guidance—

15 (1) regarding the factors that may be considered in determining whether the two-
16 phase contracting procedures authorized by subsection (a) are appropriate for use in
17 individual contracting situations;

18 (2) regarding the factors that may be used in selecting contractors; and

19 (3) providing for a uniform approach to be used Government-wide. ⁷

20 (2) CONFORMING REPEAL.—Section 2305a of title 10, United States Code, is
21 repealed.

22 (c) SECTION 2384a OF TITLE 10.—

Commented [CR274]: The T10 original has a subsection (f) that terminated on 9/30/2008 (see (f)(4)) and is omitted as OBE.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(1) IN GENERAL.—Chapter 223 of such title is further amended by adding after section 3241 as added by subsection (b), the following new section:

“§ 3242 [2384a; 41 USC 3310]. Supplies: economic order quantities

(a) [2384a(a); 41 USC 3310(a)] FACTORS AFFECTING QUANTITY TO ORDER.—

(1) An agency referred to in section 2303(a) 3063 of this title shall procure supplies in such quantity as—

(A) will result in the total cost and unit cost most advantageous to the United States, where practicable; and

(B) does not exceed the quantity reasonably expected to be required by the agency.

(2) The Secretary of Defense shall take paragraph (1) into account in approving rates of obligation of appropriations under section 2204 of this title.

(b) [2384a(b); 41 USC 3310(b)] OFFEROR'S OPINION OF QUANTITY.—Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which that would be more economically advantageous to the United States. Each such recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.”

(2) CONFORMING REPEAL.—Section 2384a of title 10, United States Code, is repealed.

(d) SECTION 2319 OF TITLE 10.—

Commented [CR275]: The section heading for the T41 section is “Quantities to order”. TO heading retained.

Commented [CR276]: Most references to the list of agencies use “named in” rather than “referred to in”. This is the only use in title 10 of “agency referred to in”. Could this be changed to conform to the standard usage?

Commented [CR277]: T41 does not have a counterpart to para (2).

Commented [CR278]: T41 does not have “the” here.

Commented [CR279]: In T41, “or quantities” is omitted. There is a codifier’s note as follows: “In subsection (b), the words “or quantities” are omitted because of 1:1.” 1 U.S.C. 1 provides “ In determining the meaning of any Act of Congress, unless the context indicates otherwise- words importing the singular include and apply to several persons, parties, or things; ...”. Could “or quantities” be omitted here in light of the 1 USC 1 definition and for parallelism with T41?

Commented [CR280]: T41 does not have “such”.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(1) IN GENERAL.—Chapter 223 of such title is further amended by adding after section 3242 as added by subsection (c), the following new section:

“§ 3243. [2319; 41 USC 3311]. Encouragement of new competitors Qualification requirement

(a) [2319(a); 41 USC 3311(a)] In this section, the term "qualification requirement" means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) [2319(b); 41 USC 3311(b)] ACTIONS BEFORE ENFORCING QUALIFICATION REQUIREMENT.—Except as provided in subsection (c), the head of the agency shall, before establishing a qualification requirement, shall—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

(4) ensure that a potential offeror is provided, upon request and on a reimbursable basis, a prompt opportunity to demonstrate its ability to meet the standards specified for qualification using—

Commented [CR281]: In T41, the header is "Qualification requirement". T10 header changed to conform to T41 in this case; the T41 header seems more on point here, since the section is indeed about qualification requirements.

Commented [CR282]: T41 has "an", which seems preferable for the first reference.

Commented [CR283]: T41 moved "shall" as shown, to appear just before the dash and as the lead-in to the verbs at the beginning of each paragraph. Seems better.

Commented [CR284]: T41 has "with those" rather than "such".

Commented [CR285]: T41 has "cost" [singular] rather than "costs".

Commented [CR286]: T41 has "on request" rather than "upon request"; T41 has different language as to reimbursable basis or its own expense

Commented [CR287]: List format here adopted from T41.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(A) qualified personnel and facilities—

(i) of the agency concerned;

(ii) of another agency obtained through interagency agreement; or

(iii) under contract; or

(B) other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of paragraph (4), provide to the extent possible that such services be provided by a contractor who that—

(A) is not expected to benefit from an absence of additional qualified sources; and

(B) who shall be required in such the contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

(c) [2319(c); 41 USC 3311(c)] APPLICABILITY, WAIVER AUTHORITY, AND REFERRAL OF

OFFERS.—

(1) APPLICABILITY.—Subsection (b) of this section does not apply with respect to a qualification requirement established by statute or administrative action before October 19, 1984, unless such requirement is a qualified products list.

(2) WAIVER AUTHORITY.—

Commented [CR288]: T41 has "is" rather than "shall be".

Commented [CR289]: T41 does not have "as to".

Commented [CR290]: T41 has "if" rather than "in the event" and omits "qualification is".

Commented [CR291]: T41 has "about" after "specific information"; T10 does not.

Commented [CR292]: To adhere to standard title 10 usage, "of this section" is deleted.

Commented [CR293]: T41 does not have "or administrative action".

Commented [CR294]: T41 does not have the "unless" clause.

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(A) [2319(c)(2)(A) 1st sent; 41 USC 3311(c)(2)(A)] SUBMISSION OF DETERMINATION OF UNREASONABLENESS.—Except as provided in subparagraph (C), if it is unreasonable to specify the standards for qualification which that a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement.

(B) [2319(c)(2)(A) 2nd sent; 41 USC 3311(c)(2)(B)] AUTHORITY TO GRANT WAIVER.—After considering any comments of the advocate for competition reviewing such determination, the head of the purchasing office may waive the requirements of paragraphs (2) through (6) of subsection (b) for up to two years with respect to the item subject to the qualification requirement.

(C) [2319(c)(2)(B); 41 USC 3311(c)(2)(C)] INAPPLICABILITY TO QUALIFIED PRODUCTS LIST.—The waiver authority provided in this paragraph does not apply with respect to a qualified products list.

(3) SUBMISSION AND CONSIDERATION OF OFFER NOT TO BE DENIED.—

(A) Subject to subparagraph (B), a potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror—

(i) is not on a qualified bidders list, qualified manufacturers list, or qualified products list; or

(ii) has not been identified as meeting a qualification requirement established after October 19, 1984.

Commented [CR295]: T41 has "the". T10 not changed.

Commented [CR296]: T41 refers to paragraphs (2)-(5), not (2)-(6).

Commented [CR297]: "Nonapplicability" in current T10 heading here is changed to "Inapplicability" for consistency with other headings.

Commented [CR298]: T41 does not have "The waiver" but begins with "Waiver";

Commented [CR299]: T41 has "under" rather than "provided in".

Commented [CR300]: T41 does not have the following elements in the T10 paragraph here: 1. clause (i) -- "is not on a ..." 2. "established after Oct 19, 1984" 3. the parenthetical beginning "(or, in the case of...)".

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1 (B) Subparagraph (A) applies to the submission and consideration of an
2 offer of a potential offeror if the potential offeror can demonstrate to the
3 satisfaction of the contracting officer (or, in the case of a contract for the
4 procurement of an aviation critical safety item or ship critical safety item, the
5 head of the design control activity for such item) that the potential offeror or its
6 product meets the standards established for qualification or can meet such
7 standards before the date specified for award of the contract.

8 (4) REFERRAL TO SMALL BUSINESS ADMINISTRATION NOT REQUIRED.—Nothing
9 contained in this subsection requires the referral of an offer to the Small Business
10 Administration pursuant to section 8(b)(7) of the Small Business Act (15 U.S.C.
11 637(b)(7)) if the basis for the referral is a challenge by the offeror to either the validity of
12 the qualification requirement or the offeror's compliance with such requirement.

13 (5) DELAY OF PROCUREMENT NOT REQUIRED.—The head of an agency need not
14 delay a proposed procurement in order to comply with subsection (b) or in order to
15 provide a potential offeror with an opportunity to demonstrate its ability to meet the
16 standards specified for qualification.

17 (6) [2319(c)(6); no T41 sec.] REQUIREMENTS BEFORE ENFORCEMENT OF CERTAIN
18 LISTS.—The requirements of subsection (b) also apply before enforcement of any
19 qualified products list, qualified manufacturers list, or qualified bidders list.

20 (d) [2319(d); 41 USC 3311(d)] FEWER THAN 2 ACTUAL MANUFACTURERS.—

21 (1) [2319(d)(1); 41 USC 3311(d)(1)] SOLICITATION AND TESTING OF ADDITIONAL
22 SOURCES OR PRODUCTS.—If the number of qualified sources or qualified products

Commented [CR301]: T41 has "This subsection does not require".

Commented [CR302]: T41 does not have "in order" before "to", here and after "subsection (b) or".

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1 available to compete actively for an anticipated future requirement is fewer than two
2 actual manufacturers or the products of two actual manufacturers, respectively, the head
3 of the agency concerned shall—

4 (A) periodically publish notice in the Commerce Business Daily soliciting
5 additional sources or products to seek qualification, unless the contracting officer
6 determines that such publication would compromise national security; and

7 (B) subject to paragraph (2), bear the cost of conducting the specified
8 testing and evaluation (excluding the costs associated with producing the item or
9 establishing the production, quality control, or other system to be tested and
10 evaluated) for a small business concern or a product manufactured by a small
11 business concern which that has met the standards specified for qualification and
12 which that could reasonably be expected to compete for a contract for that
13 requirement.

14 (2) [2319(d)(1)(B) 2nd half; 41 USC 3311(d)(2)] CERTIFICATION WHEN AGENCY
15 MAY BEAR COST.—The head of the agency concerned may bear the cost under
16 paragraph (1)(B) only if the head of the agency determines that such the additional
17 qualified sources or products are likely to result in cost savings from increased
18 competition for future requirements sufficient to amortize the costs incurred by the
19 agency within a reasonable period of time considering the duration and dollar value of
20 anticipated future requirements.

21 (3) [2319(d)(2); 41 USC 3311(d)(3)] CERTIFICATION REQUIRED.—The head of an
22 agency shall require a prospective contractor requesting the United States to bear testing

Commented [CR303]: T41 has "publish notice periodically" rather than "periodically publish notice" as in T10 here.

Commented [CR304]: T41 does not have "in the Commerce Business Daily". There is a codifier's note that in the codification of title 41 those words were "omitted as obsolete". The phrase is proposed to be omitted here for consistency with T41 and to avoid a reference to a publication that no longer exists. If it is preferable to update, rather than delete, the reference to where the notice should be published, it could be changed to "FedBizOpps". ("Effective January 1, 2002, the FedBizOpps (FBO) database has replaced the Commerce Business Daily (CBD).", from http://cbd-net.com/)

Commented [CR305]: T41 has "offset" rather than "amortize" and has the "with a reasonable period" clause as a parenthetical after "sufficient to offset". T10 wording and structure retained here.

Commented [CR306]: T41 has "the agency" rather than "an agency".

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and evaluation costs under paragraph (1)(B) to certify as to its status as a small business concern under section 3 of the Small Business Act (15 U.S.C. 632).

(e) [2319(e); 41 USC 3311(e)] EXAMINATION AND REVALIDATION OF QUALIFICATION

REQUIREMENT.—Within seven years after the establishment of a qualification requirement under subsection (b) or within seven years following an agency's enforcement of a qualified products list, qualified manufacturers list, or qualified bidders list, any such qualification requirement shall be examined and revalidated in accordance with the requirements of subsection (b). The preceding sentence does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) [2319(f); 41 USC 3311(f)] WHEN ENFORCEMENT OF QUALIFICATION REQUIREMENT

NOT ALLOWED.—Except in an emergency as determined by the head of the agency, whenever the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not thereafter enforce that qualification requirement unless the agency complies with the requirements of subsection (b).

(g) [2319(g); no T41 sec.] DEFINITIONS.—In this section:

(1) The term "aviation critical safety item" means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause a catastrophic or critical failure resulting in the loss of or serious damage to the aircraft or weapon system, an unacceptable risk of personal injury or loss of life, or an uncommanded engine shutdown that jeopardizes safety.

Commented [CR307]: T41 does not have "as to" before "its status".

Commented [CR308]: The first sentence in (e) is different from T41 in a number of respects.

Commented [CR309]: T41 has "This subsection". Meaning is the same.

Commented [CR310]: T41 has "after" rather than "whenever".

Commented [CR311]: T41 does not have "thereafter".

Commented [CR312]: T41 has "the requirement" rather than "that qualification requirement".

Commented [CR313]: These definitions are for terms that appear in the T10 section but not the T41 section.

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1 (2) The term "ship critical safety item" means any ship part, assembly, or support
2 equipment containing a characteristic the failure, malfunction, or absence of which could
3 cause a catastrophic or critical failure resulting in loss of or serious damage to the ship or
4 unacceptable risk of personal injury or loss of life.

5 (3) The term "design control activity", with respect to an aviation critical safety
6 item or ship critical safety item, means the systems command of a military department
7 that is specifically responsible for ensuring the airworthiness of an aviation system or
8 equipment, or the seaworthiness of a ship or ship equipment, in which such item is to be
9 used."

10 (2) **CONFORMING REPEAL.**—Section 2319 of title 10, United States Code, is
11 repealed.

12 (3) **CROSS-REFERENCE AMENDMENT.**—Section 823(c)(3)(C) of the National
13 Aeronautics and Space Administration Transition Authorization Act of 2017 (Public Law
14 115-10; 51 U.S.C. preceding 30301 note) is amended by striking "section 2319" and
15 inserting "section 3243".

16 (e) **CODIFICATION OF FY2017 NDAA SECTION.**—

17 (1) **CODIFICATION.**—Chapter 223 of such title is further amended by adding after
18 section 3243, as added by subsection (d), the following new section:

19 **"§ 3244 [Sec. 875 of P. L. 114–328 (10 USC 2305 note)] Use of commercial or non-**
20 **government standards in lieu of military specifications and standards**

21 (a) **IN GENERAL.**—The Secretary of Defense shall ensure that the Department of Defense
22 uses commercial or non-Government specifications and standards in lieu of military

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1 specifications and standards, including for procuring new systems, major modifications,
2 upgrades to current systems, non-developmental and commercial items, and programs in all
3 acquisition categories, unless no practical alternative exists to meet user needs. If it is not
4 practicable to use a commercial or non-Government standard, a Government-unique
5 specification may be used.

(b) LIMITED USE OF MILITARY SPECIFICATIONS.—

(1) IN GENERAL.—Military specifications shall be used in procurements only to
define an exact design solution when there is no acceptable commercial or non-
Government standard or when the use of a commercial or non-Government standard is
not cost effective.

(2) WAIVER.—A waiver for the use of military specifications in accordance with
paragraph (1) shall be approved by either—

- (A) the appropriate milestone decision authority;
- (B) the appropriate service acquisition executive; or
- (C) the Under Secretary of Defense for Acquisition, Technology, and

Logistics Acquisition and Sustainment.

(c) REVISION TO DFARS.—Not later than 180 days after the date of the enactment of this

Act [Dec. 23, 2016], the The Under Secretary of Defense for Acquisition, Technology, and
Logistics Acquisition and Sustainment shall revise ensure that the Defense Federal Acquisition
Regulation Supplement to encourage encourages contractors to propose commercial or non-
Government standards and industry-wide practices that meet the intent of the military
specifications and standards.

Commented [CR314]: This reference to "commercial items" is not amended in P.L. 115-232, sec. 836. Should it be amended?

Commented [CR315]: Would it be more accurate if "shall be" were replaced with "may be granted, but only if"? As it is, there is implicit authority for a waiver, but the waiver authority is not stated expressly. And the approval requirement appears to impose a duty on the stated officials to approve a waiver, whereas the intent is probably to create a limitation (shall vs. only if).

Commented [CR316]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR317]: NLT clause to be omitted as OBE.

Commented [CR318]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

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(d) DEVELOPMENT OF NON-GOVERNMENT STANDARDS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment shall form partnerships with appropriate industry associations to develop commercial or non-Government standards for replacement of military specifications and standards where practicable.

Commented [CR319]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

(e) EDUCATION, TRAINING, AND GUIDANCE.—The Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment shall ensure that training, education, and guidance programs throughout the Department of Defense are revised to incorporate specifications and standards reform.

Commented [CR320]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

(f) LICENSES.—The Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment

Commented [CR321]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

(1) shall negotiate licenses for standards to be used across the Department of Defense; and

(2) shall maintain an inventory of such licenses that is accessible to other Department of Defense organizations."

(2) CONFORMING REPEAL.—Section 875 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 2305 note) is repealed.

(f) CODIFICATION OF FY2017 NDAA SECTION.—

(1) Codification.—Chapter 223 of such title is further amended by adding after section 3244, as added by subsection (e), the following new section:

§ 3245 [Sec 888(a) of P.L. 114-328 (10 USC 2305 note)]. Requirement and review relating to use of brand names or brand-name or equivalent descriptions in solicitations

Commented [CR322]: Original has an (a) and a (b). This codifies (a). (b) is IT-specific and will go in ch. 345, the ch. on Acquisition of Information Technology.

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1 The Secretary of Defense shall ensure that competition in Department of Defense
2 contracts is not limited through the use of specifying brand names or brand-name or equivalent
3 descriptions, or proprietary specifications or standards, in solicitations unless a justification for
4 such specification is provided and approved in accordance with section 3204(e) of this title."

5 (2) CONFORMING REPEAL.—Section 888(a) of the National Defense
6 Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 2305 note) is
7 repealed.

8 (g) CODIFICATION OF FY2017 NDAA SECTION.—

9 (1) Codification.—Chapter 223 of such title is further amended by adding after
10 section 3245, as added by subsection (f), the following new section:

11 "§ 3246 [Sec. 813 of P.L. 114-328 (10 USC 2305 note)] Use of lowest price technically
12 acceptable source selection process

13 (a) STATEMENT OF POLICY.—It shall be the policy of the Department of Defense to avoid
14 using lowest price technically acceptable source selection criteria in circumstances that would
15 deny the Department the benefits of cost and technical tradeoffs in the source selection process.

16 (b) REVISION OF REQUIREMENT IN DEFENSE FEDERAL ACQUISITION REGULATION

17 SUPPLEMENT.— ~~Not later than 120 days after the date of the enactment of this Act [Dec. 23,~~

18 ~~2016], the~~ The Secretary of Defense shall ~~revise~~ include provisions in the Defense Federal

19 Acquisition Regulation Supplement to require that, for solicitations issued on or after the date

20 that is 120 days after ~~the date of the enactment of this Act~~ December 23, 2016, lowest price

21 technically acceptable source selection criteria are used only in ~~situations~~ a situation in which

22 each of the following applies:—

Commented [CR323]: NLT clause to be omitted as OBE.

Commented [CR324]: FOR DoD: Please provide the actual date that is applicable here.

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- 1 (1) ~~the~~ *The* Department of Defense is able to comprehensively and clearly
2 describe the minimum requirements expressed in terms of performance objectives,
3 measures, and standards that will be used to determine acceptability of offers;.
- 4 (2) ~~the~~ *The* Department of Defense would realize no, or minimal, value from a
5 contract proposal exceeding the minimum technical or performance requirements set
6 forth in the request for proposal;.
- 7 (3) ~~the~~ *The* proposed technical approaches will require no, or minimal, subjective
8 judgment by the source selection authority as to the desirability of one offeror's proposal
9 versus a competing proposal;.
- 10 (4) ~~the~~ *The* source selection authority has a high degree of confidence that a
11 review of technical proposals of offerors other than the lowest bidder would not result in
12 the identification of factors that could provide value or benefit to the Department;.
- 13 (5) ~~the~~ *The* contracting officer has included a justification for the use of a lowest
14 price technically acceptable evaluation methodology in the contract file;.
- 15 (6) ~~the~~ *The* Department of Defense has determined that the lowest price reflects
16 full life-cycle costs, including for operations and support;.
- 17 (7) ~~the~~ *The* Department of Defense would realize no, or minimal, additional
18 innovation or future technological advantage by using a different methodology; ~~and~~.
- 19 (8) ~~with~~ *With* respect to a contract for procurement of goods, the goods procured
20 are predominantly expendable in nature, nontechnical, or have a short life expectancy or
21 short shelf life.

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1 (c) AVOIDANCE OF USE OF LOWEST PRICE TECHNICALLY ACCEPTABLE SOURCE SELECTION
2 CRITERIA IN CERTAIN PROCUREMENTS.—To the maximum extent practicable, the use of lowest
3 price technically acceptable source selection criteria shall be avoided in the case of a
4 procurement that is predominately for the acquisition of—

5 (1) information technology services, cybersecurity services, systems engineering
6 and technical assistance services, advanced electronic testing, audit or audit readiness
7 services, or other knowledge-based professional services;

8 (2) personal protective equipment; or

9 (3) knowledge-based training or logistics services in contingency operations or
10 other operations outside the United States, including in Afghanistan or Iraq.

11 (d) REPORTING.—Not later than ~~December 1, 2017, and annually thereafter for three~~
12 ~~years~~ **December 1 of each year through 2020**, the Comptroller General of the United States shall
13 submit to the congressional defense committees a report on the number of instances in which
14 lowest price technically acceptable source selection criteria is used for a contract exceeding
15 \$5,000,000, including an explanation of how the situations listed in subsection (b) were
16 considered in making a determination to use lowest price technically acceptable source selection
17 criteria.?"

18 (2) CONFORMING REPEAL.—Section 813 of the National Defense Authorization
19 Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 2305 note) is repealed.

20 (h) TRANSFER OF SECTIONS 2381 AND 2318.—

21 (1) TRANSFER.—Sections 2381 and 2318 of title 10, United States Code, are
22 transferred to chapter 223 of such title, as added by this section, added (in that order)

Commented [CR325]: Sec. 2318 was amended by sec. 811(d) of the FY2019 NDAA.

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1 after section 3246, as added by subsection (g), and **redesignated** as sections 3247 and
2 3249, respectively.

3 **(2) CROSS-REFERENCE AMENDMENT.**—Section 15(k)(17)(B) of the Small Business Act
4 (15 U.S.C. 644(k)(17)(B)) is amended by striking “section 2318” and inserting “section 3249”.

5 (i) CODIFICATION OF FY2015 NDAA SECTION.—

6 (1) **CODIFICATION.**—Such chapter is further amended by inserting after section
7 3247, as transferred and redesignated by subsection (h), the following new section:

8 “§ 3248 [Sec. 824 of P.L. 113-291 (10 USC 2304 note)]. **Matters relating to reverse auctions**

9 (a) IN GENERAL.—~~Not later than 180 days after the date of the enactment of this Act~~

10 ~~[Dec. 19, 2014], the~~ *The* Secretary of Defense shall ~~clarify~~ **ensure that** regulations on reverse
11 auctions, ~~as necessary, to ensure~~ **provide** that—

12 (1) single bid contracts may not be entered into resulting from reverse auctions
13 unless compliant with existing Federal regulations and Department of Defense
14 memoranda providing guidance on single bid offers;

15 (2) all reverse auctions provide offerors with the ability to submit revised bids
16 throughout the course of the auction;

17 (3) if a reverse auction is conducted by a third party—

18 (A) inherently governmental functions are not performed by private
19 contractors, including by the third party; and

20 (B) past performance or financial responsibility information created by the
21 third party is made available to offerors; and

Commented [CR326]: NLT clause to be omitted as OBE

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(4) reverse auctions resulting in design-build military construction contracts specifically authorized in law are prohibited.

(b) TRAINING.—~~Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], the~~ **The** President of the Defense Acquisition University shall establish comprehensive training available for contract specialists in the Department of Defense on the use of reverse auctions.

Commented [CR327]: NLT clause to be omitted as OBE

(c) DESIGN-BUILD DEFINED.—In this section, the term 'design-build' means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary of Defense.”

(2) CONFORMING REPEAL.—Section 824 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 10 U.S.C. 2304 note) is repealed.

(j) CODIFICATION OF FY2010 NDAA SECTION.—

(1) CODIFICATION.—Chapter 223 of title 10, United States Code, is further amended by adding after section 3249, as transferred and redesignated by subsection (h), the following new section:

“§ 3250 [Sec. 820 of P.L. 111-84 (10 USC 2304 note)]. **Bundling of contracts: publication of notification before release of solicitation**”

Commented [CR328]: Heading here is revised from the NDAA section heading.

(a) REQUIREMENT TO PUBLISH NOTIFICATION FOR BUNDLING.—A contracting officer of the Department of Defense carrying out a covered acquisition—

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1 (1) shall publish a notification consistent with the requirements of paragraph
2 (c)(2) of subpart 10.001 of the Federal Acquisition Regulation on the website known as
3 FedBizOpps.gov (or any successor site) at least 30 days ~~prior to~~ *before* the release of a
4 solicitation for such acquisition; and

5 (2) if the agency has determined that measurably substantial benefits are expected
6 to be derived as a result of bundling such acquisition, shall include in the notification a
7 brief description of the benefits.

8 (b) COVERED ACQUISITION DEFINED.—In this section, the term 'covered acquisition'
9 means an acquisition that is—

10 (1) funded entirely using funds of the Department of Defense; and

11 (2) covered by subpart 7.107 of the Federal Acquisition Regulation (relating to
12 acquisitions involving bundling).

13 (c) CONSTRUCTION.—

14 (1) NOTIFICATION.—Nothing in this section shall be construed to alter the
15 responsibility of a contracting officer to provide the notification referred to in subsection
16 (a) with respect to a covered acquisition, or otherwise provide notification, to any party
17 concerning such acquisition under any other requirement of law or regulation.

18 (2) DISCLOSURE.—Nothing in this section shall be construed to require the public
19 availability of information that is exempt from public disclosure under section 552(b) of
20 title 5 or is otherwise restricted from public disclosure by law or Executive order.

21 (3) ISSUANCE OF SOLICITATION.—Nothing in this section shall be construed to
22 require a contracting officer to delay the issuance of a solicitation in order to meet the

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1 requirements of subsection (a) if the expedited issuance of such solicitation is otherwise
2 authorized under any other requirement of law or regulation.”

3 (2) CONFORMING REPEAL.— Section 820 of the National Defense Authorization
4 Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2304 note) is repealed.

5 (k) CODIFICATION OF FY2018 NDAA SECTION.—

6 (1) CODIFICATION.—Chapter 223 of title 10, United States Code, is further
7 amended by adding after section 3250, as added by subsection (j), the following new
8 section:

9 “§ 3251 [Sec. 807 of P.L. 115-91 (10 USC 2302 note)]. Process for enhanced supply chain
10 scrutiny

11 (a) PROCESS.— ~~Not later than 90 days after the date of the enactment of this Act [Dec. 12,~~
12 ~~2017], the~~ *The* Secretary of Defense shall establish a process for enhancing scrutiny of
13 acquisition decisions in order to improve the integration of supply chain risk management into
14 the overall acquisition decision cycle.

15 (b) ELEMENTS.—The process under subsection (a) shall include the following elements:

16 (1) Designation of a senior official responsible for overseeing the development
17 and implementation of the process.

18 (2) Development or integration of tools to support commercial due-diligence,
19 business intelligence, or otherwise analyze and monitor commercial activity to
20 understand business relationships with entities determined to be threats to the United
21 States.

Commented [CR329]: NLT clause to be omitted as OBE.

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(3) Development of risk profiles of products or services based on commercial due-diligence tools and data services.

(4) Development of education and training curricula for the acquisition workforce that supports the process.

(5) Integration, as needed, with intelligence sources to develop threat profiles of entities determined to be threats to the United States.

(6) Periodic review and assessment of software products and services on computer networks of the Department of Defense to remove prohibited products or services.

(7) Synchronization of the use of current authorities for making supply chain decisions, including section ~~806 of Public Law 111-383 (10 U.S.C. 2304 note) 3252~~ of *this title* or improved use of suspension and debarment officials.

(8) Coordination with interagency, industrial, and international partners, as appropriate, to share information, develop Government-wide strategies for dealing with significant entities determined to be significant threats to the United States, and effectively use authorities in other departments and agencies to provide consistent, Government-wide approaches to supply chain threats.

(9) Other matters as the Secretary considers necessary.”

~~(c) NOTIFICATION. — Not later than 90 days after establishing the process required by subsection (a), the Secretary shall provide a written notification to the Committees on Armed Services of the Senate and House of Representatives that the process has been established. The notification also shall include the following:~~

Commented [CR330]: Sec 806 of PL 111-383 was codified as 10 USC 2399a by the FY19 NDAA. Sec 2399a is transferred to 3252 in the next amendment below.

Commented [CR331]: Proposed to be omitted as OBE. This notification was due 90 days after the process required by (a) was established, which was required to be done NLT 90 days after Dec. 12, 2017.

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~~(1) Identification of the official designated under subsection (b)(1).~~

~~(2) Identification of tools and services currently available to the Department of Defense under subsection (b)(2).~~

~~(3) Assessment of additional tools and services available under subsection (b)(2) that the Department of Defense should evaluate.~~

~~(4) Identification of, or recommendations for, any statutory changes needed to improve the effectiveness of the process.~~

~~(5) Projected resource needs for implementing any recommendations made by the Secretary."~~

(2) **CONFORMING REPEAL.**—Section 807 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2302 note) is repealed.

(l) **TRANSFER OF SECTION 2339a.**—Section 2339a of such title is transferred to chapter 223 of such title, **added** after section 3251, as added by subsection (k), **redesignated** as section 3252, and **amended**—

(1) in subsection (b)(3)(A), by striking “section 2304(f)(3)” and inserting “section “3204(e)(2)”;

(2) in subsection (e)(2)(A), by striking “section 2319” and inserting “section “3253”;

(3) in subsection (e)(3)—

(A) in subparagraph (A), by striking “section 2305(a)(1)(C)(ii)” and “section 2305(a)(2)(A)” and inserting “section “3206(a)(3)(B)” and “section “3206(b)(1)”, respectively; and

Commented [CR332]: Sec. 2339a was enacted by sec. 881(a) of the FY2019 NDAA.

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1 (B) in subparagraph (B), by striking “section 2304c(d)(3)” and inserting
2 “section “3406(d)(3)”.

3 (m) CODIFICATION OF FY2008 NDAA SECTION.—

4 (1) CODIFICATION.—Chapter 223 of such title is further amended by adding after
5 section 3252, as transferred and redesignated by subsection (l), the following new
6 section:

7 “§ 3253 [Sec. 890 of P.L. 110-181 (10 USC 2302 note)]. Prevention of export control
8 violations

9 (a) PREVENTION OF EXPORT CONTROL VIOLATIONS.—Not later than 180 days after the
10 date of the enactment of this Act [Jan. 28, 2008], the The Secretary of Defense shall prescribe
11 regulations requiring any contractor under a contract with the Department of Defense to provide
12 goods or technology that is subject to export controls under the Arms Export Control Act (22
13 U.S.C. 2751 et seq.) or the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as
14 continued in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 et
15 seq.)) to comply with those Acts and applicable regulations with respect to such goods and
16 technology, including the International Traffic in Arms Regulations and the Export
17 Administration Regulations. Regulations prescribed under this subsection shall include a contract
18 clause enforcing such requirement.

19 (b) TRAINING ON EXPORT CONTROLS.—The Secretary of Defense shall ensure that any
20 contractor under a contract with the Department of Defense to provide goods or technology that
21 is subject to export controls under the Arms Export Control Act or the Export Administration
22 Act of 1979 (as continued in effect under the International Emergency Economic Powers Act) is

Commented [CR333]: Would a different chapter be a better fit for this section?

Commented [CR334]: NLT clause to be omitted as OBE

Commented [CR335]: US Code citations inserted in three instances.

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1 made aware of any relevant resources made available by the Department of State and the
2 Department of Commerce to assist in compliance with the requirement established by subsection
3 (a) and the need for a corporate compliance plan and periodic internal audits of corporate
4 performance under such plan.

5 (c) DEFINITIONS.—In this section:

6 (1) EXPORT ADMINISTRATION REGULATIONS.—The term 'Export Administration
7 Regulations' means those regulations contained in parts 730 through 774 of title 15, Code
8 of Federal Regulations (or successor regulations).

9 (2) INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.—The term 'International
10 Traffic in Arms Regulations' means those regulations contained in parts 120 through 130
11 of title 22, Code of Federal Regulations (or successor regulations)."

12 (2) CONFORMING REPEAL.—Section 890 of the National Defense Authorization
13 Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2302 note) is repealed.

14 **SEC. 204. PLANNING AND SOLICITATION RELATING TO PARTICULAR ITEMS**
15 **OR SERVICES.**

16 (a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
17 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
18 (Public Law 115-232), is amended by inserting after chapter 223, as added by section 203, the
19 following new chapter:

20 **“CHAPTER 225— PLANNING AND SOLICITATION RELATING TO**
21 **PARTICULAR ITEMS OR SERVICES**

“Sec.

Commented [CR336]: In the original, this was subsection (d). The original subsection (c) was a requirement to submit a report NLT 180 days after Jan. 28, 2008, and is omitted as OBE.

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- 3271 [Sec 802(a)-(c) of FY04 NDAA, P L 108–136 (10 USC 2302 note)] Procurement of aviation critical safety items and related services: quality control.
- 3272 [Sec 130(a)-(c) of FY07 NDAA, P L 109–364 (10 USC 2302 note)] Procurement of ship critical safety items and related services: quality control.
- 3273 [Sec 142 of FY18 NDAA, P.L. 115-91 (10 USC 2302 note)]. Explosive ordnance disposal units: authority to acquire new or emerging technologies and capabilities.
- 3274 [Sec 852 of FY15 NDAA, P.L. 113-291 (10 USC 2302 note)]. Consideration of corrosion control in preliminary design review.
- 3275 [Sec 231 of FY17 NDAA, P.L. 114-328 (10 USC 2302 note)]. Strategy for assured access to trusted microelectronics.
- 3276 [Sec 803 of FY14 NDAA, P.L. 113-66 (10 USC prec 2571 note)]. Obsolete electronic parts: identification and replacement.
- 3277 [Sec 323 of FY14 NDAA, P.L. 113-66 (10 USC 7551 note)]. Consideration of capabilities of arsenals owned by the United States to fulfill manufacturing requirements.
- 3278 [Sec 314 of FY03 NDAA, P.L. 107-314 (10 USC 2302 note)]. Procurement of environmentally preferable procurement items.
- 3279 [Sec 826 of FY01 NDAA, P.L. 106-398 (10 USC 2304 note)]. Requirement to disregard certain agreements in awarding contracts for purchase of firearms or ammunition.
- 3280 [Sec 806 of FY99 NDAA, P.L. 105-261 (10 USC 2304 note)]. Procurement of conventional ammunition.
- 3281 [Sec 143 of FY09 NDAA, P.L. 110-417 (10 USC 2304 note)]. Competition for new individual weapon when gaps in small arms capabilities identified.
- 3282 [Sec 1698 of FY18 NDAA, P.L. 115-91 (10 USC 2302 note)]. Use of commercial items in Distributed Common Ground Systems.
- 3283 [Sec 334 of FY18 NDAA, P.L. 115-91 (10 USC 2302 note)]. Military working dogs: capacity; procurement; annual report. **”**

(b) CODIFICATION OF FY2004 NDAA SECTION.—

(1) **CODIFICATION.**—Chapter 225 of title 10, United States Code, as added by subsection (a), is amended by adding after the table of sections at the beginning the following:

“§3271. [Sec 802(a)-(c) of FY04 NDAA, P L 108–136 (10 USC 2302 note)] Procurement of aviation critical safety items and related services: quality control

(a) **QUALITY CONTROL POLICY.**—The Secretary of Defense shall prescribe in regulations a quality control policy for the procurement of aviation critical safety items and the procurement of modifications, repair, and overhaul of such items.

(b) **Content OF REGULATIONS.**—The policy set forth in the regulations shall include the following requirements:

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1 (1) That the head of the design control activity for aviation critical safety items
2 establish processes to identify and manage the procurement, modification, repair, and
3 overhaul of aviation critical safety items.

4 (2) That the head of the contracting activity for an aviation critical safety item
5 enter into a contract for the procurement, modification, repair, or overhaul of such item
6 only with a source approved by the design control activity in accordance with section
7 ~~2319 of title 10, United States Code~~ **3243 of this title.**

8 (3) That the aviation critical safety items delivered, and the services performed
9 with respect to aviation critical safety items, meet all technical and quality requirements
10 specified by the design control activity.

11 (c) DEFINITIONS.—In this section, the terms 'aviation critical safety item' and 'design
12 control activity' have the meanings given ~~such~~ **those** terms in section ~~2319(g) of title 10, United~~
13 ~~States Code, as amended by subsection (d)~~ **3243(g) of this title.**"

14 (2) CONFORMING REPEAL.—Section 802 of the National Defense Authorization
15 Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C. 2302 note) is amended by
16 striking subsections (a), (b), and (c).

17 (c) CODIFICATION OF FY2017 NDAA SECTION.—

18 (1) CODIFICATION.—Chapter 225 of such title is further amended by adding after
19 section 3271, as added by subsection (b), the following new section:

20 **“§ 3272 [Sec 130(a)-(c) of FY07 NDAA, P L 109–364 (10 USC 2302 note)] Procurement of**
21 **ship critical safety items and related services: quality control**

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1 (a) QUALITY CONTROL POLICY.—The Secretary of Defense shall prescribe in regulations
2 a quality control policy for the procurement of the following:

- 3 (1) Ship critical safety items
- 4 (2) Modifications, repair, and overhaul of ship critical safety items

5 (b) ELEMENTS.—The policy required under subsection (a) shall include requirements as
6 follows:

7 (1) That the head of the design control activity for ship critical safety items
8 establish processes to identify and manage the procurement, modification, repair, and
9 overhaul of such items.

10 (2) That the head of the contracting activity for a ship critical safety item enter
11 into a contract for the procurement, modification, repair, or overhaul of such item only
12 with a source on a qualified manufacturers list or a source approved by the design control
13 activity in accordance with section 2319 of title 10, United States Code (as amended by
14 ~~subsection (d))~~ **3243 of this title.**

15 (3) That the ship critical safety items delivered, and the services performed with
16 respect to such items, meet all technical and quality requirements specified by the design
17 control activity.

18 (c) DEFINITIONS.—In this section, the terms 'ship critical safety item' and 'design control
19 activity' have the meanings given ~~such those~~ terms in ~~subsection (g) of section 2319 of title 10,~~
20 ~~United States Code (as so amended)~~ **section 3243(g) of this title.**

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1 (2) **CONFORMING REPEAL.**—Section 130 of the John Warner National Defense
2 Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 2302 note) is
3 amended by striking subsections (a), (b), and (c).

4 (d) **CODIFICATION OF FY2018 NDAA SECTION.**—

5 (1) **CODIFICATION.**—Chapter 225 of such title is further amended by adding after
6 section 3272, as added by subsection (c), the following new section:

7 “§ 3273 [Sec 142 of FY18 NDAA, P.L. 115-91 (10 USC 2302 note)]. **Explosive ordnance**
8 **disposal units: authority to acquire new or emerging technologies and**
9 **capabilities**

10 The Secretary of Defense, after consultation with the ~~head of each military service~~
11 *Secretary of each military department*, may provide to an explosive ordnance disposal unit the
12 authority to acquire new or emerging technologies and capabilities that are not specifically
13 provided for in the authorized equipment allowance for the unit, as such allowance is set forth in
14 the table of equipment and table of allowance for the unit.”

15 (2) **CONFORMING REPEAL.**—Section 142 of the National Defense Authorization
16 Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2302 note) is repealed.

17 (e) **CODIFICATION OF FY2015 NDAA SECTION.**—

18 (1) **CODIFICATION.**—Chapter 225 of such title is further amended by adding after
19 section 3273, as added by subsection (d), the following new section:

20 “§ 3274 [Sec 852 of FY15 NDAA, P.L. 113-291 (10 USC 2302 note)]. **Consideration of**
21 **corrosion control in preliminary design review**

Commented [CR337]: It appears that the reference to “head of each military service” in this context refers to the Secretaries of the military departments, not the uniformed service chiefs.
If that is not correct, please advise.

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1 The Under Secretary of Defense for Acquisition, Technology, and Logistics ~~Acquisition~~
2 *and Sustainment* shall ensure that Department of Defense Instruction 5000.02 and other
3 applicable guidance require full consideration, during preliminary design review for a product, of
4 metals, materials, and technologies that effectively prevent or control corrosion over the life
5 cycle of the product.”.

Commented [CR338]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

6 (2) CONFORMING REPEAL.—Section 852 of the Carl Levin and Howard P.

7 “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law
8 113–291; 10 U.S.C. 2302 note) is repealed.

9 (f) CODIFICATION OF FY2017 NDAA SECTION.—

10 (1) CODIFICATION.—Chapter 225 of such title is further amended by adding after
11 section 3274, as added by subsection (e), a new section 3275 consisting of—

12 (A) a heading as follows:

13 “§ 3275 [Sec 231 of FY17 NDAA, P.L. 114-328 (10 USC 2302 note)]. Strategy for assured
14 access to trusted microelectronics”; and

15 (B) a text consisting of the text of subsections (a), (b), (c), (d), and (f) of
16 section 231 of the National Defense Authorization Act for Fiscal Year 2017
17 (Public Law 114–328; 10 U.S.C. 2302 note), revised—

18 (i) in subsection (a), by striking “by not later than September 30,
19 2019”;

Commented [CR339]: Note paragraph (2) below for continuation of this requirement outside of the new title 10 section.

20 (ii) in subsection (c), by striking “one year after the date of the
21 enactment of this Act” and inserting “December 23, 2017”;

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(iii) in subsection (d), by striking “Not later than September 30,

2019, the Secretary” and inserting “The Secretary”; and

(iv) by redesignating subsection (f) as subsection (e).

(2) CONTINUATION OF DEADLINE FOR STRATEGY AND DIRECTIVE.—The

Secretary of Defense shall develop the strategy required by subsection (a) of section 3275 of title 10, United States Code, as added by paragraph (1), and shall issue the directive required by subsection (d) of such section, not later than September 30, 2019.

(3) CONFORMING REPEAL.—Section 231(a)-(d) of the National Defense

Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 2302 note) is repealed.

(4) CONFORMING AMENDMENTS TO REPORTING REQUIREMENT.—Subsection (e)

of such section is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting “of section 3275 of title 10,

United States Code” before the period at the end; and

(ii) in subparagraph (C), by inserting “of such section” before the

period at the end; and

(B) in paragraph (2), by inserting “such” before “subsection (a)”.

(g) CODIFICATION OF FY2014 NDAA SECTION.—

(1) CODIFICATION.—Chapter 225 of such title is further amended by adding after section 3275, as added by subsection (f), a new section 3276 consisting of—

(A) a heading as follows:

Commented [CR340]: Note paragraph (2) below for continuation of this requirement outside of the new title 10 section.

Commented [CR341]: See paragraphs (3) & (4) below as to continuation of the current subsection (e) outside of the new title 10 section.

Commented [CR342]: By only repealing (a)-(d), this leaves in place (e) and (f). Subsection (e) is a one-time report requirement due NLT 9/30/20, and subsection (f) includes a definition of a term used in subsection (e).

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1 “§3276 [Sec 803 of FY14 NDAA, P.L. 113-66 (10 USC preceding 2571 note)]. Obsolete

2 **electronic parts: identification and replacement”; and**

3 (B) a text consisting of the text of section 803 of the National Defense
4 Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. prec 2571
5 note), revised—

6 (i) in subsection (a), by striking “Not later than 180 days after the
7 date of the enactment of this Act, the Secretary” and inserting “The
8 Secretary”; and

9 (ii) in subsection (b)—

10 (I) in the matter preceding paragraph (1), by striking “At a
11 minimum, **the**” and inserting “The”; and

12 (II) in paragraph (5), by striking “section 2337 of title 10,
13 United States Code,” and inserting “section 4324 of this title,”.

14 (2) **CONFORMING REPEAL.**—Section 803 of the National Defense Authorization
15 Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. preceding 2571 note) is
16 repealed.

17 (h) **CODIFICATION OF FY2014 NDAA SECTION.**—

18 (1) **CODIFICATION.**—Chapter 225 of such title is further amended by adding after
19 section 3276, as added by subsection (g), the following new section:

20 “§ 3277 [Sec 323 of FY14 NDAA, P.L. 113-66 (10 USC 7551 note)]. **Consideration of**

21 **capabilities of arsenals owned by the United States to fulfill manufacturing**
22 **requirements**

Commented [CR343]: Phrase “At a minimum,” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

Commented [CR344]: Wording of heading revised to follow more closely the text itself.

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1 "(a) CONSIDERATION OF CAPABILITY OF ARSENALS.—When undertaking a make-or-buy
2 analysis, a program executive officer or program manager of a military service or Defense
3 Agency shall consider the capability of arsenals owned by the United States to fulfill a
4 manufacturing requirement.

Commented [CR345]: Could "military service" be changed to "military department" here?

5 "(b) NOTIFICATION OF SOLICITATIONS.—Not later than 180 days after the date of the
6 enactment of this Act [Dec. 26, 2013], the The Secretary of Defense shall establish and begin
7 implementation of a system for ensuring that the arsenals owned by the United States are notified
8 of any solicitation that fulfills a manufacturing requirement for which there is no or limited
9 domestic commercial source."

Commented [CR346]: Phrase "and begin implementation of ..." omitted as OBE and tied to the NLT clause. That is, the NLT requirement was not only to establish the required system with 180 days, but to begin implementation within 180 days.

10 (2) CONFORMING REPEAL.—Section 323 of the National Defense Authorization
11 Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 2302 note) is repealed.

12 (i) CODIFICATION OF FY2003 NDAA SECTION.—

13 (1) CODIFICATION.—Chapter 225 of such title is further amended by adding after
14 section 3277, as added by subsection (h), the following new section:

15 "§ 3278 [Sec 314 of FY03 NDAA, P.L. 107-314 (10 USC 2302 note)]. Procurement of
16 environmentally preferable procurement items

17 "(a) TRACKING SYSTEM.—The Secretary of Defense shall develop and implement an
18 effective and efficient tracking system to identify the extent to which the Defense Logistics
19 Agency procures environmentally preferable procurement items or procurement items made with
20 recovered material. The system shall provide for the separate tracking, to the maximum extent
21 practicable, of the procurement of each category of procurement items that, as of the date of the

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1 ~~enactment of this Act~~ *December. 2, 2002*, has been determined to be environmentally preferable
2 or made with recovered material.

3 “(b) ASSESSMENT OF TRAINING AND EDUCATION.—The Secretary of Defense shall assess
4 the need to establish a program, or enhance existing programs, for training and educating
5 Department of Defense procurement officials to ensure that they are aware of any Department
6 requirements, preferences, or goals for the procurement of environmentally preferable
7 procurement items or procurement items made with recovered material.

8 ~~“(c) REPORTING REQUIREMENT. Not later than March 1, 2004, and each March 1
9 thereafter through 2007, the Secretary of Defense shall submit to the Committee on Armed
10 Services of the Senate and the Committee on Armed Services of the House of Representatives a
11 report detailing the results obtained from the tracking system developed under subsection (a).~~

12 ~~“(d) (c) RELATION TO OTHER LAWS.—Nothing in this section shall be construed to alter
13 the requirements of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).~~

14 “(e) (d) DEFINITIONS.—In this section:

15 “(1) The term 'environmentally preferable', in the case of a procurement item,
16 means that the item has a lesser or reduced effect on human health and the environment
17 when compared with competing products that serve the same purpose. The comparison
18 may consider raw materials acquisition, production, manufacturing, packaging,
19 distribution, reuse, operation, maintenance, or disposal of the product.

20 “(2) The terms 'procurement item' and 'recovered material' have the meanings
21 given such terms in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).”

Commented [CR347]: Although there is no time limit, (b) appears to be a one-time requirement to make the specified assessment. If so, this subsection should be omitted from the codification as OBE. DoD: Please advise if (b) has ongoing applicability or is OBE.

Commented [CR348]: (c) to be omitted as OBE

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(2) CONFORMING REPEAL.—Section 314 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 10 U.S.C. 2302 note) is repealed.

(j) CODIFICATION OF FY2001 NDAA SECTION.—

(1) CODIFICATION.—Chapter 225 of such title is further amended by adding after section 3278, as added by subsection (i), the following new section:

“§ 3279 [Sec 826 of FY01 NDAA, P.L. 106-398 (10 USC 2304 note)]. Requirement to disregard certain agreements in awarding contracts for purchase of firearms or ammunition

“In accordance with the requirements contained in the amendments enacted in the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98–369; 98 Stat. 1175), the Secretary of Defense may not, in awarding a contract for the purchase of firearms or ammunition, take into account whether a manufacturer or vendor of firearms or ammunition is a party to an agreement under which the manufacturer or vendor agrees to adopt limitations with respect to importing, manufacturing, or dealing in firearms or ammunition in the commercial market.”

Commented [CR349]: Is the opening “in accordance with” clause needed? Or could it be omitted as not needed and OBE. If retained, could the reference to “the amendments enacted in [CICA]” be updated?

(2) CONFORMING REPEAL.—Section 826 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398; 10 U.S.C. 2304 note) is repealed.

(k) CODIFICATION OF FY1999 NDAA SECTION.—

(1) CODIFICATION.—Chapter 225 of such title is further amended by adding after section 3279, as added by subsection (j), the following new section:

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1 “§ 3280 [Sec 806 of FY99 NDAA, P.L. 105-261 (10 USC 2304 note)]. Procurement of
2 conventional ammunition

3 “(a) AUTHORITY.—The official in the Department of Defense designated as the single
4 manager for conventional ammunition in the Department shall have the authority to restrict the
5 procurement of conventional ammunition to sources within the national technology and
6 industrial base in accordance with the authority in section 2304(e) 3204(a) of this title.

7 “(b) REQUIREMENT.—The official in the Department of Defense designated as the single
8 manager for conventional ammunition in the Department of Defense shall limit a specific
9 procurement of ammunition to sources within the national technology and industrial base in
10 accordance with section 2304(e)(3) 3204(a)(3) of this title in any case in which that manager
11 determines that such limitation is necessary—

12 “(1) to maintain a facility, producer, manufacturer, or other supplier available for
13 furnishing an essential item of ammunition or ammunition component in cases of national
14 emergency; or

15 “(2) to achieve industrial mobilization.

16 “(c) DEFINITIONS.—In this section:

17 “(1) SINGLE MANAGER FOR CONVENTIONAL AMMUNITION.—The term ‘single
18 manager for conventional ammunition’ means the official in the Department of
19 Defense designated as the single manager for conventional ammunition in the
20 Department.

Commented [CR350]: Note new definition in subsection (c)(1) below to simplify this reference here.

Commented [CR351]: Note new definition in subsection (c)(1) below to simplify this reference here.

Commented [CR352]: Definition of “single manager for conventional ammunition” added to replace the long description at the beginning of both (a) and (b) with the shorter 4-word version, which is also the name of the position in DoD policy. (DoD Directive 5160.65, discussed in next note)

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“(2) CONVENTIONAL AMMUNITION DEFINED.—In this section, the The term 'conventional ammunition' has the meaning given that term in Department of Defense Directive 5160.65, dated March 8, 1995.”

(2) CONFORMING REPEAL.—Section 806 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 10 U.S.C. 2304 note) is repealed.

(I) CODIFICATION OF FY2009 NDAA SECTION.—

(1) CODIFICATION.—Chapter 225 of such title is further amended by adding after section 3280, as added by subsection (k), the following new section:

“§ 3281 [Sec 143 of FY09 NDAA, P.L. 110-417 (10 USC 2304 note)]. ~~Small arms acquisition strategy and requirements review~~ Competition for new individual weapon when gaps in small arms capabilities identified

(a) COMPETITION FOR A NEW INDIVIDUAL WEAPON.—

(1) COMPETITION REQUIRED.—If the small arms capabilities based assessments by the Army identify gaps in small arms capabilities and the Secretary of the Army determines that a new individual weapon is required to address such gaps, the Secretary shall procure the new individual weapon using full and open competition as described in paragraph (2).

(2) FULL AND OPEN COMPETITION.—The full and open competition described in this paragraph is competition among all responsible manufacturers that—

(A) is open to all developmental item solutions and non-developmental item solutions; and

Commented [CR353]: There is a newer version of this DoDD, here. Should this reference be updated to refer to the DoDD as dated August 1, 2008? And Incorporating Change 2, August 31, 2018? There is still a definition of “conventional ammunition” in the revised DoDD. Is it the same as the 1995 definition? DoD: what is the effect on a statutory reference like this to a DoD issuance, with a specific date of issuance, when the DoD issuance is updated? Should something like “(or any successor directive)” be added?

Commented [CR354]: Original subsection (a) required a report by the SecDef due NLT 120 days after Oct. 14, 2008, and is to be omitted as OBE. The report was to include certain assessments by the SecDef.

Commented [CR355]: Original (b)(1) refers to assessments “by the Army” and does not refer to assessments under subsection (a), suggesting that the reference here is to any assessment of the stated matter that is carried out by the Army, at any time.

Commented [CR356]: DoD: Is this applied as a permanent, ongoing requirement?

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1 (B) provides for the award of a contract based on selection criteria that
2 reflect the key performance parameters and attributes identified in a service
3 requirements document approved by the Army.

4 ~~(e)~~ (b) SMALL ARMS DEFINED.—In this section, the term 'small arms'—

5 (1) means man-portable or vehicle-mounted light weapons, designed primarily for
6 use by individual military personnel for anti-personnel use; and

7 (2) includes pistols, carbines, rifles, and light, medium, and heavy machine
8 guns.”

9 (2) CONFORMING REPEAL.—Section 143 of the Duncan Hunter National Defense
10 Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2304 note) is
11 repealed.

12 (m) CODIFICATION OF FY2018 NDAA SECTION.—

13 (1) CODIFICATION.—Chapter 225 of such title is further amended by adding after
14 section 3281, as added by subsection (l), the following new section:

15 “§ 3282 [Sec 1698 of FY18 NDAA, P.L. 115-91 (10 USC 2302 note)]. Use of commercial
16 items in Distributed Common Ground Systems

17 "(a) IN GENERAL.—The procurement process for each covered Distributed Common
18 Ground System shall be carried out in accordance with section ~~2377~~ 3453 of this title.

19 ~~(d)~~ (b) DEFINITION.—In this section, the term 'covered Distributed Common
20 System' includes the following:

21 "(1) The Distributed Common Ground System of the Army.

22 "(2) The Distributed Common Ground System of the Navy.

Commented [CR357]: Original subsection (b) required a report due NLT 30 days after Dec. 12, 2107, and is omitted as OBE. Original subsection (c) defined a term which only appears in original subsection (b) and so is also omitted.

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"(3) The Distributed Common Ground System of the Marine Corps.

"(4) The Distributed Common Ground System of the Air Force.

"(5) The Distributed Common Ground System of the Special Operations Forces."

(2) **CONFORMING REPEAL.**—Section 1698 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2302 note) is repealed.

(n) **CODIFICATION OF FURTHER FY2018 NDAA SECTION.**—

(1) **CODIFICATION.**—Chapter 225 of such title is further amended by adding after section 3282, as added by subsection (m), the following new section:

“§ 3283 [Sec 334 of FY18 NDAA, P.L. 115-91 (10 USC 2302 note)]. **Military working dogs used by the Department of Defense: capacity; procurement; annual report**

"(a) **CAPACITY.**—The Secretary of Defense, acting through the Executive Agent for Military Working Dogs (hereinafter in this section referred to as the 'Executive Agent'), shall—

"(1) identify the number of military working dogs required to fulfill the various missions of the Department of Defense for which such dogs are used, including force protection, facility and check point security, and explosives and drug detection;

"(2) take such steps as are practicable to ensure an adequate number of military working dog teams are available to meet and sustain the mission requirements identified in paragraph (1);

"(3) ensure that the Department's needs and performance standards with respect to military working dogs are readily available to dog breeders and trainers; and

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"(4) coordinate with other Federal, State, and local agencies, nonprofit organizations, universities, and private sector entities, as appropriate, to increase the training capacity for military working dog teams.

"(b) MILITARY WORKING DOG PROCUREMENT.—The Secretary, acting through the Executive Agent, shall work to ensure that military working dogs are procured as efficiently as possible and at the best value to the Government, while maintaining the necessary level of quality and encouraging increased domestic breeding.

"(c) ANNUAL REPORT.—Not later than 90 days after December 12, 2017, and annually thereafter until September 30, 2021, the Secretary, acting through the Executive Agent, shall submit to the congressional defense committees a report on the procurement and retirement of military working dogs for the fiscal year preceding the fiscal year during which the report is submitted. Each report under this subsection shall include the following for the fiscal year covered by the report:

"(1) The number of military working dogs procured, by source, by each military department or Defense Agency.

"(2) The cost of procuring military working dogs incurred by each military department or Defense Agency.

"(3) The number of domestically-bred and sourced military working dogs procured by each military department or Defense Agency, including a list of vendors, their location, cost, and the quantity of dogs procured from each vendor.

Commented [CR358]: DoD please provide the actual date (in mid-March) that is the deadline for the remaining reports under this requirement.

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1 "(4) The number of non-domestically-bred military working dogs procured from
2 non-domestic sources by each military department or Defense Agency, including a list of
3 vendors, their location, cost, and the quantity of dogs procured from each vendor.

4 "(5) The cost of procuring pre-trained and green dogs for force protection, facility
5 and checkpoint security, and improvised explosive device, other explosives, and drug
6 detection.

7 "(6) An analysis of the procurement practices of each military department or
8 Defense Agency that limit market access for domestic canine vendors and breeders.

9 "(7) The total cost of procuring domestically-bred military working dogs versus
10 the total cost of procuring dogs from non-domestic sources.

11 "(8) The total number of domestically-bred dogs and the number of dogs from
12 foreign sources procured by each military department or Defense Agency and the number
13 and percentage of those dogs that are ultimately deployed for their intended use.

14 "(9) An explanation for any significant difference in the cost of procuring military
15 working dogs from different sources.

16 "(10) An estimate of the number of military working dogs expected to retire
17 annually and an identification of the primary cause of the retirement of such dogs.

18 "(11) An identification of the final disposition of military working dogs no longer
19 in service.

20 "(d) MILITARY WORKING DOG DEFINED.—In this section, the term 'military working dog'
21 means a dog used in any official military capacity, as defined by the Secretary of Defense."

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(2) CONFORMING REPEAL.—Section 334 of the National Defense Authorization

Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2302 note) is repealed.

TITLE III—CONTRACTING METHODS AND CONTRACT TYPES

(PART V, SUBPART C)

NOTE: Subpart C of the new Part V, as enacted, had at the beginning 2 chapters designated as 241 and 243. Ch. 241 was originally drafted with two subchapters; ch. 243 was originally drafted with five subchapters.

To provide greater visibility to the different elements of Part V, it is now proposed that the draft subchapters of chapters 241 and 243 be made into separate chapters (with two of them combined), so there would be six chapters rather than two originally envisaged. Four are at the beginning of Subpart C, designated as 241, 242, 243, & 244, and the other two, designated as 257 and 258, are at the end of subpart C.

SEC. 301. AWARDING OF CONTRACTS.

(a) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle

A, and at the beginning of part V of subtitle A (as added by section 801 of Public Law 115-232),

of title 10, United States Code, are amended by striking the items relating to chapters 241 and

243 and inserting the following:

Table with 2 columns: Chapter Title and Page Number. Includes entries for 'Awarding of Contracts - Competition in Contracting', 'Specific Types of Contracts', 'Other Matters Relating to Awarding and Types of Contracts', and 'Un definitized Contractual Actions'.

(b) NEW CHAPTER.—

(1) IN GENERAL.—Part V of subtitle A of title 10, United States Code, as added by

section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year

2019 (Public Law 115-232), is amended by striking chapters 241 and 243 and inserting

the following:

Commented [CR359]: Many of the numerous comments in this title are "roadmap" type comments to identify differences in wording from parallel T41 provisions.

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1 "CHAPTER 241—AWARDING OF CONTRACTS—COMPETITION
2 IN CONTRACTING"

Sec.

- 3301 [2305(b)(1),(2); 41 U.S.C. 3701]. Basis of award and rejection.
3302 [2305(b)(3); 41 U.S.C. 3702]. Sealed bids.
3303 [2305(b)(4); 41 U.S.C. 3703]. Competitive proposals.
3304 [2305(b)(5), (7); 41 U.S.C. 3704]. Post-award debriefings.
3305 [2305(b)(6), (7); 41 U.S.C. 3705]. Pre-award debriefings.
3306 [2305(b)(8); 41 U.S.C. 3706]. Encouragement of alternative dispute resolution.
3307 [2305(b)(9); 41 U.S.C. 3707]. Antitrust violations.
3308 [2305(e), (f); 41 U.S.C. 3708]. Protests.
3309 [2305(g); 41 U.S.C. 4702]. Prohibition on release of contractor proposals.

3 §3301 [2305(b)(1),(2); 41 U.S.C. 3701]. Basis of award and rejection

4 (a) [2305(b)(1); 41 U.S.C. 3701(a)] AWARD.—The head of an agency shall evaluate
5 sealed bids and competitive proposals and make an award based solely on the factors specified in
6 the solicitation.

7 (b) [2305(b)(2); 41 U.S.C. 3701(b)] REJECTION.—All sealed bids or competitive
8 proposals received in response to a solicitation may be rejected if the head of the agency
9 determines that such action is in the public interest.

10 §3302 [2305(b)(3); 41 U.S.C. 3702]. Sealed bids

11 (a) [2305(b)(3) 1st sent; 41 U.S.C. 3702(a)] OPENING OF BIDS.—Sealed bids shall be
12 opened publicly at the time and place stated in the solicitation.

13 (b) [2305(b)(3) 2nd sent; 41 U.S.C. 3702(b)] CRITERIA FOR AWARDING CONTRACT.—The
14 head of the agency shall evaluate the bids in accordance with section 3301(a) of this title without
15 discussions with the bidders and, except as provided in section 3301(b) of this title, shall award a
16 contract with reasonable promptness to the responsible bidder whose bid conforms to the

Commented [CR360]: The restatement of 10 USC 2305 in this chapter follows the organization of parallel provisions of title 41 to the extent possible, for parallelism in citation to parallel provisions.

Headings in this chapter, for both section headings and internal side headings, are drawn from the parallel T41 provision.

Commented [CR361]: CICA is widely cited in general usage, but the term does not appear in title 10. 10 U.S.C. 2305 is part of what is referred to as CICA. So, the proposal here is to use that term as part of the chapter heading for the restatement of sec. 2305. OK?

Commented [CR362]: This chapter covers (b), (c), (e), (f), & (g) of 2305. The remaining subsections, (a), (c) & (d), are in ch. 221 as new 3206 & 3208. This structure is adopted so as to achieve parallel structure w/ comparable provisions of title 41. (And note that subsection (g) may fit better in the chapter on Prohibitions and Penalties, ch. 363.)

Commented [CR363]: T41 has ", and award a contract,". T10 text unchanged here.

Commented [CR364]: T41 has "rejection". T10 text unchanged here

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1 solicitation and is most advantageous to the United States, considering only price and the other
2 price-related factors included in the solicitation.

3 (c) [2305(b)(3) 3rd & 4th sent; 41 U.S.C. 3702(c)] NOTICE OF AWARD.—The award of a
4 contract shall be made by transmitting, in writing or by electronic means, notice of the award to
5 the successful bidder. Within three days after the date of contract award, the head of the agency
6 shall notify, in writing or by electronic means, each bidder not awarded the contract that the
7 contract has been awarded.

8 §3303 [2305(b)(4); 41 U.S.C. 3703]. Competitive proposals

9 (a) [2305(b)(4)(A); 41 U.S.C. 3703(a)] EVALUATION AND AWARD.—The head of an
10 agency shall evaluate competitive proposals in accordance with section 3301(a) of this title and
11 may award a contract—

12 (1) after discussions with the offerors, provided that written or oral discussions
13 have been conducted with all responsible offerors who submit proposals within the
14 competitive range; or

15 (2) based on the proposals received, without discussions with the offerors (other
16 than discussions conducted for the purpose of minor clarification) provided that the
17 solicitation included a statement that proposals are intended to be evaluated, and award
18 made, without discussions, unless discussions are determined to be necessary.

19 (b) [2305(b)(4)(B); 41 U.S.C. 3703(b)] LIMIT ON NUMBER OF PROPOSALS.— If the
20 contracting officer determines that the number of offerors that would otherwise be included in
21 the competitive range under subsection (a)(1) exceeds the number at which an efficient
22 competition can be conducted, the contracting officer may limit the number of proposals in the

Commented [CR365]: T41 has "Federal Government"
T10 text unchanged here

Commented [CR366]: T41 has some wording and punctuation
differences.
T10 unchanged here.

Commented [CR367]: T41 has "if" rather than "provided that"
and has the following: "as required by section 3306(b)(2)(B)(i) of
this title". The equivalent for T10 would be new 3206(b)(2)(B)(i) in
ch. 221; current 2305(a)(2)(B)(ii)(I)

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 competitive range, in accordance with the criteria specified in the solicitation, to the greatest
2 number that will permit an efficient competition among the offerors rated most highly in
3 accordance with such criteria.

4 (c) [2305(b)(4)(C) 1st sent; 41 U.S.C. 3703(c)] CRITERIA FOR AWARDING CONTRACT.—

5 Except as provided in section 3301(b) of this title, the head of the agency shall award a contract
6 with reasonable promptness to the responsible source whose proposal is most advantageous to
7 the United States, considering only cost or price and the other factors included in the solicitation.

Commented [CR368]: T41 has "Except as otherwise provided in ...". T10 does not have "otherwise". T10 wording unchanged here

8 (d) [2305(b)(4)(C) 2nd sent; 41 U.S.C. 3703(d)] NOTICE OF AWARD.—The head of the
9 agency shall award the contract by transmitting, in writing or by electronic means, notice of the
10 award to such source and, within three days after the date of contract award, shall notify, in

11 writing or by electronic means, all other offerors of the rejection of their proposals. This
12 subsection does not apply with respect to the award of a contract for the acquisition of perishable
13 subsistence items.

Commented [CR369]: T41 does not have this 2nd sentence.

14 §3304 [2305(b)(5), (7); 41 U.S.C. 3704]. Post-award debriefings

15 (a) [2305(b)(5)(A) 1st sent; 41 U.S.C. 3704(a)] REQUEST FOR DEBRIEFING.—When a
16 contract is awarded by the head of an agency on the basis of competitive proposals, an
17 unsuccessful offeror, upon written request received by the agency within 3 days after the date on
18 which the unsuccessful offeror receives the notification of the contract award, shall be debriefed
19 and furnished the basis for the selection decision and contract award.

20 (b) [2305(b)(5)(A) 2nd sent; 41 U.S.C. 3704(b)] WHEN DEBRIEFING TO BE
21 CONDUCTED.— The head of the agency shall debrief the offeror within, to the maximum extent
22 practicable, five days after receipt of the request by the agency.

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1 (c) [2305(b)(5)(B); 41 U.S.C. 3704(c)] INFORMATION TO BE PROVIDED.— The
2 debriefing shall include, ~~at a minimum~~—
3 (1) the agency's evaluation of the significant weak or deficient factors in the
4 offeror's offer;
5 (2) the overall evaluated cost and technical rating of the offer of the contractor
6 awarded the contract and the overall evaluated cost and technical rating of the offer of the
7 debriefed offeror;
8 (3) the overall ranking of all offers;
9 (4) a summary of the rationale for the award;
10 (5) in the case of a proposal that includes a commercial product that is an end item
11 under the contract, the make and model of the item being provided in accordance with the
12 offer of the contractor awarded the contract;
13 (6) reasonable responses to relevant questions posed by the debriefed offeror as to
14 whether source selection procedures set forth in the solicitation, applicable regulations,
15 and other applicable authorities were followed by the agency; and
16 (7) an opportunity for a disappointed offeror to submit, within two business days
17 after receiving a post-award debriefing, additional questions related to the debriefing.
18 The agency shall respond in writing to any additional question submitted under paragraph (7)
19 within five business days after receipt of the question. The agency shall not consider the
20 debriefing to be concluded until the agency delivers its written responses to the disappointed
21 offeror.

Commented [CR370]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

Commented [CR371]: T41 does not have a provision corresponding to (7). This provision was added to T10 by the FY2018 NDAA, sec.818(b)(2)

Commented [CR372]: T41 does not have a provision corresponding to the two sentences here after paragraph (7). They were added to T10 as a new subparagraph (C) by the FY2018 NDAA, sec.818(b)(3). They are shown here as undesignated “flush” sentences so as to preserve symmetry in the following provisions between T10 & T41 designations.

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1 (d) [2305(b)(5)(D); 41 U.S.C. 3704(d)] INFORMATION NOT TO BE INCLUDED.— The
2 debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other
3 offers and may not disclose any information that is exempt from disclosure under section 552(b)
4 of title 5.

5 (e) [2305(b)(5)(E); 41 U.S.C. 3704(e)] INCLUSION OF STATEMENT IN SOLICITATION.—
6 Each solicitation for competitive proposals shall include a statement that information described
7 in subsection (c) may be disclosed in post-award debriefings.

8 (f) [2305(b)(5)(F); 41 U.S.C. 3704(f)] AFTER SUCCESSFUL PROTEST.—If, within one year
9 after the date of the contract award and as a result of a successful procurement protest, the
10 agency seeks to fulfill the requirement under the protested contract either on the basis of a new
11 solicitation of offers or on the basis of new best and final offers requested for that contract, the
12 agency shall make available to all offerors—

13 (1) the information provided in debriefings under this section regarding the offer
14 of the contractor awarded the contract; and

15 (2) the same information that would have been provided to the original offerors.

16 (g) [2305(b)(7); 41 U.S.C. 3704(g)] SUMMARY TO BE INCLUDED IN FILE.—The
17 contracting officer shall include a summary of any debriefing conducted under this section in the
18 contract file.

19 §3305 [2305(b)(6), (7); 41 U.S.C. 3705]. Pre-award debriefings

20 (a) [2305(b)(6)(A) 1st sent; 41 U.S.C. 3705(a)] REQUEST FOR DEBRIEFING.—When the
21 contracting officer excludes an offeror submitting a competitive proposal from the competitive
22 range (or otherwise excludes such an offeror from further consideration prior to the final source

Commented [CR373]: T41 has "the debriefing". T10 wording retained here. Original (b)(7) set forth here, applicable here only to this section (original (b)(5)) for parallelism. It is set forth again after next section (original (b)(6)), rather than once after both as in T10 original.

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1 selection decision), the excluded offeror may request in writing, within three days after the date
2 on which the excluded offeror receives notice of its exclusion, a debriefing prior to award.

3 (b) [2305(b)(6)(A) 2nd sent; 41 U.S.C. 3705(b)] WHEN DEBRIEFING TO BE
4 CONDUCTED.— The contracting officer shall make every effort to debrief the unsuccessful
5 offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best
6 interests of the Government to conduct a debriefing at that time.

7 (c) [2305(b)(6)(B); 41 U.S.C. 3705(c)] PRECONDITION FOR POST-AWARD DEBRIEFING.—
8 The contracting officer is required to debrief an excluded offeror in accordance with section
9 3304 of this title only if that offeror requested and was refused a pre-award debriefing under
10 subsections (a) and (b).

11 (d) [2305(b)(6)(C); 41 U.S.C. 3705(d)] INFORMATION TO BE PROVIDED.—The debriefing
12 conducted under this section shall include—

13 (1) the executive agency's evaluation of the significant elements in the offeror's
14 offer;

15 (2) a summary of the rationale for the offeror's exclusion; and

16 (3) reasonable responses to relevant questions posed by the debriefed offeror as to
17 whether source selection procedures set forth in the solicitation, applicable regulations,
18 and other applicable authorities were followed by the executive agency.

19 (e) [2305(b)(6)(D); 41 U.S.C. 3705(e)] INFORMATION NOT TO BE DISCLOSED.—The
20 debriefing conducted under this section may not disclose the number or identity of other offerors
21 and shall not disclose information about the content, ranking, or evaluation of other offerors'
22 proposals.

Commented [CR374]: T41 uses "executive agency"; T10 uses "agency" or "head of the agency". Use of "executive agency" in T10 here (and in paragraph (3) immediately below) appears to be an anomaly. Recommend omitting "executive" for consistency with rest of CICA provisions in T10.

Commented [CR375]: See comment immediately above;

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1 (f) [2305(b)(7); 41 U.S.C. 3705(f)] SUMMARY TO BE INCLUDED IN FILE.—The
2 contracting officer shall include a summary of any debriefing conducted under this section in the
3 contract file.

4 §3306 [2305(b)(8); 41 U.S.C. 3706]. Encouragement of alternative dispute resolution

5 The Federal Acquisition Regulation shall include a provision encouraging the use of
6 alternative dispute resolution techniques to provide informal, expeditious, and inexpensive
7 procedures for an offeror to consider using before filing a protest, prior to the award of a
8 contract, of the exclusion of the offeror from the competitive range (or otherwise from further
9 consideration) for that contract.

10 §3307 [2305(b)(9); 41 U.S.C. 3707]. Antitrust violations

11 If the head of an agency considers that a bid or proposal evidences a violation of the
12 antitrust laws, ~~he~~ *that agency head* shall refer the bid or proposal to the Attorney General for
13 appropriate action.

Commented [CR376]: Current T10 wording has "he"; proposed to be changed to "that agency head" as less awkward than "the head of the agency" a second time.

14 §3308 [2305(e) & (f); 41 U.S.C. 3708]. Protests

15 (a) [2305(e); 41 U.S.C. 3708(a)] PROTEST FILE.—

16 (1) ESTABLISHMENT AND ACCESS.—If, in the case of a solicitation for a contract
17 issued by, or an award or proposed award of a contract by, the head of an agency, a
18 protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31 and an
19 actual or prospective offeror so requests, a file of the protest shall be established by the
20 procuring activity and reasonable access shall be provided to actual or prospective
21 offerors.

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(2) REDACTED INFORMATION.—Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(b) [2305(f); 41 U.S.C. 3708(b)] AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency—

(1) may take any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31; and

(2) may pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of such section.

§3309 [2305(g); 41 U.S.C. 4702]. Prohibition on release of contractor proposals

(a) [2305(g)(3); 41 U.S.C. 4702(a)] DEFINITION.—In this section, the term "proposal" means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(b) [2305(g)(1); 41 U.S.C. 4702(b)] PROHIBITION.—~~Except as provided in subsection (e),~~ a proposal in the possession or control of an agency named in section ~~2303~~ 3063 of this title may not be made available to any person under section 552 of title 5.

(c) [2305(g)(2); 41 U.S.C. 4702(c)] INAPPLICABILITY.—Subsection (b) does not apply to any proposal that is set forth or incorporated by reference in a contract entered into between the Department and the contractor that submitted the proposal. ;

(2) CONFORMING REPEAL.—Subsections (b), (e), (f), and (g) of section 2305 of title 10, United States Code, are repealed.

Commented [CR377]: "Except as" clause to be omitted as unnecessary in light of first words of (c). The "Except as" clause does not appear in the T41 provision. A codifier's note says those words were "omitted as unnecessary".

Commented [CR378]: Note that there is no antecedent for "Department". This is from the T10 original. It appears that this should be "agency". Note that subsection (b) uses "agency".

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(c) CROSS-REFERENCE AMENDMENTS.—

(1) Section 3553(d)(4)(B) of title 31, United States Code, is amended by striking “section 2305(b)(5)(B)(vii)” and inserting “section 3304(c)(7)”.

(2) Section 1907(a)(3)(B)(ii) of title 41, United States Code, is amended by striking “section 2305(e) and (f)” and inserting “section 3308”.

(3) Section 555 of the FAA Reauthorization Act of 2018 (Public Law 115-254; 41 U.S.C. preceding 3101 note) is amended by striking “section 2305” in subsections (a)(4) and (c)(1) and inserting “chapter 241”.

(3) Section 403(a) of the Housing Amendments of 1955 (42 U.S.C. 1594(a)) is amended by striking “section 3 of the Armed Services Procurement Act of 1947” and inserting “chapter 241 of title 10, United States Code”.

SEC. 302. SPECIFIC TYPES OF CONTRACTS.

(a) NEW CHAPTER.—

(1) IN GENERAL.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by inserting after chapter 241, as added by section 301, the following new chapter:

“CHAPTER 242—SPECIFIC TYPES OF CONTRACTS

Sec.

3321 [2306(a) 2nd sent, (b); 41 U.S.C. 3901]. Contracts awarded using procedures other than sealed-bid procedures.

3322 [2306(a) 1st sent, (d), (e); 41 U.S.C. 3905(a)-(c)]. Cost contracts.

3323 [2306(c)]. Cost-plus contracting prohibited for military construction and military family housing projects.

3324 [Sec. 829 of FY17 NDAA, P. L. 114–328 (10 USC 2306 note)]. Preference for fixed-price contracts.”

Commented [CR379]: The restatement of 10 USC 2306 in this chapter follows the organization of parallel provisions of title 41 to the extent possible, for parallelism in citation to parallel provisions. Headings in this chapter, for both section headings and internal side headings, are drawn from the parallel T41 provision.

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1 § 3321 [2306(a) 2nd sent, (b); 41 U.S.C. 3901]. Contracts awarded using procedures other
2 than sealed-bid procedures

3 (a) [2306(a) 2nd sent; 41 U.S.C. 3901(a)] AUTHORIZED TYPES.— Subject to the
4 limitation in section 3342(a) of this title, the other provisions of this section chapter, and other
5 applicable provisions of law, the head of an agency, in awarding contracts under this chapter???

Commented [CR380]: The comparable T41 provision (41 U.S.C. 3901(a)) is as follows: "Except as provided in section 3905 of this title, contracts awarded after using procedures other than sealed-bid procedures may be of any type which in the opinion of the agency head will promote the best interests of the Federal Government." In particular, the T41 provision omits "Subject to ... the other provisions of this [section], and other applicable provisions of law", probably on the basis that they are unnecessary as stating truisms. Also, T41 does not have "in awarding contracts under this chapter", but just has "in awarding contracts". Is "under this chapter" necessary in the T10 provision? Is it a limitation, or just a description? Consider parallel omissions here to remove unnecessary words.

6 TBD after using procedures other than sealed-bid procedures, may enter into any kind of contract
7 that the head of the agency considers will promote the best interests of the United States.

8 (b) [2306(b); 41 U.S.C. 3901(b)] REQUIRED WARRANTY.—
9 (1) [2306(b) 1st sent; 41 U.S.C. 3901(b)(1)] CONTENT.—Each contract awarded

10 under this chapter [ch. 137] after using procedures other than sealed-bid procedures
11 shall contain a warranty, determined to be suitable by the head of the agency, that the
12 contractor has employed or retained no person or selling agency to solicit or obtain the
13 contract under an understanding or agreement for a commission, percentage, brokerage,
14 or contingent fee, except a bona fide employee or established commercial or selling
15 agency maintained by him the contractor to obtain business.

Commented [CR381]: In T41, the phrase "under this chapter" does not appear. Is it needed here? That is, is it a limitation, or merely a description? In particular, could that phrase be omitted here, as in T41?

Commented [CR382]: In T41, the text beginning here with "shall contain a warranty" reads as follows: "shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure the contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial or selling agencies the contractor maintains to secure business."

16 (2) [2306(b) 2nd sent; 41 U.S.C. 3901(b)(2)] REMEDY FOR BREAKING
17 WARRANTY.— If a contractor breaks such a warranty under paragraph (1) the United
18 States—

Commented [CR383]: T41 reads: "For the breach or violation of the warranty, the Federal Government may annul the contract without liability or deduct from the contract price or consideration the full amount of the commission, percentage, brokerage, or contingent fee."

- 19 (A) may annul the contract without liability; or
20 (B) may deduct the commission, percentage, brokerage, or contingent fee
21 from the contract price or consideration.

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(3) [2306(b) 3rd sent; 41 U.S.C. 3901(b)(3)] INAPPLICABILITY TO CERTAIN

CONTRACTS.—Paragraph (1) does not apply—

(A) to a contract that is for an amount not greater than the simplified acquisition threshold; or

(B) to a contract for the acquisition of commercial products or commercial services.

§ 3322 [2306(a) 1st sent, (d), (e); 41 U.S.C. 3905(a)-(c)]. Cost contracts

(a) [2306(a) 1st sent; 41 U.S.C. 3905(a)] COST-PLUS-A-PERCENTAGE-OF-COST SYSTEM OF CONTRACTING **PROHIBITED**.—The cost-plus-a-percentage-of-cost system of contracting may not be used.

(b) [2306(d); 41 U.S.C. 3905(b)] COST-PLUS-A-FIXED-FEE CONTRACTS.—

(1) [2306(d) 3rd sent; 41 U.S.C. 3905(b)(1)] IN GENERAL.—Except as provided in paragraphs (2) and (3), the fee for performing a cost-plus-a-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract, not including the fee.

(2) [2306(d) 1st sent; 41 U.S.C. 3905(b)(2)] EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.—The fee for performing a cost-plus-a-fixed-fee contract for experimental, developmental, or research work may not be more than 15 percent of the estimated cost of the contract, not including the fee.

(3) [2306(d) 2nd sent; 41 U.S.C. 3905(b)(3)] ARCHITECTURAL OR ENGINEERING SERVICES.—The fee for performing a cost-plus-a-fixed-fee contract for architectural or engineering services for a public work or utility plus the cost of those services to the contractor may not be more than 6 percent of the estimated cost, not including fees.

Commented [CR384]: The heading in the T41 provision is “Cost-Plus-A-Percentage-Of-Cost Contracts Disallowed”. The proposed T10 heading uses “System of Contracting” rather than “Contracts” to follow the text more closely and uses “Prohibited” rather than “Disallowed”. Note that 2306(c) refers to “the prohibition specified in subsection (a) ...”.

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(4) [2306(d) 4th sent; 41 U.S.C. 3905(b)(1), (3)] TIME FOR DETERMINATIONS.—

Determinations under this subsection of the estimated costs of a contract or project shall be made by the head of the agency at the time the contract is made.

(c) [2306(e); 41 U.S.C. 3905(e)] ADVANCE NOTICE OF CERTAIN SUBCONTRACTS.—

(1) [2306(e)(1); 41 U.S.C. 3905(c)] IN GENERAL.—Except as provided in paragraph (2), each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

(A) a cost-plus-a-fixed-fee subcontract; or

(B) a fixed-price subcontract or purchase order involving more than the greater of—

(i) the simplified acquisition threshold; or

(ii) 5 percent of the estimated cost of the prime contract.

(2) [2306(e)(2)] EXCEPTION.—Paragraph (1) shall does not apply to a prime contract with a contractor that maintains a purchasing system approved by the contracting officer for the contract.

Commented [CR385]: T41 wording is different.

Commented [CR386]: T41 does not have a counterpart to para (2) here.

Commented [CR387]: Changed from "shall not" to "does not" for internal consistency.

§ 3323 [2306(e)]. Cost-plus contracting prohibited for military construction and military family housing projects

(a) PROHIBITION.—A contract entered into by the United States in connection with a military construction project or a military family housing project may not use any form of cost-plus contracting. This prohibition is in addition to the prohibition specified in section 3322(a) of this title on the use of the cost-plus-a-percentage-of-cost system of contracting.

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1 (b) APPLICABILITY.—The prohibition in subsection (a) applies notwithstanding a
2 declaration of war or the declaration by the President of a national emergency under section 201
3 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the armed forces.”

4 (2) CONFORMING REPEAL.—Section 2306 of title 10, United States Code, is
5 **repealed.**

6 (b) CODIFICATION OF FY2017 NDAA SECTION.—

7 (1) Codification.—Chapter 242 of title 10, United States Code, as added by
8 subsection (a), is amended by adding after section 3323 the following new section:

9 “§ 3324 [Sec. 829 of FY17 NDAA, P. L. 114–328 (10 USC 2306 note)] Preference for fixed-
10 price contracts

11 (a) ESTABLISHMENT OF PREFERENCE.—~~Not later than 180 days after the date of the~~
12 ~~enactment of this Act [Dec. 23, 2016], the~~ *The* Defense Federal Acquisition Regulation
13 Supplement shall ~~be revised to~~ establish a preference for fixed-price contracts, including fixed-
14 price incentive fee contracts, in the determination of contract type.

15 (b) APPROVAL REQUIREMENT FOR CERTAIN COST-TYPE CONTRACTS.—

16 (1) IN GENERAL.—A contracting officer of the Department of Defense may not
17 enter into a cost-type contract described in paragraph (2) unless the contract is approved
18 *(as applicable)* by—

19 (A) the service acquisition executive of the military department
20 concerned;

21 (B) the head of the Defense Agency concerned;

22 (C) the commander of the combatant command concerned; or

Commented [CR388]: NLT clause to be omitted as OBE

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(D) the Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment (as applicable).

(2) COVERED CONTRACTS.—A contract described in this paragraph is—

(A) a cost-type contract in excess of \$50,000,000, in the case of a contract entered into on or after October 1, 2018, and before October 1, 2019; and

(B) a cost-type contract in excess of \$25,000,000, in the case of a contract entered into on or after October 1, 2019.”

(2) CONFORMING REPEAL.—Section 829 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 2306 note) is repealed.

(c) CROSS-REFERENCE AMENDMENT.—Section 2343 of title 10, United States Code, is amended by striking “2306(a), 2306(b), 2306(e)” and inserting “3351, 3352(a), 3352(c)”.

SEC. 303. OTHER MATTERS RELATING TO AWARDING OF CONTRACTS.

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by inserting after chapter 242, as added by section 302, the following new chapter:

CHAPTER 243—OTHER MATTERS RELATING TO AWARDING OF CONTRACTS

- Sec. 3341 [Sec. 886 of P.L. 115-91, FY18 NDAA (10 USC 2302 note)]. Development of procurement administrative lead time.
3342 [Sec. 816 of P.L. 109-163, FY06 NDAA (10 USC 2305 note)]. Use of tiered evaluations of offers for contracts and task orders under contracts.
3343 [Sec. 819 of P.L. 109-163, FY06 NDAA (10 USC 2305 note)]. Authorization of evaluation factor for defense contractors employing or subcontracting with members of the Selected Reserve of the reserve components.

Commented [CR389]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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- 3344 [2316] Disclosure of identity of contractor only after public announcement.
- 3345 [2302e]. Contract authority for advanced development of initial or additional prototype units.
- 3346 [Sec. 806(a)-(d) of P.L. 112-81, FY12 NDAA (10 USC 2302 note)]. Inclusion of data on contractor performance in past performance databases for source selection decisions.
- 3347 [Sec. 818(a) of P.L. 115-91, FY18 NDAA (10 USC 2305 note)]. Enhanced post-award debriefing rights.
- 3348 [Sec. 368 of P.L. 112-81, FY12 NDAA (10 USC 2302 note)]. Procurement of tents or other temporary structures. ■

1 (b) CODIFICATION OF FY2018 NDAA SECTION.—

2 (1) **CODIFICATION.**—Chapter 243 of title 10, United States Code, as added by
3 subsection (a), is amended by inserting after the table of sections at the beginning a new
4 section 3341 consisting of—

5 (A) a heading as follows:

6 “§ 3341 [Sec. 886 of P.L. 115-91, FY18 NDAA (10 USC 2302 note)]. **Development of**
7 **procurement administrative lead time”;** and

8 (B) a text consisting of the text of section 886 of the National Defense
9 Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2302
10 note), revised—

11 (i) in subsection (a), by striking “the date of the enactment of this
12 Act” and inserting “December 12, 2017”; and

13 (ii) in subsection (d), by striking “United States Code,”.

14 (2) **CONFORMING REPEAL.**—Section 886 of the National Defense Authorization
15 Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2302) is repealed.

16 (c) CODIFICATION OF FY2006 NDAA SECTION.—

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1 (1) **CODIFICATION.**—Chapter 243 of title 10, United States Code, is further
2 amended by inserting adding after section 3341, as added by subsection (b), a new
3 section 3342 consisting of—

4 (A) a heading as follows:

5 “§ 3342 [Sec. 816 of P.L. 109-163, FY06 NDAA (10 USC 2305 note)]. ~~Guidance on use Use~~
6 **of tiered evaluations of offers for contracts and task orders under contracts”;**
7 **and**

8 (B) a text consisting of the text of section 816 of the National Defense
9 Authorization Act for Fiscal Year 2006 (Public Law 109-163; 10 U.S.C. 2305
10 note).

11 (2) **CONFORMING REPEAL.**—Section 816 of the National Defense Authorization
12 Act for Fiscal Year 2006 (Public Law 109-163; 10 U.S.C. 2305) is repealed.

13 (d) **CODIFICATION OF ADDITIONAL FY2006 NDAA SECTION.**—

14 (1) **CODIFICATION.**—Chapter 243 of title 10, United States Code, is further
15 amended by inserting adding after section 3342, as added by subsection (c), a new section
16 3343 consisting of—

17 (A) a heading as follows:

18 “§ 3343 [Sec. 819 of P.L. 109-163, FY06 NDAA (10 USC 2305 note)]. **Authorization of**
19 **evaluation factor for defense contractors employing or subcontracting with**
20 **members of the Selected Reserve of the reserve components of the Armed**
21 **Forces”;** and

Commented [CR390]: This section header is from the original NDAA section. However, in light of subsection (b), which includes a prohibition related to market research, the words “Guidance on” would be omitted.

Commented [CR391]: “of the Armed Forces” to be omitted as unnecessary inside title 10.

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(B) a text consisting of the text of section 819 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 10 U.S.C. 2305 note), revised by striking “of the Armed Forces” both places it appears.

(2) **CONFORMING REPEAL.**—Section 819 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 10 U.S.C. 2305) is repealed.

(e) **TRANSFER OF SECTION 2316.**—

(1) **TRANSFER.**—Section 2316 of title 10, United States Code, is **transferred** to chapter 243 of such title, **inserted** after section 3343, as added by subsection (d), and **redesignated** as section **3344**.

(2) **REVISED SECTION HEADING.**—The heading for such section is amended to read as follows:

“§3344 [2316]. **Disclosure of identity of contractor *only after public announcement*”.**

(f) **TRANSFER OF SECTION 2302e.**— Section 2302e of title 10, United States Code, is **transferred** to chapter 243 of such title, **inserted** after section 3344, as transferred and redesignated by subsection (e), **redesignated** as section **3345**, and **amended** in subsection (a) by striking “section 2302(2)(B)” and inserting “section 3019(2)”.

(g) **CODIFICATION OF FY2012 NDAA SECTION.**—

(1) **CODIFICATION.**—Chapter 243 of title 10, United States Code, is further amended by inserting after section 3345, as transferred and redesignated by subsection

(f), a new section 3346 consisting of—

(A) a heading as follows:

Commented [CR392]: In title 10, it is not necessary to further identify the reserve components as reserve components “of the Armed Forces”. See 10 USC 10101.

Commented [CR393]: 1. The existing heading is not clear that the section is a limitation. Consider the addition in italic.
2. Perhaps this section would fit better in the chapter on Prohibitions and Penalties. It is a prohibition of disclosure before public announcement, even if not stated that way.

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“§ 3346 [Sec. 806(a)-(d) of P.L. 112-81, FY12 NDAA (10 USC 2302 note)]. Past

performance databases used for source selection decisions: inclusion of data on contractor performance”; and

(B) a text consisting of the text of subsections (a) through (d) of section 819 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 2302 note), revised—

(i) in subsection (a), by striking “Not later than” and all that follows through “shall develop” and inserting “The Under Secretary of Defense for Acquisition, Technology, and Logistics Under Secretary of Defense for Acquisition and Sustainment shall implement”;

(ii) in subsection (b), by striking “, at a minimum”; and

(iii) in subsection (c), by striking “Not later than ” and all that follows through “to require” and inserting “The Under Secretary of Defense for Acquisition, Technology, and Logistics Under Secretary of Defense for Acquisition and Sustainment shall ensure that the Defense Supplement to the Federal Acquisition Regulation Supplement requires”.

(2) CONFORMING REPEAL.—Section 806 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 2302) is repealed.

(h) CODIFICATION OF ADDITIONAL FY2018 NDAA SECTION.—

(1) CODIFICATION.—Chapter 243 of title 10, United States Code, is further amended by inserting after section 3346, as added by subsection (g), a new section 3347 consisting of—

Commented [CR394]: The NLT clause would be omitted as OBE.

Commented [CR395]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR396]: “develop” changed to “implement” to reflect on-going applicability. The context, including the heading of subsection (a), make it clear that the strategy was not only to be developed but to be carried out in practice.

Commented [CR397]: Phrase “, at a minimum” in subsection (b) proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

Commented [CR398]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR399]: This amendment to subsection (c) removes the NLT clause and changes the direction to the UnderSecDef for ongoing applicability (from “revise the [DFARS] to require ...”) to “...ensure that the [DFARS] requires ..”).

Reference to DFARS revised to move “Supplement” after “[FAR]”.

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(A) a heading as follows:

“§ 3347 [Sec. 818(a) of P.L. 115-91, FY18 NDAA (10 USC 2305 note)]. Enhanced post-award debriefing rights: release of contract award information”; and

(B) a text consisting of the text of section 818(a) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2305 note), revised—

(i) by striking “(a) RELEASE” and all that follows through “to require” and inserting “The Secretary of Defense shall ensure that the Department of Defense Supplement to the Federal Acquisition Regulation Supplement requires”; and

(ii) in paragraph (4), by striking “section 2305(b)(5)(D) of title 10, United States Code,” and inserting “section 3304(d) of this title.”

(2) CONFORMING REPEAL.—Section 818(a) of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2305) is repealed.

(3) TRANSITION PROVISION.—The Secretary of Defense shall revise the Defense Federal Acquisition Regulation Supplement to carry out section 3348 of title 10, United States Code, as added by paragraph (1), not later than 180 days after December 12, 2017.

(i) CODIFICATION OF ADDITIONAL FY2012 NDAA SECTION.—

(1) CODIFICATION.—Chapter 243 of title 10, United States Code, is further amended by inserting after section 3347, as added by subsection (h), a new section 3348 consisting of—

(A) a heading as follows:

Commented [CR400]: Would this provision be better if added as a new subsection in 3304, above, rather than as a separate section here?

Commented [CR401]: This amendment (1) removes the NLT clause (180 days after Dec. 12, 2017) and (2) changes the direction to the SecDef for ongoing applicability (from “revise the [DFARS] to require ...”) to “...ensure that the [DFARS] requires ..”). A transition provision for the NLT clause is included in paragraph (3) for consideration.

Commented [CR402]: In this case, the original uses “Secretary of Defense”, not USD(AT&L).

Commented [CR403]: Name of DFARS restated to put “Supplement” after “FAR”.

Commented [CR404]: This paragraph should be omitted if the required revision to the DFARS has already been made or if it is made before this provision is enacted.

DoD: Please advise as to whether the DFARS revision required by sec. 818(a) has been made.

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1 “§ 3348 [Sec. 368 of P.L. 112-81, FY12 NDAA (10 USC 2302 note)]. Procurement of tents or
2 other temporary structures”; and

3 (B) a text consisting of the text of section 368 of the National Defense
4 Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 2302
5 note), revised by striking “Armed Forces” in subsection (a) and inserting “armed
6 forces”.

7 (2) **CONFORMING REPEAL.**—Section 368 of the National Defense Authorization
8 Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 2302) is repealed.

9 **SEC. 304. UNDEFINITIZED CONTRACTUAL ACTIONS.**

10 (a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
11 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
12 (Public Law 115-232), is amended by inserting after chapter 243, as added by section 303, the
13 following new chapter:

14 **“CHAPTER 244—UNDEFINITIZED CONTRACTUAL ACTIONS**

Sec.

3371 [2326(a)]. Undefined contractual actions: required description of anticipated effect on
military department requirements if use of undefinitized contractual action results in
delay.

3372 [2326(b),(c) (h); Sec. 812 of FY10 NDAA, P L 111–84 (10 USC 2326 note)]. Undefined
contractual actions: requirements and limitations relating to definitization of contractual
terms, specifications, and price.

3373 [2326(d),(e)]. Undefined contractual actions: limitation on inclusion of non-urgent
requirements and on modification of scope.

3374 [2326(f)]. Undefined contractual actions: allowable profit.

3375 [2326(g)]. Undefined contractual actions: time limit.

3376 [Sec. 809 of FY08 NDAA, P L 110–181 (10 USC 2326 note)]. Undefined contractual
actions: implementation and enforcement of requirements.

3377 [2326(i), (j)]. Inapplicability to Coast Guard and National Aeronautics and Space
Administration; definitions.

Commented [CR405]: This chapter divides 10 U.S.C. 2326 into six sections.

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1 § 3371 [2326(a)]. **Undefinitized contractual actions: required description of anticipated**
2 **effect on military department requirements if use of undefinitized**
3 **contractual action results in delay**

4 The head of an agency may not enter into an undefinitized contractual action unless the
5 request to the head of the agency for authorization of the contractual action includes a
6 description of the anticipated effect on requirements of the military department concerned if a
7 delay is incurred for purposes of determining contractual terms, specifications, and price before
8 performance is begun under the contractual action.

9 § 3372 [2326(b),(c),(h); Sec. 812 of FY10 NDAA, P L 111–84 (10 USC 2326 note)].

10 **Undefinitized contractual actions: requirements and limitations relating to**
11 **definitization of contractual terms, specifications, and price**

12 (a) [2326(b)] CONTRACTUAL ACTION TO PROVIDE TIME FOR DEFINITIZATION OF
13 CONTRACTUAL TERMS, SPECIFICATIONS, AND PRICE; LIMITATIONS ON OBLIGATION OF FUNDS.—

14 (1) [2326(b)(1)] TERMS FOR TIME FOR DEFINITIZATION TO BE INCLUDED IN
15 CONTRACTUAL ACTION.—A contracting officer of the Department of Defense may not
16 enter into an undefinitized contractual action unless the contractual action provides for
17 agreement upon contractual terms, specifications, and price by the earlier of—

18 (A) the end of the 180-day period beginning on the date on which the
19 contractor submits a qualifying proposal to definitize the contractual terms,
20 specifications, and price; or

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1 (B) the date on which the amount of funds obligated under the contractual
2 action is equal to more than 50 percent of the negotiated overall ceiling price for
3 the contractual action.

4 (2) [2326(b)(2), (3)] LIMITATION ON OBLIGATION OF FUNDS BEFORE
5 DEFINITIZATION.—

6 (A) [2326(b)(2)] 50 PERCENT LIMITATION.—Except as provided in
7 subparagraph (B), the contracting officer for an undefinitized contractual action
8 may not obligate with respect to such contractual action an amount that is equal to
9 more than 50 percent of the negotiated overall ceiling price until the contractual
10 terms, specifications, and price are definitized for such contractual action.

11 (B) [2326(b)(3)] 75 PERCENT LIMITATION WHEN CONTRACTOR SUBMITS
12 QUALIFYING PROPOSAL.— If a contractor submits a qualifying proposal (as
13 defined in section 3377(b) of this title) to definitize an undefinitized contractual
14 action before an amount equal to more than 50 percent of the negotiated overall
15 ceiling price is obligated on such action, the contracting officer for such action
16 may not obligate with respect to such contractual action an amount that is equal to
17 more than 75 percent of the negotiated overall ceiling price until the contractual
18 terms, specifications, and price are definitized for such contractual action.

19 (3) [2326(b)(4)] WAIVER AUTHORITY.—The head of an agency may waive the
20 provisions of this subsection with respect to a contract of that agency if that head of an
21 agency determines that the waiver is necessary in order to support any of the following
22 operations:

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1 (A) A contingency operation.

2 (B) A humanitarian or peacekeeping operation.

3 (4) [2326(b)(5)] INAPPLICABILITY WITH RESPECT TO PURCHASE OF INITIAL
4 SPARES.—This subsection does not apply to an undefinitized contractual action for the
5 purchase of initial spares.

6 (5) [Sec. 812 of FY10 NDAA, P L 111–84 (10 USC 2326 note)] LIMITATIONS ON
7 PAYMENT WITH RESPECT TO COSTS INCURRED BEFORE DEFINITIZATION TO BE APPLICABLE
8 TO ALL CATEGORIES OF UNDEFINITIZED CONTRACTUAL ACTIONS.—

9 (A) REGULATION.—~~Not later than 180 days after the date of the enactment~~
10 ~~of this Act [Oct. 28, 2009], the~~*The* Secretary of Defense shall ~~revise~~ *ensure that*
11 ~~the Defense Supplement to the Federal Acquisition Regulation~~ *Supplement to*
12 ~~ensure~~ *requires* that any limitations described in subparagraph (B) are applicable
13 to all categories of undefinitized contractual actions (including undefinitized task
14 orders and delivery orders).

15 (B) COVERED LIMITATIONS.—The limitations referred to in subparagraph
16 (A) are any limitations on the reimbursement of costs and the payment of profits
17 or fees with respect to costs incurred before the definitization of an undefinitized
18 contractual action of the Department of Defense, including—

19 (i) such limitations as described in part 52.216-26 of the Federal
20 Acquisition Regulation; and

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1 (ii) any such limitations implementing the requirements of section

2 ~~809 of the National Defense Authorization Act for Fiscal Year 2008~~

3 ~~(Public Law 110-181; 10 U.S.C. 2326 note)~~ 3376 of this title.

4 (b) [2326(c)] LIMITATION ON UNILATERAL DEFINITIZATION BY CONTRACTING

5 OFFICER.—With respect to any undefinitized contractual action with a value greater than
6 \$50,000,000, if agreement is not reached on contractual terms, specifications, and price within
7 the period or by the date provided in subsection (a)(1), the contracting officer may not
8 unilaterally definitize those terms, specifications, or price over the objection of the contractor
9 until—

10 (1) the service acquisition executive for the military department that awarded the
11 contract, or the Under Secretary of Defense for Acquisition and Sustainment if the
12 contract was awarded by a Defense Agency or other component of the Department of
13 Defense, approves the definitization in writing;

14 (2) the contracting officer provides a copy of the written approval to the
15 contractor; and

16 (3) a period of 30 calendar days has elapsed after the written approval is provided
17 to the contractor.

18 (c) [2326(h)] DEFINITIZATION IN CASE OF FOREIGN MILITARY CONTRACTS.—

19 (1) 180-DAY REQUIREMENT.—Except as provided in paragraph (2), a contracting
20 officer of the Department of Defense may not enter into an undefinitized contractual
21 action for a foreign military sale unless the contractual action provides for agreement

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1 upon contractual terms, specifications, and price by the end of the 180-day period
2 described in subsection (a)(1)(A).

3 (2) WAIVER AUTHORITY.—The requirement under paragraph (1) may be waived
4 in accordance with subsection (a)(3).

5 **§3373 [2326(d), (e)]. Undefined contractual actions: limitation on inclusion of non-**
6 **urgent requirements and on modification of scope**

7 (a) [2326(d)] INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare
8 parts and support equipment that are not needed on an urgent basis may not be included in an
9 undefinitized contractual action for spare parts and support equipment that are needed on an
10 urgent basis unless the head of the agency approves such inclusion as being—

- 11 (1) good business practice; and
12 (2) in the best interests of the United States.

13 (b) [2326(e)] MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action
14 under which performance has begun may not be modified unless the head of the agency approves
15 such modification as being—

- 16 (1) good business practice; and
17 (2) in the best interests of the United States.

18 **§3374 [2326(f)]. Undefined contractual actions: allowable profit**

19 (a) [2326(f)(1)] ALLOWED PROFIT TO REFLECT CERTAIN REDUCED COST RISKS OF
20 CONTRACTOR.—The head of an agency shall ensure that the profit allowed on an undefinitized
21 contractual action for which the final price is negotiated after a substantial portion of the
22 performance required is completed reflects—

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(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(b) [2326(f)(2)] DATE AS OF WHICH CONTRACTOR COST RISK TO BE DETERMINED.—If a contractor submits a qualifying proposal to definitize an undefinitized contractual action and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal, the head of the agency concerned shall ensure that the profit allowed on the contract accurately reflects the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal.

§3375 [2326(g)]. Undefinitized contractual actions: time limit

~~No~~ **An** undefinitized contractual action may **not** extend beyond 90 days without a written determination by the Secretary of the military department concerned, the head of the Defense Agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition, Technology, and Logistics **Acquisition and Sustainment** (as applicable) that it is in the best interests of the military department, the Defense Agency, the combatant command, or the Department of Defense, respectively, to continue the action.

§ 3376 [Sec. 809 of FY08 NDAA, P L 110–181 (10 USC 2326 note)]. Undefinitized contractual actions: implementation and enforcement of requirements

(a) GUIDANCE AND INSTRUCTIONS.— ~~Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the~~ **The** Secretary of Defense shall issue guidance, with

Commented [CR406]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

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1 detailed implementation instructions, for the Department of Defense to ensure the
2 implementation and enforcement of requirements applicable to undefinitized contractual actions.

3 (b) ELEMENTS.—The guidance and instructions issued pursuant to subsection (a) shall
4 address ~~at a minimum~~ *the following*:

5 (1) The circumstances in which it is, and is not, appropriate for Department of
6 Defense officials to use undefinitized contractual actions.

7 (2) Approval requirements (including thresholds) for the use of undefinitized
8 contractual actions.

9 (3) Procedures for ensuring that timelines for the definitization of undefinitized
10 contractual actions are met.

11 (4) Procedures for ensuring compliance with regulatory limitations on the
12 obligation of funds pursuant to undefinitized contractual actions.

13 (5) Procedures for ensuring compliance with regulatory limitations on profit or
14 fee with respect to costs incurred before the definitization of an undefinitized contractual
15 action.

16 (6) Reporting requirements for undefinitized contractual actions that—

17 (A) fail to meet required timelines for definitization; or

18 (B) fail to comply with regulatory limitations on the obligation of funds or
19 on profit or fee.

20 § 3377 [2326(i), (j)]. **Inapplicability to Coast Guard and National Aeronautics and Space**

21 **Administration; definitions**

Commented [CR407]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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- 1 (a) **[2326(i)]** APPLICABILITY.—This chapter does not apply to the Coast Guard or the
- 2 National Aeronautics and Space Administration.
- 3 (b) **[2326(j)]** DEFINITIONS.—In this chapter:
- 4 (1) The term "undefinitized contractual action" means a new procurement action
- 5 entered into by the head of an agency for which the contractual terms, specifications, or
- 6 price are not agreed upon before performance is begun under the action. Such term does
- 7 not include contractual actions with respect to the following:
- 8 (A) Purchases in an amount not in excess of the amount of the simplified
- 9 acquisition threshold.
- 10 (B) Special access programs.
- 11 (C) Congressionally mandated long-lead procurement contracts.
- 12 (2) The term "qualifying proposal" means a proposal that contains sufficient
- 13 information to enable the Department of Defense to conduct a meaningful audit of the
- 14 information contained in the proposal. **?**
- 15 (b) **CONFORMING REPEALS**.—The following provisions of law are repealed:
- 16 (1) Section 2326 of title 10, United States Code.
- 17 (2) Section 812 of the National Defense Authorization Act for Fiscal Year 2010
- 18 (Public Law 111–84; 10 U.S.C. 2326 note).
- 19 (3) Section 809 of the National Defense Authorization Act for Fiscal Year 2008
- 20 (Public Law 110–181; 10 U.S.C. 2326 note).
- 21 **SEC. 305. TASK AND DELIVERY ORDER CONTRACTS.**

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(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapter 245 and inserting the following:

CHAPTER 245 — TASK AND DELIVERY ORDER CONTRACTS (MULTIPLE AWARD CONTRACTS)

Sec.

- 3401 [10 U.S.C. 2304d; 41 U.S.C. 4101]. Task and delivery order contracts: definitions.
3402 [Sec. 1004(d) of FASA, PL 103-355 (10 U.S.C. 2304a note); 41 U.S.C. 4102]. Authorities or responsibilities not affected.
3403 [10 U.S.C. 2304a; 41 U.S.C. 4103]. Task and delivery order contracts: general authority.
3404 [not in T10; 41 U.S.C. 4104]. Guidance on use of task and delivery order contracts.
3405 [10 U.S.C. 2304b; 41 U.S.C. 4105]. Task order contracts: advisory and assistance services.
3406 [10 U.S.C. 2304c; 41 U.S.C. 4106]. Task and delivery order contracts: orders.

§3401 [10 U.S.C. 2304d; 41 U.S.C. 4101]. Task and delivery order contracts: definitions

In this chapter:

(1) [2304d(2); 41 U.S.C. 4101(1)] DELIVERY ORDER CONTRACT.—The term

"delivery order contract" means a contract for property that—

(A) does not procure or specify a firm quantity of property (other than a minimum or maximum quantity); and

(B) provides for the issuance of orders for the delivery of property during the period of the contract.

(2) [2304d(1); 41 U.S.C. 4101(2)] TASK ORDER CONTRACT.—The term "task

order contract" means a contract for services that—

(A) does not procure or specify a firm quantity of services (other than a minimum or maximum quantity); and

Commented [CR408]: New chapter is organized so as to be parallel with ch. 41 of T41.

Commented [CR409]: New T10 section proposed here both to provide a useful cross-reference to a T41 provision that applies to DoD and to maintain parallelism with the section numbering of ch. 41 of T41 (3404/4104).

Commented [CR410]: Order of paragraphs from original inverted so as to match the order in 41 U.S.C. 4101

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1 (B) provides for the issuance of orders for the performance of tasks during
2 the period of the contract.

3 § 3402 [Sec. 1004(d) of FASA, PL 103-355 (10 U.S.C. 2304a note); 41 U.S.C. 4102].

4 **Authorities or responsibilities not affected**

5 This chapter does not modify or supersede, and is not intended to impair or restrict,
6 authorities or responsibilities under sections 1101 to 1104 of title 40,

7 §3403 [10 U.S.C. 2304a; 41 U.S.C. 4103]. **Task and delivery order contracts: general**
8 **authority**

9 (a) [2304a(a); 4103(a)] AUTHORITY TO AWARD.—Subject to the requirements of this
10 section, section 3406 of this title, and other applicable law, the head of an agency may enter into
11 a task or delivery order contract for procurement of services or property.

12 (b) [2304a(b); 4103(b)] SOLICITATION.—The solicitation for a task or delivery order
13 contract shall include the following:

14 (1) The period of the contract, including the number of options to extend the
15 contract and the period for which the contract may be extended under each option, if any.

16 (2) The maximum quantity or dollar value of the services or property to be
17 procured under the contract.

18 (3) A statement of work, specifications, or other description that reasonably
19 describes the general scope, nature, complexity, and purposes of the services or property
20 to be procured under the contract.

Commented [CR411]: The proposed wording here is somewhat different from the original wording in sec. 1004(d) of FASA, at 2304a note. The wording here is drawn from 41 USC 4102, which was codifying a similar provision from FASA applicable to civilian agencies (sec. 1054(b)). Wording in 1004(d) of FASA, PL 103-355, as amended (10 U.S.C. 2304a note), is as follows:
“(d) PROVISIONS NOT AFFECTED.—Nothing in section 2304a, 2304b, 2304c, or 2304d of title 10, United States Code, as added by subsection (a), and nothing in the amendments made by subsections (b) and (c) [amending sections 2304 and 2331 of this title], shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under chapter 11 of title 40, United States Code.”

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1 (c) [2304a(c); 4103(c)] APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE
2 PROCEDURES.—The head of an agency may use procedures other than competitive procedures to
3 enter into a task or delivery order contract under this section only if—

4 (1) an exception in subsection (a) of section 3204 of this title applies to the
5 contract; and

6 (2) the use of those procedures is approved in accordance with subsection (e) of
7 that section.

8 (d) [2304a(d); 4103(d)] SINGLE AND MULTIPLE CONTRACT AWARDS.—

9 (1) EXERCISE OF AUTHORITY.—The head of an agency may exercise the authority
10 provided in this section—

11 (A) to award a single task or delivery order contract; or

12 (B) if the solicitation states that the head of the agency has the option to do
13 so, to award separate task or delivery order contracts for the same or similar
14 services or property to two or more sources.

15 (2) DETERMINATION NOT REQUIRED.—No determination under section 3203 of
16 this title is required for award of multiple task or delivery order contracts under paragraph
17 (1)(B).

18 (3) WHEN SINGLE SOURCE AWARDS FOR TASK OR DELIVERY ORDER CONTRACTS
19 EXCEEDING \$100,000,000 ARE ALLOWED.—No task or delivery order contract in an
20 amount estimated to exceed \$100,000,000 (including all options) may be awarded to a
21 single source unless the head of the agency determines in writing that—

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1 (A) the task or delivery orders expected under the contract are so
2 integrally related that only a single source can efficiently perform the work;

3 (B) the contract provides only for firm, fixed price task orders or delivery
4 orders for—

5 (i) products for which unit prices are established in the contract; or

6 (ii) services for which prices are established in the contract for the
7 specific tasks to be performed;

8 (C) only one source is qualified and capable of performing the work at a
9 reasonable price to the Government; or

10 (D) because of exceptional circumstances, it is necessary in the public
11 interest to award the contract to a single source.

12 (4) REGULATIONS.—The regulations implementing this subsection shall
13 establish—

14 (A) a preference for awarding, to the maximum extent practicable,
15 multiple task or delivery order contracts for the same or similar services or
16 property under the authority of paragraph (1)(B); and

17 (B) criteria for determining when award of multiple task or delivery order
18 contracts would not be in the best interest of the Federal Government.

19 (e) [2304a(e); 4103(e)] CONTRACT MODIFICATIONS.—A task or delivery order may not
20 increase the scope, period, or maximum value of the task or delivery order contract under which
21 the order is issued. The scope, period, or maximum value of the contract may be increased only
22 by modification of the contract.

Commented [CR412]: “efficiently” was substituted for “reasonably” by sec. 816 of the FY19 NDAA. FYI: A similar change was NOT made to the parallel provision at 41 USC 4103(d)(3)(A).

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1 (f) [2304a(f)] CONTRACT PERIOD.—The head of an agency entering into a task or
2 delivery order contract under this section may provide for the contract to cover any period up to
3 five years and may extend the contract period for one or more successive periods pursuant to an
4 option provided in the contract or a modification of the contract. The total contract period as
5 extended may not exceed 10 years unless such head of an agency determines in writing that
6 exceptional circumstances necessitate a longer contract period.

7 (g) [2304a(g); 4103(f)] INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE
8 SERVICES.—Except as otherwise specifically provided in section 3405 of this title, this section
9 does not apply to a task or delivery order contract for the procurement of advisory and assistance
10 services (as defined in section 1105(g) of title 31).

11 (h) [2304a(h); 4103(g)] RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing
12 in this section may be construed to limit or expand any authority of the head of an agency or the
13 Administrator of General Services to enter into schedule, multiple award, or task or delivery
14 order contracts under any other provision of law.

15 **§3404 [not in T10; 41 U.S.C. 4104]. Guidance on use of task and delivery order contracts**

16 For a requirement that the Federal Acquisition Regulation provide guidance to agencies
17 on the appropriate use of task and delivery order contracts in accordance with this chapter and
18 chapter 41 of title 41, see section 4104 of title 41.

19 **§3405 [10 U.S.C. 2304b; 41 U.S.C. 4105]. Task order contracts: advisory and assistance**
20 **services**

Commented [CR413]: Note that T41 does not have a corresponding "CONTRACT PERIOD" subsection. This subsection (f) was added to sec. 2304a by the FY2004 NDAA and old (f) & (g) were redesignated as (g) & (h). So, the designations of the next two subsections are now different in T10 & T41.

Commented [CR414]: The Section 809 Panel made a recommendation in Vol. 2 of the Panel report to remove the distinction between personal and non-personal services. IF that recommendation is adopted by Congress, this subsection should be reexamined and perhaps eliminated.

Commented [CR415]: New section proposed both to provide a useful cross-reference to a T41 provision that applies to DoD and to maintain parallelism in the following sections with the section numbering of ch. 41 of T41. This is intended to be purely and obviously a cross-reference and not a substantive provision. The T41 provision already applies to DoD.

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1 (a) [2304b(i); 4105(a)] ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section,
2 the term "advisory and assistance services" has the meaning given that term in section 1105(g) of
3 title 31.

Commented [CR416]: T10 subsections from current law reordered so as to be parallel to the order in the T41 section.

Commented [CR417]: Same comment here as on subsection (g) above. This whole section on advisory and assistance services would need to be reexamined IF Congress adopts the 809 Panel recommendation to eliminate the distinction between personal and non-personal services.

4 (b) [2304b(a); 4105(b)] AUTHORITY TO AWARD.—

5 (1) IN GENERAL.—Subject to the requirements of this section, section 3406 of this
6 title, and other applicable law, the head of an agency may enter into a task order contract
7 for procurement of advisory and assistance services.

8 (2) ONLY UNDER THIS SECTION.—The head of an agency may enter into a task
9 order contract for procurement of advisory and assistance services only under the
10 authority of this section.

11 (c) [2304b(b); 4105(c)] CONTRACT PERIOD.—The period of a task order contract entered
12 into under this section, including all periods of extensions of the contract under options,
13 modifications, or otherwise, may not exceed five years unless a longer period is specifically
14 authorized in a law that is applicable to the contract.

15 (d) [2304b(c); 4105(d)] CONTENT OF NOTICE.—The notice required by section 1708 of
16 title 41 and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly
17 describe the general scope, magnitude, and duration of the proposed task order contract in a
18 manner that would reasonably enable a potential offeror to decide whether to request the
19 solicitation and consider submitting an offer.

20 (e) [2304b(d); 4105(e)] REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—

21 (1) SOLICITATION.—The solicitation for the proposed task order contract shall
22 include the information (regarding services) described in section 3403(b) of this title.

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1 (2) CONTRACT.—A task order contract entered into under this section shall
2 contain the same information that is required by paragraph (1) to be included in the
3 solicitation of offers for that contract.

4 (f) [2304b(e); 4105(f)] MULTIPLE AWARDS.—

5 (1) AUTHORITY TO MAKE MULTIPLE AWARDS.—The head of an agency may, on the
6 basis of one solicitation, award separate task order contracts under this section for the
7 same or similar services to two or more sources if the solicitation states that the head of
8 the agency has the option to do so.

9 (2) CONTENT OF SOLICITATION.—If, in the case of a task order contract for
10 advisory and assistance services to be entered into under this section, the contract period
11 is to exceed three years and the contract amount is estimated to exceed \$10,000,000
12 (including all options), the solicitation shall—

13 (A) provide for a multiple award authorized under paragraph (1); and

14 (B) include a statement that the head of the agency may also elect to award
15 only one task order contract if the head of the agency determines in writing that
16 only one of the ~~offerers~~ offerors is capable of providing the services required at
17 the level of quality required.

18 (3) NONAPPLICATION.—Paragraph (2) does not apply in the case of a solicitation
19 for which the head of the agency concerned determines in writing that, because the
20 services required under the task order contract are unique or highly specialized, it is not
21 practicable to award more than one contract.

22 (g) [2304b(f); 4105(g)] CONTRACT MODIFICATIONS.—

Commented [CR418]: Title 10 original has “offerers”. Parallel T41 provision has “offerors” (although the original (from FASA) had “offerers”). Note that subsection (d) above uses “offeror”. Assuming that “offerers” was a typo in the original, this change would correct it, as it was already corrected for title 41 in the title 41 codification.

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1 (1) INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT ONLY BY
2 MODIFICATION OF CONTRACT.—A task order may not increase the scope, period, or
3 maximum value of the task order contract under which the order is issued. The scope,
4 period, or maximum value of the contract may be increased only by modification of the
5 contract.

6 (2) USE OF COMPETITIVE PROCEDURES.—Unless use of procedures other than
7 competitive procedures is authorized by an exception in subsection (a) of section **3204** of
8 this title and approved in accordance with subsection (e) of **that section**, competitive
9 procedures shall be used for making such a modification.

10 (3) NOTICE.—Notice regarding the modification shall be provided in accordance
11 with section 1708 of title 41 and section 8(e) of the Small Business Act (15 U.S.C.
12 637(e)).

13 (h) [**2304b(g); 4105(h)**] CONTRACT EXTENSIONS.—

14 (1) WHEN CONTRACT MAY BE EXTENDED.—Notwithstanding the limitation on the
15 contract period set forth in subsection (c) or in a solicitation or contract pursuant to
16 subsection (f), a task order contract entered into by the head of an agency under this
17 section may be extended on a sole-source basis for a period not exceeding six months if
18 the head of the agency determines that—

19 (A) the award of a follow-on contract has been delayed by circumstances
20 that were not reasonably foreseeable at the time the initial contract was entered
21 into; and

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1 (B) the extension is necessary in order to ensure continuity of the receipt
2 of services pending the award of, and commencement of performance under, the
3 follow-on contract.

4 (2) LIMIT OF ONE EXTENSION.—A task order contract may be extended under the
5 authority of paragraph (1) only once and only in accordance with the limitations and
6 requirements of this subsection.

7 (i) [2304b(h); 4105(i)] INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not
8 apply to a contract for the acquisition of property or services that includes acquisition of advisory
9 and assistance services if the head of an agency entering into the contract determines that, under
10 the contract, advisory and assistance services are necessarily incident to, and not a significant
11 component of, the contract.

12 §3406 [10 U.S.C. 2304c; 41 U.S.C. 4106]. Task and delivery order contracts: orders

13 (a) [10 U.S.C. 2304c(g); 41 U.S.C. 4106(a)] APPLICATION.—This section applies to task
14 and delivery order contracts entered into under sections 3403 and 3405 of this title.

15 (b) [10 U.S.C. 2304c(a); 41 U.S.C. 4106(b)] ACTIONS NOT REQUIRED FOR ISSUANCE OF
16 ORDERS.—The following actions are not required for issuance of a task or delivery order under a
17 task or delivery order contract:

18 (1) A separate notice for such order under section 1708 of title 41 or section 8(e)
19 of the Small Business Act (15 U.S.C. 637(e)).

20 (2) Except as provided in subsection (c), a competition (or a waiver of
21 competition approved in accordance with section 3204(e) of this title) that is separate
22 from that used for entering into the contract.

Commented [CR419]: T10 subsections from current law reordered so as to be parallel to the order in the T41 section.

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1 (c) [10 U.S.C. 2304c(b); 41 U.S.C. 4106(c)] MULTIPLE AWARD CONTRACTS.—When
2 multiple task or delivery order contracts are awarded under section 3403(d)(1)(B) or 3405(f) of
3 this title, all contractors awarded the contracts shall be provided a fair opportunity to be
4 considered, pursuant to procedures set forth in the contracts, for each task or delivery order in
5 excess of \$2,500 that is to be issued under any of the contracts unless—

6 (1) the agency's need for the services or property ordered is of such unusual
7 urgency that providing such opportunity to all ~~of~~ those contractors would result in
8 unacceptable delays in fulfilling that need;

9 (2) only one of those contractors is capable of providing the services or property
10 required at the level of quality required because the services or property ordered are
11 unique or highly specialized;

12 (3) the task or delivery order should be issued on a sole-source basis in the
13 interest of economy and efficiency because it is a logical follow-on to a task or delivery
14 order already issued on a competitive basis;

15 (4) it is necessary to place the order with a particular contractor in order to satisfy
16 a minimum guarantee; or

17 (5) the task or delivery order satisfies one of the exceptions in section 3204(a) of
18 this title to the requirement to use competitive procedures.

19 (d) [10 U.S.C. 2304c(d); 41 U.S.C. 4106(d)] ENHANCED COMPETITION FOR ORDERS IN
20 EXCESS OF \$5,000,000.—In the case of a task or delivery order in excess of \$5,000,000, the
21 requirement to provide all contractors a fair opportunity to be considered under subsection (c) is
22 not met unless all such contractors are provided ~~at a minimum~~—

Commented [CR420]: “of” proposed to be inserted for parallelism with T41

Commented [CR421]: Original subsection (c) from T10 moved after this subsection for parallelism with T41 and is now subsection (e).

Commented [CR422]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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1 (1) a notice of the task or delivery order that includes a clear statement of the
2 agency's requirements;

3 (2) a reasonable period of time to provide a proposal in response to the notice;

4 (3) disclosure of the significant factors and subfactors, including cost or price, that
5 the agency expects to consider in evaluating such proposals, and their relative
6 importance;

7 (4) in the case of an award that is to be made on a best value basis, a written
8 statement documenting—

9 (A) the basis for the award; and

10 (B) the relative importance of quality and price or cost factors; and

11 (5) an opportunity for a post-award debriefing consistent with the requirements of
12 section ~~2305(b)(5)~~ 3304 of this title.

13 (e) [10 U.S.C. 2304c(e); 41 U.S.C. 4106(e)] STATEMENT OF WORK.—A task or delivery
14 order shall include a statement of work that clearly specifies all tasks to be performed or property
15 to be delivered under the order.

16 (f) [10 U.S.C. 2304c(e); 41 U.S.C. 4106(f)] PROTESTS.—

17 (1) PROTESTS NOT AUTHORIZED.—A protest is not authorized in connection with
18 the issuance or proposed issuance of a task or delivery order except for—

19 (A) a protest on the ground that the order increases the scope, period, or
20 maximum value of the contract under which the order is issued; or

21 (B) a protest of an order valued in excess of \$25,000,000.

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(2) JURISDICTION OVER PROTESTS.—Notwithstanding section 3556 of title 31, the Comptroller General of the United States shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

Commented [CR423]: T10 original has “of the United States” after “Comptroller General”. Omitted here for parallelism with T41.

(g) [10 U.S.C. 2304c(f); 41 U.S.C. 4106(g)] TASK AND DELIVERY ORDER

OMBUDSMAN.—

(1) APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.—The head of each agency who awards multiple task or delivery order contracts under section 3403(d)(1)(B) or 3405(f) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on those contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (c).

(2) WHO IS ELIGIBLE.—The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate *advocate for competition*.

Commented [CR424]: Changed from “competition advocate” for parallelism with T41 and because 10 USC 2318 and 41 USC 1705 use “advocate for competition” rather than “competition advocate”.

(b) CONFORMING REPEALS.—The following provisions of law are repealed:

(1) Sections 2304a, 2304b, 2304c, and 2304d of title 10, United States Code.

(2) Section 1004(d) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 10 U.S.C. 2304a note).

(c) CROSS-REFERENCE AMENDMENTS.—

(1) Section 15(r)(2) of the Small Business Act (15 U.S.C. 644(r)(2)) is amended by striking “section 2304c(b)” and inserting “section 3406(c)”.

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(2) Section 1427(b) of National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 40 U.S.C. 1103 note) is amended by striking “sections 2304a and 2304b” and inserting “sections 3403 and 3405”.

(3) Section 3302(a)(3)(B) of title 41, United States Code, is amended by striking “sections 2304a to 2304d of title 10,” and inserting “chapter 245 of title 10”.

(4) Section 4104(a) of title 41, United States Code, is amended by striking “sections 2304a to 2304d” and inserting “chapter 245”.

(5) Section 801(c)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)(2)) is amended by striking “section 2304c(d)” and inserting “section 3406(d)”.

SEC. 306. ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES.

(a) TRANSFER OF CHAPTER 140.—

(1) TRANSFER OF CHAPTER.—Chapter 140 of title 10, United States Code, is **transferred** to part V of subtitle A of that title 10, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), **inserted** in place of chapter 247 as enacted by that section, and **redesignated** as chapter 247.

(2) REDESIGNATION OF SECTIONS.—Sections in chapter 247 of title 10, United States Code, as transferred and redesignated by paragraph (1), are redesignated as follows:

Old Section No.	New Section No.
2375	3452
2376	3451

Commented [CR425]: In the new Part V, chapter 247 is just a shell with a chapter header and the word “[RESERVED]”.

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2377	3453
2379	3455
2380	3456
2380a	3457

Commented [CR426]: A section 3454 relating to marked research training will be inserted below between current 2377 & 2379. [And note that there is no 2378 in current law]

1 (3) TABLE OF SECTIONS.—The items in the table of sections at the beginning of
2 such chapter are amended to conform to the redesignations made by paragraph (2).

3 (4) TABLES OF CHAPTERS.—The tables of chapters at the beginning of subtitle A,
4 and at the beginning of part IV of subtitle A, of title 10, United States Code, are amended
5 by striking the item relating to chapter 140.

6 **(b) AMENDMENTS TO TRANSFERRED SECTIONS.—**

7 (1) SECTION 3451.—

Commented [CR427]: This is the section relating to definitions [current 2376]. In current chapter 140, it appears second. The amendments made by this paragraph will move it to become the first section in the chapter.

8 (A) Section 3451 of title 10, United States Code, as redesignated by
9 subsection (a)(2), is **transferred** within chapter 247 of such title **so as to appear**
10 **after the table of sections at the beginning** of such chapter (and before section
11 3452 as so redesignated).

12 (B) The table of sections at the beginning of such chapter is amended to
13 conform to the transfer made by subparagraph (A).

14 (2) SECTION 3452.—Section 3452 of title 10, United States Code, as redesignated
15 by subsection (a)(2), is amended—

16 (A) by striking “Under Secretary of Defense for Acquisition, Technology,
17 and Logistics” in subsections (b)(2), (c)(2), (d)(2), and (e) and inserting “Under
18 Secretary of Defense for Acquisition and Sustainment”; and

Commented [CR428]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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1 (B) in subsection (e)(2), by striking “section 2533a” and “section 2533b”
2 and inserting “section 4862” and “section 4863”, respectively.

3 (3) SECTION 3453.—Section 3453 of title 10, United States Code, as redesignated
4 by subsection (a)(2), is amended by striking “section 2379” in subsection (d)(1) and
5 inserting “section 3455”.

6 (4) SECTION 3457.—Section 3457 of title 10, United States Code, as redesignated
7 by subsection (a)(2), is amended by striking “section 2376(1)” in subsections (a) and (b)
8 and inserting “section 3451(1)”.

9 (5) SECTION INCORPORATED INTO SECTION 3457.—Such chapter is further
10 amended—

11 (A) by striking the heading of the final section of such chapter, as
12 transferred by subsection (a);

13 (B) in the text following such heading—

14 (i) by striking “Notwithstanding 2376(1)” and inserting “(c)
15 COMMINGLED ITEMS PURCHASED BY CONTRACTORS.—Notwithstanding
16 section 3451(1)”; and

17 (ii) by striking “purposed of” and inserting “purposes of”; and

18 (C) in the table of sections at the beginning of the chapter, by striking the
19 final item.

20 (c) CHAPTER HEADING.—

21 (1) The heading of chapter 247 of title 10, United States Code, as transferred and
22 redesignated by subsection (a), is amended to read as follows:

Commented [CR429]: The amendments made by subparagraphs (A) & (B)(i) merge the text of current 2380B into new 3457 [old 2380a] and designate that text as subsection (c).

Commented [CR430]: The text quoted is as in the original; the word “section” is missing.

Commented [CR431]: This amendment corrects a typo (“purposed”) in current law.

Commented [CR432]: The amendment to the chapter heading changes “Procurement” to “Acquisition”.

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CHAPTER 247—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

(2)The items relating to such chapter in the tables of chapters at the beginning of subtitle A, and at the beginning of part V of subtitle A, of title 10, United States Code, are amended to read as follows:

“247. Acquisition of Commercial Products and Commercial Services 3451”.

(d) CODIFICATION OF NDAA SECTIONS RELATING TO CONTRACT CLAUSES IN

COMMERCIAL CONTRACTS.—

(1) CODIFICATION.—Section 3452 of title 10, United States Code, as redesignated by subsection (a)(2), is amended by adding at the end the following new subsections:

(f) [Sec. 874(b) of P.L. 114-328 (10 U.S.C. 2375 note)] CONDITIONS WITH RESPECT TO REQUIREMENTS FOR INCLUSION OF CERTAIN CONTRACT CLAUSES.—

(1) CONTRACT CLAUSES.—To the maximum extent practicable, the Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment shall ensure that the Defense Federal Acquisition Regulation Supplement does not require the inclusion of contract clauses in contracts for the procurement of commercial items, commercial products or commercial services or contracts for the procurement of commercially available off-the-shelf items, unless such clauses are—

(A) required to implement provisions of law or executive orders applicable to such contracts; or

(B) determined to be consistent with standard commercial practice.

Commented [CR433]: The preceding provisions of this section dealt with the current sections of chapter 140 itself. The remaining provisions of this section deal with related NDAA sections that are shown as “note” sections in the Code.

Commented [CR434]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR435]: Note that, since this limitation is stated as a limitation on requirements in the DFARS, this apparently does NOT preclude the requirement of contract clauses through other means. It seems interesting that the law would prohibit DoD from doing something by one particular way, rather than just generically prohibiting it. Compare paragraph (2) below.

Commented [CR436]: This amendment is NOT made in the FY2019 NDAA to the source section (from the FY2017 NDAA), but that appears to have been an oversight.

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"(2) FLOW-DOWN TO SUBCONTRACTS.—(A) To the maximum extent practicable, the Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment shall ensure that the flow-down of contract clauses to subcontracts under contracts for the procurement of commercial items, commercial products or commercial services or commercially available off-the-shelf items is prohibited unless such flow-down is required to implement provisions of law or executive orders applicable to such subcontracts.

"(B) SUBCONTRACTS.—In this paragraph, the term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor. The term does not include agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract has the meaning given that term in subsection (c)(3).

"(g) [Sec. 821 of P.L. 110-181 (10 U.S.C. 2304 note)] PLAN FOR RESTRICTING

GOVERNMENT-UNIQUE CONTRACT CLAUSES ON COMMERCIAL CONTRACTS.—

"(1) PLAN.—The Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment shall develop and implement carry out a plan to minimize the number of government-unique contract clauses used in commercial contracts by restricting the clauses to the following:

"(A) Government-unique clauses authorized by law or regulation.

"(B) Any additional clauses that are relevant and necessary to a specific contract.

Commented [CR437]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR438]: Note that the "flow-down" limitation in subparagraph (B) of the original [paragraph (2) here] is NOT stated as a DFARS limitation, but would seem to apply across the board. Contrast with subparagraph (A) of the original [paragraph (1) here]. So, the law appears to be inconsistent, but that may have been intentional. No change from original; the above is just noted.

Commented [CR439]: As in paragraph (1) above, this amendment is NOT made in the FY2019 NDAA to the source section (from the FY2017 NDAA), but that appears to have been an oversight.

Commented [CR440]: Wording change for economy of words, to pick up identical definition already in the title 10 text being amended.

Commented [CR441]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR442]: "develop and implement" proposed to be changed to "carry out" to reflect ongoing nature of the requirement.

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"(2) COMMERCIAL CONTRACT.—In this subsection, the term 'commercial contract' means a contract awarded by the Federal Government for the procurement of a commercial product or a commercial service."

(2) CONFORMING REPEALS.—The following provisions of law are repealed.

(A) Section 874(b) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2375 note).

(B) Section 821 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2304 note).

(e) CODIFICATION OF NDAA SECTIONS RELATING TO TRAINING.—

(1) CODIFICATION.—

(A) Chapter 247 of title 10, United States Code, as transferred and redesignated by subsection (a), is amended by inserting after section 3453 the following new section:

§ 3454. [10 U.S.C. 2377(e); Sec. 826(b) of P.L. 110-181 (10 U.S.C. 2377 note); Sec. 844(b) of P.L. 114-92 (10 U.S.C. 2377 note)] Market research training

“(b) [826(b)] REQUIREMENT TO DEVELOP TRAINING AND TOOLS.—The Secretary of Defense shall develop training to assist contracting officers, and market research tools to assist such officers and prime contractors, in performing appropriate market research as required by subsection (c) of section 3453 of this title.

“(c) [844(b)] INCORPORATION INTO MANAGEMENT CERTIFICATION TRAINING MANDATE.—The Chairman of the Joint Chiefs of Staff shall ensure that the requirements of

Commented [CR443]: The original NDAA section also included a definition of “commercial item” which is omitted here since the provision as added to the chapter will now be covered by the definitions in sec. 3451 (current 2376).

Commented [CR444]: Note that in the redesignations in subsection (a)(2) above, space was left for a new 3454.

Commented [CR445]: Note that the new section begins with subsection (b). Subsection (a) of the new section will be current 2377(e), which is transferred immediately below and inserted to appear between the section heading and this subsection (b).

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 subsection (a) are incorporated into the requirements management certification training mandate
2 of the Joint Capabilities Integration Development System.”

3 (B) Subsection (e) of section 3453 of such title, as transferred and
4 redesignated by subsection (a), is **transferred** to section 3454, as added by
5 subparagraph (A), **inserted** after the section heading, **redesignated** as subsection
6 (a), and **amended** by inserting “of section 3453 of this title” in the first sentence
7 after “subsections (c) and (d)”.

8 (C) The table of sections at the beginning of such chapter is amended by
9 inserting after the item relating to section 3453 the following new item:

“3454. Market research training.”.

10 (2) CONFORMING REPEALS.—The following provisions of law are **repealed**:

11 (A) Section 844(b) of the National Defense Authorization Act for Fiscal
12 Year 2016 (Public Law 114-92; 10 U.S.C. 2377 note).

13 (B) Section 826(b) of the National Defense Authorization Act for Fiscal
14 Year 2008 (Public Law 110-181; 10 U.S.C. 2377 note).

15 (f) **CODIFICATION OF NDAA SECTIONS RELATING TO MARKET RESEARCH.**—

16 (1) CODIFICATION.—Section 3453 of title 10, United States Code, as redesignated
17 by subsection (a)(2) and amended by subsection (e)(1)(B), is further amended by adding
18 at the end the following new subsections:

19 “(e) [855 of P.L. 114-92 (10 U.S.C. 2377 note)] GUIDANCE TO ENSURE COMPLIANCE
20 WITH REQUIREMENTS REGARDING MARKET RESEARCH.—

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1 “(1) GUIDANCE REQUIRED.—The Under Secretary of Defense for Acquisition,
2 ~~Technology, and Logistics Acquisition and Sustainment~~ shall issue guidance to ensure
3 that acquisition officials of the Department of Defense fully comply with the
4 requirements of this section regarding market research and commercial products and
5 commercial services.

6 “(2) [855(a)(1)] CONTRACTS FOR INFORMATION TECHNOLOGY PRODUCTS OR
7 SERVICES.—The guidance issued pursuant to this subsection shall, ~~at a minimum~~, provide
8 that the **head of an agency** may not enter into a contract in excess of the simplified
9 acquisition threshold for information technology products or services that are not
10 commercial products or commercial services unless ~~the head of the agency~~ determines in
11 writing that no commercial products or commercial services are suitable to meet the
12 agency's needs as provided in subsection (c)(2).

13 “(3) [855(a)(2)] MARKET RESEARCH TO BE USED TO INFORM PRICE
14 REASONABLENESS DETERMINATIONS.—The guidance issued pursuant to this subsection
15 shall, ~~at a minimum~~, ensure that market research conducted in accordance with subsection
16 (c) is used, where appropriate, to inform price reasonableness determinations.

17 “(4) [855(c)] MARKET RESEARCH DEFINED.—In this subsection, the term 'market
18 research' means a review of existing systems, subsystems, capabilities, and technologies
19 that are available or could be made available to meet the needs of the Department of
20 Defense in whole or in part. The review may include any of the techniques for conducting
21 market research provided in section 10.002(b)(2) of the Federal Acquisition Regulation

Commented [CR446]: The original has “NLT 90 days after the date of the enactment of this Act [Nov. 25, 2015]”, which is omitted here as OBE.

Commented [CR447]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR448]: Phrase proposed to be omitted as part of general recommendation to delete “, at a minimum,” wherever appearing as being unnecessary.

Commented [CR449]: How is “head of the agency” used here and in new subsection (f), both derived from NDAA sections and outside the scope of the definitions in 2376? This is about a DoD issuance. Does it also apply to CG & NASA? Or does “head of the agency” in the NDAA source section for this provision not have the 2376(2) meaning?

Commented [CR450]: Phrase proposed to be omitted as part of general recommendation to delete “, at a minimum,” wherever appearing as being unnecessary.

Commented [CR451]: The original 855 had a subsection (b), omitted here as OBE, which required that certain documents be reviewed and revised as necessary within 180 days of date of enactment.

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1 and shall include, at a minimum, contacting knowledgeable individuals in Government
2 and industry regarding existing market capabilities.

Commented [CR452]: Phrase proposed to be omitted as part of general recommendation to delete ", at a minimum," wherever appearing as being unnecessary.

3 "(f) [Sec. 876 of P.L. 114-328 (10 U.S.C. 2377 note)] PREFERENCE FOR COMMERCIAL
4 SERVICES.—

5 "(1) IN GENERAL.—The Secretary of Defense shall ensure that the guidance issued
6 pursuant to subsection (e) provides that the head of an agency may not enter into a
7 contract in an amount above the simplified acquisition threshold for services described in
8 paragraph (3) that are not commercial services unless the determining authority for
9 purposes of this subsection determines in writing that no commercial services are suitable
10 to meet the agency's needs as provided in subsection (c)(2).

Commented [CR453]: The original has "NLT 90 days after the date of the enactment of this Act [Dec 23, 2016]", which is omitted here as OBE.

Commented [CR454]: The original requires the SecDef to revise the guidance issued under 855 "to provide that ..." This would revise the text to state it as an ongoing requirement.

Commented [CR455]: The text after "provides that" in this subsection is revised and reorganized from the original for readability, particularly to reduce the amount of duplicative language in paragraphs (1) and (2) of the original.

11 "(2) DETERMINING AUTHORITY.—The determining authority for purposes of this
12 subsection is as follows:

13 "(A) In the case of a contract in an amount in excess of \$10,000,000, the
14 determining authority is whichever of the following is applicable:

15 "(i) The service acquisition executive of the military department
16 concerned.

17 "(ii) The head of the Defense Agency concerned.

18 "(iii) The commander of the combatant command concerned.

19 "(iv) The Under Secretary of Defense for Acquisition and
20 Sustainment.

Commented [CR456]: In the original, the reference is to USD(AT&L). It is changed here to refer to both USD(A&S) and USD(R&E). Is that OK?

21 "(v) The Under Secretary of Defense for Research and
22 Engineering.

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"(B) In the case of a contract *not covered by subparagraph (A)*, the determining authority is the contracting officer.

"(3) COVERED SERVICES.—Services described in this paragraph are the following:

"(A) Facilities-related services.

"(B) Knowledge-based services (except engineering services).

"(C) Construction services.

"(D) Medical services.

"(E) Transportation services."

(2) CONFORMING REPEALS.—The following provisions of law are **repealed**:

(A) Section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2377 note).

(B) Section 876 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2377 note).

(g) CODIFICATION OF NDAA SECTION RELATING TO CONVERSION OF PROCUREMENTS

FROM COMMERCIAL ACQUISITION PROCEDURES.—

(1) CODIFICATION.—

(A) Chapter 247 of title 10, United States Code, as transferred and redesignated by subsection (a), is amended **by adding at the end** the following new section:

"§ 3458. [Sec. 856 of P.L. 114-92 (10 U.S.C. 2377 note)] Limitation on conversion of procurements from commercial acquisition procedures

"(a) LIMITATION.—

Commented [CR457]: This section has a sunset of 11/25/2020 (see subsec (d) below). If the sunset is not extended in the FY20 cycle, it may be preferable to leave this section as a note section, rather than codify it. If that is the decision, it is easy to remove this codification from the text.

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"(1) IN GENERAL.—Except as provided in paragraph (2), prior to converting the procurement of a commercial product or a commercial service valued at more than \$1,000,000 from commercial acquisition procedures under part 12 of the Federal Acquisition Regulation to noncommercial acquisition procedures under part 15 of the Federal Acquisition Regulation, the contracting officer for the procurement shall determine in writing that—

Alternative to subsection (a)(1) – matter before subparagraph (A):

"(1) IN GENERAL.—A procurement of a commercial product or a commercial service valued at more than \$1,000,000 that is being conducted using commercial acquisition procedures under part 12 of the Federal Acquisition Regulation may not be converted to noncommercial acquisition procedures under part 15 of the Federal Acquisition Regulation unless the contracting officer for the procurement determines in writing that—

"(A) the earlier use of commercial acquisition procedures under part 12 of the Federal Acquisition Regulation was in error or based on inadequate information; and

"(B) the Department of Defense will realize a cost savings compared to the cost of procuring a similar quantity or level of such item or service using commercial acquisition procedures.

“(2) APPROVAL OF DETERMINATION BY HEAD OF CONTRACTING ACTIVITY BEFORE CONTRACT AWARD.—In the case of a procurement described in paragraph (1) that is valued at more than \$100,000,000, a contract may not be awarded pursuant to a conversion of the procurement described in that paragraph until—

“(A) the head of the contracting activity approves the determination made under paragraph (1); and

Commented [CR458]: The original (above) seems literally to require that the CO make the determination, at some time before the contract conversion (“shall determine”). The alternative, which is provided for consideration, would restate it as a limitation, using the formulation of “may not ... unless”. Note that paragraph (2), below, uses the formulation “may not ... until”.

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(B) a copy of the determination as approved is provided to the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

Acquisition and Sustainment.

(b) FACTORS TO BE CONSIDERED.—In making a determination under paragraph (1)

subsection (a)(1), the determining official contracting officer shall, at a minimum, consider the following factors:

(1) The estimated cost of research and development to be performed by the existing contractor to improve future products or services.

(2) The transaction costs for the Department of Defense and the contractor in assessing and responding to data requests to support a conversion to noncommercial acquisition procedures.

(3) Changes in purchase quantities.

(4) Costs associated with potential procurement delays resulting from the conversion.

(c) PROCEDURES.—The Secretary of Defense shall—

(1) develop procedures to track conversions of future contracts and subcontracts for improved analysis and reporting; and

(2) ensure that the Defense Federal Acquisition Regulation Supplement reflects the requirement limitation in subsection (a).

(d) SUNSET.—The requirements of this section shall terminate on November 25, 2020.

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

Commented [CR459]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR460]: Proposed to be changed from "determining official" to "contracting officer", since a determination under (a)(1) is made by the CO.

Commented [CR461]: Phrase proposed to be omitted as part of general recommendation to delete ", at a minimum," wherever appearing as being unnecessary.

Commented [CR462]: The original began with "NLT 180 days after [Nov. 25, 2015]", which is omitted here as OBE.

Commented [CR463]: The NDAA section being codified here is the FY2016 NDAA, enacted on Nov. 25, 2015. In that context, does "conversions of future contracts" refer to conversions of contracts entered into after on or that date? If so, the phrase "conversion of future contracts and subcontracts" could be changed to "conversion of contracts and subcontracts entered into after November 24, 2015;". The ambiguity inherent in the word "future" may bolster the case for keeping this provision as a note, in addition to the 22/25/20 sunset.

Commented [CR464]: This is changed from "revise the DFARS to reflect..." to the form shown here to reflect the ongoing applicability.

Commented [CR465]: Change from "requirement" to "limitation" suggested as being more accurate. Note that the section heading and the subsection (a) heading both use "limitation" rather than "requirement".

Commented [CR466]: In the original, this was subsection (e). The original subsection (d) required a one-time report NLT Nov. 25, 2016 and is omitted as OBE.

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“3458. Limitation on conversion of procurements from commercial acquisition procedures.”.

1 (2) CONFORMING REPEAL.—Section 856 of the National Defense Authorization
2 Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2377 note) is repealed.

3 (h) CODIFICATION OF NDAA SECTION RELATING TO COMMERCIAL SOFTWARE REUSE
4 PREFERENCE.—

5 (1) CODIFICATION.—

6 (A) Chapter 247 of title 10, United States Code, as transferred and
7 redesignated by subsection (a), is amended by adding after section 3458, as added
8 by subsection (g), the following new section:

9 “§ 3459. [Sec. 803 of P.L. 110-417 (10 U.S.C. 2377 note)] Commercial software reuse
10 preference

11 “The Secretary of Defense shall ensure that contracting officials identify and evaluate, at
12 all stages of the acquisition process (including concept refinement, concept decision, and
13 technology development), opportunities for the use of commercial computer software and other
14 non-developmental software.”

15 (B) The table of sections at the beginning of such chapter is amended by
16 adding at the end the following new item:

“3459. Commercial software reuse preference.”.

17 (2) CONFORMING REPEAL.— Section 803 of the Duncan Hunter National
18 Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2377
19 note) is repealed.

Commented [CR467]: This section heading is from the original. Note that the text itself does not use the term “reuse” and that it does not appear to create a “preference” for commercial software, but to require that opportunities be identified and evaluated. That seems quite different from a “preference”. An alternative heading such as “Identification and evaluation of opportunities for use of non-developmental software” would seem to better reflect the text. Or should the text refer in some fashion to “reuse” or “use of software previously sold” or something like that? Reaction from DoD requested 9-28-18.

Commented [CR468]: The original had a requirement for a one-time report due NLT 270 days after Oct. 14, 2008. That is omitted here as OBE.

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1 (i) CODIFICATION OF NDAA SECTION RELATING TO PILOT PROGRAM FOR
2 AUTHORITY TO ACQUIRE INNOVATIVE COMMERCIAL ITEMS, TECHNOLOGIES, AND SERVICES
3 USING GENERAL SOLICITATION COMPETITIVE PROCEDURES.—

4 (1) CODIFICATION.—

5 (A) Chapter 247 of title 10, United States Code, as transferred and
6 redesignated by subsection (a), is amended by **adding after section 3459**, as
7 added by subsection (h), the following new section:

8 “§ 3460. [Sec. 879 of P.L. 114-328 (10 U.S.C. 2302 note)] Authority to acquire innovative
9 commercial products, technologies, and services using general solicitation
10 competitive procedures: pilot program

11 “(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military
12 departments may carry out a pilot program, to be known as the 'defense commercial solutions
13 opening pilot program', under which the Secretary may acquire innovative commercial products,
14 technologies, and services through a competitive selection of proposals resulting from a general
15 solicitation and the peer review of such proposals.

16 “(b) TREATMENT AS COMPETITIVE PROCEDURES.—Use of general solicitation competitive
17 procedures for the pilot program under subsection (a) shall be considered to be use of
18 competitive procedures for purposes of **chapter 137** **????** of this title.

19 “(c) LIMITATIONS.—

20 “(1) IN GENERAL.—The Secretary may not enter into a contract or agreement
21 under the pilot program for an amount in excess of \$100,000,000 without a written
22 determination from the Under Secretary *of Defense for Acquisition, Logistics, and*

Commented [CR469]: For implementation of this program, see DoD memorandum of June 26, 2018, here: <https://www.acq.osd.mil/dpap/policy/policyvault/USA001228-18-DPAP.pdf>

Commented [CR470]: This reference will need to be updated. What specific sections of ch. 137 relate to “use of competitive procedures”?

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Technology Acquisition and Sustainment or the Under Secretary of Defense for Research and Engineering, as applicable, or the relevant service acquisition executive of the efficacy of the effort to meet mission needs of the Department of Defense or the relevant military department.

"(2) FIXED-PRICE REQUIREMENT.—Contracts or agreements A contract or agreement entered into under the pilot program shall be fixed-price, including fixed-price incentive fee contracts.

"(3) TREATMENT AS COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES.— Notwithstanding section 3451(1) of this title, items, technologies, and services acquired under the pilot program shall be treated as commercial products or commercial services.

"(d) GUIDANCE.— Not later than six months after the date of the enactment of this Act [Dec. 23, 2016], the Secretary shall issue guidance Guidance issued by the Secretary for the implementation of the pilot program under this section within the Department of Defense.—Such guidance shall be issued in consultation with the Director of the Office of Management and Budget and shall be posted for access by the public.

"(e) CONGRESSIONAL NOTIFICATION REQUIRED.—

"(1) IN GENERAL.—Not later than 45 days after the award of a contract for an amount exceeding \$100,000,000 using the authority in subsection (a), the Secretary of Defense shall notify the congressional defense committees of the award.

"(2) ELEMENTS.—Notice of an award under paragraph (1) shall include the following:

Commented [CR471]: This change from USD(AT&L) to apply to both A&S and R&E ok? This provision was NOT addressed in the DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR472]: Changed from plural to singular for general title 10 style.

Commented [CR473]: "pilot" inserted for internal consistency in the section.

Commented [CR474]: "NLT" clause omitted as OBE. Remaining edits are to reflect ongoing applicability.

[FINAL DRAFT]

DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (A) Description of the innovative **commercial** products, technology, or
2 service acquired.

3 (B) Description of the requirement, capability gap, or potential
4 technological advancement with respect to which the innovative **commercial**
5 products, technology, or service acquired provides a solution or a potential new
6 capability.

7 (C) Amount of the contract awarded.

8 (D) Identification of *the* contractor awarded the contract.

9 (f) DEFINITION.—In this section, the term 'innovative' means—

10 (1) any technology, process, or method, including research and development,
11 that is new as of the date of submission of a proposal; or

12 (2) any application that is new as of the date of submission of a proposal of a
13 technology, process, or method existing as of such date.

14 (g) SUNSET.—The authority to enter into contracts under the pilot program shall expire
15 on September 30, 2022."

16 (B) The table of sections at the beginning of such chapter is amended by
17 adding at the end the following new item:

“3460. Authority to acquire innovative commercial items, technologies, and services using general solicitation competitive procedures: pilot program.”.

18 (2) CONFORMING REPEAL.— Section 879 of the National Defense Authorization
19 Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2302 note) is repealed.

20 (j) CODIFICATION OF NDAA SECTION RELATING TO PROCUREMENT OF
21 **COMMERCIAL SERVICES.**—

[FINAL DRAFT]

DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (1) CODIFICATION.—

2 (A) Chapter 247 of title 10, United States Code, as transferred and
3 redesignated by subsection (a), is amended by **adding after section 3460**, as
4 added by subsection (i), the following new section:

5 “§ 3461. [Sec. 805 of P.L. 110-181 (10 U.S.C. 2330 note)] **Procurement of commercial**
6 **services**

7 "(a) REGULATIONS REQUIRED.— ~~The~~ Secretary of Defense shall ~~modify~~ **ensure that** the
8 regulations of the Department of Defense for the procurement of commercial services for or on
9 behalf of the Department of Defense **meet the requirements of this section.**

10 "(b) APPLICABILITY OF COMMERCIAL PROCEDURES.—

11 "(1) SERVICES OF A TYPE SOLD IN MARKETPLACE.—The regulations ~~modified~~
12 ~~pursuant to~~ **referred to in** subsection (a) shall ensure that services that are not offered and
13 sold competitively in substantial quantities in the commercial marketplace, but are of a
14 type offered and sold competitively in substantial quantities in the commercial
15 marketplace, may be treated as commercial services for purposes of ~~section 2306a~~
16 **sections 3701-3708** of this title (relating to truth in negotiations), only if the contracting
17 officer determines in writing that the offeror has submitted sufficient information to
18 evaluate, through price analysis, the reasonableness of the price for such services.

19 "(2) INFORMATION SUBMITTED.—To the extent necessary to make a determination
20 under paragraph (1), the contracting officer may request the offeror to submit—

Commented [CR475]: The original has “NLT 180 days after [Jan. 28, 2008], “, which is omitted as OBE.

[FINAL DRAFT]

DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (A) prices paid for the same or similar commercial services under
2 comparable terms and conditions by both government and commercial customers;
3 and

4 (B) if the contracting officer determines that the information described in
5 subparagraph (A) is not sufficient to determine the reasonableness of price, other
6 relevant information regarding the basis for price or cost, including information
7 on labor costs, material costs, and overhead rates.

8 (c) TIME-AND-MATERIALS CONTRACTS.—

9 (1) COMMERCIAL SERVICES ACQUISITIONS.—The regulations ~~modified pursuant~~
10 ~~to~~ *referred to in* subsection (a) shall ensure that procedures applicable to time-and-
11 materials contracts and labor-hour contracts for commercial service acquisitions may be
12 used only for the following:

13 (A) Services procured for support of a *commercial* service, as described
14 in section 103a(1) of title 41.

15 (B) Emergency repair services.

16 (C) Any other commercial services only to the extent that the head of the
17 agency concerned approves a determination in writing by the contracting officer
18 that—

19 (i) the services to be acquired are commercial services as defined
20 in section 103a(2) of title 41;

Commented [CR476]: Word "commercial" does not appear in the amendment made by 836(f)(6)(B)(iii) of the FY19 NDAA, but it appears that it should. Is insertion of "commercial" as shown here OK?

[FINAL DRAFT]

DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

"(ii) if the services to be acquired are subject to subsection (b), the offeror of the services has submitted sufficient information in accordance with that subsection;

"(iii) such services are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

"(iv) the use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

"(2) NON-COMMERCIAL SERVICES ACQUISITIONS.—Nothing in this subsection shall be construed to preclude the use of procedures applicable to time-and-materials contracts and labor-hour contracts for non-commercial service acquisitions for the acquisition of any category of services."

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3461. Procurement of commercial services."

(2) **CONFORMING REPEAL.**—Section 805 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2330 note) is **repealed**.

(k) CODIFICATION OF OTHER NDAA PROVISIONS RELATING TO COMMERCIAL

ITEMS.—

(1) [Sec. 851(c)-(e) of P.L. 114-92 (10 U.S.C. 2306a note)] CODIFICATION.—**Section 3456** of title 10, United States Code, as redesignated by subsection (a)(2), is amended by adding at the end the following new subsections:

Commented [CR477]: This subsection would codify subsections (c), (d), and (e) of section 851 of PL 114-92, the FY16 NDAA. Each of those subsections is a note under 2306a.

Reviewing suggestion: it will be much easier to track this by looking at the Public Law print for P.L. 114-92, rather than at the notes under 2306a.

In the original, they each refer to "this section and the amendments made by this section".

The section made two amendments. Subsection (a) added a new section 2380 to title 10 [now sec. 3456]; subsection (b) added a new paragraph (4) to 2306a(b).

To preserve the applicability to the amendment made by subsection (a) of sec. 851, this subsection would incorporate those three subsections as part of new section 3456, with references to "the amendments made by this section" changed to "this section".

A similar provision will be proposed to be added to section 2306a(b)(4) as part of the reorganization text that includes that section.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “(c) [Sec. 851(c)] DEFINITION OF COMMERCIAL ITEM.—Nothing in this section shall
2 affect the meaning of the term 'commercial item' under subsection (a)(5) of section 2464 of this
3 title or any requirement under subsection (a)(3) or subsection (c) of such section.

4 “(d) [Sec. 851(d)] REGULATIONS.—The Defense Federal Acquisition Regulation
5 Supplement shall reflect the requirements of this section.

6 “(e) [Sec. 851(e)] RULE OF CONSTRUCTION.—Nothing in this section shall be construed to
7 preclude the contracting officer for the procurement of a commercial product or commercial
8 service from requiring the contractor to supply information that is sufficient to determine the
9 reasonableness of price, regardless of whether or not the contractor was required to provide such
10 information in connection with any earlier procurement.”

11 (2) CONFORMING REPEAL.—Section 851 of the National Defense Authorization
12 Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2306a note) is amended by
13 striking subsections (c), (d), and (e).

14 SEC. 307. MULTIYEAR CONTRACTS.

15 (a) SECTION 2306b.—

16 (1) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added
17 by section 801 of the John S. McCain National Defense Authorization Act for Fiscal
18 Year 2019 (Public Law 115-232), is amended by striking chapter 249 and inserting the
19 following:

20 “CHAPTER 249—MULTIYEAR CONTRACTS

Subchapter Sec.
I. Multiyear Contracts for Acquisition of Property [from 10 U.S.C. 2306b]3501
II. Multiyear Contracts for Acquisition of Services [from 10 U.S.C. 2306c]3531

Commented [CR478]: The original has “NLT 180 days after the date of the enactment of this Act [Nov. 25, 2015],” which is omitted as OBE.

Commented [CR479]: Subsection (b) of 2380 was added by the FY18 NDAA. The original 2380 is what is now 2380(a). To preserve the original meaning, should the references to “this section” in new (c), (d), and (e) be changed to “subsection (a)”, so as to refer to the same text as in the original?

Commented [CR480]: These three subsections should also be added to the TINA statute, at 10 USC 2306a(b)(4). This repeal of these three subsections as a conforming repeal should not be made until they have been added both places.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

III. Other Authorities Relating to Multiyear Contracts3551

SUBCHAPTER I—MULTIYEAR CONTRACTS FOR ACQUISITION OF

PROPERTY

Sec.

- 3501 [2306b(a), (k)]. Multiyear contracts for acquisition of property: authority; definitions.
3502 [2306b(b)]. Multiyear contracts for acquisition of property: regulations.
3503 [2306b(c), (f), (g)]. Multiyear contracts for acquisition of property: contract cancellation or termination.
3504 [2306b(d)]. Multiyear contracts for acquisition of property: participation by subcontractors, vendors, and suppliers.
3505 [2306b(e)]. Multiyear contracts for acquisition of property: protection of existing authority.
3506 [2306b(h)]. Department of Defense contracts: acquisition of weapon systems.
3507 [2306b(i)]. Department of Defense contracts: defense acquisitions specifically authorized by law.
3508 [2306b(1)(1),(6)&(8)]. Department of Defense contracts: notice to congressional committees before taking certain actions.
3509 [2306b(1)(3),(4),(5),(8)&(9)]. Department of Defense contracts: multiyear contracts with value in excess of \$500,000,000.
3510 [2306b(j),(1)(2),(7)&(8)]. Department of Defense contracts: additional matters with respect to multiyear defense contracts.
3511 [2306b(m)]. Increased funding and reprogramming requests.

§ 3501 [2306b(a), (k)]. Multiyear contracts for acquisition of property: authority; definitions

(a) [2306b(a)] AUTHORITY.—To the extent that funds are otherwise available for

obligation, the head of an agency may enter into ~~multiyear contracts~~ a multiyear contract for the purchase of property whenever the head of that agency finds each of the following:

(1) That the use of such a contract will result in significant savings of the total anticipated costs of carrying out the program through annual contracts.

(2) That the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities.

Commented [CR481]: 10 U.S.C.2306b would be turned into a subchapter with 10 sections. (That section as shown in the PDF of title 10 from LRC is 4 1/2 pages long. That's really long. Hard to believe it was originally just a subsection in 2306. See the cross-reference that was left behind in 2306(h) when it was made into a separate section by FASA.)

Commented [CR482]: Change from plural to singular in conformance with general title 10 practice. And note that the various paragraphs below are written from the point of view of one contract at a time, not contracts collectively.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (3) That there is a reasonable expectation that throughout the contemplated
2 contract period the head of the agency will request funding for the contract at the level
3 required to avoid contract cancellation.

4 (4) That there is a stable design for the property to be acquired and that the
5 technical risks associated with such property are not excessive.

6 (5) That the estimates of both the cost of the contract and the anticipated cost
7 avoidance through the use of a multiyear contract are realistic.

8 (6) In the case of a purchase by the Department of Defense, that the use of such a
9 contract will promote the national security of the United States.

10 (7) In the case of a contract in an amount equal to or greater than \$500,000,000,
11 that the conditions required by **paragraphs (3) through (6) of section 3507(c) of this**
12 **title** will be met, in accordance with the Secretary's certification and determination under
13 such section, by such contract.

14 (b) **[2306b(k)] MULTIYEAR CONTRACT DEFINED.**—For the purposes of this subchapter, a
15 multiyear contract is a contract for the purchase of property for more than one, but not more than
16 five, program years. Such a contract may provide that performance under the contract during the
17 second and subsequent years of the contract is contingent upon the appropriation of funds and (if
18 it does so provide) may provide for a cancellation payment to be made to the contractor if such
19 appropriations are not made.

20 ~~(c) DEFINITIONS.—The definitions in section 2302 of this title apply in this subchapter.~~

21 ~~(d) APPLICABILITY.—The provisions of section 2303 of this title apply to this subchapter~~
22 ~~in the same manner as if this subchapter were in chapter 137 of this title.~~

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1 § 3502 [2306b(b)]. **Multiyear contracts for acquisition of property: regulations**

2 (a) [2306b(b)(1)] REQUIREMENT.—Each official named in subsection (b) shall prescribe
3 acquisition regulations for the agency or agencies under the jurisdiction of that official to
4 promote the use of multiyear contracting as authorized by section 3501 of this title in a manner
5 that will allow the most efficient use of multiyear contracting.

6 (b) [2306b(b)(2)] OFFICIALS SPECIFIED TO PRESCRIBE REGULATIONS.—

7 (1) DEPARTMENT OF DEFENSE.—The Secretary of Defense shall prescribe the
8 regulations applicable to the Department of Defense.

9 (2) COAST GUARD.—The Secretary of Homeland Security shall prescribe the
10 regulations applicable to the Coast Guard, except that the regulations prescribed by the
11 Secretary of Defense shall apply to the Coast Guard when it is operating as a service in
12 the Navy.

13 (3) NASA.—The Administrator of the National Aeronautics and Space
14 Administration shall prescribe the regulations applicable to the National Aeronautics and
15 Space Administration.

16 § 3503 [2306b(c), (f), (g)]. **Multiyear contracts for acquisition of property: contract**
17 **cancellation or termination**

18 (a) [2306b(c)] CONTRACT CANCELLATIONS.—The regulations under section 3502 of this
19 title may provide for cancellation provisions in multiyear contracts to the extent that such
20 provisions are necessary and in the best interests of the United States. The cancellation
21 provisions may include consideration of both recurring and nonrecurring costs of the contractor
22 associated with the production of the items to be delivered under the contract.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (b) [2306b(f)] CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING.—In the
2 event funds are not made available for the continuation of a contract made under this section into
3 a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or
4 termination may be paid from—

5 (1) appropriations originally available for the performance of the contract
6 concerned;

7 (2) appropriations currently available for procurement of the type of property
8 concerned, and not otherwise obligated; or

9 (3) funds appropriated for those payments.

10 (c) [2306b(g)] CONTRACT CANCELLATION CEILINGS EXCEEDING \$100,000,000.—

11 (1) [2306b(g)(1)] Before any contract described in section 3501(a) of this title that
12 contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be
13 awarded, the head of the agency concerned shall give written notification of the proposed
14 contract and of the proposed cancellation ceiling for that contract to the congressional
15 defense committees, and such contract may not then be awarded until the end of a period
16 of 30 days beginning on the date of such notification.

17 (2) [2306b(g)(2)] In the case of a contract described in section 3501(a) of this title
18 with a cancellation ceiling described in paragraph (1), if the budget for the contract does
19 not include proposed funding for the costs of contract cancellation up to the cancellation
20 ceiling established in the contract, the head of the agency concerned shall, as part of the
21 certification required by section 3507(c) of this title, give written notification to the
22 congressional defense committees of—

Commented [CR483]: Cross-reference note: In current law, 2306b(g)(2), the reference to subsection (i)(1)(A) should be to (i)(3)(A). The cross reference should have been changed at the time of the amendment to 2306b(i) in the FY15 NDAA. In the reorganized provision, 3507(c)(1) corresponds to the old 2306b(i)(3)(A). But, it appears that the reference should be just be to 3507(c), as that is the certification requirement, while (c)(1) is just one of the conditions that must be satisfied.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (A) the cancellation ceiling amounts planned for each program year in the
2 proposed multiyear procurement contract, together with the reasons for the
3 amounts planned;

4 (B) the extent to which costs of contract cancellation are not included in
5 the budget for the contract; and

6 (C) a financial risk assessment of not including budgeting for costs of
7 contract cancellation.

8 **§ 3504 [2306b(d)]. Multiyear contracts for acquisition of property: participation by**
9 **subcontractors, vendors, and suppliers**

10 In order to broaden the defense industrial base, the regulations under section 3502 of this
11 title shall provide that, to the extent practicable—

12 (1) multiyear contracting under section 3501(a) of this title shall be used in such a
13 manner as to seek, retain, and promote the use under such contracts of companies that are
14 subcontractors, vendors, or suppliers; and

15 (2) upon accrual of any payment or other benefit under such a multiyear contract
16 to any subcontractor, vendor, or supplier company participating in such contract, such
17 payment or benefit shall be delivered to such company in the most expeditious manner
18 practicable.

19 **§ 3505 [2306b(e)]. Multiyear contracts for acquisition of property: protection of existing**
20 **authority**

21 The regulations under section 3502 of this title shall provide that, to the extent
22 practicable, the administration of this subchapter, and of the regulations prescribed under this

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 subchapter, shall not be carried out in a manner to preclude or curtail the existing ability of an
2 agency—

3 (1) to provide for competition in the production of items to be delivered under
4 such a contract; or

5 (2) to provide for termination of a prime contract the performance of which is
6 deficient with respect to cost, quality, or schedule.

7 **§ 3506 [2306b(h)]. Department of Defense contracts: acquisition of weapon systems**

8 In the case of the Department of Defense, the authority under section 3501(a) of this title
9 includes authority to enter into the following multiyear contracts in accordance with this
10 subchapter:

11 (1) A multiyear contract for the purchase of a weapon system, items and services
12 associated with a weapon system, and logistics support for a weapon system.

13 (2) A multiyear contract for advance procurement of components, parts, and
14 materials necessary to the manufacture of a weapon system, including a multiyear
15 contract for such advance procurement that is entered into in order to achieve economic-
16 lot purchases and more efficient production rates.

17 **§ 3507 [2306b(i)]. Department of Defense contracts: defense acquisitions specifically
18 authorized by law**

19 (a) [2306b(i)(1)] LIMITATION.—In the case of the Department of Defense, a multiyear
20 contract in an amount equal to or greater than \$500,000,000 may not be entered into under this
21 subchapter unless the contract is specifically authorized by law in an Act other than an
22 appropriations Act.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (b) [2306b(i)(2)] MATTERS TO BE INCLUDED IN REQUEST FOR AUTHORIZATION.—In
2 submitting a request for a specific authorization by law to carry out a defense acquisition
3 program using multiyear contract authority under this subchapter, the Secretary of Defense shall
4 include in the request the following:

5 (1) A report containing preliminary findings of the agency head required in
6 paragraphs (1) through (6) of section 3501(a) of this title, together with the basis for such
7 findings.

8 (2) Confirmation that the preliminary findings of the agency head under
9 paragraph (1) were supported by a preliminary cost analysis performed by the Director of
10 Cost Assessment and Program Evaluation.

11 (c) [2306b(i)(3)] REQUIRED CERTIFICATION.—A multiyear contract may not be entered
12 into under this subchapter for a defense acquisition program that has been specifically authorized
13 by law to be carried out using multiyear contract authority unless the Secretary of Defense
14 certifies in writing, not later than 30 days before entry into the contract, that each of the
15 following conditions is satisfied:

16 (1) The Secretary has determined that each of the requirements in paragraphs (1)
17 through (6) of section 3501(a) of this title will be met by such contract and has provided
18 the basis for such determination to the congressional defense committees.

19 (2) The Secretary's determination under paragraph (1) was made after completion
20 of a cost analysis conducted on the basis of section ~~2334(e)(2)~~ 3226(b) of this title, and
21 the analysis supports the determination.

Commented [CR484]: The text here shows the text as amended by sec. 817 of the FY19 NDAA.

Commented [CR485]: In current law, the reference is to 2334(e)(2) should be to 2334(f)(2) as explained in this codifier's note. "Section 2334(e)(2) of this title, referred to in subsec.(i)(3)(B), was redesignated as section 2334(f)(2) of this title by Pub. L. 114-328, div. A, title VIII, §842(a)(3), Dec. 23, 2016, 130 Stat. 2288." The replacement for 2334(f)(2) is 3226(b).

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1 (3) The system being acquired pursuant to such contract has not been determined
2 to have experienced cost growth in excess of the critical cost growth threshold pursuant
3 to section ~~2433(d)~~ 4374 of this title within 5 years prior to the date the Secretary
4 anticipates such contract (or a contract for advance procurement entered into consistent
5 with the authorization for such contract) will be awarded.

6 (4) A sufficient number of end items of the system being acquired under such
7 contract have been delivered at or within the most current estimates of the program
8 acquisition unit cost or procurement unit cost for such system to determine that current
9 estimates of such unit costs are realistic.

10 (5) During the fiscal year in which such contract is to be awarded, sufficient funds
11 will be available to perform the contract in such fiscal year, and the future-years defense
12 program for such fiscal year will include the funding required to execute the program
13 without cancellation.

14 (6) The contract is a fixed price type contract.

15 (7) The proposed multiyear contract provides for production at not less than
16 minimum economic rates given the existing tooling and facilities.

17 ~~(d) [2306b(i)(6)] AUTHORITY WHEN ONE OR MORE CONDITIONS NOT MET.—The~~
18 Secretary may make the certification under subsection (c) notwithstanding the fact that one or
19 more of the conditions of such certification are not met, if the Secretary—

20 (1) determines that, due to exceptional circumstances, proceeding with a
21 multiyear contract under this subchapter is in the best interest of the Department of
22 Defense; and

Commented [CR486]: Original paragraphs (6) & (7) moved up in order to appear as subsections (d) & (e), immediately after subsection (c), to which they relate.

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(2) provides the basis for such determination with the certification.

(e) [2306b(i)(7)] LIMITATION ON DELEGATION.—The Secretary may not delegate the authority to make the certification under subsection (c) or the determination under subsection (d) to an official below the level of Under Secretary of Defense for ~~Acquisition, Technology, and Logistics~~ *Acquisition and Sustainment*.

(f) [2306b(i)(4)] REQUESTS FOR RELIEF FROM SPECIFIED COST SAVINGS.—If for any fiscal year a multiyear contract to be entered into under this subchapter is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that significant savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

(g) [2306b(i)(5)] PROCUREMENT OF COMPLETE AND USABLE END ITEMS.—

(1) IN GENERAL.—The Secretary may obligate funds for procurement of an end item under a multiyear contract for the purchase of property only for procurement of a complete and usable end item.

(2) LONG-LEAD ITEMS.—The Secretary may obligate funds appropriated for any fiscal year for advance procurement under a contract for the purchase of property only for

Commented [CR487]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 the procurement of those long-lead items necessary in order to meet a planned delivery
2 schedule for complete major end items that are programmed under the contract to be
3 acquired with funds appropriated for a subsequent fiscal year (including an economic
4 order quantity of such long-lead items when authorized by law).

5 **§ 3508 [2306b(1)(1),(6)&(8)]. Department of Defense contracts: notice to congressional**
6 **committees before taking certain actions**

7 (a) [2306b(1)(1)] NOTICE BEFORE AWARD OF CERTAIN CONTRACTS.—

8 (1) [2306b(1)(1)(A)] REQUIRED NOTICE.—The head of an agency may not initiate
9 a contract described in paragraph (2) unless the congressional defense committees are
10 notified of the proposed contract at least 30 days in advance of the award of the proposed
11 contract.

12 (2) [2306b(1)(1)(B)] COVERED CONTRACTS.—Paragraph (1) applies to the
13 following contracts:

14 (A) A multiyear contract—

15 (i) that employs economic order quantity procurement in excess of
16 \$20,000,000 in any one year of the contract; or

17 (ii) that includes an unfunded contingent liability in excess of
18 \$20,000,000.

19 (B) Any contract for advance procurement leading to a multiyear contract
20 that employs economic order quantity procurement in excess of \$20,000,000 in
21 any one year.

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1 (b) [2306b(1)(6)] NOTICE BEFORE TERMINATING MULTIYEAR PROCUREMENT
2 CONTRACT.—The head of an agency may not terminate a multiyear procurement contract until
3 10 days after the date on which notice of the proposed termination is provided to the
4 congressional defense committees.

5 (c) [2306b(1)(8)] APPLICABILITY.—This section does not apply to the National
6 Aeronautics and Space Administration or to the Coast Guard.

7 **§ 3509 [2306b(1)(3),(4),(5),(8)&(9)]. Department of Defense contracts: multiyear contracts**
8 **with value in excess of \$500,000,000**

9 (a) [2306b(1)(3)] LIMITATION.—The head of an agency may not initiate a multiyear
10 procurement contract for any system (or component thereof) if the value of the multiyear
11 contract would exceed \$500,000,000 unless authority for the contract is specifically provided in
12 an appropriations Act.

13 (b) [2306b(1)(4),(5)&(9)] REPORT REQUIRED BEFORE ENTERING INTO CONTRACT ABOVE
14 THRESHOLD.—

15 (1) [2306b(1)(5)] IN GENERAL.—The head of an agency may not enter into a
16 multiyear contract (or extend an existing multiyear contract), the value of which would
17 exceed \$500,000,000 (when entered into or when extended, as the case may be), until the
18 Secretary of Defense submits to the congressional defense committees a report containing
19 the information described in paragraph (2) with respect to the contract (or contract
20 extension).

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1 (2) [2306b(1)(4)] MATTER TO BE INCLUDED IN REPORT.—Each report required by
2 paragraph (1) with respect to a contract (or contract extension) shall contain the
3 following:

4 (A) The amount of total obligational authority under the contract (or
5 contract extension) and the percentage that such amount represents of—

6 (i) the applicable procurement account; and

7 (ii) the agency procurement total.

8 (B) The amount of total obligational authority under all multiyear
9 procurements of the agency concerned (determined without regard to the amount
10 of the multiyear contract (or contract extension)) under multiyear contracts in
11 effect at the time the report is submitted and the percentage that such amount
12 represents of—

13 (i) the applicable procurement account; and

14 (ii) the agency procurement total.

15 (C) The amount equal to the sum of the amounts under subparagraphs (A)
16 and (B), and the percentage that such amount represents of—

17 (i) the applicable procurement account; and

18 (ii) the agency procurement total.

19 (D) The amount of total obligational authority under all Department of
20 Defense multiyear procurements (determined without regard to the amount of the
21 multiyear contract (or contract extension)), including any multiyear contract (or
22 contract extension) that has been authorized by the Congress but not yet entered

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1 into, and the percentage that such amount represents of the procurement accounts
2 of the Department of Defense treated in the aggregate.

3 (3) [2306b(1)(9)] DEFINITIONS.—In this subsection:

4 (A) The term "applicable procurement account" means, with respect to a
5 multiyear procurement contract (or contract extension), the appropriation account
6 from which payments to execute the contract will be made.

7 (B) The term "agency procurement total" means the procurement accounts
8 of the agency entering into a multiyear procurement contract (or contract
9 extension) treated in the aggregate.

10 (c) [2306b(1)(8)] APPLICABILITY.—This section does not apply to the National
11 Aeronautics and Space Administration or to the Coast Guard.

12 **§ 3510 [2306b(j),(1)(2),(7),(8)]. Department of Defense contracts: additional matters with**
13 **respect to multiyear defense contracts**

14 (a) [2306b(j)]. CONTRACT OPTIONS FOR VARYING QUANTITIES.—The Secretary of
15 Defense may instruct the Secretary of the military department concerned to incorporate into a
16 proposed multiyear contract negotiated priced options for varying the quantities of end items to
17 be procured over the period of the contract.

18 (b) [2306b(1)(2)] FUNDING FOR ECONOMIC ORDER QUANTITY ADVANCE PROCUREMENT.—
19 The head of an agency may not initiate a multiyear contract for which the economic order
20 quantity advance procurement is not funded at least to the limits of the Government's liability.

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1 (c) [2306b(1)(7)] USE OF PRESENT VALUE ANALYSIS.—The execution of multiyear
2 contracting authority shall require the use of a present value analysis to determine lowest cost
3 compared to an annual procurement.

4 (d) [2306b(1)(8)] APPLICABILITY.—This section does not apply to the National
5 Aeronautics and Space Administration or to the Coast Guard.

6 § 3511 [2306b(m)]. **Increased funding and reprogramming requests**

7 Any request for increased funding for the procurement of a major system under a
8 multiyear contract authorized under this subchapter shall be accompanied by an explanation of
9 how the request for increased funding affects the determinations made by the Secretary under
10 section 3507 of this title.”.

11 (2) CONFORMING REPEAL.—Section 2306b of title 10, United States Code, is
12 **repealed.**

13 (3) CROSS-REFERENCE AMENDMENTS.—Section 221(a) of the Coast Guard and
14 Maritime Transportation Act of 2012 (Public Law 112-213; 14 U.S.C. 573 note) is
15 amended—

16 (A) in paragraph (1), by striking “section 2306b” and inserting
17 “subchapter I of chapter 249”;

18 (B) in paragraph (2), by striking “section 2306b(a)” and inserting “section
19 3501(a)”; and

20 (C) in paragraph (3), by striking “section 2306b(a)(1)” and inserting
21 “section 3501(a)(1)”.

22 (b) SECTION 2306c.—

Commented [CR488]: How should the references to 10 U.S.C. 2306b in annual NDAA provisions authorizing specific MYP contracts (usually in title I) be addressed? Would a “deeming” provision be useful?

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1 (1) NEW SUBCHAPTER.—Chapter 249 of title 10, United States Code, as amended
2 by subsection (a)(1), is amended by adding at the end the following new subchapter:

3 "SUBCHAPTER II— MULTIYEAR CONTRACTS FOR ACQUISITION OF
4 SERVICES

Sec.

3531 [2306c(a), (b), (f), (h)]. Multiyear contracts for acquisition of services: authority; definitions.

3532 [2306c(c)]. Multiyear contracts for acquisition of services: applicable principles.

3533 [2306c(e),(d)(4)&(5)]. Multiyear contracts for acquisition of services: contract cancellation or termination.

3534 [2306c(d)(2)]. Multiyear contracts for acquisition of services: contracts with value above \$500,000,000 to be specifically authorized by law.

3535 [2306c(d)(1)&(3)]. Multiyear contracts for acquisition of services: notice to congressional committees before taking certain actions.

5 § 3531 [2306c(a), (b), (f), (h)]. Multiyear contracts for acquisition of services: authority;
6 definitions

7 (a) [2306c(a)] AUTHORITY.—Subject to sections 3533 and 3534 of this title, the head of
8 an agency may enter into contracts for periods of not more than five years for services described
9 in subsection (b), and for items of supply related to such services, for which funds would
10 otherwise be available for obligation only within the fiscal year for which appropriated whenever
11 the head of the agency finds each of the following:

12 (1) That there will be a continuing requirement for the services consonant with
13 current plans for the proposed contract period.

14 (2) That the furnishing of such services will require a substantial initial
15 investment in plant or equipment, or the incurrence of substantial contingent liabilities for
16 the assembly, training, or transportation of a specialized work force.

Commented [CR489]: 10 U.S.C.2306c is turned into a subchapter with 5 sections.

Commented [CR490]: Note that there is no subsection (g) in current 2306c

Commented [CR491]: Conformed to style in 3501(a), above.

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1 (3) That the use of such a contract will promote the best interests of the United
2 States by encouraging effective competition and promoting economies in operation.

3 (b) [2306c(b)] COVERED SERVICES.—The authority under subsection (a) applies to the
4 following types of services:

5 (1) Operation, maintenance, and support of facilities and installations.

6 (2) Maintenance or modification of aircraft, ships, vehicles, and other highly
7 complex military equipment.

8 (3) Specialized training necessitating high quality instructor skills (for example,
9 pilot and air crew members; foreign language training).

10 (4) Base services (for example, ground maintenance; in-plane refueling; bus
11 transportation; refuse collection and disposal).

12 (5) Environmental remediation services for—

13 (A) an active military installation;

14 (B) a military installation being closed or realigned under a base closure
15 law; or

16 (C) a site formerly used by the Department of Defense.

17 (c) [2306c(f)] MULTIYEAR CONTRACT DEFINED.—For the purposes of this subchapter, a
18 multiyear contract is a contract for the purchase of services for more than one, but not more than
19 five, program years. Such a contract may provide that performance under the contract during the
20 second and subsequent years of the contract is contingent upon the appropriation of funds and (if
21 it does so provide) may provide for a cancellation payment to be made to the contractor if such
22 appropriations are not made.

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1 (d) DEFINITIONS.—~~(1)~~ [2306c(h)] In this subchapter, the term "military installation" has
2 the meaning given that term in section 2801(c)(4) of this title.

3 ~~(2) The definitions in section 2302 of this title apply in this subchapter.~~

4 **§ 3532 [2306c(c)]. Multiyear contracts for acquisition of services: applicable principles**

5 In entering into ~~multiyear contracts~~ *a multiyear contract* for services under the authority
6 of this subchapter, the head of the agency shall be guided by the following principles:

Commented [CR492]: Change from plural to singular in conformance with general title 10 practice. And note that the various paragraphs below are written from the point of view of one contract at a time, not contracts collectively.

7 (1) The portion of the cost of any plant or equipment amortized as a cost of
8 contract performance should not exceed the ratio between the period of contract
9 performance and the anticipated useful commercial life of such plant or equipment.
10 Useful commercial life, for this purpose, means the commercial utility of the facilities
11 rather than the physical life thereof, with due consideration given to such factors as
12 location of facilities, specialized nature thereof, and obsolescence.

13 (2) Consideration shall be given to the desirability of obtaining an option to renew
14 the contract for a reasonable period not to exceed three years, at prices not to include
15 charges for plant, equipment and other nonrecurring costs, already amortized.

16 (3) Consideration shall be given to the desirability of reserving in the agency the
17 right, upon payment of the unamortized portion of the cost of the plant or equipment, to
18 take title thereto under appropriate circumstances.

19 **§ 3533 [2306c(e),(d)(4)&(5)]. Multiyear contracts for acquisition of services: contract**
20 **cancellation or termination**

21 (a) [2306c(e)]. CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING.—In the
22 event that funds are not made available for the continuation of a multiyear contract for services

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1 into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of
2 cancellation or termination may be paid from—

3 (1) appropriations originally available for the performance of the contract
4 concerned;

5 (2) appropriations currently available for procurement of the type of services
6 concerned, and not otherwise obligated; or

7 (3) funds appropriated for those payments.

8 (b) [2306c(d)(4)&(5)] CONTRACT CANCELLATION CEILINGS EXCEEDING \$100,000,000.—

9 (1) [2306c(d)(4)] Before any contract described in section 3531(a) of this title that
10 contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be
11 awarded, the head of the agency concerned shall give written notification of the proposed
12 contract and of the proposed cancellation ceiling for that contract to the congressional
13 defense committees, and such contract may not then be awarded until the end of a period
14 of 30 days beginning on the date of such notification.

15 (2) [2306c(d)(5)] In the case of a contract described in section 3531(a) of this title
16 with a cancellation ceiling described in paragraph (1), if the budget for the contract does
17 not include proposed funding for the costs of contract cancellation up to the cancellation
18 ceiling established in the contract, the head of the agency concerned shall give written
19 notification to the congressional defense committees of—

20 (A) the cancellation ceiling amounts planned for each program year in the
21 proposed multiyear procurement contract, together with the reasons for the
22 amounts planned;

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1 (B) the extent to which costs of contract cancellation are not included in
2 the budget for the contract; and

3 (C) a financial risk assessment of not including budgeting for costs of
4 contract cancellation.

5 **§ 3534 [2306c(d)(2)]. Multiyear contracts for acquisition of services: contracts with value**
6 **above \$500,000,000 to be specifically authorized by law**

7 The head of an agency may not initiate a multiyear contract for services under this
8 subchapter if the value of the multiyear contract would exceed \$500,000,000 unless authority for
9 the contract is specifically provided by law.

10 **§ 3535 [2306c(d)(1)&(3)]. Multiyear contracts for acquisition of services: notice to**
11 **congressional committees before taking certain actions**

12 (a) [2306c(d)(1)] NOTICE BEFORE AWARD OF CERTAIN CONTRACTS.—The head of an
13 agency may not initiate under this subchapter a contract for services that includes an unfunded
14 contingent liability in excess of \$20,000,000 unless the congressional defense committees are
15 notified of the proposed contract at least 30 days in advance of the award of the proposed
16 contract.

17 (b) [2306c(d)(3)] NOTICE BEFORE TERMINATING MULTIYEAR PROCUREMENT CONTRACT
18 FOR SERVICES.—The head of an agency may not terminate a multiyear procurement contract for
19 services until 10 days after the date on which notice of the proposed termination is provided to
20 the congressional defense committees.”

21 (2) CONFORMING REPEAL.—Section 2306c of title 10, United States Code, is
22 **repealed.**

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(c) OTHER AUTHORITIES.—

(1) NEW SUBCHAPTER.—Chapter 253 of title 10, United States Code, as amended by subsections (a)(1) and (b)(1), is amended by adding at the end the following new subchapter:

“SUBCHAPTER III—OTHER AUTHORITIES RELATING TO MULTIYEAR CONTRACTS

Sec. 3551 [2410o]. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products. 3552. [Sec 853 of PL 114-328 (10 U.S.C. 2306b note)] Multiple program multiyear contract pilot demonstration program.”

(2) TRANSFER TO NEW SUBCHAPTER.—Section 2410o of title 10, United States Code, is transferred to subchapter III of chapter 249 of such title, as added by paragraph (1), inserted after the table of sections, and redesignated as section 3551.

(3) CODIFICATION OF NDAA SECTION.—Such subchapter is further amended by adding after section 3551 a new section 3552 consisting of—

(A) a heading as follows:

“§ 3552 [Sec 853 of PL 114-328 (10 U.S.C. 2306b note)] Multiple program multiyear contract pilot demonstration program”; and

(B) a text consisting of the text of section 853 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2306b note), amended—

(i) in subsection (a), by striking “section 2306b of title 10, United States Code” and inserting “subchapter I of this chapter”; and

Commented [CR493]: FYI: There are two “note” sections related to multiyear contracting that are NOT proposed for repeal but to be left “as is”. They are— 1. Sec. 8008 of the FY90 DoD Approps Act (10 U.S.C. 2306b note) – subsection (b) is permanent (“None of the funds provided in this Act and hereafter may ...”). But, subsection (b) incorporates some text from subsection (a), and it would be challenging to seek to codify this provision. 2. Sec. 854 of the FY18 NDAA, P.L. 115-91 (10 U.S.C. 2306c note) – This is a pilot program. The duration (thru FY22) would fit within the policy for proposing codifications, but the scope is only five contracts, and that limitation led to the conclusion to not propose codification for this provision.

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(ii) in subsection (c), by striking “section 2306b(i) of title 10” and inserting “section 3507 of this title”.

(4) CONFORMING REPEAL.—Section 853 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2306b note) is repealed.

SEC. 308. SIMPLIFIED ACQUISITION PROCEDURES.

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapter 251 and inserting the following:

“CHAPTER 251—SIMPLIFIED ACQUISITION PROCEDURES”

Sec. 3571 [10 U.S.C. 2302(7), 2302a(a); 41 U.S.C. 134, 153, 3101(b)(1)]. Simplified acquisition threshold. 3572 [10 U.S.C. 2302a(b); 2302b; 41 USC 3101(b)(1)(B), (2)]. Inapplicable laws; implementation of simplified acquisition procedures. 3573 [10 U.S.C. 2338; 41 U.S.C. 1902]. Micro-purchase threshold. 3574 [Sec. 848 of P. L. 105-85, FY98 NDAA (10 U.S.C. 2304 note)]. Requirement relating to micro-purchases.

§ 3571 [10 USC 2302(7), 2302a(a); 41 USC 134, 153, 3101(b)(1)(A)]. Simplified acquisition threshold

For purposes of an acquisition by agencies named in section 2303 3063 of this title, the simplified acquisition threshold is as follows:

(1) [10 U.S.C. 2302a(a); 41 U.S.C. 3101(b)(1)(A)] GENERAL RULE.—Except as provided in paragraphs (2) and (3), the simplified acquisition threshold is as specified in section 134 of title 41.

(2) [10 USC 2302(7); 41 USC 153] HIGHER THRESHOLD FOR CONTRACT IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATION.—In the case of a contract to

Commented [CR494]: See ch. 19 of title 41

Commented [CR495]: The section numbers for the new ch 251 have been changed from 3551-3554 in the Part V shell to 3571-3574 in order to make more room for ch. 249, relating to Multiyear Contracts.

Commented [CR496]: Changed to singular from “acquisitions” [plural] in 10 USC 2302a(a) to match singular in 41 USC 3101(b)(1)(A).

Commented [CR497]: This paragraph is derived from 10 U.S.C. 2302(7). The wording follows 41 U.S.C. 153

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be awarded and performed, or purchase to be made, outside the United States in support of a humanitarian or peacekeeping operation (as such term defined in section 153(2) of title 41), the simplified acquisition threshold is the amount equal to two times the amount specified for that term under paragraph (1).

(3) [new in title 10] HIGHER THRESHOLD FOR CONTRACT COVERED BY SPECIAL EMERGENCY PROCUREMENT AUTHORITY.—For higher thresholds in the case of procurements to which subsection (a) of section 1903 of title 41 applies, see subsection (b) of that section.

§ 3572 [10 USC 2302a(b), 2302b; 41 USC 3101(b)(1)(B), (2)]. Inapplicable laws; implementation of simplified acquisition procedures

(a) [10 USC 2302a(b); 41 USC 3101(b)(1)(B)] INAPPLICABLE LAWS.—No A law properly listed in the Federal Acquisition Regulation pursuant to section 1905 of title 41 shall does not apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(b) [10 USC 2302b; 41 USC 3101(b)(2)] IMPLEMENTATION OF SIMPLIFIED ACQUISITION PROCEDURES.—The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 1901 of title 41 shall apply as provided in that section to the agencies named in section 2303(a) of this title.

§3573 [10 U.S.C. 2338; 41 U.S.C. 1902]. Micro-purchase threshold

The micro-purchase threshold for the Department of Defense is \$10,000.

§3574 [Sec. 848 of P. L. 105-85, FY98 NDAA (10 U.S.C. 2304 note)]. Requirement relating to micro-purchases

Commented [CR498]: 10 USC 2302(7) also refers to a contract in support of a contingency operation, which is omitted here because 41 USC 1903 provides a higher threshold in that case. This is parallel with 41 U.S.C. 153. See the codifiers note under 41 USC 153. OK?

Commented [CR499]: This new subsection is proposed as an obviously nonsubstantive useful cross-reference provision. OK?

Commented [CR500]: The change from “No law ... shall apply” to “A law ... does not apply” is made to conform to T41 wording.

Commented [CR501]: 41 USC 3101(b)(2) has “Simplified” without “The”. The wording of 2302b is retained here, with “The”.

Commented [CR502]: “shall” proposed to be omitted as unnecessary and for consistency with T41.

Commented [CR503]: Section ref to be changed when new # for 2303 assigned

Commented [CR504]: Recognizing that 2338 was just amended in the FY19 NDAA, it is shown here as in current law. It must be noted that it appears redundant with 41 USC 1902(a). Alternatively, to provide a reference within title 10 to the applicable law under title 41, it could be stated in the same form as for the Simplified Acquisition Threshold on page 1 above (e.g., “For purposes of an acquisition by the Department of Defense, the micro-purchase threshold is as provided in section 1902(a) of title 41.” Or “For provisions of law relating to the micro-purchase threshold, see sections 1902 and 1903 of title 41.”) IF the section is retained in title 10 in its current form (perhaps to provide a template in place for a different dollar amount in the future, for example), consider whether “for purposes of section 1902(a) of title 41” shouldn’t be added after “for the Department of Defense”. Otherwise, where is the authority to USE the MPT? What 2338 does now is say what the dollar amount is. What statute now allows for actual use of streamlined procedures below that dollar amount? And note that 41 U.S.C.1903(b)(1) refers to 1902. If DoD is not covered by 1902, where is the DoD authority for increased thresholds for contingency operations, etc?

Commented [CR505]: In response to a query as to status of this section, DoD replied on 9/04/18 as follows: “The Defense Pricing and Contracting (DPC) policy expert stated that it appears the 90% requirement identified in section 848 of the FY98 NDAA is obsolete.” The response then referred to use of the Governmentwide commercial purchase card. So, perhaps rather than codification, section 848 should be repealed. Should sec. 848 be codified as shown here, left as is, or repealed as obsolete? DoD: please advise.

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1 (a) [848(a)(2)] REQUIREMENT.—At least 90 percent of all eligible purchases made by the
2 Department of Defense for an amount less than the micro-purchase threshold shall be made
3 through streamlined micro-purchase procedures.

4 (b) [848(b)] ELIGIBLE PURCHASES.—The Secretary of Defense shall establish which
5 purchases are eligible for purposes of subsection (a). In establishing which purchases are
6 eligible, the Secretary may exclude those categories of purchases determined not to be
7 appropriate or practicable for streamlined micro-purchase procedures.

8 (c) [848(e)] DEFINITIONS.—In this section:

9 (1) The term 'micro-purchase threshold' has the meaning provided that term in
10 section 1902 of title 41.

11 (2) The term 'streamlined micro-purchase procedures' means—
12 (A) procedures providing for the use of the Government-wide commercial
13 purchase card; or
14 (B) any other method for carrying out micro-purchases that the Secretary
15 of Defense prescribes in the regulations implementing this section.

16 (b) CONFORMING REPEALS.—The following provisions of law are **repealed**:

- 17 (1) Sections 2302a and 2302b of title 10, United States Code.
18 (2) Section 2338 of title 10, United States Code.
19 (2) Section 848 of the National Defense Authorization Act for Fiscal Year 1998
20 (Public Law 105-85; 10 U.S.C. 2304 note).

21 **SEC. 309. RAPID ACQUISITION PROCEDURES.**

22 (a) CODIFICATION OF SECTION 806 PROCEDURES.—

Commented [CR506]: In the original, "Not later than October 1, 2000," is omitted as OBE, as is the original (a)(1), which provided a 60% rule effective October 1, 1998, and which was superseded by the 90% rule on Oct. 1, 2000.

Commented [CR507]: The original NDAA section has a subsection (c) requiring a plan by 3/1/98 and a subsection (d) requiring annual reports in 1999, 2000, and 2001. They are omitted here as OBE.

Commented [CR508]: The original refers to 41 USC 1902, as shown. If this section is to be codified, should this reference be changed to refer instead to the title 10 section immediately above?

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(1) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapter 253 and inserting the following:

“CHAPTER 253—EMERGENCY AND RAPID ACQUISITION

PROCEDURES

Subchapter	Sec.
I. Rapid Acquisition and Deployment Procedures [Sec 806 of P. L. 107-314; sec. 8070 of P. L. 115-141 (10 U.S.C. 2302 note)]	3601
II. Rapid Prototyping and Rapid Fielding for Acquisition Programs with “Middle Tier” Duration [Sec. 804 of P. L. 114-92 (10 U.S.C. 2302 note)]	3611
III. Other Authorities Relating to Rapid Acquisition	3621

SUBCHAPTER I—RAPID ACQUISITION AND DEPLOYMENT

PROCEDURES

- 3601 [Sec 806(a), (b)]. Rapid acquisition and deployment of urgently needed supplies: requirement to prescribe procedures.
- 3602 [Sec 806(c); sec. 8069 of P. L. 115-245]. Use of prescribed procedures in response to combat emergencies and certain urgent operational needs: authority; requirements and limitations.
- 3603 [Sec 806(d)]. Waiver of certain statutes and regulations.
- 3604 [Sec 806(e)]. Testing requirement.
- 3605 [Sec 806(f)]. Limitation with respect to quantity of articles approved for low-rate initial production for a major system.
- 3606 [Sec 806(g)]. Associated support services defined.

§ 3601 [Sec 806(a), (b)]. Rapid acquisition and deployment of urgently needed supplies: requirement to prescribe procedures

"(a) [Sec 806(a)] REQUIREMENT.—The Secretary of Defense shall prescribe procedures for the rapid acquisition and deployment of supplies and associated support services that are—

Commented [CR509]: Note that in the new Part V, chapter 253 is just a shell with a chapter header and the word “[RESERVED]”.

Commented [CR510]: The chapter heading as enacted in the FY19 NDAA is “Emergency and Rapid Acquisitions”. Suggest that, in light of the provisions proposed for this chapter, that the chapter heading be revised as shown, to delete “EMERGENCY AND”. None of the various provisions proposed for codification here actually use the term “emergency”. Also suggest adding “PROCEDURES” at the end of the heading, as shown.

Commented [CR511]: Original reads: “Middle Tier of Acquisition for Rapid Prototyping and Rapid Fielding”. Suggested revision, while retaining “Middle Tier” adds “Duration” for context.

Commented [CR512]: Subchapter I is from section 806 of P. L. 107-314 (10 U.S.C. 2302 note)

Commented [CR513]: The original has “NLT 180 days after the date of the enactment of this Act [12/2/2002].” at the beginning, which is omitted here as OBE.

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1 (1)(A) currently under development by the Department of Defense or available
2 from the commercial sector;

3 (B) require only minor modifications to supplies described in subparagraph (A);
4 or

5 "(C) are developed or procured under the rapid fielding or rapid prototyping
6 acquisition pathways under **section 3611 of this title**; and

7 (2) urgently needed to react to an enemy threat or to respond to significant and
8 urgent safety situations.

9 "(b) [Sec 806(b)] ISSUES TO BE ADDRESSED.—The procedures prescribed under
10 subsection (a) shall include the following:

11 "(1) A process for streamlined communications between the Chairman of the Joint
12 Chiefs of Staff, the acquisition community; and the research and development
13 community, including—

14 "(A) a process for the commanders of the combatant commands and the
15 Joint Chiefs of Staff to communicate their needs to the acquisition community and
16 the research and development community; and

17 "(B) a process for the acquisition community and the research and
18 development community to propose supplies and associated support services that
19 meet the needs communicated by the combatant commands and the Joint Chiefs
20 of Staff.

21 "(2) Procedures for demonstrating, rapidly acquiring, and deploying supplies-and
22 associated support services proposed pursuant to paragraph (1)(B), including—

Commented [CR514]: The word "currently" from the original seems to be surplusage in light of the word "are" [present tense]. Also, note that "currently" is not a modifier of "urgently needed" in paragraph (2) below.

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"(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of the supplies and associated support services;

"(B) a process for developing an acquisition and funding strategy for the deployment of the supplies and associated support services; and

"(C) a process for making deployment and utilization determinations based on information obtained pursuant to subparagraphs (A) and (B).

"(3) Specific procedures in accordance with the guidance developed under section 3611 of this title.

§ 3602 [Sec 806(c)]. Use of prescribed procedures in response to combat emergencies and certain urgent operational needs: authority; requirements and limitations

"(a) [Sec 806(c)(1)] ~~DETERMINATION OF NEED~~ AUTHORITY FOR USE OF PROCEDURES FOR RAPID ACQUISITION AND DEPLOYMENT UPON DETERMINATION OF NEED.

(1) [Sec 806(c)(1)(A)] COMBAT CASUALTIES.—In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense, are urgently needed to eliminate a documented deficiency that has resulted in combat casualties, or is likely to result in combat casualties, the Secretary may use the procedures developed under section 3601 of this title in order to accomplish the rapid acquisition and deployment of the needed supplies and associated support services.

"(2) [Sec 806(c)(1)(B)] CONTINGENCY OPERATIONS.—In the case of any supplies and associated support services that, as determined in writing by the Secretary of Defense, are urgently needed to eliminate a documented deficiency that impacts an

Commented [CR515]: Revised subsection heading, to reflect that the subsection is the actual authority for use of the section 806 procedures, as well as the requirement for a determination of need.

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1 ongoing or anticipated contingency operation and that, if left unfulfilled, could
2 potentially result in loss of life or critical mission failure, the Secretary may use the
3 procedures developed under section 3601 of this title in order to accomplish the rapid
4 acquisition and deployment of the needed supplies and associated support services.

5 "(3) [Sec 806(e)(1)(C)] CYBER ATTACKS.—(A) In the case of any supplies and
6 associated support services that, as determined in writing by the Secretary of Defense
7 without delegation, are urgently needed to eliminate a deficiency that as the result of a
8 cyber attack has resulted in critical mission failure, the loss of life, property destruction,
9 or economic effects, or if left unfilled is likely to result in critical mission failure, the loss
10 of life, property destruction, or economic effects, the Secretary may use the procedures
11 developed under section 3601 of this title in order to accomplish the rapid acquisition and
12 deployment of the needed offensive or defensive cyber capabilities, supplies, and
13 associated support services.

14 "(B) In this paragraph, the term 'cyber attack' means a deliberate action to alter,
15 disrupt, deceive, degrade, or destroy computer systems or networks or the information or
16 programs resident in or transiting these systems or networks.

17 "(b) [Sec 806(c)(2)] DESIGNATION OF SENIOR OFFICIAL RESPONSIBLE.—

18 (1) [Sec 806(c)(2)(A)] REQUIREMENT.—(A) Except as provided under
19 subparagraph (B), whenever the Secretary makes a determination under paragraph (1),
20 (2), or (3) of subsection (a) that certain supplies and associated support services are
21 urgently needed to eliminate a deficiency described in that paragraph, the Secretary shall
22 designate a senior official of the Department of Defense to ensure that the needed

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1 supplies and associated support services-are acquired and deployed as quickly as
2 possible, with a goal of awarding a contract for the acquisition of the supplies and
3 associated support services within 15 days.

4 "(B) Subparagraph (A) does not apply to acquisitions initiated in the case of a
5 determination by the Secretary that funds are necessary to immediately initiate a project
6 under the rapid fielding or rapid prototyping acquisition pathways under **section 3611 of**
7 **this title** if the designated official for acquisitions using such pathways is the service
8 acquisition executive.

9 "(2) [Sec 806(c)(2)(B)] AUTHORITY OF DESIGNATED SENIOR OFFICIAL.—Upon
10 designation of a senior official under paragraph (1), the Secretary shall authorize that
11 official to waive any provision of law, policy, directive, or regulation described in section
12 3603 of this title that such official determines in writing would unnecessarily impede the
13 rapid acquisition and deployment of the needed supplies and associated support services.
14 In a case in which the needed supplies and associated support services cannot be acquired
15 without an extensive delay, the senior official shall require that an interim solution be
16 implemented and deployed using the procedures developed under section 3601 of this
17 title to minimize adverse consequences resulting from the urgent need.

18 "(c) [Sec 806(c)(3)] USE OF FUNDS.—

19 (1) [Sec 806(c)(3)(A)] In any fiscal year in which the Secretary makes a
20 determination described in paragraph (1), (2), or (3) of subsection (a), or upon the
21 Secretary making a determination that funds are necessary to immediately initiate a
22 project under the rapid fielding or rapid prototyping acquisition pathways under **section**

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1 **3611 of this title** based on a compelling national security need, the Secretary may use
2 any funds available to the Department of Defense for acquisitions of supplies and
3 associated support services if the determination includes a written finding that the use of
4 such funds is necessary to address the deficiency in a timely manner.

5 "(2) [Sec 806(e)(3)(B)] Except as provided under paragraph (3), the authority of
6 this subchapter may only be used to acquire supplies and associated support services—

7 "(A) in the case of determinations by the Secretary under subsection
8 (a)(1), in an amount aggregating not more than \$200,000,000 during any fiscal
9 year;

10 "(B) in the case of determinations by the Secretary under subsection
11 (a)(2), in an amount aggregating not more than \$200,000,000 during any fiscal
12 year;

13 "(C) in the case of determinations by the Secretary under subsection
14 (a)(3), in an amount aggregating not more than \$200,000,000 during any fiscal
15 year; and

16 "(D) in the case of a determination by the Secretary that funds are
17 necessary to immediately initiate a project under the rapid fielding or rapid
18 prototyping acquisition pathways under **section 3611 of this title**, in an amount
19 not more than \$200,000,000 during any fiscal year.

20 "(3) [Sec 806(e)(3)(C)] For each of **fiscal years 2017 and 2018**, the limits set
21 forth in subparagraphs (A) and (B) of paragraph (2) do not apply to the exercise of
22 authority under those subparagraphs provided that the total amount of supplies and

Commented [CR516]: Could this paragraph be dropped as OBE?

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1 associated support services acquired as provided under such paragraph may not exceed
2 \$800,000,000 during such fiscal year.

3 "(d) [Sec 806(c)(4)] NOTIFICATION TO CONGRESSIONAL COMMITTEES.—

4 (1) [Sec 806(c)(4)(A)] In the case of a determination by the Secretary under
5 subsection (a)(1), the Secretary shall notify the congressional defense committees of the
6 determination within 15 days after the date of the determination.

7 (2) [Sec 806(c)(4)(B)] In the case of a determination by the Secretary under
8 subsection (a)(2), the Secretary shall notify the congressional defense committees of the
9 determination at least 10 days before the date on which the determination is effective.

10 (3) [Sec 806(c)(4)(C)] In the case of a determination by the Secretary under
11 subsection (c)(1) that funds are necessary to immediately initiate a project under the rapid
12 fielding or rapid prototyping acquisition pathways under **section 3611 of this title**, the
13 Secretary shall notify the congressional defense committees of the determination within
14 10 days after the date of the use of such funds.

15 "(4) [Sec 806(c)(4)(D)] A notice under this subsection shall include the following:

16 "(A) The supplies and associated support services to be acquired.

17 "(B) The amount anticipated to be expended for the acquisition.

18 "(C) The source of funds for the acquisition.

19 "(5) [Sec 806(c)(4)(E)] A notice under this subsection shall be sufficient to fulfill
20 any requirement to provide notification to Congress for a new start program.

21 "(6) [Sec 806(c)(4)(F)] A notice under this subsection shall be provided in
22 consultation with the Director of the Office of Management and Budget.

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1 “(7) [Sec 8069 of the FY19 DoD Approps Act (div. A of P.L. 115-245; 10
2 U.S.C. 2302 note)] Any notice that is required to be submitted to the Committees on
3 Appropriations of the Senate and House of Representatives under this subsection shall be
4 submitted pursuant to that requirement concurrently to the Subcommittees on Defense of
5 ~~the Committees on Appropriations of the Senate and House of Representatives~~ *those*
6 *committees*.

7 "(e) [Sec 806(c)(5)] TIME FOR TRANSITIONING TO NORMAL ACQUISITION SYSTEM.—

8 (1) [Sec 806(c)(5)(A)] An acquisition initiated under this section shall transition
9 to the normal acquisition system not later than two years after the date on which the
10 Secretary makes the determination described in subsection (a) with respect to the supplies
11 and associated support services-concerned.

12 "(2) [Sec 806(c)(5)(B)] Paragraph (1) does not apply to an acquisition initiated in
13 the case of a determination by the Secretary that funds are necessary to immediately
14 initiate a project under the rapid fielding or rapid prototyping acquisition pathways under
15 **section 3611 of this title**.

16 "(f) [Sec 806(c)(6)] LIMITATION ON OFFICERS WITH AUTHORITY TO MAKE A
17 DETERMINATION.—The authority to make a determination under paragraph (1), (2), or (3) of
18 subsection (a) may be exercised only by the Secretary of Defense or Deputy Secretary of
19 Defense.

20 **§ 3603 [Sec 806(d)]. Waiver of certain statutes and regulations**

21 (a) [Sec 806(d)(1)] Upon a determination described in section 3602(a) of this title, the
22 senior official designated in accordance with section 3602(b) of this title with respect to that

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1 designation is authorized to waive any provision of law, policy, directive or regulation
2 addressing—
3 "(1) the establishment of the requirement for the supplies and associated support
4 services;
5 "(2) the research, development, test, and evaluation of the supplies and associated
6 support services; or
7 "(3) the solicitation and selection of sources, and the award of the contract, for
8 procurement of the supplies and associated support services.

9 "(b) [Sec 806(d)(2)] Nothing in this section authorizes the waiver of—
10 "(1) the requirements of this subchapter or the regulations implementing this
11 subchapter; or
12 "(2) any provision of law imposing civil or criminal penalties.

13 **§ 3604 [Sec 806(e)]. Testing requirement**

14 (a) [Sec 806(e)(1)] The process for demonstrating performance and evaluating for current
15 operational purposes the existing capability of the supplies and associated support services
16 prescribed under section 3601(b)(2)(A) of this title shall include—
17 "(1) an operational assessment in accordance with procedures prescribed by the
18 Director of Operational Test and Evaluation; and
19 "(2) a requirement to provide information about any deficiency of the supplies
20 and associated support services in meeting the original requirements for the supplies and
21 associated support services (as stated in a statement of the urgent operational need or
22 similar document) to the deployment decisionmaking authority.

Commented [CR517]: The word "designation" appears here as in the original. In context, it looks like it should be "determination", referring back to the determination on the first line of this section.

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1 "(b) [Sec 806(e)(2)] The process may not include a requirement for any deficiency of
2 supplies and associated support services to be the determining factor in deciding whether to
3 deploy the supplies and associated support services.

4 "(c) [Sec 806(e)(3)] If supplies and associated support services are deployed under the
5 rapid acquisition and deployment procedures prescribed pursuant to this subchapter, or under any
6 other authority, before the completion of operational test and evaluation of the supplies and
7 associated support services, the Director of Operational Test and Evaluation shall have access to
8 operational records and data relevant to such supplies and associated support services in
9 accordance with section 139(e)(3) of this title for the purpose of completing operational test and
10 evaluation of the supplies and associated support services. The access to the operational records
11 and data shall be provided in a time and manner determined by the Secretary of Defense
12 consistent with requirements of operational security and other relevant operational requirements.

13 **§ 3605 [Sec 806(f)]. Limitation with respect to quantity of articles approved for low-rate**
14 **initial production for a major system**

15 In the case of supplies that are part of a major system for which a low-rate initial
16 production quantity determination has been made pursuant to section ~~2400~~ **4231** of this title, the
17 quantity of such supplies acquired using the procedures prescribed pursuant to this subchapter
18 may not exceed an amount consistent with complying with limitations on the quantity of articles
19 approved for low-rate initial production for such system. Any such supplies shall be included in
20 any relevant calculation of quantities for low-rate initial production for the system concerned.

21 **§ 3606 [Sec 806(g)]. Associated support services defined**

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1 In this subchapter, the term 'associated support services' means training, operation,
2 maintenance, and support services needed in connection with the deployment of supplies to be
3 acquired pursuant to the authority of this subchapter. The term does not include functions that are
4 inherently governmental or otherwise exempted from private sector performance."

(2) CONFORMING REPEALS.—The following provisions of law are repealed:

(A) Section 806 of the Bob Stump National Defense Authorization Act for
Fiscal Year 2003 (Public Law 107–314; 10 U.S.C. 2302 note).

(B) Section 8069 of the Department of Defense Appropriations Act,
2019 (division A of Public Law 115-245; 10 U.S.C. 2302 note).

(C) Section 845(c) of the National Defense Authorization Act for Fiscal
Year 2012 (Public Law 112–81; 10 U.S.C. 2302 note).

(3) CLERICAL AMENDMENTS.—The tables of chapters at the beginning of subtitle
A, and at the beginning of part V of subtitle A, of title 10, United States Code, are
amended by striking the item relating to chapter 253 and inserting the following new
item:

"253. Rapid Acquisition Procedures3601".

(b) CODIFICATION OF SECTION 804 PROCEDURES.—

(1) NEW SUBCHAPTER.—Chapter 253 of title 10, United States Code, as amended
by subsection (a)(1), is amended by adding at the end the following new subchapter:

"SUBCHAPTER II—RAPID PROTOTYPING AND RAPID FIELDING FOR
ACQUISITION PROGRAMS WITH "MIDDLE TIER" DURATION

Sec.

Commented [CR518]: This provision made the authority to
acquire associated support services under sec. 806 of P.L. 107-314
contingent on submission of a specified SecDef certification.
The certification was made by letter from the SecDef to the cong def
committees dated Aug 21, 2013.
So, this provision is proposed to be repealed as being OBE, without
codification.

Commented [CR519]: If the revised chapter heading on page 1
is approved, then this paragraph (3) should be included.

Commented [CR520]: Subchapter II is from section 804 of P.
L. 114-92 (10 U.S.C. 2302 note)

Commented [CR521]: As noted at the beginning of this
chapter, the original reads: "Middle Tier of Acquisition for Rapid
Prototyping and Rapid Fielding". Suggested revision, while
retaining "Middle Tier" adds "Duration" for context.

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3611 [804(a), (b)]. Middle-tier acquisition programs: acquisition pathways for rapid prototyping and rapid fielding.
3612 [804(c)]. Acquisition programs carried out under the acquisition pathways for rapid prototyping and rapid fielding: expedited process.
3613 [804(d)]. Rapid prototyping funds.

1 § 3611 [804(a), (b)]. Middle-tier acquisition programs: acquisition pathways for rapid
2 prototyping and rapid fielding

3 "(a) GUIDANCE REQUIRED.—The Under Secretary of Defense for Acquisition,
4 Technology, and Logistics, Acquisition and Sustainment, in consultation with the Comptroller of
5 the Department of Defense and the Vice Chairman of the Joint Chiefs of Staff, shall establish
6 guidance for a 'middle tier' of acquisition programs that are intended to be completed in a period
7 of two to five years.

8 "(b) ACQUISITION PATHWAYS.—The guidance required by subsection (a) shall cover the
9 following two acquisition pathways:

10 "(1) RAPID PROTOTYPING.— The rapid prototyping pathway shall provide for the
11 use of innovative technologies to rapidly develop fieldable prototypes to demonstrate
12 new capabilities and meet emerging military needs. The objective of an acquisition
13 program under this the rapid prototyping pathway shall be to field a prototype that can be
14 demonstrated in an operational environment and provide for a residual operational
15 capability within five years of the development of an approved requirement.

16 "(2) RAPID FIELDING.—The rapid fielding pathway shall provide for the use of
17 proven technologies to field production quantities of new or upgraded systems with
18 minimal development required. The objective of an acquisition program under this the

Commented [CR522]: The original has "NLT 180 days after the date of the enactment of this Act [11/15/2015]," at the beginning. That clause is omitted here as OBE.
Commented [CR523]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).
Commented [CR524]: Note that this word informs the reader that the concept of a "middle tier" of programs relates to the duration of a program, and not some other factor. Hence the suggestion of the addition of the word "Duration" to the subchapter heading, compared to the heading of sec. 804.

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1 *rapid fielding* pathway shall be to begin production within six months and complete
2 fielding within five years of the development of an approved requirement.

3 **§ 3612 [804(c)]. Acquisition programs carried out under the acquisition pathways for rapid**
4 **prototyping and rapid fielding: expedited process**

5 "(a) [Sec 804(c)(1)] IN GENERAL.—The guidance required by section 3611 of this title
6 shall provide for a streamlined and coordinated requirements, budget, and acquisition process
7 that results in the development of an approved requirement for each program in a period of not
8 more than six months from the time that the process is initiated. Programs that are subject to the
9 guidance shall not be subject to the Joint Capabilities Integration and Development System
10 Manual and Department of Defense Directive 5000.01, except to the extent specifically provided
11 in the guidance.

12 "(b) [Sec 804(c)(2)] RAPID PROTOTYPING *PATHWAY*.—With respect to the rapid
13 prototyping pathway, the guidance shall include the following:

14 "(1) A merit-based process for the consideration of innovative technologies and
15 new capabilities to meet needs communicated by the Joint Chiefs of Staff and the
16 ~~combatant~~ commanders *of the combatant commands*.

17 "(2) A process for developing and implementing acquisition and funding
18 strategies for the program.

19 "(3) A process for demonstrating and evaluating the performance of fieldable
20 prototypes developed pursuant to the program in an operational environment.

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1 "(4) A process for transitioning successful prototypes to new or existing
2 acquisition programs for production and fielding under the rapid fielding pathway or the
3 traditional acquisition system.

4 "(c) [Sec 804(c)(3)] RAPID FIELDING *PATHWAY*.—With respect to the rapid fielding
5 pathway, the guidance shall include the following:

6 " (1) A merit-based process for the consideration of existing products and proven
7 technologies to meet needs communicated by the Joint Chiefs of Staff and the ~~combatant~~
8 commanders *of the combatant commands*.

9 " (2) A process for demonstrating performance and evaluating for current
10 operational purposes the proposed products and technologies.

11 " (3) A process for developing and implementing acquisition and funding
12 strategies for the program.

13 " (4) A process for considering lifecycle costs and addressing issues of logistics
14 support and system interoperability.

15 " (5) A process for identifying and exploiting opportunities to use the rapid
16 fielding pathway to reduce total ownership costs.

17 "(d) [Sec 804(c)(4)] STREAMLINED PROCEDURES.—The guidance for the programs **may**
18 provide for any of the following streamlined procedures:

19 " (1) [Sec 804(c)(4)(A)] The service acquisition executive of the military
20 department concerned shall appoint a program manager for such program from among
21 candidates from among civilian employees or members of the armed forces who have
22 significant and relevant experience managing large and complex programs.

Commented [CR525]: The word "may" [from the original] is interesting here, since each of the subordinate paragraphs below uses "shall".

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1 "(2) [Sec 804(c)(4)(B)] The program manager for each program shall report with
2 respect to such program directly, without intervening review or approval, to the service
3 acquisition executive of the military department concerned.

4 "(3) [Sec 804(c)(4)(C)] The service acquisition executive of the military
5 department concerned shall evaluate the job performance of such **program** manager on an
6 annual basis. In conducting an evaluation under this paragraph, a service acquisition
7 executive shall consider the extent to which the **program** manager has achieved the
8 objectives of the program for which the **program** manager is responsible, including
9 quality, timeliness, and cost objectives.

10 "(4) [Sec 804(c)(4)(D)] The program manager of a **defense streamlined program**
11 shall be authorized staff positions for a technical staff, including experts in business
12 management, contracting, auditing, engineering, testing, and logistics, to enable the
13 **program** manager to manage the program without the technical assistance of another
14 organizational unit of an agency to the maximum extent practicable.

15 "(5) [Sec 804(c)(4)(E)] The program manager of a **defense streamlined program**
16 shall be authorized, in coordination with the users of the equipment and capability to be
17 acquired and the test community, to make trade-offs among life-cycle costs,
18 requirements, and schedules to meet the goals of the program.

19 "~~(6)~~ [Sec 804(c)(4)(G)] The program manager of a **defense streamlined program**
20 shall be provided a process to expeditiously seek a waiver from Congress from any
21 statutory or regulatory requirement that the program manager determines adds little or no
22 value to the management of the program.

Commented [CR526]: Since "program manager" is used in paragraphs (1) and (2), the same usage is suggested in this paragraph and paragraph (4), for consistency and standardized usage.

Commented [CR527]: Note that the term "defense streamlined program", which appears here and in paragraphs (5) & (6), does not otherwise appear.

Commented [CR528]: See note to paragraph (4) above.

Commented [CR529]: Final two paragraphs switched from the original order so as to put the paragraphs relating to the program manager in consecutive order, with the paragraph about the SAE/DAE following below..

Commented [CR530]: See note to paragraph (4) above.

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"(7) [Sec 804(c)(4)(F)] The service acquisition executive, acting in coordination with the defense acquisition executive, shall serve as the milestone decision authority for the program.

§ 3613 [804(d)]. Rapid prototyping funds

"(a) [804(d)(1)] DEPARTMENT OF DEFENSE RAPID PROTOTYPING FUND.—

"(1) [804(d)(1)(A)] IN GENERAL.—The Secretary of Defense shall establish a fund to be known as the 'Department of Defense Rapid Prototyping Fund' to provide funds, in addition to other funds that may be available, for acquisition programs under the rapid prototyping pathway established pursuant to section 3611 of this title and other purposes specified in law. The Fund shall be managed by a senior official of the Department of Defense designated by the Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment. The Fund shall consist of the following:

"(A) Amounts appropriated to the Fund.

"(B) Amounts credited to the Fund pursuant to section 828 of this Act [the National Defense Authorization Act for Fiscal Year 2016 (10 U.S.C. 2430 note)] 4275 of this title.

"(C) Any other amounts appropriated to, credited to, or transferred to the Fund.

"(2) [804(d)(1)(B)] TRANSFER AUTHORITY.—Amounts available in the Fund may be transferred to a military department for the purpose of carrying out an acquisition program under the rapid prototyping pathway established pursuant to section 3611 of this title. Any amount so transferred shall be credited to the account to which it is transferred.

Commented [CR531]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

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1 The transfer authority provided in this paragraph is in addition to any other transfer
2 authority available to the Department of Defense.

3 "(3) [804(d)(1)(C)] CONGRESSIONAL NOTICE.—The senior official designated to
4 manage the Fund shall notify the congressional defense committees of any transfer under
5 paragraph (2) within 5 business days after such transfer. Each notification shall specify

6 *the following:*

7 (A) The amount transferred.

8 (B) The purpose of the transfer.,~~and~~

9 (C) The total projected cost and estimated cost to complete the acquisition
10 program to which the funds were transferred.

11 "(b) [804(d)(2)] MILITARY DEPARTMENT RAPID PROTOTYPING FUNDS.—The Secretary of
12 each military department may establish a military department-specific fund (and, in the case of
13 the Secretary of the Navy, including the Marine Corps) to provide funds, in addition to other
14 funds that may be available to the military department concerned, for acquisition programs under
15 the rapid fielding and prototyping pathways established pursuant to section 3611 of this title.
16 Each military department-specific fund shall consist of amounts appropriated or credited to the
17 fund."

18 (2) CONFORMING REPEAL.—Section 804 of the National Defense Authorization
19 Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note) is **repealed**.

20 (c) OTHER AUTHORITIES.—Chapter 253 of title 10, United States Code, as amended by
21 subsections (a)(1) and (b)(1), is amended by adding at the end the following new subchapter:

Commented [CR532]: The original says "paragraph (2)" but apparently should say "subparagraph (B)". Here, paragraph (2) is correct.

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1 "SUBCHAPTER III—OTHER AUTHORITIES RELATING TO RAPID
2 ACQUISITION

- Sec.
3621 [Sec. 804(b) of P. L. 111-383 (10 U.S.C. 2302 note)]. Discriminating Differentiating urgent
operational needs from traditional requirements.
3622 [Sec. 805 of P. L. 114-92 (10 U.S.C. 2302 note)]. Capital assets and services that meet critical
national security needs: procedures for alternative acquisition pathways.
3623 [Sec. 806 of P. L. 114-92 (10 U.S.C. 2302 note)]. Waiver of acquisition laws to acquire vital
national security capabilities: Secretary of Defense authority.
3624 [Sec. 849(d) of P. L. 114-328 (10 U.S.C. 2377 note)]. Commercial operational and support savings
initiative.
3625 [Sec. 851 of P. L. 113-291 (10 U.S.C. 2302 note)]. Rapid acquisition and deployment procedures:
United States Special Operations Command.
3626 [Sec. 225 of P. L. 115-232 (10 U.S.C. 2358 note)]. Procedures for rapid reaction to emerging
technology.

Commented [CR533]: Revised heading suggested as preferable word choice. As an alternative to "Differentiating", the word "Distinguishing" would probably also work here.

(d) CODIFICATION OF FY2011 NDAA SECTION.—

(1) IN GENERAL.—Chapter 253 of title 10, United States Code, as amended by subsection (a), is further amended by inserting after the table of sections at the beginning of subchapter III, as added by subsection (c), the following new section:

"§ 3621 [Sec. 804(b) of P. L. 111-383 (10 U.S.C. 2302 note)]. Discriminating Differentiating urgent operational needs from traditional requirements

Commented [CR534]: Subsection (a) in the original required a review and a report on the review to be submitted to congressional committees NLT Jan 7, 2012. That subsection is omitted as OBE.

Commented [CR535]: As an alternative to "Differentiating", the word "Distinguishing" would probably also work here.

Commented [CR536]: A NLT clause is omitted as OBE.

"(a) [804(b)(1)] EXPEDITED REVIEW PROCESS.—The Secretary of Defense shall implement an expedited review process to determine whether capabilities proposed as urgent operational needs—

Commented [CR537]: "develop and" omitted before "implement" as OBE and as subsumed within "implement".

- (1) are appropriate for fielding through the process for the rapid fielding of capabilities; or
(2) should be fielded through the traditional acquisition process.

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1 "(b) [804(b)(2)] ELEMENTS.—The review process implemented pursuant to subsection (a)
2 shall—

3 "(1) apply to the rapid fielding of capabilities in response to joint urgent
4 operational need statements and to other urgent operational needs statements generated
5 by the military departments and the combatant commands;

6 "(2) identify officials responsible for making determinations described in
7 subsection (a);

8 "(3) establish appropriate time periods for making such determinations;

9 "(4) set forth standards and criteria for making such determinations based on
10 considerations of urgency, risk, and life-cycle management;

11 "(5) establish appropriate thresholds for the applicability of the review process, or
12 of elements of the review process; and

13 "(6) authorize appropriate officials to make exceptions from standards and criteria
14 established under paragraph (4) in exceptional circumstances.

15 "(c) [804(b)(3)] COVERED CAPABILITIES.—The review process implemented pursuant to
16 subsection (a) shall provide that, subject to such exceptions as the Secretary considers
17 appropriate for purposes of this section, the acquisition process for rapid fielding of capabilities
18 in response to urgent operational needs is appropriate only for capabilities that—

19 "(1) can be fielded within a period of two to 24 months;

20 "(2) do not require substantial development effort;

21 "(3) are based on technologies that are proven and available; and

22 "(4) can appropriately be acquired under fixed price contracts."

Commented [CR538]: "developed and" before "implemented" omitted as OBE

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1 (2) **CONFORMING REPEAL.**—Section 804 of the Ike Skelton National Defense
2 Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 2302 note) is
3 repealed.

4 (e) **CODIFICATION OF FY2016 NDAA SECTION.**—

5 (1) **IN GENERAL.**—Chapter 253 of such title is further amended by adding after
6 section 3621, as added by subsection (d), the following new section:

7 “§ 3622 [Sec. 805 of P. L. 114-92 (10 U.S.C. 2302 note)]. **Capital assets and services that**
8 **meet critical national security needs: procedures for alternative acquisition**
9 **pathways**

10 The Secretary of Defense shall establish procedures for alternative acquisition pathways
11 to acquire capital assets and services that meet critical national security needs. The procedures
12 shall—

13 "(1) be separate from existing acquisition procedures;

14 "(2) be supported by streamlined contracting, budgeting, life-cycle cost
15 management, and requirements processes;

16 "(3) establish alternative acquisition paths based on the capabilities being bought
17 and the time needed to deploy these capabilities; and

18 "(4) maximize the use of flexible authorities in existing law and regulation.”

19 (2) **CONFORMING REPEAL.**—Section 805 of the National Defense Authorization
20 Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note) is repealed.

21 (f) **CODIFICATION OF ADDITIONAL FY2016 NDAA SECTION.**—

Commented [CR539]: This section has two subsections. Subsection (b) is codified above as new 3621. Subsection (a) was a requirement for a certain review and a report on the review NLT Jan 7, 2012, and is omitted in the codification.

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(1) IN GENERAL.—Chapter 253 of such title is further amended by adding after section 3622, as added by subsection (e), the following new section:

“§ 3623 [Sec. 806 of P. L. 114-92 (10 U.S.C. 2302 note)]. Waiver of acquisition laws to acquire vital national security capabilities: Secretary of Defense authority

"(a) WAIVER AUTHORITY.—The Secretary of Defense ~~is authorized to~~ *may* waive any provision of acquisition law or regulation described in subsection (c) for the purpose of acquiring a capability that would not otherwise be available to the ~~Armed Forces of the United States~~ *armed forces*, upon ~~a determination that~~ *the Secretary's determination of each of the following* with respect to that acquisition:

"(1) The acquisition of the capability is in the vital national security interest of the United States.

"(2) The application of the law or regulation to be waived would impede the acquisition of the capability in a manner that would undermine the national security of the United States.

"(3) The underlying purpose of the law or regulation to be waived can be addressed in a different manner or at a different time.

"(b) DESIGNATION OF RESPONSIBLE OFFICIAL.—

“(1) *DESIGNATION*.—Whenever the Secretary of Defense makes a determination under subsection (a)(1) that the acquisition of a capability is in the vital national security interest of the United States, the Secretary shall designate a senior official of the Department of Defense who shall be personally responsible and accountable for the rapid and effective acquisition and deployment of the needed capability.

Commented [CR540]: Note that subsection (b) makes clear that this is a SecDef determination.

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"(2) AUTHORITY.—The Secretary—

"(A) shall provide the designated official such authority as the Secretary determines necessary to achieve ~~this objective~~ *the rapid and effective acquisition and deployment of the needed capability*; and

"(B) may use the waiver authority in subsection (a) for ~~this purpose~~ *the purpose of subparagraph (A)*.

"(c) ACQUISITION LAWS AND REGULATIONS.—

"(1) ~~IN GENERAL~~—For purposes of subsection (a), a provision of acquisition law or regulation described in this subsection is a provision of law or regulation addressing any of the following:

"(A) The establishment of a requirement or specification for the capability to be acquired.

"(B) Research, development, test, and evaluation of the capability to be acquired.

"(C) Production, fielding, and sustainment of the capability to be acquired.

"(D) Solicitation, selection of sources, and award of contracts for the capability to be acquired.

"(2) LIMITATIONS.—Nothing in this ~~subsection~~ *section* authorizes the waiver of—

"(A) the requirements of this section;

"(B) any provision of law imposing civil or criminal penalties; or

"(C) any provision of law governing the proper expenditure of appropriated funds.

Commented [CR541]: There is no prior use of the word "objective", so the reference to "this objective" is problematic. In context, it appears to mean the matter at the end of paragraph (1) immediately above. This revision OK?

Commented [CR542]: Similarly, there is no prior reference to "this purpose". This revision OK?

Commented [CR543]: This is rephrased to make subsection (c) the specification of laws and regs that may be waived without also appearing to be an authority itself. That is, the authority is in subsection (a). Note that subsection (a), in the original, refers to a law or regulation "described in" subsection (c).

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1 "(d) CONGRESSIONAL NOTIFICATION REQUIREMENT.—Not later than 10 days after any
2 exercise of the waiver authority under subsection (a), the Secretary of Defense shall submit to
3 Congress a written notification of the waiver. The notification shall provide the details of the
4 waiver and the benefits the waiver is expected to provide to the Department of Defense.

5 "(e) NONDELEGATION.—The authority of the Secretary to waive provisions of laws and
6 regulations under subsection (a) ~~is nondelegable~~ **may not be delegated.**"

7 (2) CONFORMING REPEAL.—Section 806 of the National Defense Authorization
8 Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note) is repealed.

9 (g) CODIFICATION OF FY2017 NDAA SECTION.—

10 (1) IN GENERAL.—Chapter 253 of such title is further amended by adding after
11 section 3623, as added by subsection (f), the following new section:

12 “§ 3624 [Sec. 849(d) of P. L. 114-328 (10 U.S.C. 2377 note)] **Commercial operational and**
13 **support savings initiative**

14 "(a) IN GENERAL.—The Secretary of Defense may establish a commercial operational and
15 support savings initiative to improve readiness and reduce operations and support costs by
16 inserting existing commercial products or technology into military legacy systems through the
17 rapid development of prototypes and fielding of production items based on current commercial
18 technology.

19 "(b) PROGRAM PRIORITY.—The commercial operational and support savings initiative
20 shall fund programs that—

Commented [CR544]: This subsection is divided into two sentences and rephrased for customary title 10 format and for clarity.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 "(1) reduce the costs of owning and operating a military system, including the
2 costs of personnel, consumables, goods and services, and sustaining the support and
3 investment associated with the peacetime operation of a weapon system;

4 "(2) take advantage of the commercial sector's technological innovations by
5 inserting commercial technology into fielded weapon systems; and

6 "(3) emphasize prototyping and experimentation with new technologies and
7 concepts of operations.

8 "(c) FUNDING PHASES.—

9 "(1) IN GENERAL.—Projects funded under the commercial operational and support
10 savings initiative shall consist of two phases, Phase I and Phase II.

11 "(2) PHASE I.—

12 “(A) Funds made available during Phase I shall be used to perform the
13 non-recurring engineering, testing, and qualification that are typically needed to
14 adapt a commercial item or technology for use in a military system.

15 “(B) Phase I shall include—

16 “(i) establishment of cost and performance metrics to evaluate
17 project success;

18 “(ii) establishment of a transition plan and agreement with a
19 military department or Defense Agency for adoption and sustainment of
20 the technology or system; and

Commented [CR545]: The term “commercial item” is changed to “commercial product”, effective 1/1/2020. See 836(f)(7) of the FY19 NDAA and paragraph (3) below.

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"(iii) the development, fabrication, and delivery of a demonstrated prototype to a military department for installation into a fielded Department of Defense system.

"(C) Programs shall be terminated if no agreement is established within two years of project initiation.

"(D) The Office of the Secretary of Defense may provide up to 50 percent of Phase I funding for a project. The military department or Defense Agency concerned may provide the remainder of Phase I funding, which may be provided out of operation and maintenance funding.

"(E) Phase I funding shall not exceed three years.

"(F) Phase I projects shall be selected based on a merit-based process using criteria to be established by the Secretary of Defense.

"(3) PHASE II.—

"(A) Phase II shall include the purchase of limited production quantities of the prototype kits and transition to a program of record for continued sustainment.

"(B) Phase II awards may be made without competition if general solicitation competitive procedures were used for the selection of parties for participation in a Phase I project.

"(C) Phase II awards may be made as firm fixed-price awards.

"(d) TREATMENT AS COMPETITIVE PROCEDURES.—The use of a merit-based process for selection of projects under the commercial operational and support savings initiative shall be

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1 considered to be the use of competitive procedures for purposes of **chapter 137** **?????** of this
2 title.”

Commented [CR546]: What specific sections of current ch. 137 does this refer to?
The term “competitive procedures” is used in ch. 137 in secs. 2304(a)-(f), (i), 2304a(c), 2304b(f), 2304c(b), 2304e(a), 2308(b), & 2330(b)(3).

3 (2) **CONFORMING REPEAL.**—Section 849(d) of the National Defense
4 Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2377 note) is
5 repealed.

6 (h) **CODIFICATION OF FY2018 NDAA SECTION.**—

7 (1) **IN GENERAL.**—Chapter 253 of such title is further amended by adding after
8 section 3624, as added by subsection (g), a new section 3625 consisting of—

9 (A) a heading as follows:

10 “§ 3625 [Sec. 851 of P. L. 113-291 (10 U.S.C. 2302 note)].**Rapid acquisition and deployment**
11 **procedures: United States Special Operations Command”: and**

12 (B) a text consisting of the text of section 851 of the National Defense
13 Authorization Act for Fiscal Year 2015 (Public Law 113-291; 10 U.S.C. 2302
14 note), revised by striking “section 806 of the Bob Stump National Defense
15 Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2302
16 note)” in subsection (f) and inserting “subchapter I of this chapter”.

17 (2) **CONFORMING REPEAL.**— Section 851 of the National Defense Authorization
18 Act for Fiscal Year 2015 (Public Law 113-291; 10 U.S.C. 2302 note) is **repealed**.

19 (i) **CODIFICATION OF FY2019 NDAA SECTION.**—

20 (1) **IN GENERAL.**—Chapter 253 of such title is further amended by adding after
21 section 3625 as added by subsection (h), a new section 3626 consisting of—

22 (A) a heading as follows:

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1 “§ 3626 [Sec. 225 of P. L. 115-232 (10 U.S.C. 2358 note)]. Procedures for rapid reaction to
2 emerging technology”: and

3 (B) a text consisting of the text of subsections (a) and (b) of section 225 of
4 the John S. McCain National Defense Authorization Act for Fiscal Year 2019
5 (Public Law 115-232; 10 U.S.C. 2358 note), revised by striking “Not later than
6 180 days after the date of the enactment of this Act, the Under” in subsection (a)
7 and inserting “The Under”.

8 (2) CONFORMING REPEAL.—Section 225 of the John S. McCain National
9 Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2358
10 note) is repealed.

11 **SEC. 310. CONTRACTING WITH OR THROUGH OTHER AGENCIES.**

12 (a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by
13 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
14 (Public Law 115-232), is amended by striking chapter 255 and inserting the following:

15 **“CHAPTER 255—CONTRACTING WITH OR THROUGH OTHER**
16 **AGENCIES**

- 17 Sec.
- [3651. \[Sec 854 of P. L. 108-375 \(10 U.S.C. 2304 note\)\] Defense procurements made through contracts of other agencies: limitation for contracts in excess of simplified acquisition threshold.](#)
 - [3652. \[Sec 897 of P. L. 114-92 \(10 U.S.C. 2500 note\)\] Treatment of interagency and State and local purchases when Department of Defense acts as contract intermediary for General Services Administration.](#)
 - [3653. \[Sec 318 of P. L. 107-107 \(10 U.S.C. 2302 note\)\] Procurement of light duty trucks: hybrid vehicles and alternative fueled vehicles.](#)
 - [3654. \[Sec 387\(c\) of P. L. 105-85 \(10 U.S.C. 195 note\)\] Authority to procure printing and duplication services from Government Publishing Office.”](#)

Commented [CR547]: The original has a subsection (c) requiring a briefing NLT 180 days after enactment [Aug 13, 2108]. It is omitted as being OBE.

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(b) CODIFICATION OF FY2005 NDAA SECTION.—

(1) CODIFICATION.—Chapter 255 of title 10, United States Code, as amended by subsection (a), is amended by adding after the table of sections the following new section:

“§ 3651. [Sec 854 of P .L. 108–375 (10 U.S.C. 2304 note)] **Defense procurements made through contracts of other agencies: limitation for contracts in excess of simplified acquisition threshold**

"(a) [854(a)] LIMITATION.—The head of an agency may not procure goods or services (under section 1535 of title 31, pursuant to a designation under section 11302(e) of title 40, or otherwise) through a contract entered into by an agency outside the Department of Defense for an amount greater than the simplified acquisition threshold unless the procurement is done in accordance with procedures for reviewing and approving the use of such contracts that are prescribed by that head of an agency.

"(b) [854(c)] INAPPLICABILITY TO CONTRACTS FOR CERTAIN SERVICES.—This section does not apply to procurements of the following services:

"(1) Printing, binding, or blank-book work to which section 502 of title 44 applies.

"(2) Services available under programs pursuant to section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106–481; 2 U.S.C. 182c).

"(c) [854(e)] DEFINITIONS.—In this section:

Commented [CR548]: Reference to definition moved to subsection (c) below, Definitions

Commented [CR549]: Remainder of this sentence revised for clarity – “prescribed by” clause moved to the end of the sentence.

Commented [CR550]: In the original, subsection (b) is an effective date provision specifying applicability to orders for goods or services issued on or after the date that is 180 days after Oct. 28, 2004. It is omitted here as OBE.

Commented [CR551]: In the original, subsection (d) required an annual report for each of 2005 & 2006. It is omitted here as OBE.

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(1) The term 'head of an agency' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, *or* the Secretary of the Air Force.

(2) The term 'simplified acquisition threshold' means the simplified acquisition threshold referred to in section ~~2304(e)~~ 3205 of this title.

Commented [CR552]: In the original, paragraphs (2) and (3) defined "Defense Agency" and "[DoD] Field Activity" by reference to the definitions in 10 U.S.C. 101. With the codification of this provision in title 10, those definitions will apply on their own terms and are not needed here.

(2) **CONFORMING REPEAL.**—Section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 10 U.S.C. 2304 note) is repealed.

(c) **CODIFICATION OF FY2016 NDAA SECTION.**—

(1) **CODIFICATION.**—Chapter 255 of such title is further amended by adding after section 3651, as added by subsection (b), the following new section:

“§ 3652. [Sec 897 of P. L. 114–92; FY16 NDAA (10 U.S.C. 2500 note)] Treatment of interagency and State and local purchases when Department of Defense acts as contract intermediary for General Services Administration

"A contract executed by the Department of Defense as a result of the transfer of the contract from the General Services Administration, or for which the Department serves as an item manager for products on behalf of the General Services Administration, is not subject to requirements under ~~chapter 148~~ *provisions of this title specified in section 4803(b)* of this title to the extent the contract is for purchases of products by another Federal agency or a State or local government."

Commented [CR553]: This section is generally revised to be singular rather than plural, for general title 10 usage.

(2) **CONFORMING REPEAL.**—Section 897 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2500 note) is repealed.

(d) **CODIFICATION OF FY2002 NDAA SECTION.**—

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1 (1) CODIFICATION.—Such chapter is further amended by adding after section
2 3652, as added by subsection (c), the following new section:
3 “§ 3653. [Sec 318 of P. L. 107–107; FY02 NDAA (10 U.S.C. 2302 note)] Procurement of
4 light duty trucks: hybrid vehicles and alternative fueled vehicles
5 "(a) DEFENSE FLEETS NOT COVERED BY REQUIREMENT IN ENERGY POLICY ACT OF
6 1992.—
7 (1) The Secretary of Defense shall coordinate with the Administrator of General
8 Services to ensure that only hybrid vehicles are procured by the Administrator for the
9 Department of Defense fleet of light duty trucks that is not in a fleet of vehicles to which
10 section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies.
11 "(2) The Secretary, in consultation with the Administrator, may waive the policy
12 regarding the procurement of hybrid vehicles in paragraph (1) to the extent that the
13 Secretary determines necessary—
14 "(A) in the case of trucks that are exempt from the requirements of section
15 303 of the Energy Policy Act of 1992 for national security reasons under
16 subsection (b)(3)(E) of such section, to meet specific requirements of the
17 Department of Defense for capabilities of light duty trucks;
18 "(B) to procure vehicles consistent with the standards applicable to the
19 procurement of fleet vehicles for the Federal Government; or
20 "(C) to adjust to limitations on the commercial availability of light duty
21 trucks that are hybrid vehicles.
22 "(b) REQUIREMENT TO EXCEED REQUIREMENT IN ENERGY POLICY ACT OF 1992.—

Commented [CR554]: In the original, subsection (a) had a paragraph (3), which is omitted here as OBE, as follows: "This subsection applies with respect to procurements of light duty trucks in fiscal year 2005 and subsequent fiscal years."

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(1) The Secretary of Defense shall coordinate with the Administrator of General Services to ensure that, of the light duty trucks procured in any fiscal year for the fleets of light duty vehicles of the Department of Defense to which section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies, 10 percent of the total number of such trucks are alternative fueled vehicles or hybrid vehicles.

"(2) Light duty trucks acquired for the Department of Defense that are counted to comply with section 303 of the Energy Policy Act of 1992 for a fiscal year shall be counted to determine the total number of light duty trucks procured for the Department of Defense for that fiscal year for the purposes of paragraph (1), but shall not be counted to satisfy the requirement in that paragraph.

(c) DEFINITIONS.—In this section:

"(1) The term 'hybrid vehicle' means a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

"(A) an internal combustion or heat engine using combustible fuel; and

"(B) a rechargeable energy storage system.

"(2) The term 'alternative fueled vehicle' has the meaning given that term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211)."

(2) **CONFORMING REPEAL.—**Section 318 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 10 U.S.C. 2302 note) is repealed.

(e) CODIFICATION OF FY1998 NDAA SECTION.—

(1) **CODIFICATION.—**Chapter 255 of title is further amended by adding after section 3653, as added by subsection (d), the following new section:

Commented [CR555]: In paragraph (1), references to applicability to trucks procured in fiscal years after FY2004 and after FY2006, and a separate rule for applicability to trucks procured during FY05 and FY06, are omitted as OBE.

Commented [CR556]: In the original, this is subsection (d). Subsection (c) of the original was a one-time report requirement due with the FY03 budget and is omitted as OBE.

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1 “§ 3654. [Sec 387(c) of P. L. 105–85; FY98 NDAA (10 U.S.C. 195 note)] Authority to
2 procure printing and duplication services from Government Publishing
3 Office

4 Consistent with section 501 of title 44, the Secretary of a military department or head of a
5 Defense Agency may contract directly with the Government Publishing Office for printing and
6 duplication services otherwise available through the Defense Automated Printing Service.”

7 (2) CONFORMING REPEAL.—Section 387(c) of the National Defense
8 Authorization Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 195 note) is
9 repealed.

Commented [CR557]: DOD: It appears that the Defense Automated Printing Service has been disestablished. If so, how is this provision in current law being administered? That is, if the reference to DAPS is obsolete, WHAT WOULD DOD SUGGEST as the appropriate current successor reference? Note that DoD Instruction 5330.03 establishes DLA Document Services as the preferred provider for document automation services to the DoD. Document Services is also designated as the single manager for printing and high-speed, high-volume duplicating in the DoD.

NOTE: The following 4 sections, which relate to the subject matter of the chapter above and appear under a single heading in the notes under 10 U.S.C. 2304, will be left as is for purposes of the reorganization project:

- 1. FY09 NDAA Pub. L. 110–417, §804(a)–(c).
2. FY08 NDAA Pub. L. 110–181, §801.
3. FY07 NDAA Pub. L. 109–364, §817.
4. FY06 NDAA Pub. L. 109–163, §811.

10 SEC. 311. CONTRACTS FOR LONG-TERM LEASE OR CHARTER OF VESSELS,
11 AIRCRAFT, AND COMBAT VEHICLES.

12 (a) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle
13 A, and at the beginning of part V of subtitle A (as added by section 801 of Public Law 115-232),
14 of title 10, United States Code, are amended by inserting after the item relating to chapter 255
15 the following new items:

- “257. Contracts for Long-Term Lease or Charter of Vessels, Aircraft, and Combat
Vehicles3671
“258. Other Types of Contracts Used for Procurements for Particular Purposes3681”

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(b) NEW CHAPTER.—

(1) IN GENERAL.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by inserting after chapter 255 the following new chapter:

“CHAPTER 257—CONTRACTS FOR LONG-TERM LEASE OR CHARTER OF VESSELS, AIRCRAFT, AND COMBAT VEHICLES

- Sec. 3671 [2401(a),(b)]. Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles.
3672 [2401(c)(1),(e)]. Requirement of specific authorization by law for appropriation, and for obligation and expenditure, of funds for certain contracts relating to aircraft, naval vessels, and combat vehicles.
3673 [2401(c)(2)]. Limitation on indemnification.
3674 [2401(d)]. Long-term lease or charter defined; substantial termination liability.
3675 [2401(f)]. Capital lease or lease-purchase treated as an acquisition.
3676 [2401(g)]. Guidelines.
3677 [2401(h)]. Contracts for lease or use of vessels for a term of greater than two years but less than five years: prior notice to congressional committees.
3678 [2401a(b)]. Contracts with terms of 18 months or more: limitation.

§3671 [2401(a),(b)]. Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles

(a) [2401(a)] LIMITATION.—

(1) The Secretary of a military department may make a contract for the lease of a vessel, aircraft, or combat vehicle or for the provision of a service through use by a contractor of a vessel, aircraft, or combat vehicle only as provided in subsection (b) if—
(A) the contract will be a long-term lease or charter; or

Commented [CR558]: This chapter divides 10 U.S.C. 2401 into seven sections.

Commented [CR559]: In 2401, subsections (a), (b), (d), and (h) refer to “vessels”; subsections (c), (e), (f), and (g) refer to “naval vessels”. That suggests that (a), (b), (d), and (h) apply to certain vessels that are not naval vessels, and thus that the scope of the two sets of subsections is not the same. Is that intended? Or is the intent that the entire section applies to the same set of vessels? How is this applied today?

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1 (B) the terms of the contract provide for a substantial termination liability
2 on the part of the United States.

3 (2) The Secretary of a military department may make a contract that is an
4 agreement to lease or charter or an agreement to provide services and that is (or will be)
5 accompanied by a contract for the actual lease, charter, or provision of services only as
6 provided in subsection (b) if the contract for the actual lease, charter, or provision of
7 services is (or will be) a contract described in paragraph (1).

8 (b) [2401(b)] CONDITIONS FOR COVERED CONTRACTS.—

9 (1) The Secretary may make a contract described in subsection (a)(1) if—

10 (A) the Secretary has been specifically authorized by law to make the
11 contract;

12 (B) before a solicitation for proposals for the contract was issued the
13 Secretary notified the congressional defense committees of the Secretary's
14 intention to issue such a solicitation;

15 (C) the Secretary has notified those committees of the proposed contract
16 and provided a detailed description of the terms of the proposed contract and a
17 justification for entering into the proposed contract rather than providing for the
18 lease, charter, or services involved through purchase of the vessel, aircraft, or
19 combat vehicle to be used under the contract, and a period of 30 days of
20 continuous session of Congress has expired following the date on which the
21 notice was received by those committees; and

22 (D) the Secretary has certified to those committees—

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1 (i) that entering into the proposed contract as a means of obtaining
2 the vessel, aircraft, or combat vehicle is the most cost-effective means of
3 obtaining such vessel, aircraft, or combat vehicle; and

4 (ii) that the Secretary has determined that the lease complies with
5 all applicable laws, Office of Management and Budget circulars, and
6 Department of Defense regulations.

7 (2) For purposes of paragraph (1)(C) **and paragraph (4)(C)**—

8 (A) the continuity of a session of Congress is broken only by an
9 adjournment of the Congress sine die; and

10 (B) the days on which either House is not in session because of an
11 adjournment of more than three days to a day certain are excluded in a
12 computation of such 30-day period.

13 (3)(A) Upon receipt of a notice under paragraph (1)(C), a committee identified in
14 paragraph (1)(B) **may request** the Inspector General of the Department of Defense or the
15 Comptroller General of the United States to conduct a review of the proposed contract to
16 determine whether or not the contract meets the requirements of this chapter.

17 (B) If a review is requested under subparagraph (A), the Inspector General of the
18 Department of Defense or the Comptroller General of the United States, as the case may
19 be, shall submit to the Secretary and the congressional defense committees a report on
20 such review before the expiration of the period specified in paragraph (1)(C).

*(3) If, upon receipt of a notice under paragraph (1)(C), a committee identified in
paragraph (1)(B) requests the Inspector General of the Department of Defense or the
Comptroller General of the United States to conduct a review of the proposed contract to*

Commented [CR560]: See comment at (4)(C) below for explanation of this possible addition.

Commented [CR561]: Paragraph (3) here is shown as in current law. Note that current law is stated so as to appear to grant the congressional committees authority to make such a request. But, can't congressional committees make such a request under their own authority, without this statutory "authorization"? Isn't the point here to get an IG or CG review within the specified time, upon a review being requested?

Commented [CR562]: Please consider this alternative to (3)(A)&(B). It restates the matter without appearing to authorize the committees to make a request.

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determine whether or not the contract meets the requirements of this chapter, the Inspector General of the Department of Defense or the Comptroller General of the United States, as the case may be, shall submit to the Secretary and the congressional defense committees a report on such review before the expiration of the period specified in paragraph (1)(C).

Commented [CR563]: As an observation, note that, as to the DoD IG, this is a requirement ["shall"] for an action by the executive branch that is triggered by an action of the legislative branch other than by bicameralism and presentment.

(4) In the case of a contract described in subsection (a)(1)(B), the commander of the special operations command established pursuant to section 167 of this title may make a contract without regard to this subsection if—

Commented [CR564]: See 10 USC 322(a) & 10171(c) for the addition of the "established pursuant to" phrase.

(A) funds are available and obligated for the full cost of the contract (including termination costs) on or before the date the contract is awarded;

(B) the Secretary of Defense submits to the congressional defense committees a certification that there is no alternative for meeting urgent operational requirements other than making the contract; and

(C) a period of 30 days of continuous session of Congress has expired following the date on which the certification was received by such committees.

Commented [CR565]: Note that, while paragraph (2) above provides a rule for measuring days of continuous session of Congress under (1)(C), there is no similar rule here, in (4)(C). While the wording does not literally say so, it would seem logical that, in practice, the rule in (2) is applied to (4)(C), as well as (1)(C). If the law is indeed applied that way now, the addition to paragraph (2) above so as to refer to both (1)(C) AND (4)(C), would bring the wording of the statute into conformity with actual practice.

§3672 [2401(c)(1),(e)]. Requirement of specific authorization by law for appropriation, and for obligation and expenditure, of funds for certain contracts relating to aircraft, naval vessels, and combat vehicles

(a) [2401(c)(1)] LIMITATION.—Funds may not be appropriated for any fiscal year to or for any armed force or obligated or expended for—

(1) the long-term lease or charter of any aircraft, naval vessel, or combat vehicle;

or

Commented [CR566]: As noted in the comment to the heading to 3371 above, in 2401, subsections (a), (b), (d), and (h) refer to "vessels", while subsections (c), (e), (f), and (g) refer to "naval vessels". That suggests that (a), (b), (d), and (h) apply to all vessels (both naval vessels and other vessels), and thus that the scope of the two sets of subsections is not the same. Is that intended? Or is the intent that all of section 2401 applies to the same set of vessels? How is this applied today? For review, "naval" is highlighted throughout.

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1 (2) for the lease or charter of any aircraft, **naval** vessel, or combat vehicle the
2 terms of which provide for a substantial termination liability on the part of the United
3 States,
4 unless funds for that purpose have been specifically authorized by law.

5 (b) [2401(e)] MATTER TO BE SUBMITTED TO CONGRESS.—

6 (1) Whenever a request is submitted to Congress for the authorization of the
7 long-term lease or charter of aircraft, **naval** vessels, or combat vehicles or for the
8 authorization of a lease or charter of aircraft, **naval** vessels, or combat vehicles which
9 provides for a substantial termination liability on the part of the United States, the
10 Secretary of Defense shall submit with that request an analysis of the cost to the United
11 States (including lost tax revenues) of any such lease or charter arrangement compared
12 with the cost to the United States of direct procurement of the aircraft, **naval** vessels, or
13 combat vehicles by the United States.

14 (2)(A) Any such analysis shall be reviewed and evaluated by the Director of the
15 Office of Management and Budget and the Secretary of the Treasury within 30 days after
16 the date on which the request and analysis are submitted to Congress.

17 (B) The Director and Secretary—

18 (i) shall conduct such review and evaluation on the basis of the guidelines
19 issued pursuant to ~~subsection (f)~~ *section 3676 of this title*; and

20 (ii) shall report to Congress in writing on the results of their review and
21 evaluation at the earliest practicable date, but in no event more than 45 days after
22 the date on which the request and analysis are submitted to the Congress.

Commented [CR567]: Original says "subsection (f)". However, regulations under 2401 are issued under subsection (g), not (f). [The FY06 NDAA (Jan. 6, 2006) redesignated (f) as (g) without conforming this cross-reference.]
The revised reference here is to the section derived from (g).

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1 (3) Whenever a request is submitted to Congress for the authorization of funds for
2 the Department of Defense for the long-term lease or charter of aircraft, **naval** vessels, or
3 combat vehicles authorized under this chapter, the Secretary of Defense—

4 (A) shall indicate in the request what portion of the requested funds is
5 attributable to capital-hire; and

6 (B) shall reflect such portion in the appropriate procurement account in the
7 request.

8 **§3673 [2401(c)(2)]. Limitation on indemnification**

9 Funds appropriated to the Department of Defense may not be used to indemnify any
10 person under the terms of a contract entered into under this chapter—

11 (1) for any amount paid or due by any person to the United States for any liability
12 arising under the Internal Revenue Code of 1986; or

13 (2) to pay any attorneys' fees in connection with such contract.

14 **§3674 [2401(d)]. Long-term lease or charter defined; substantial termination liability**

15 (a) **[2401(d)(1)] LONG-TERM LEASE OR CHARTER.—**

16 (1) GENERAL RULE.—

17 (A) In this chapter, the term "long-term lease or charter" (except as
18 provided in paragraph (2)) means a lease, charter, service contract, or conditional
19 sale agreement—

20 (i) the term of which is for a period of five years or longer or more
21 than one-half the useful life of the vessel, aircraft, or combat vehicle; or

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1 (ii) the initial term of which is for a period of less than five years
2 but which contains an option to renew or extend the agreement for a
3 period which, when added to the initial term (or any previous renewal or
4 extension), is five years or longer.

5 (B) Such term includes the extension or renewal of a lease or charter
6 agreement if the term of the extension or renewal thereof is for a period of five
7 years or longer or if the term of the lease or charter agreement being extended or
8 renewed was for a period of five years or longer.

9 (2) SPECIAL RULE.—

10 (A) In the case of an agreement described in subparagraph (C), the term
11 "long-term lease or charter" means a lease, charter, service contract, or
12 conditional sale agreement—

13 (i) the term of which is for a period of three years or longer; or

14 (ii) the initial term of which is for a period of less than three years
15 but which contains an option to renew or extend the agreement for a
16 period which, when added to the initial term (or any previous renewal or
17 extension), is three years or longer.

18 (B) Such term includes the extension or renewal of a lease or charter
19 agreement if the term of the extension or renewal thereof is for a period of three
20 years or longer or if the term of the lease or charter agreement being extended or
21 renewed was for a period of three years or longer.

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1 (C) An agreement described in this subparagraph is an agreement under
2 which—

3 (i) the lessor first places the property in service under the
4 agreement or the property has been in service for less than one year; and

5 (ii) there is allowable to the lessor or charterer an
6 investment tax credit or depreciation for the property leased, chartered, or
7 otherwise provided under the agreement under section 168 of the Internal
8 Revenue Code of 1986 (unless the lessor or charterer has elected
9 depreciation on a straightline method for such property),

10 (b) **[2401(d)(2)] SUBSTANTIAL TERMINATION LIABILITY.**—For the purposes of this
11 chapter, the United States shall be considered to have a substantial termination liability under a
12 contract—

13 (1) if there is an agreement by the United States under the contract to pay an
14 amount not less than the amount equal to 25 percent of the value of the vessel, aircraft, or
15 combat vehicle under lease or charter, calculated on the basis of the present value of the
16 termination liability of the United States under such charter or lease (as determined under
17 regulations prescribed by the Secretary of Defense); or

18 (2) if (as determined under regulations prescribed by the Secretary of Defense) the
19 sum of—

20 (A) the present value of the amount of the termination liability of the
21 United States under the contract as of the end of the term of the contract
22 (exclusive of any option to extend the contract); and

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1 (B) the present value of the total of the payments to be made by the United
2 States under the contract (excluding any option to extend the contract) attributable
3 to capital-hire,
4 is more than one-half the price of the vessel, aircraft, or combat vehicle involved.

5 **§3675 [2401(f)]. Capital lease or lease-purchase treated as an acquisition**

6 (a) [2401(f)(1)] IN GENERAL.—If a lease or charter covered by this chapter is a capital
7 lease or a lease-purchase—

8 (1) the lease or charter shall be treated as an acquisition and shall be subject to all
9 applicable statutory and regulatory requirements for the acquisition of aircraft, **naval**
10 vessels, or combat vehicles; and

11 (2) funds appropriated to the Department of Defense for operation and
12 maintenance may not be obligated or expended for the lease or charter.

13 (b) [2401(f)(2)] DEFINITIONS.—In this section, the terms "capital lease" and "lease-
14 purchase" have the meanings given those terms in Appendix B to Office of Management and
15 Budget Circular A–11, as in effect on January 6, 2006.

16 **§3676 [2401(g)]. Guidelines**

17 The Director of the Office of Management and Budget and the Secretary of the Treasury
18 shall jointly issue guidelines for determining under what circumstances the Department of
19 Defense may use lease or charter arrangements for aircraft, **naval** vessels, and combat vehicles
20 rather than directly procuring such aircraft, vessels, and combat vehicles.

21 **§3677 [2401(h)]. Contracts for lease or use of vessels for a term of greater than two years**
22 **but less than five years: prior notice to congressional committees**

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1 (a) LIMITATION.—The Secretary of a military department may make a contract described
2 in subsection (b) with respect to a vessel only if—

3 (1) the Secretary has notified the congressional defense committees of the
4 proposed contract and included in such notification—

5 (A) a detailed description of the terms of the proposed contract and a
6 justification for entering into the proposed contract rather than obtaining the
7 capability provided for by the lease, charter, or services involved through
8 purchase of the vessel;

9 (B) a determination that entering into the proposed contract as a means of
10 obtaining the vessel is the most cost-effective means of obtaining the vessel; and

11 (C) a plan for meeting the requirement provided by the proposed contract
12 upon completion of the term of the lease contract; and

13 (2) a period of 60 days has expired following the date on which the notice was
14 received by those committees.

15 (b) COVERED CONTRACTS.—A contract described in this subsection is a contract for the
16 lease **or charter** of a vessel or for the provision of a service through use by a contractor of a
17 vessel, the term of which is for a period of greater than two years, but less than five years.

18 **§ 3678 [2401a(b)]. Contracts with terms of 18 months or more: limitation**

19 The Secretary of Defense or the Secretary of a military department may not enter into any
20 contract with a term of 18 months or more, or extend or renew any contract for a term of 18
21 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar
22 agreement, unless the Secretary has considered all costs of such contract (including estimated

Commented [CR568]: Noting that (a)(1)(A) immediately above has "charter," should "or charter" be inserted here after "lease"?

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1 termination liability) and has determined in writing that the contract is in the best interest of the
2 Government.”

3 (2) **CONFORMING REPEAL.**—Sections 2401 and 2401a(b) of title 10, United
4 States Code, are repealed.

Commented [CR569]: This repeals only subsection (b) of sec. 2401a; the remainder of that section [subsection (a)] is dealt with in the next chapter, below.

5 **SEC. 312. OTHER TYPES OF CONTRACTS USED FOR PROCUREMENTS FOR**
6 **PARTICULAR PURPOSES.**

7 (a) **NEW CHAPTER.**—

8 (1) **IN GENERAL.**—Part V of subtitle A of title 10, United States Code, as added by
9 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year
10 2019 (Public Law 115-232), is amended by inserting after chapter 257, as added by
11 section 311, the following new chapter:

12 **“CHAPTER 258—OTHER TYPES OF CONTRACTS USED FOR**
13 **PROCUREMENTS FOR PARTICULAR PURPOSES**

Sec.

3681 [2401a(a)]. Leasing of commercial vehicles and equipment.

3682 [Sec. 1018 of FY07 NDAA, P.L. 109-364 (10 U.S.C. 2401 note)]. Riding gang member requirements.

3683 [Sec. 814(a) of FY17 NDAA, P.L. 114-328 (10 U.S.C. 2302 note)]. Personal protective equipment.

3684 [Sec. 8126 of FY09 DoD **Approps** Act, P.L. 109-364 (10 U.S.C. 2401a note)]. Lease of firefighting, crash rescue, and snow removal equipment.

14 **“§ 3681 [2401a(a)]. Leasing of commercial vehicles and equipment**

15 The Secretary of Defense may use leasing in the acquisition of commercial vehicles and
16 equipment whenever the Secretary determines that such leasing is practicable and efficient.

17 **“§ 3683 [Sec. 814(a) of FY17 NDAA, P.L. 114-328 (10 U.S.C. 2302 note)]. Procurement of**
18 **personal protective equipment**

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1 “Not later than 90 days after the date of the enactment of this Act [Dec. 23, 2016], the

Commented [CR570]: NLT clause to be omitted as OBE

2 *The* Defense Federal Acquisition Regulation Supplement shall be revised —

Commented [CR571]: Deleted to reflect the ongoing nature of the requirement.

3 "(1) ~~to~~ prohibit the use by the Department of Defense of reverse auctions or
4 lowest price technically acceptable contracting methods for the procurement of personal
5 protective equipment or an aviation critical safety item (as defined in section ~~2319(g)~~
6 **3243(g)** of this title) if the level of quality or failure of the equipment or item could result
7 in combat casualties; and

8 "(2) ~~to~~ establish a preference for the use of best value contracting methods for the
9 procurement of such equipment or item.".

10 “§ 3684 [Sec. 8126 of FY09 DoD Approps Act, P.L. 109-364 (10 U.S.C. 2401a note)]. Lease
11 **of firefighting, crash rescue, and snow removal equipment**

12 (a) The Secretary of the Army and the Secretary of the Air Force may each enter into one
13 or more multiyear leases of—

- 14 (1) nontactical firefighting equipment;
- 15 (2) nontactical crash rescue equipment; or
- 16 (3) nontactical snow removal equipment.

17 (b) The period of a lease entered into under this section shall be for any period not in
18 excess of 10 years.

19 (c) Any such lease—
20 (1) shall provide that performance under the lease during the second and
21 subsequent years of the contract is contingent upon the appropriation of funds; and

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(2) shall provide for a cancellation payment to be made to the lessor if such appropriations are not made.

(d) Lease payments made under subsection (a) shall be made from amounts provided in this or future appropriations Acts.”

Commented [CR572]: Phrase “this or future” to be omitted as unnecessary in the codification as a title 10 section.

(2) **CONFORMING REPEALS.**—The following provisions of law are **repealed**:

(A) Section 2401a of title 10, United States Code (as amended by section 311(b)(2)).

(B) Section 814(a) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 10 U.S.C. 2302 note).

(C) Section 8126 of the Department of Defense **Appropriations Act**, 2009 (Public Law 105–262; 10 U.S.C. 2401a note).

(b) **CODIFICATION OF FY2007 NDAA SECTION.**—

(1) **CODIFICATION.**—Chapter 258 of title 10, United States Code, as added by subsection (a), is amended by inserting after section 3681 a new section 3682 consisting of—

(A) a heading as follows:

“§ 3682 [Sec. 1018 of FY07 NDAA, P.L. 109-364 (10 U.S.C. 2401 note)]. **Riding gang member requirements**”; and

(B) a text consisting of the text of section 1018 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 2401 note), revised—

(i) by striking “, United States Code,” each place it appears; and

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(ii) by striking “, United States Code” in subsections (a)(1) and

(b)(3).

(2) CONFORMING REPEAL.—Section 1018 of the National Defense Authorization

Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 2401 note) is repealed.

TITLE IV—GENERAL CONTRACTING PROVISIONS (PART V, SUBPART D)

SEC. 401. COST OR PRICING DATA.

(a) NEW CHAPTER.—

(1) IN GENERAL.—Part V of subtitle A of title 10, United States Code, as

added by section 801 of the John S. McCain National Defense Authorization Act

for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapter 271

and inserting the following:

“CHAPTER 271—TRUTHFUL COST OR PRICING DATA

Table with 2 columns: Subchapter, Sec. I—Cost Or Pricing Data (Truth In Negotiations) 3701, II— Other Provisions Relating to Cost or Pricing Data 3721

SUBCHAPTER I—COST OR PRICING DATA (TRUTH IN NEGOTIATIONS)

- Sec. 3701. [2306a(h), 41 USC 3501] Definitions. 3702. [2306a(a), 41 USC 3502] Required cost or pricing data and certification. 3703. [2306a(b), 41 USC 3503] Exceptions. 3704. [2306a(c), 41 USC 3504] Cost or pricing data on below-threshold contracts. 3705. [2306a(d), 41 USC 3505] Submission of other information. 3706. [2306a(e), 41 USC 3506] Price reductions for defective cost or pricing data. 3707. [2306a(f), 41 USC 3507] Interest and penalties for certain overpayments. 3708. [2306a(g), 41 USC 3508] Right to examine contractor records.

§3701. [2306a(h), 41 USC 3501] Definitions

Commented [CR573]: Subchapter I is from 10 USC 2306a & is organized to follow the structure of Ch. 35 of Title 41.

Commented [CR574]: For the subchapter heading, the proposal is to track the heading of 2306a. The heading of ch. 35 of Title 41 is “Truthful Cost or Pricing Data”, which is used above for the full chapter heading.

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In this subchapter:

(1) [2306a(h)(1), 41 USC 3501(a)(2)] COST OR PRICING DATA.—The term "cost or pricing data" means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), or, if applicable consistent with section 3706(a)(2) of this title, another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

(2) [2306a(h)(2), 41 USC 3501(a)(3)] SUBCONTRACT.—The term "subcontract" includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

§3702 [2306a(a), 41 USC 3502]. Required cost or pricing data and certification

(a) [2306a(a)(1); 3502(a)] WHEN REQUIRED.—The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(1) OFFEROR FOR PRIME CONTRACT.—An offeror for a prime contract under chapter 137 ??? of this title to be entered into using procedures other than sealed-bid procedures that is only expected to receive one bid shall be required to submit cost or pricing data before the award of a contract if—

(A) in the case of a prime contract entered into after June 30, 2018, the price of the contract to the United States is expected to exceed \$2,000,000; and

(B) in the case of a prime contract entered into on or before June 30, 2018, the price of the contract to the United States is expected to exceed \$750,000.

Commented [CR575]: What sections of ch. 137 are covered by the reference to "a prime contract under chapter 137"?

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1 (2) CONTRACTOR.—The contractor for a prime contract under ~~chapter 137~~ of this
2 **title** shall be required to submit cost or pricing data before the pricing of a change or
3 modification to the contract if—

4 (A) in the case of a change or modification made to a prime contract
5 referred to in paragraph (1)(A), the price adjustment is expected to exceed
6 \$2,000,000;

7 (B) in the case of a change or modification made after July 1, 2018, to a
8 prime contract that was entered into on or before June 30, 2018, and that has been
9 modified pursuant to subsection (f), the price adjustment is expected to exceed
10 \$750,000; and

11 (C) in the case of a change or modification not covered by subparagraph
12 (A) or (B), the price adjustment is expected to exceed \$750,000.

13 (3) OFFEROR FOR SUBCONTRACT.—An offeror for a subcontract (at any tier) of a
14 contract under ~~chapter 137~~ of this **title** shall be required to submit cost or pricing data
15 before the award of the subcontract if the prime contractor and each higher-tier
16 subcontractor have been required to make available cost or pricing data under this
17 subchapter and—

18 (A) in the case of a subcontract under a prime contract referred to in
19 paragraph (1)(A), the price of the subcontract is expected to exceed \$2,000,000;

20 (B) in the case of a subcontract entered into after July 1, 2018, under a
21 prime contract that was entered into on or before June 30, 2018, and that has been

Commented [CR576]: Same question as above.

Commented [CR577]: Same question as above. This does not include "prime" before "contract".

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1 modified pursuant to subsection (f), the price of the subcontract is expected to
2 exceed \$2,000,000; and

3 (C) in the case of a subcontract not covered by subparagraph (A) or (B),
4 the price of the subcontract is expected to exceed \$750,000.

5 (4) SUBCONTRACTOR.—The subcontractor for a subcontract covered by paragraph
6 (3) shall be required to submit cost or pricing data before the pricing of a change or
7 modification to the subcontract if—

8 (A) in the case of a change or modification to a subcontract referred to in
9 paragraph (3)(A) or (3)(B), the price adjustment is expected to exceed
10 \$2,000,000; and

11 (B) in the case of a change or modification to a subcontract referred to in
12 paragraph (3)(C), the price adjustment is expected to exceed \$750,000.

13 (b) [2306a(a)(2); 3502(b)] CERTIFICATION.—A person required, as an offeror, contractor,
14 or subcontractor, to submit cost or pricing data under subsection (a) (or required by the head of
15 the agency concerned to submit such data under section 3704 of this title) shall be required to
16 certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted
17 are accurate, complete, and current.

18 (c) [2306a(a)(3); 3502(e)] TO WHOM SUBMITTED.—Cost or pricing data required to be
19 submitted under subsection (a) (or under section 3704 of this title), and a certification required to
20 be submitted under subsection (b), shall be submitted—

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(1) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

(2) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(d) [2306a(a)(4); 3502(d)] APPLICABILITY OF SUBCHAPTER.—Except as provided under section 3703 of this title, this subchapter applies to contracts entered into by the head of an agency on behalf of a foreign government.

(e) [2306a(a)(5); 3502(e)] SUBCONTRACTS NOT AFFECTED BY WAIVER.— A waiver of requirements for submission of certified cost or pricing data that is granted under section 3703(a)(3) of this title in the case of a contract or subcontract does not waive the requirement under subsection (a)(3) of this section for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under subsection (a)(3) of this section should be waived in the case of such subcontracts and justifies in writing the reasons for the determination.

(f) [2306a(a)(6); 3502(f)] MODIFICATIONS TO PRIOR CONTRACTS.—~~Upon~~*On* the request of a contractor that was required to submit cost or pricing data under subsection (a) in connection with a prime contract entered into on or before June 30, 2018, the head of the agency that entered into the contract shall modify the contract to reflect paragraphs (2)(B) and (3)(B) of subsection (a). All ~~such~~ *those* modifications shall be made without requiring consideration.

Commented [CR578]: The two wording changes shown in this subsection would conform the title 10 provision to the wording in the parallel title 41 provision.

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1 (g) [2306a(a)(7); 3502(g)] ADJUSTMENT OF AMOUNTS.—Effective on October 1 of each
2 year that is divisible by 5, each amount set forth in subsection (a) shall be adjusted in accordance
3 with section 1908 of title 41.

4 **§3703 [2306a(b), 41 USC 3503]. Exceptions**

5 (a) [2306a(b)(1), 41 USC 3503(a)] IN GENERAL.—Submission of certified cost or pricing
6 data shall not be required under section 3702 of this title in the case of a contract, a subcontract,
7 or modification of a contract or subcontract—

8 (1) for which the price agreed upon is based on –

9 (A) adequate competition that results in at least two or more responsive
10 and viable competing bids; or

11 (B) prices set by law or regulation;

12 (2) for the acquisition of a commercial product or a commercial service;

13 (3) in an exceptional case when the head of the procuring activity, without
14 delegation, determines that the requirements of this subchapter may be waived and
15 justifies in writing the reasons for such determination; or

16 (4) to the extent such data—

17 (A) relates to an offset agreement in connection with a contract for the sale
18 of a weapon system or defense-related item to a foreign country or foreign firm;

19 and

20 (B) does not relate to a contract or subcontract under the offset agreement
21 for work performed in such foreign country or by such foreign firm that is directly

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1 related to the weapon system or defense-related item being purchased under the
2 contract.

3 (b) [2306a(b)(2), 41 USC 3503(b)] MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS
4 FOR COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES.—In the case of a modification of a
5 contract or subcontract for a commercial product or commercial service that is not covered by
6 the exception to the submission of certified cost or pricing data in paragraph (1) or (2) of
7 subsection (a), submission of certified cost or pricing data shall not be required under section
8 3702 of this title if—

9 (1) the contract or subcontract being modified is a contract or subcontract for
10 which submission of certified cost or pricing data may not be required by reason of
11 paragraph (1) or (2) of subsection (a); and

12 (2) the modification would not change the contract or subcontract, as the case may
13 be, from a contract or subcontract for the acquisition of a commercial product or
14 commercial service to a contract or subcontract for the acquisition of an item other than a
15 commercial product or commercial service”].

16 (c) [2306a(b)(3)] NONCOMMERCIAL MODIFICATIONS OF COMMERCIAL PRODUCTS.—

17 (1) The exception in subsection (a)(2) does not apply to cost or pricing data on
18 noncommercial modifications of a commercial product that are expected to cost, in the
19 aggregate, more than the amount specified in section 3702(a)(1)(A) of this title, as
20 adjusted from time to time under section 3702(g) of this title, or 5 percent of the total
21 price of the contract (at the time of contract award), whichever is greater.

Commented [CR579]: FY19 NDAA Sec 836(c)(5)(A)(ii)(II) has “services”.
But, it appears that it should have been “service” [singular].
(Compare the other amendments and “product” [singular]).
So, the correction to “service” would be made here.

Commented [CR580]: FY19 NDAA Sec 836(c)(5)(A)(ii)(II) has “services”.
But, it appears that it should have been “service” [singular].
(Compare the other amendments and “product” [singular]).
So, the correction to “service” would be made here.

Commented [CR581]: Same as immediately above.

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1 (2) In this subsection, the term "noncommercial modification", with respect to a
2 commercial product, means a modification of such product that is not a modification
3 described in section 103(3)(A) of title 41.

4 (3) Nothing in paragraph (1) shall be construed—

5 (A) to limit the applicability of the exception in paragraph (1) or (3) of
6 subsection (a) to cost or pricing data on a noncommercial modification of a
7 commercial product; or

8 (B) to require the submission of cost or pricing data on any aspect of an
9 acquisition of a commercial product other than the cost and pricing of
10 noncommercial modifications of such product.

11 (d) [2306a(b)(4)] COMMERCIAL PRODUCT OR COMMERCIAL SERVICE DETERMINATION.—

12 (1) [2306a(b)(4)(A)] For purposes of applying the exception under subsection
13 (a)(2) to the required submission of certified cost or pricing data, the contracting officer
14 may presume that a prior commercial product or commercial service determination made
15 by a military department, a Defense Agency, or another component of the Department of
16 Defense shall serve as a determination for subsequent procurements of such product or
17 service.

18 (2) [2306a(b)(4)(B)] If the contracting officer does not make the presumption
19 described in paragraph (1) and instead chooses to proceed with a procurement of a
20 product or service previously determined to be a commercial product or a commercial
21 service using procedures other than the procedures authorized for the procurement of a
22 commercial product or a commercial service, as the case may be, the contracting officer

Commented [CR582]: This cross-reference will NOT need to change; 103(3)(A) is the same in the revision made by sec. 836(a)(1) of the FY19 NDAA.

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1 shall request a review of the commercial product or commercial service determination by
2 the head of the contracting activity.

3 (3) [2306a(b)(4)(C)] Not later than 30 days after receiving a request for review of
4 a determination under paragraph (2), the head of a contracting activity shall—

5 (A) confirm that the prior determination was appropriate and still
6 applicable; or

7 (B) issue a revised determination with a written explanation of the basis
8 for the revision.

9 ~~“(4) [Sec. 851(c)-(e) of P.L. 114-92 (10 U.S.C. 2306a note)] (A) [Sec. 851(c)]~~
10 Nothing in this subsection shall affect the meaning of the term 'commercial item' under
11 subsection (a)(5) of section 2464 of this title or any requirement under subsection (a)(3)
12 or subsection (c) of such section.

13 ~~“(B) [Sec. 851(d)] The Defense Federal Acquisition Regulation Supplement shall~~
14 reflect the requirements of this subsection.

15 ~~“(C) [Sec. 851(e)] Nothing in this subsection shall be construed to preclude the~~
16 contracting officer for the procurement of a commercial item from requiring the
17 contractor to supply information that is sufficient to determine the reasonableness of
18 price, regardless of whether or not the contractor was required to provide such
19 information in connection with any earlier procurement.

20 (e) [2306a(b)(5)] A contracting officer shall consider evidence provided by an offeror of
21 recent purchase prices paid by the Government for the same or similar commercial products or
22 commercial services in establishing price reasonableness on a subsequent purchase if the

Commented [CR583]: Paragraph (4) would codify subsections (c), (d), and (e) of section 851 of PL 114-92, the FY16 NDAA. Each of those subsections is a note under 2306a.

Reviewing suggestion: it will be much easier to track this by looking at the Public Law print for P.L. 114-92, rather than at the notes under 2306a.

In the original, they each refer to “this section and the amendments made by this section”.

The section made two amendments. Subsection (a) added a new section 2380 to title 10; subsection (b) added a new paragraph (4) to 2306a(b). [now subsection (d) above, with 3 paragraphs] To preserve the applicability to the amendment made by subsection (b) of sec. 851, this paragraph would incorporate those three subsections as part of subsection (d), with references to “the amendments made by this section” changed to “this subsection”. A similar provision will be proposed to be added to section 2380 as part of the reorganization text that includes that section.

Commented [CR584]: The original has “NLT 180 days after the date of the enactment of this Act [Nov. 25, 2015],” which is omitted as OBE.

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1 contracting officer is satisfied that the prices previously paid remain a valid reference for
2 comparison after considering the totality of other relevant factors such as the time elapsed since
3 the prior purchase and any differences in the quantities purchased or applicable terms and
4 conditions.

5 (f) [2306a(b)(6)] DETERMINATION BY PRIME CONTRACTOR.—A prime contractor required
6 to submit certified cost or pricing data under section 3702 of this title with respect to a prime
7 contract shall be responsible for determining whether a subcontract under such contract qualifies
8 for an exception under subsection (a)(1) from such requirement.

9 **§3704 [2306a(c), 41 USC 3504]. Cost or pricing data on below-threshold contracts**

10 (a) AUTHORITY TO REQUIRE SUBMISSION.—Subject to subsection (b), when certified cost
11 or pricing data are not required to be submitted by section 3702 of this title for a contract,
12 subcontract, or modification of a contract or subcontract, such data may nevertheless be required
13 to be submitted by the head of the procuring activity, but only if the head of the procuring
14 activity determines that such data are necessary for the evaluation by the agency of the
15 reasonableness of the price of the contract, subcontract, or modification of a contract or
16 subcontract. In any case in which the head of the procuring activity requires such data to be
17 submitted under this section, the head of the procuring activity shall justify in writing the reason
18 for such requirement.

19 (b) EXCEPTION.—The head of the procuring activity may not require certified cost or
20 pricing data to be submitted under this section for any contract or subcontract, or modification of
21 a contract or subcontract, covered by the exceptions in paragraph (1) or (2) of section 3703(a) of
22 this title.

Commented [CR585]: "Section" is consistent with wording in T41, here and in paragraph (3) below. T10 original says "this paragraph", which literally would change to "this subsection". However, in the original, "this paragraph" makes no sense, both in paragraph (2) and paragraph (3). In the context, it has to mean "subsection" [now "section"]. This appears to have been a drafting error. Both the T10 & T41 provisions were added by FASA, with the same language (citations on request). When T41 was enacted as positive law in 2011, this change was made.

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1 (c) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not
2 delegate the functions under this section.

3 **§3705 [2306a(d), 41 USC 3505]. Submission of other information**

4 (a) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not
5 required to be submitted under this subchapter for a contract, subcontract, or modification of a
6 contract or subcontract, the offeror shall be required to submit to the contracting officer data
7 other than certified cost or pricing data (if requested by the contracting officer), to the extent
8 necessary to determine the reasonableness of the price of the contract, subcontract, or
9 modification of the contract or subcontract. Except in the case of a contract or subcontract
10 covered by the exceptions in section 3703(a)(1) of this title, the contracting officer shall require
11 that the data submitted include, ~~at a minimum,~~ appropriate information on the prices at which the
12 same item or similar items have previously been sold that is adequate for evaluating the
13 reasonableness of the price for the procurement. ~~If the contracting officer determines that the~~
14 offeror does not have access to and cannot provide sufficient information on prices for the same
15 or similar items to determine the reasonableness of price, the contracting officer shall require the
16 submission of information on prices for similar levels of work or effort on related products or
17 services, prices for alternative solutions or approaches, and other information that is relevant to
18 the determination of a fair and reasonable price.

19 (b) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the
20 following provisions regarding the types of information that contracting officers may require
21 under subsection (a):

Commented [CR586]: The phrase “at a minimum” is recommend to be omitted generally as unnecessary, here and wherever else occurring. It is particularly unnecessary after the word “includes”, which inherently means that there can be more.

Commented [CR587]: This sentence beginning “If the contracting officer”, is in T10 but not in T41. It was added by the FY16 NDAA, sec. 852(e).

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1 (1) REASONABLE LIMITATIONS.—Reasonable limitations on requests for sales data
2 relating to commercial products or commercial services.

3 (2) LIMITATION ON SCOPE OF REQUEST.—A requirement that a contracting officer
4 limit, to the maximum extent practicable, the scope of any request for information
5 relating to commercial products or commercial services from an offeror to only that
6 information that is in the form regularly maintained by the offeror in commercial
7 operations.

8 (3) INFORMATION NOT TO BE DISCLOSED.—A statement that any information
9 received relating to commercial products or commercial services that is exempt from
10 disclosure under section 552(b) of title 5 shall not be disclosed by the Federal
11 Government.

12 **§3706 [2306a(e), 41 USC 3506]. Price reductions for defective cost or pricing data**

13 (a) PROVISION REQUIRING ADJUSTMENT.—

14 (1) IN GENERAL.—A prime contract (or change or modification to a prime
15 contract) under which a certificate under section 3702(b) of this title is required shall
16 contain a provision that the price of the contract to the United States, including profit or
17 fee, shall be adjusted to exclude any significant amount by which it may be determined
18 by the head of the agency that the price was increased because the contractor (or any
19 subcontractor required to make available such a certificate) submitted defective cost or
20 pricing data.

21 (2) WHAT CONSTITUTES DEFECTIVE COST OR PRICING DATA.—For the purposes of
22 this subchapter, defective cost or pricing data are cost or pricing data ~~which that~~ as of the

Commented [CR588]: Changed for parallelism with T41.

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1 date of agreement on the price of the contract (or another date agreed upon between
2 parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding
3 sentence the parties agree upon a date other than the date of agreement on the price of the
4 contract, the date agreed on by the parties shall be as close to the date of agreement on
5 the price of the contract as is practicable.

6 (b) VALID DEFENSE.—In determining for purposes of a contract price adjustment under a
7 contract provision required by subsection (a) whether, and to what extent, a contract price was
8 increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it
9 shall be a defense that the United States did not rely on the defective data submitted by the
10 contractor or subcontractor.

11 (c) INVALID DEFENSES.—It is not a defense to an adjustment of the price of a contract
12 under a contract provision required by subsection (a) that—

13 (1) the price of the contract would not have been modified even if accurate,
14 complete, and current cost or pricing data had been submitted by the contractor or
15 subcontractor because the contractor or subcontractor-

16 (A) was the sole source of the property or services procured; or

17 (B) otherwise was in a superior bargaining position with respect to the
18 property or services procured;

19 (2) the contracting officer should have known that the cost ~~and or~~ pricing data in
20 issue were defective even though the contractor or subcontractor took no affirmative
21 action to bring the character of the data to the attention of the contracting officer;

Commented [CR589]: Change for internal consistency and consistency with T41

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1 (3) the contract was based on an agreement between the contractor and the United
2 States about the total cost of the contract and there was no agreement about the cost of
3 each item procured under the contract; or

4 (4) the prime contractor or subcontractor did not submit a certification of cost ~~and~~
5 ~~or~~ pricing data relating to the contract as required under section 3702(b) of this title.

Commented [CR590]: Change for internal consistency and consistency with T41, Note that 3702(b) uses "cost or pricing data".

6 (d) OFFSETS.—

7 (1) WHEN ALLOWED.—A contractor shall be allowed to offset an amount against
8 the amount of a contract price adjustment under a contract provision required by
9 subsection (a) if—

10 (A) the contractor certifies to the contracting officer (or to a designated
11 representative of the contracting officer) that, to the best of the contractor's
12 knowledge and belief, the contractor is entitled to the offset; and

13 (B) the contractor proves that the cost or pricing data were available
14 before the date of agreement on the price of the contract (or price of the
15 modification) or, if applicable consistent with subsection (a)(2), another date
16 agreed upon between the parties, and that the data were not submitted as specified
17 in section 3702(c) of this title before such date.

18 (2) WHEN NOT ALLOWED.—A contractor shall not be allowed to offset an amount
19 otherwise authorized to be offset under paragraph (1) if—

20 (A) the certification under section 3702(b) of this title with respect to the
21 cost or pricing data involved was known to be false when signed; or

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1 (B) the United States proves that, had the cost or pricing data referred to in
2 paragraph (1)(B) been submitted to the United States before the date of agreement
3 on the price of the contract (or price of the modification) or, if applicable
4 consistent with subsection (a)(2), another date agreed upon between the parties,
5 the submission of the cost or pricing data would not have resulted in an increase
6 in that price in the amount to be offset.

7 **§3707 [2306a(f), 41 USC 3507]. Interest and penalties for certain overpayments**

8 (a) IN GENERAL.—If the United States makes an overpayment to a contractor under a
9 contract subject to this subchapter and the overpayment was due to the submission by the
10 contractor of defective cost or pricing data, the contractor shall be liable to the United States—

11 (1) for interest on the amount of such overpayment, to be computed—

12 (A) for the period beginning on the date the overpayment was made to the
13 contractor and ending on the date the contractor repays the amount of such
14 overpayment to the United States; and

15 (B) at the current rate prescribed by the Secretary of the Treasury under
16 section 6621 of the Internal Revenue Code of 1986; and

17 (2) if the submission of the defective data was a knowing submission, for an
18 additional amount equal to the amount of the overpayment.

19 (b) LIABILITY NOT AFFECTED BY REFUSAL TO SUBMIT CERTIFICATION.—Any liability
20 under this section of a contractor that submits cost or pricing data but refuses to submit the
21 certification required by section 3702(b) of this title with respect to the cost or pricing data shall
22 not be affected by the refusal to submit the certification.

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1 §3708 [2306a(g), 41 USC 3508]. Right to examine contractor records

2 For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing
3 data required to be submitted by this subchapter, the head of an agency shall have the authority
4 provided by section ~~2313(a)(2)~~ 3841(b)(2) of this title.”

5 (2) **CONFORMING REPEAL.**—Section 2306a of title 10, United States Code, is
6 repealed.

7 (3) **CROSS-REFERENCE AMENDMENTS.**—

8 (A) Section 1608(b) of the National Defense Authorization Act for Fiscal
9 Year 2016 (Public Law 114-92; 10 U.S.C. 2273 note) is amended by striking
10 “section 2306a” and inserting “subchapter I of chapter 271”.

11 (B) Section 866(b)(4) of the Ike Skelton National Defense Authorization
12 Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2302 note) is
13 amended—

14 (i) in subparagraph (A), by striking “section 2306a” and inserting
15 “subchapter I of chapter 271”; and

16 (ii) in subparagraph (B), by striking “section 2306a(d)” and
17 inserting “section 3705”.

18 (C) Section 2343 of title 10, United States Code, is amended by striking
19 “2306a, and 2313” and inserting “3701-3708, and 3841”.

20 (D) Section 2379(c)(1) of title 10, United States Code, is amended by
21 striking “section 2306a” and inserting “sections 3701-3708”.

Commented [CR591]: Note that the single current section 2306a, as reorganized, is in eight sections and is 14 pages long.

Commented [CR592]: It is unfortunate that the reorganized TINA section is a subchapter rather than a chapter, so the old references to 2306a become this cumbersome reference. If 2306a were turned into a chapter, rather than a subchapter, the references would be much simpler and the parallelism with title 41 would be greater. BUT, what to do with the 4 NDAA sections proposed for codification in subchapter II, as well as any future additions? Without subchapters in the chapter, what would we do with those sections? Those sections are all 2306a notes now.

Commented [CR593]: This section is left “as is”.

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1 (E) Section 2380(b)(2)(B)(i) of title 10, United States Code, is amended by
2 striking “section 2306a(b)(4)(B)” and inserting “section 3703(d)(2)”.

3 (F) Section 9511(d) of title 10, United States Code, is amended by striking
4 “section 2306a” and inserting “subchapter I of chapter 271”.

5 (G) Section 272(c) of the National Defense Authorization Act for Fiscal
6 Years 1998 and 1999 (Public Law 100-180; 15 U.S.C. 4602) is amended by
7 striking “section 2306a” and inserting “subchapter I of chapter 271”.

8 (H) Section 830(d) of the National Defense Authorization Act for Fiscal
9 Year 2017 (Public Law 114-328; 22 U.S.C. 2762(d)) is amended—

10 (i) in paragraph (1)(B), by striking “section 2306a” and inserting
11 “subchapter I of chapter 271”; and

12 (i) in paragraph (3), by striking “section 2306a(a)(2)” and inserting
13 “section 3702(b)”.

14 (I) Section 1502(b)(1)(B) of title 41, United States Code, is amended by
15 striking “section 2306a(a)(1)(A)(i)” and inserting “section 3702(a)(1)(A)”.

16 (J) Section 1903(c)(2)(B) of title 41, United States Code, is amended by
17 striking “section 2306a” and inserting “subchapter I of chapter 271”.

18 (K) Section 2101(2)(A) of title 41, United States Code, is amended by
19 striking “section 2306a(h)” and inserting “section 3701”.

20 (L) Section 890(a)(2) of the John S. McCain National Defense
21 Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2306a

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1 note) is amended by striking "section 2306a" and inserting "subchapter I of
2 chapter 271".

3 (b) ADDITIONAL COST OR PRICING PROVISIONS.—

4 (1) IN GENERAL.—Chapter 271 of title 10, United States Code, as amended by
5 subsection (a), is further amended by adding at the end the following new subchapter:

6 "SUBCHAPTER II—OTHER PROVISIONS RELATING TO COST OR
7 PRICING DATA

"Sec.

3721. [Sec. 831 of P. L. 112-239 (10 U.S.C. 2306a note)] Evaluating the reasonableness of price: guidance and training.

3722. [Sec 817 of P. L. 107-314 (10 U.S.C. 2306a note)] Grants of exceptions to cost or pricing data certification requirements and waivers of cost accounting standards.

3723. [Sec. 873 of P. L. 114-92 (10 U.S.C. 2306a note)] Streamlining awards for innovative technology projects: pilot program.

3724. [Sec. 899 of P. L. 114-92 (10 U.S.C. 2306a note)] Risk-based contracting for smaller contract actions under Truth in Negotiations Act: pilot program.

8 "§ 3271 [Sec. 831 of P. L. 112-239 (10 U.S.C. 2306a note)] Evaluating the reasonableness of
9 price: guidance and training

10 "(a) GUIDANCE.—The Under Secretary of Defense for Acquisition, Technology, and
11 Logistics Acquisition and Sustainment shall issue guidance on the use of the authority provided
12 by sections 3705 and 3455 of this title. The guidance shall—

13 "(1) include standards for determining whether information on the prices at which
14 the same or similar items have previously been sold is adequate for evaluating the
15 reasonableness of price;

Commented [CR594]: The original has "Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the...". That is omitted here as OBE.

Commented [CR595]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

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"(2) include standards for determining the extent of uncertified cost information that should be required in cases in which price information is not adequate for evaluating the reasonableness of price;

"(3) ensure that in cases in which such uncertified cost information is required, the information shall be provided in the form in which it is regularly maintained by the offeror in its business operations; and

"(4) provide that no additional cost information may be required by the Department of Defense in any case in which there are sufficient non-Government sales to establish reasonableness of price.

(b) TRAINING AND EXPERTISE.—The Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment shall implement a plan of action to—

"(1) train the acquisition workforce on the use of the authority provided by sections 3705 and 3455 of this title in evaluating reasonableness of price in procurements of commercial items; and

"(2) develop a cadre of experts within the Department of Defense to provide expert advice to the acquisition workforce in the use of the authority provided by those sections in accordance with the guidance issued pursuant to subsection (a).

(c) DOCUMENTATION REQUIREMENTS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment shall ensure that requests for uncertified cost information for the purposes of evaluating reasonableness of price are sufficiently documented. The Under Secretary shall require that the contract file include, at a minimum, the following:

Commented [CR596]: The original has "Not later than 270 days after the date of the enactment of this Act [Jan. 2, 2013], the...". That is omitted here as OBE.

Commented [CR597]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR598]: The original has "develop and begin implementation of ...".

Commented [CR599]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR600]: Phrase proposed to be omitted as part of general recommendation to delete ", at a minimum," wherever appearing as being unnecessary. It is particularly unnecessary after "include".

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"(1) A justification of the need for additional cost information.

"(2) A copy of any request from the Department of Defense to a contractor for additional cost information.

"(3) Any response received from the contractor to the request, including any rationale or justification provided by the contractor for a failure to provide the requested information.

§ 3722. [Sec 817 of P. L. 107-314 (10 U.S.C. 2306a note)] Grants of exceptions to cost or pricing data certification requirements and waivers of cost accounting standards

(a) [817(a)] GUIDANCE FOR EXCEPTIONS IN EXCEPTIONAL CIRCUMSTANCES.—The Secretary of Defense shall issue guidance on the circumstances under which it is appropriate to grant an exceptional case exception or waiver with respect to certified cost and-or pricing data and cost accounting standards.

(b) [817(b)] DETERMINATION REQUIRED FOR EXCEPTIONAL CASE EXCEPTION OR WAIVER.—The guidance issued under subsection (a) shall, at a minimum, include a limitation that a grant of an exceptional case exception or waiver is appropriate with respect to a contract, subcontract, or (in the case of submission of certified cost and-or pricing data) modification only upon a determination that—

(1) the property or services cannot reasonably be obtained under the contract, subcontract, or modification, as the case may be, without the grant of the exception or waiver;

Commented [CR601]: The original has a subsection (d), omitted in the codification, which was a one-time report requirement due 180 days after Jan 2, 2015.

Commented [CR602]: For consistency throughout, "and" is changed to "or" ["cost OR pricing data"] The section header has "or". Same change made below to subsequent references in this section (below) and in the next section.

Commented [CR603]: Same comment as above as to " , at a minimum".

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"(2) the price can be determined to be fair and reasonable without the submission of certified cost and-or pricing data or the application of cost accounting standards, as the case may be; or

Commented [CR604]: This "or" at the end of paragraph (2) was changed from "and" in the FY19 NDAA, section 825.

"(3) there are demonstrated benefits to granting the exception or waiver.

"(c) APPLICABILITY OF NEW GUIDANCE.—The guidance issued under subsection (a) shall apply to each exceptional case exception or waiver that is granted on or after the date on which the guidance is issued.

"(d) [817(d)(1)] DEFINITION OF EXCEPTIONAL CASE EXCEPTION OR WAIVER.—In this section, the term 'exceptional case exception or waiver' means either of the following:

"(1) An exception pursuant to section 3703(a)(3) of this title, relating to submission of certified cost and-or pricing data.

"(2) A waiver pursuant to section 1502(b)(3)(B) of title 41, relating to the applicability of cost accounting standards to contracts and subcontracts.

~~"(2) The term 'commercial item exception' means an exception pursuant to section 3703(a)(2) of this title, relating to submission of certified cost and pricing data.~~

Commented [CR605]: The term defined here is no longer used in the section and so the definition is eliminated. The term was used in a previous subsection (d), which was repealed by sec 1051(j) of P.L. 115-91.

§ 3723. [Sec. 873(a)-(g) of P. L. 114-92 (10 U.S.C. 2306a note)] Streamlining awards for innovative technology projects: pilot program

"(a) EXCEPTION FROM CERTIFIED COST AND-OR PRICING DATA REQUIREMENTS.—

Commented [CR606]: See note as to "or" rather than "and" in 3722(a), above.

"(1) Subject to paragraph (2), the requirements under section 3702 of this title shall not apply to a contract, subcontract, or modification of a contract or subcontract valued at less than \$7,500,000 awarded to a small business or nontraditional defense contractor pursuant to—

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"(A) a technical, merit-based selection procedure, such as a broad agency announcement, or

"(B) the Small Business Innovation Research Program or Small Business Technology Transfer Program.

"(2) The exception under paragraph (1) shall not apply if the head of the agency determines that submission of cost and-or pricing data should be required based on—

"(A) past performance of the specific small business or nontraditional defense contractor; or

"(B) analysis of other information specific to the award.

"(b) EXCEPTION FROM RECORDS EXAMINATION REQUIREMENT.—

"(1) Subject to paragraph (2), the requirements under subparagraphs (A), (B), and (C) of section 2313(a)(2) 3841(b)(2) of this title and subsection (c) of section 2313 3841 of this title shall not apply to a contract valued at less than \$7,500,000 awarded to a small business or nontraditional defense contractor pursuant to—

"(A) a technical, merit-based selection procedure, such as a broad agency announcement, or

"(B) the Small Business Innovation Research Program.

"(2) The exception under paragraph (1) shall not apply if—

"(A) the head of the agency determines that auditing of records should be required based on—

"(i) past performance of the specific small business or nontraditional defense contractor; or

Commented [CR607]: In the original, paragraph (2) was an "unless" clause following subparagraph (B). It is revised to become paragraph (2) for readability.

Commented [CR608]: In the original, paragraph (2) was an "unless" clause following subparagraph (B). It is revised to become paragraph (2) for readability.

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1 “(ii) analysis of other information specific to the award; and
2 “(B) such performance audit is initiated within 18 months of the contract
3 completion.

4 “(c) TREATMENT AS COMPETITIVE PROCEDURES.—Use of a technical, merit-based
5 selection procedure or the Small Business Innovation Research Program or Small Business
6 Technology Transfer Program for the pilot program under this section shall be considered to be
7 use of competitive procedures for purposes of ~~chapter 137~~ ???? of this title.

8 “(d) DISCRETION TO USE NON-CERTIFIED ACCOUNTING SYSTEMS.—In executing
9 programs under ~~this~~ *the* pilot program, the Secretary of Defense shall establish procedures under
10 which a small business or nontraditional contractor may engage an independent certified public
11 accountant for the review and certification of its accounting system for the purposes of any
12 audits required by regulation, unless the head of the agency determines that this is not
13 appropriate based on past performance of the specific small business or nontraditional defense
14 contractor, or based on analysis of other information specific to the award.

15 “(e) GUIDANCE AND TRAINING.—The Secretary of Defense shall ensure that acquisition
16 and auditing officials are provided guidance and training on the flexible use and tailoring of
17 authorities under the pilot program to maximize efficiency and effectiveness.

18 “(f) SUNSET.—The exceptions under subsections (a) and (b) shall terminate on October 1,
19 2020.

20 “(g) DEFINITIONS.—In this section:

21 “(1) SMALL BUSINESS.—The term 'small business' has the meaning given the term
22 'small business concern' under section 3 of the Small Business Act (15 U.S.C. 632).

Commented [CR609]: What provisions of chapter 137 are covered by the reference here to “the use of competitive procedures for purposes of chapter 137”?

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1 ~~"(2) NONTRADITIONAL DEFENSE CONTRACTOR.—The term 'nontraditional defense~~
2 ~~contractor' has the meaning given that term in section 2302(9) of this title.~~

3 **§ 3724. [Sec. 899 of P. L. 114-92 (10 U.S.C. 2306a note)] Risk-based contracting for smaller**
4 **contract actions under Truth in Negotiations Act: pilot program**

5 "(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Defense may conduct a pilot
6 program to demonstrate the efficacy of using risk-based techniques in requiring submission of
7 data on a sampling basis for purposes of **subchapter I of this chapter** (popularly known as the
8 'Truth in Negotiations Act').

9 "(b) INCREASE IN THRESHOLDS.—For purposes of a pilot program under subsection (a),
10 \$5,000,000 shall be the threshold applicable to requirements under subsection (a) of section **3702**
11 of this title, as follows:

12 "(1) The requirement under paragraph (1) of that subsection to submit cost or
13 pricing data for a prime contract entered into during the pilot program period.

14 "(2) The requirement under paragraph (2) of that subsection to submit cost or
15 pricing data for the change or modification to a prime contract made during the pilot
16 program period.

17 "(3) The requirement under paragraph (3) of that subsection to submit cost or
18 pricing data for a subcontract entered into during the pilot program period.

19 "(4) The requirement under paragraph (4) of that subsection to submit cost or
20 pricing data for the change or modification to a subcontract made during the pilot
21 program period.

22 "(c) RISK-BASED CONTRACTING.—

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1 "(1) AUTHORITY TO REQUIRE SUBMISSION OF COST OR PRICING DATA ON BELOW-
2 THRESHOLD CONTRACTS.—Subject to paragraph (4), when certified cost or pricing data
3 are not required to be submitted pursuant to subsection (b) for a contract or subcontract
4 entered into or modified during the pilot program period, such data may nevertheless be
5 required to be submitted by the head of the procuring activity, if the head of the procuring
6 activity—

7 "(A) determines that such data are necessary for the evaluation by the
8 agency of the reasonableness of the price of the contract, subcontract, or
9 modification of a contract or subcontract; or

10 "(B) requires the submission of such data in accordance with a risk-based
11 contracting approach established pursuant to paragraph (3).

12 "(2) WRITTEN DETERMINATION REQUIRED.—In any case in which the head of the
13 procuring activity requires certified cost or pricing data to be submitted under paragraph
14 (1)(A), the head of the procuring activity shall justify in writing the reason for such
15 requirement.

16 "(3) RISK-BASED CONTRACTING.—The head of an agency shall establish a risk-
17 based sampling approach under which the submission of certified cost or pricing data
18 may be required for a risk-based sample of contracts, the price of which is expected to
19 exceed \$750,000 but not \$5,000,000. The authority to require certified cost or pricing
20 data under this paragraph shall not apply to any contract of an offeror that has not been
21 awarded, for at least the one-year period preceding the issuance of a solicitation for the

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1 contract, any other contract in excess of \$5,000,000 under which the offeror was required
2 to submit certified cost or pricing data under subchapter I of this chapter.

3 "(4) EXCEPTION.—The head of the procuring activity may not require certified
4 cost or pricing data to be submitted under this subsection for any contract or subcontract,
5 or modification of a contract or subcontract, covered by the exceptions in paragraph (1)
6 or (2) of section 3703(a) of this title.

7 "(5) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity
8 may not delegate functions under this subsection.

9 "(d) DEFINITIONS.—In this section:

10 "~~(1) HEAD OF AN AGENCY.—The term 'head of an agency' has the meaning given~~
11 ~~the term in section 2302 of this title.~~

12 "(2) PILOT PROGRAM PERIOD.—The term 'pilot program period' means the period
13 beginning on October 1, 2016, and ending on **September 30, 2019**."

14 (2) CONFORMING REPEALS.—The following provisions of law are repealed:

15 (A) Section 831 of the National Defense Authorization Act for Fiscal Year
16 2013 (Public Law 112-239; 10 U.S.C. 2306a note).

17 (B) Section 817 of the Bob Stump National Defense Authorization Act for
18 Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2306a note).

19 (C) Section 873 of the National Defense Authorization Act for Fiscal Year
20 2016 (Public Law 114-92; 10 U.S.C. 2306a note).

21 (D) Section 899 of the National Defense Authorization Act for Fiscal Year
22 2016 (Public Law 114-92; 10 U.S.C. 2306a note).

Commented [CR610]: In the original, this was subsection (e). The original required reports NLT 1/1/17 & 1/1/19 and is omitted as OBE.

Commented [CR611]: "head of an agency" is defined in sec 3004 in ch 201 above for applicability to all of Part V, so this paragraph becomes unnecessary.

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(3) **PRESERVATION OF REPORTING REQUIREMENT.**—Not later than January 1, 2019, the Secretary of Defense shall submit to the congressional defense committees a report on activities undertaken under section 3724 of title 10, United States Code, as added by paragraph (1), and under section 899 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2306a note), before the repeal of such section by paragraph (2).

SEC. 402. ALLOWABLE COSTS.

(a) **NEW CHAPTER.**—

(1) **IN GENERAL.**—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapter 273 and inserting the following:

“CHAPTER 273—ALLOWABLE COSTS

Subchapter	Sec.
I. General	3741
II. Other Allowable Cost Provisions	3761

“SUBCHAPTER I—GENERAL

- Sec.
- 3741. [2324(l); 41 USC 4301] Definitions.
- 3742 [2324(l)(1)(B); 41 USC 4302]. Adjustment of threshold amount of covered contract.
- 3743. [2324(a)-(d); 41 USC 4303] Effect of submission of unallowable costs.
- 3744. [2324(e); 41 USC 4304] Specific costs not allowable.
- 3745. [2324(f); 41 USC 4305]. Required regulations.
- 3746. [2324(g); 41 USC 4306]. Applicability of regulations to subcontractors.
- 3747. [2324(h); 41 USC 4307]. Contractor certification.
- 3748. [2324(i); 41 USC 4308]. Penalties for submission of cost known to be unallowable .
- 3749. [2324(j); 41 USC 4309]. Burden of proof on contractor.
- 3750. [2324(k); 41 USC 4310]. Proceeding costs not allowable.

Commented [CR612]: Subchapter I is derived from 10 USC 2324 & organized to conform to the organization of 41 USC Ch. 43.

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1 §3741. [2324(l), 41 USC 4301] Definitions

2 In this subchapter:

3 (1) [2324(l)(4), 41 USC 4301(1)] COMPENSATION.—The term "compensation",
4 for a **fiscal** year, means the total amount of wages, salary, bonuses and deferred
5 compensation for the **fiscal** year, whether paid, earned, or otherwise accruing, as recorded
6 in an employer's cost accounting records for the **fiscal** year.

Commented [CR613]: Title 10 section does NOT have the word "fiscal"; title 41 does. Proposed to be added here for consistency with T41.

7 (2) [2324(l)(1)(A), 41 USC 4301(2)] COVERED CONTRACT.—The term "covered
8 contract" means a contract for an amount in excess of \$500,000 that is entered into by the
9 head of an agency, except that such term does not include—

Commented [CR614]: FYI: This amount appears in T41 also. It may be desirable to consider updating the dollar amount (in both statutes) to reflect the actual amount in effect at this time. However, no change is proposed here.

10 (A) a fixed-price contract without cost incentives; or

11 (B) any firm fixed-price contract for the purchase of commercial products
12 or commercial services.

13 (3) [2324(l)(6), 41 USC 4301(3)] FISCAL YEAR.—The term "fiscal year" means a
14 fiscal year established by a contractor for accounting purposes.

15 (4) [2324(l)(2); not in T41] HEAD OF AN AGENCY.—The term "head of an agency"
16 means—

17 (A) the Secretary of Defense;

18 (B) the Secretary of Homeland Security; and

19 (C) the Administrator of the National Aeronautics and Space
20 Administration.

21 (5) [2324(l)(3)] AGENCY.—The term "agency" means—

22 (A) the Department of Defense;

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(B) the Coast Guard; and

(C) the National Aeronautics and Space Administration.

§3742 [2324(l)(1)(B); 41 USC 4302]. Adjustment of threshold amount of covered contract

Effective on October 1 of each year that is divisible by 5, the amount set forth in section 3741(2) of this title shall be adjusted in accordance with section 1908 of title 41.

Commented [CR615]: FYI, 41 USC 4302 is different here; sec. 811(e) of the FY18 NDAA amended this provision to read as shown; there was no parallel amendment to T41.

§3743. [2324(a)-(d); 41 USC 4303] Effect of submission of unallowable costs

(a) [2324(a); 41 USC 4303(a)] INDIRECT COST THAT VIOLATES FEDERAL ACQUISITION REGULATION COST PRINCIPLE.—The head of an agency shall require that a covered contract

Commented [CR616]: Here and throughout, headers are drawn from existing title 41 counterpart provision

provide that if the contractor submits to the agency a proposal for settlement of indirect costs incurred by the contractor for any period after those costs have been accrued and if that proposal includes the submission of a cost that is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or an applicable agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

Commented [CR617]: Minor wording changes made to conform to T41 wording. Things like "such" to "those", "which" to "that", and adding an "an".

(b) [2324(b); 41 USC 4303(b)] PENALTY FOR VIOLATION OF COST PRINCIPLE.—

(1) UNALLOWABLE COST IN PROPOSAL.—If the head of the agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the head of the agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

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1 (B) interest (to be computed based on provisions in the Federal
2 Acquisition Regulation) to compensate the United States for the use of any funds
3 which a contractor has been paid in excess of the amount to which the contractor
4 was entitled.

5 (2) COST DETERMINED TO BE UNALLOWABLE BEFORE PROPOSAL SUBMITTED.—If
6 the head of the agency determines that a proposal for settlement of indirect costs
7 submitted by a contractor includes a cost determined to be unallowable in the case of that
8 contractor before the submission of that proposal, the head of the agency shall assess a
9 penalty against the contractor in an amount equal to 2 times the amount of the disallowed
10 cost allocated to covered contracts for which a proposal for settlement of indirect costs
11 has been submitted.

12 (c) [2324(c); 41 USC 4303(c)] WAIVER OF PENALTY.—The Federal Acquisition
13 Regulation shall provide for a penalty under subsection (b) to be waived in the case of a
14 contractor's proposal for settlement of indirect costs when—

15 (1) the contractor withdraws the proposal before the formal initiation of an audit
16 of the proposal by the Federal Government and resubmits a revised proposal;

17 (2) the amount of unallowable costs subject to the penalty is insignificant; or

18 (3) the contractor demonstrates, to the contracting officer's satisfaction, that—

19 (A) it has established appropriate policies and personnel training and an
20 internal control and review system that provide assurances that unallowable costs
21 subject to penalties are precluded from being included in the contractor's proposal
22 for settlement of indirect costs; and

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1 (B) the unallowable costs subject to the penalty were inadvertently
2 incorporated into the proposal.

3 (d) [2324(d); 41 USC 4303(d)] APPLICABILITY OF CONTRACT DISPUTES PROCEDURE.—

4 An action of the head of an agency under subsection (a) or (b)—

5 (1) shall be considered a final decision for the purposes of section 7103 of title 41;

6 and

7 (2) is appealable in the manner provided in section 7104(a) of that title.

8 **§3744. [2324(e); 41 USC 4304] Specific costs not allowable**

9 (a) [2324(e)(1); 41 USC 4304(a)] SPECIFIC COSTS.—The following costs are not
10 allowable under a covered contract:

11 (1) Costs of entertainment, including amusement, diversion, and social activities
12 and any costs directly associated with such costs (such as tickets to shows or sports
13 events, meals, lodging, rentals, transportation, and gratuities).

14 (2) Costs incurred to influence (directly or indirectly) legislative action on any
15 matter pending before Congress, a State legislature, or a legislative body of a political
16 subdivision of a State.

17 (3) Costs incurred in defense of any civil or criminal fraud proceeding or similar
18 proceeding (including filing of any false certification) brought by the United States where
19 the contractor is found liable or has pleaded nolo contendere to a charge of fraud or
20 similar proceeding (including filing of a false certification).

21 (4) Payments of fines and penalties resulting from violations of, or failure to
22 comply with, Federal, State, local, or foreign laws and regulations, except when incurred

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1 as a result of compliance with specific terms and conditions of the contract or specific
2 written instructions from the contracting officer authorizing in advance such payments in
3 accordance with applicable provisions of the Federal Acquisition Regulation.

4 (5) Costs of membership in any social, dining, or country club or organization.

5 (6) Costs of alcoholic beverages.

6 (7) Contributions or donations, regardless of the recipient.

7 (8) Costs of advertising designed to promote the contractor or its products.

8 (9) Costs of promotional items and memorabilia, including models, gifts, and
9 souvenirs.

10 (10) Costs for travel by commercial aircraft which exceed the amount of the
11 standard commercial fare.

12 (11) Costs incurred in making any payment (commonly known as a "golden
13 parachute payment") that is—

14 (A) in an amount in excess of the normal severance pay paid by the contractor to
15 an employee upon termination of employment; and

16 (B) paid to the employee contingent upon, and following, a change in
17 management control over, or ownership of, the contractor or a substantial portion of the
18 contractor's assets.

19 (12) Costs of commercial insurance that protects against the costs of the
20 contractor for correction of the contractor's own defects in materials or workmanship.

21 (13) Costs of severance pay paid by the contractor to foreign nationals employed
22 by the contractor under a service contract performed outside the United States, to the

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1 extent that the amount of severance pay paid in any case exceeds the amount paid in the
2 industry involved under the customary or prevailing practice for firms in that industry
3 providing similar services in the United States, as determined under the Federal
4 Acquisition Regulation.

5 (14) Costs of severance pay paid by the contractor to a foreign national employed
6 by the contractor under a service contract performed in a foreign country if the
7 termination of the employment of the foreign national is the result of the closing of, or
8 the curtailment of activities at, a United States military facility in that country at the
9 request of the government of that country.

10 (15) Costs incurred by a contractor in connection with any criminal, civil, or
11 administrative proceeding commenced by the United States or a State, to the extent
12 provided in section 3750 of this title.

13 (16) Costs of compensation of any contractor employee for a fiscal year,
14 regardless of the contract funding source, to the extent that such compensation exceeds
15 \$625,000 adjusted annually for the U.S. Bureau of Labor Statistics Employment Cost
16 Index for total compensation for private industry workers, by occupational and industry
17 group not seasonally adjusted, except that the Secretary of Defense may establish
18 exceptions for positions in the science, technology, engineering, mathematics, medical,
19 and cybersecurity fields and other fields requiring unique areas of expertise upon a
20 determination that such exceptions are needed to ensure that the Department of Defense
21 has continued access to needed skills and capabilities.

Commented [CR618]: FYI: The parallel provision in title 41 has "or subcontractor, or personal services contractor," after "by a contractor". No change here from the T10 wording.

Commented [CR619]: FYI, P. L. 113-66 & P.L.113-67, both enacted on 12/26/13, both amended this paragraph generally (subparagraph (P) in the original). The U.S. Code shows both versions.

No change here other than changing "(P)" to "(16)" in both places.

Commented [CR620]: FYI, as a follow-on to the note above, the same double enactment occurred in amendments to title 41 by the same statutes. See 41 USC 4304(a)(16).

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1 (16) Costs of compensation of contractor and subcontractor employees for a fiscal
2 year, regardless of the contract funding source, to the extent that such compensation
3 exceeds \$487,000 per year, adjusted annually to reflect the change in the Employment
4 Cost Index for all workers, as calculated by the Bureau of Labor Statistics, except that the
5 head of an executive agency may establish one or more narrowly targeted exceptions for
6 scientists, engineers, or other specialists upon a determination that such exceptions are
7 needed to ensure that the executive agency has continued access to needed skills and
8 capabilities.

9 (17) Costs incurred by a contractor in connection with a congressional
10 investigation or inquiry into an issue that is the subject matter of a proceeding resulting in
11 a disposition as described in section 3750(c) of this title.

Commented [CR621]: FYI: Title 41 does not have a parallel provision to paragraph (17), added to T10 by sec. 857 of the FY15 NDAA, Dec. 19, 2014. There was no parallel amendment to T41.

12 (b) [2324(e)(3); 41 USC 4304(b)] WAIVER OF SEVERANCE PAY RESTRICTIONS FOR

13 FOREIGN NATIONALS.—

14 (1) HEAD OF AN AGENCY DETERMINATION.—Pursuant to the Federal Acquisition
15 Regulation and subject to the availability of appropriations, the head of an agency
16 awarding a covered contract (other than a contract to which subsection (d) applies) may
17 waive the application of the provisions of paragraphs (13) and (14) of subsection (a) to
18 that contract if the head of the agency determines that—

19 (A) the application of such provisions to that contract would adversely
20 affect the continuation of a program, project, or activity that provides significant
21 support services for members of the armed forces stationed or deployed outside
22 the United States;

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1 (B) the contractor has taken (or has established plans to take) appropriate
2 actions within the contractor's control to minimize the amount and number of
3 incidents of the payment of severance pay by the contractor to employees under
4 the contract who are foreign nationals; and

5 (C) the payment of severance pay is necessary in order to comply with a
6 law that is generally applicable to a significant number of businesses in the
7 country in which the foreign national receiving the payment performed services
8 under the contract or is necessary to comply with a collective bargaining
9 agreement.

10 (2) SOLICITATION TO INCLUDE STATEMENT ABOUT WAIVER.—The head of an
11 agency shall include in the solicitation for a covered contract a statement indicating—

12 (A) that a waiver has been granted under paragraph (1) for the contract; or

13 (B) whether the head of the agency will consider granting such a waiver,
14 and, if the head of the agency will consider granting a waiver, the criteria to be
15 used in granting the waiver.

16 (3) DETERMINATION TO BE MADE BEFORE CONTRACT AWARDED.—The head of an
17 agency shall make the final determination regarding whether to grant a waiver under
18 paragraph (1) with respect to a covered contract before award of the contract.

19 (c) [2324(e)(4); 41 USC 4304(c)(1st sent)] ESTABLISHMENT OF DEFINITIONS, EXCLUSIONS,
20 LIMITATIONS, AND QUALIFICATIONS.—The provisions of the Federal Acquisition Regulation
21 implementing this subchapter may establish appropriate definitions, exclusions, limitations, and
22 qualifications.

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1 (d) [2324(e)(2); no T41 provision] SPECIFIC COSTS UNDER MILITARY BANKING
2 CONTRACTS RELATING TO FOREIGN NATIONALS.—
3 (1) AUTHORITY.—The Secretary of Defense may provide in a military banking
4 contract that the provisions of paragraphs (13) and (14) of subsection (a) shall not apply
5 to costs incurred under the contract by the contractor for payment of mandated foreign
6 national severance pay. The Secretary may include such a provision in a military banking
7 contract only if the Secretary determines, with respect to that contract, that the contractor
8 has taken (or has established plans to take) appropriate actions within the contractor's
9 control to minimize the amount and number of incidents of the payment of severance pay
10 by the contractor to employees under the contract who are foreign nationals.
11 (2) DEFINITIONS.—In paragraph (1):
12 (A) MILITARY BANKING CONTRACT.—The term "military banking
13 contract" means a contract between the Secretary and a financial institution under
14 which the financial institution operates a military banking facility outside the
15 United States for use by members of the armed forces stationed or deployed
16 outside the United States and other authorized personnel.
17 (B) MANDATED FOREIGN NATIONAL SEVERANCE PAY.—The term
18 "mandated foreign national severance pay" means severance pay paid by a
19 contractor to a foreign national employee the payment of which by the contractor
20 is required in order to comply with a law that is generally applicable to a
21 significant number of businesses in the country in which the foreign national
22 receiving the payment performed services under the contract.

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(3) EXCEPTION FOR FOREIGN-OWNED FINANCIAL INSTITUTIONS.—Paragraph (1) does not apply to a contract with a financial institution that is owned or controlled by citizens or nationals of a foreign country, as determined by the Secretary of Defense. Such a determination shall be made in accordance with—

(A) the criteria set out in paragraph (1) of section 4(g) of the Buy American Act (as added by section 7002(2) of the Omnibus Trade and Competitiveness Act of 1988); and

(B) the policy guidance referred to in paragraph (2)(A) of that section.

§3745. [2324(f); 41 USC 4305]. Required regulations

(a) [2324(f)(1)(1st & 2d sent); 41 USC 4305(a)] IN GENERAL.—The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Those provisions shall define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts.

(b) [2324(f)(1)(3d sent); 41 USC 4305(b)] SPECIFIC ITEMS.—The regulations shall, ~~at a minimum,~~ clarify the cost principles applicable to contractor costs of the following:

- (1) Air shows.
- (2) Membership in civic, community, and professional organizations.
- (3) Recruitment.
- (4) Employee morale and welfare.
- (5) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

Commented [CR622]: Phrase proposed to be omitted as part of general recommendation to delete ", at a minimum," wherever appearing as being unnecessary. An amendment is provided below to make a parallel amendment to 41 USC 4305(b), if desired.

Commented [CR623]: IF there is concern that eliminating "at a minimum" in this instance could be read as making this list exclusive, suggest inserting "at least" after "contractor costs of"

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- 1 (6) Community relations.
- 2 (7) Dining facilities.
- 3 (8) Professional and consulting services, including legal services.
- 4 (9) Compensation.
- 5 (10) Selling and marketing.
- 6 (11) Travel.
- 7 (12) Public relations.
- 8 (13) Hotel and meal expenses.
- 9 (14) Expense of corporate aircraft.
- 10 (15) Company-furnished automobiles.
- 11 (16) Advertising.
- 12 (17) Conventions.

(c) ADDITIONAL REQUIREMENTS.—

(1) [2324(f)(2); 41 USC 4305(c)(1)] WHEN QUESTIONED COSTS MAY BE RESOLVED.—The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until ~~he~~ *the contracting officer* has obtained—

(A) adequate documentation with respect to such costs; and

(B) the opinion of the contract auditor on the allowability of those costs.

(2) [2324(f)(3); 41 USC 4305(c)(2)] PRESENCE OF CONTRACT AUDITOR.—The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, the contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

Commented [CR624]: T41 has “of those costs” instead of “with respect to such costs”. T10 wording retained.

Commented [CR625]: FYI, Title 41 has “a contract auditor”, rather than “the contract auditor”.

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1 (3) [2324(f)(4); 41 USC 4305(c)(3)] SETTLEMENT TO REFLECT AMOUNT OF
2 INDIVIDUAL QUESTIONED COSTS.—The Federal Acquisition Regulation shall require that
3 all categories of costs designated in the report of the contract auditor as questioned with
4 respect to a proposal for settlement be resolved in such a manner that the amount of the
5 individual questioned costs that are paid will be reflected in the settlement.

6 **§3746. [2324(g); 41 USC 4306]. Applicability of regulations to subcontractors**

7 The regulations referred to in sections 3744 and 3745(a) and (b) of this title shall require
8 prime contractors of a covered contract, to the maximum extent practicable, to apply the
9 provisions of such regulations to all subcontractors of the covered contract.

10 **§3747. [2324(h); 41 USC 4307]. Contractor certification**

11 (a) [2324(h)(1); 41 USC 4307(a)] CONTENT AND FORM.—A proposal for settlement of
12 indirect costs applicable to a covered contract shall include a certification by an official of the
13 contractor that, to the best of the certifying official's knowledge and belief, all indirect costs
14 included in the proposal are allowable. Any such certification shall be in a form prescribed in the
15 Federal Acquisition Regulation.

16 (b) [2324(h)(2); 41 USC 4307(b)] WAIVER.—The head of the agency or the Secretary of
17 the military department concerned may, in an exceptional case, waive the requirement for
18 certification under subsection (a) in the case of any contract if the head of the agency or the
19 Secretary—

20 (1) determines in such case that it would be in the interest of the United States to
21 waive such certification; and

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(2) states in writing the reasons for that determination and makes such determination available to the public.

§3748. [2324(i), (l)(3); 41 USC 4308]. Penalties for submission of cost known to be unallowable

The submission to an agency of a proposal for settlement of costs for any period after those costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that the cost is unallowable, is subject to the provisions of section 287 of title 18 and section 3729 of title 31.

Commented [CR626]: Minor wording changes to heading made to conform to title 41 wording.

Commented [CR627]: Deleting "the provisions of" for consistency with T41. FYI, deleting that phrase before a section reference is a drafting convention used generally in the T41 codification.

§3749. [2324(j); 41 USC 4309]. Burden of proof on contractor

In a proceeding before the Armed Services Board of Contract Appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Department of Defense is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.

Commented [CR628]: Changed to conform to Title 41.

§3750. [2324(k); 41 USC 4310]. Proceeding costs not allowable

(a) [2324(k)(6); 41 USC 4310(a)]. DEFINITIONS.—In this section:

(1) [2324(k)(6)(B); 41 USC 4310(a)(1)] COSTS.—The term "costs", with respect to a proceeding, means all costs incurred by a contractor, subcontractor, or personal services contractor, whether before or after the commencement of the proceeding, including the following:

Commented [CR629]: Original T10 throughout this section has "contractor or subcontractor, or personal services contractor". Changed to this form for consistency with T41.

(A) Administrative and clerical expenses.

(B) The cost of legal services, including legal services performed by an employee of the contractor, subcontractor, or personal services contractor.

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1 (C) The cost of the services of accountants and consultants retained by the
2 contractor, subcontractor, or personal services contractor.

3 (D) The pay of directors, officers, and employees of the contractor,
4 subcontractor, or personal services contractor for time devoted by those directors,
5 officers, and employees to the proceeding.

6 (2) [2324(k)(6)(C); 41 USC 4310(a)(2)] PENALTY.—The term "penalty" does not
7 include restitution, reimbursement, or compensatory damages.

8 (3) [2324(k)(6)(A); 41 USC 4310(a)(3)] PROCEEDING.—The term "proceeding"
9 includes an investigation.

10 (b) [2324(k)(1); 41 USC 4310(b)] IN GENERAL.—Except as otherwise provided in this
11 section, costs incurred by a contractor, subcontractor, or personal services contractor in
12 connection with any criminal, civil, or administrative proceeding commenced by the United
13 States, by a State, or by a contractor, subcontractor, or personal services contractor employee
14 submitting a complaint under section ~~2409~~ **4701** of this title are not allowable as reimbursable
15 costs under a covered contract, subcontract, or personal services contract if the proceeding—

16 (1) relates to a violation of, or failure to comply with, a Federal or State statute or
17 regulation or to any other activity described in subparagraphs (A) through (C) of section
18 ~~2409(a)(1)~~ **4701(a)(1)** of this title; and

19 (2) results in a disposition described in subsection (c).

20 (c) [2324(k)(2); 41 USC 4310(c)] COVERED DISPOSITIONS.—A disposition referred to in
21 subsection (b)(2) is any of the following:

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1 (1) In the case of a criminal proceeding, a conviction (including a conviction
2 pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in
3 subsection (b).

4 (2) In the case of a civil or administrative proceeding involving an allegation of
5 fraud or similar misconduct, a determination of contractor, subcontractor, or personal
6 services contractor liability on the basis of the violation or failure referred to in
7 subsection (b).

8 (3) In the case of any civil or administrative proceeding, the imposition of a
9 monetary penalty or an order to take corrective action under section ~~2409~~ 4701 of this
10 title by reason of the violation or failure referred to in subsection (b).

11 (4) A final decision to do any of the following, by reason of the violation or
12 failure referred to in subsection (b):

13 (A) Debar or suspend the contractor, subcontractor, or personal services
14 contractor.

15 (B) Rescind or void the contract, subcontract, or personal services
16 contract.

17 (C) Terminate the contract, subcontract, or personal services contract for
18 default.

19 (5) A disposition of the proceeding by consent or compromise if such action
20 could have resulted in a disposition described in paragraph (1), (2), (3), or (4).

21 (d) [2324(k)(3); 41 USC 4310(d)] COSTS ALLOWED BY SETTLEMENT AGREEMENT IN
22 PROCEEDING COMMENCED BY UNITED STATES.—In the case of a proceeding referred to in

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1 subsection (b) that is commenced by the United States and is resolved by consent or compromise
2 pursuant to an agreement entered into by a contractor, subcontractor, or personal services
3 contractor and the United States, the costs incurred by the contractor, subcontractor, or personal
4 services contractor in connection with the proceeding that are otherwise not allowable as
5 reimbursable costs under subsection (b) may be allowed to the extent specifically provided in
6 that agreement.

7 (e) [2324(k)(4); 41 USC 4310(e)] COSTS SPECIFICALLY AUTHORIZED IN PROCEEDING
8 COMMENCED BY STATE.—In the case of a proceeding referred to in subsection (b) that is
9 commenced by a State, the head of the agency or Secretary of the military department concerned
10 that awarded the covered contract, subcontract, or personal services contract involved in the
11 proceeding may allow the costs incurred by the contractor, subcontractor, or personal services
12 contractor in connection with the proceeding as reimbursable costs if the head of the agency or
13 Secretary determines, in accordance with the Federal Acquisition Regulation, that the costs were
14 incurred as a result of—

15 (1) a specific term or condition of the contract, subcontract, or personal services
16 contract; or

17 (2) specific written instructions of the agency or military department.

18 (f) [2324(k)(5); 41 USC 4310(f)] OTHER ALLOWABLE COSTS.—

19 (1) IN GENERAL.—Except as provided in paragraph (3), costs incurred by a
20 contractor, subcontractor, or personal services contractor in connection with a criminal,
21 civil, or administrative proceeding commenced by the United States or a State in
22 connection with a covered contract, subcontract, or personal services contract may be

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1 allowed as reimbursable costs under the contract, subcontract, or personal services
2 contract if the costs are not disallowable under subsection (b), but only to the extent
3 provided in paragraph (2).

4 (2) AMOUNT OF ALLOWABLE COSTS.—

5 (A) MAXIMUM AMOUNT ALLOWED.—The amount of the costs allowable
6 under paragraph (1) in any case may not exceed the amount equal to 80 percent of
7 the amount of the costs incurred, to the extent that the costs are determined to be
8 otherwise allowable and allocable under the Federal Acquisition Regulation.

9 (B) CONTENT OF REGULATIONS.—Regulations issued for the purpose of
10 subparagraph (A) shall provide for appropriate consideration of—

11 (i) the complexity of procurement litigation;

12 (ii) generally accepted principles governing the award of legal fees
13 in civil actions involving the United States as a party; and

14 (iii) such other factors as may be appropriate.

15 (3) WHEN OTHERWISE ALLOWABLE COSTS ARE NOT ALLOWABLE.—In the case of a
16 proceeding referred to in paragraph (1), contractor, subcontractor, or personal services
17 contractor costs otherwise allowable as reimbursable costs under this subsection are not
18 allowable if—

19 (A) the proceeding involves the same contractor, subcontractor, or
20 personal services contractor misconduct alleged as the basis of another criminal,
21 civil, or administrative proceeding; and

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1 (B) the costs of the other proceeding are not allowable under subsection

2 (b) ”.

3 (2) CONFORMING REPEAL.—Section 2324 of title 10, United States Code, is
4 repealed.

5 (b) ADDITIONAL ALLOWABLE COST PROVISIONS.—

6 (1) IN GENERAL.—Chapter 273 of title 10, United States Code, as amended by
7 subsection (a), is amended by adding at the end the following new subchapter:

8 “SUBCHAPTER II—OTHER ALLOWABLE COST PROVISIONS

Commented [CR630]: Subchapter II is derived from sections other than 10 USC 2324.

Sec.

3761. [2325] Restructuring costs.

3762. [2372] Independent research and development costs: allowable costs.

3763. [2372a] Bid and proposal costs: allowable costs.

3764. [Sec 852(b) of P. L. 109-364 (10 USC 2324 note)] Excessive pass-through charges.

3765. [Sec 841 of P. L. 103-160 (10 USC 2324 note)] Institutions of higher education:
reimbursement of indirect costs under Department of Defense contracts.

9 §3761. [10 USC 2325] Restructuring costs

10 (a) [10 USC 2325(a)(1)] LIMITATION ON PAYMENT OF RESTRUCTURING COSTS.—The
11 Secretary of Defense may not pay, under subchapter I of this chapter, a defense contractor for
12 restructuring costs associated with a business combination of the contractor that occurs after
13 November 18, 1997, unless the Secretary determines in writing either—

14 (1) that the amount of projected savings for the Department of Defense associated
15 with the restructuring will be at least twice the amount of the costs allowed; or

16 (2) that the amount of projected savings for the Department of Defense associated
17 with the restructuring will exceed the amount of the costs allowed and that the business

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1 combination will result in the preservation of a critical capability that otherwise might be
2 lost to the Department.

3 (b) [10 USC 2325(a)(2)] LIMITATION ON DELEGATION.—The Secretary may not delegate
4 the authority to make a determination under subsection (a), with respect to a business
5 combination, to an official of the Department of Defense—

6 (1) below the level of an Assistant Secretary of Defense for a case in which the
7 amount of restructuring costs is expected to exceed \$25,000,000 over a five-year period;
8 or

9 (2) below the level of the Director of the Defense Contract Management Agency
10 for all other cases.

11 (c) [10 USC 2325(b)] DEFINITION.—In this section, the term "business combination"
12 includes a merger or acquisition.

13 **§ 3764. [§852(b)] P. L. 109-364 (10 USC 2324 note) Excessive pass-through charges**

14 (a) [§852(b)(1)] REGULATIONS REQUIRED—The Secretary of Defense shall prescribe
15 regulations to ensure that pass-through charges on contracts or subcontracts (or task or delivery
16 orders) that are entered into for or on behalf of the Department of Defense are not excessive in
17 relation to the cost of work performed by the relevant contractor or subcontractor.

18 (b) [§852(b)(2)] SCOPE OF REGULATIONS.—The regulations prescribed under subsection
19 (a)—

20 (1) shall not apply to any firm, fixed-price contract or subcontract (or task or
21 delivery order) that is—

22 (A) awarded on the basis of adequate price competition; or

Commented [CR631]: Sec. 852 had two subsections. Sub (a) was a one-time report due 180 days after enactment (10/17/06). That subsection is omitted here. Sub (b) is codified here.

Commented [CR632]: Original has "Not later than May 1, 2007.", which is omitted in the codification here as OBE.

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(B) for the acquisition of a commercial product or a commercial service;

and

(2) may include such additional exceptions as the Secretary determines to be necessary in the interest of the national defense.

(c) **EXCESSIVE PASS-THROUGH CHARGE DEFINED.**—In this section, the term ‘excessive pass-through charge’, with respect to a contractor or subcontractor that adds no, or negligible, value to a contract or subcontract, means a charge to the Government by the contractor or subcontractor that is for overhead or profit on work performed by a lower-tier contractor or subcontractor (other than charges for the direct costs of managing lower-tier contracts and subcontracts and overhead and profit based on such direct costs).

(d) **APPLICABILITY.**—The regulations prescribed under subsection (a) shall apply to contracts awarded for or on behalf of the Department of Defense on or after May 1, 2007.

§ 3765. [§841 of P. L. 103-160 (10 USC 2324 note)] Institutions of higher education:

reimbursement of indirect costs under Department of Defense contracts

(a) **PROHIBITION.**—The Secretary of Defense may not by regulation place a limitation on the amount that the Department of Defense may reimburse an institution of higher education for allowable indirect costs incurred by the institution for work performed for the Department of Defense under a Department of Defense contract unless that same limitation is applied uniformly to all other organizations performing similar work for the Department of Defense under Department of Defense contracts.

Commented [CR633]: Para (4) of 852(b) was a one-time report due one year after enactment (10/17/06). That paragraph is omitted here as OBE.

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1 (b) WAIVER.—The Secretary of Defense may waive the application of the prohibition in
2 subsection (a) in the case of a particular institution of higher education if the governing body of
3 the institution requests the waiver in order to simplify the overall management by that institution
4 of cost reimbursements by the Department of Defense for contracts awarded by the Department
5 to the institution.

6 (c) DEFINITIONS.—In this section:

7 (1) ALLOWABLE INDIRECT COSTS.—The term “allowable indirect costs” means
8 costs that are generally considered allowable as indirect costs under regulations that
9 establish the cost reimbursement principles applicable to an institution of higher
10 education for purposes of Department of Defense contracts.

11 (2) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher
12 education” has the meaning given that term in section 101 of the Higher Education Act of
13 1965 (20 U.S.C. 1001).²

14 (2) **TRANSFER OF SECTIONS ON ALLOWABILITY OF INDEPENDENT RESEARCH**
15 **AND DEVELOPMENT COSTS AND BID AND PROPOSAL COSTS.—**

16 (A) Sections 2372 and 2372a of title 10, United States Code, are
17 **transferred** to subchapter II of chapter 273 of such title, as added by paragraph
18 (1), **inserted** after section 3761 (in that order), and **redesignated** as sections 3762
19 and 3763, respectively.

20 (B) Section 3763 of such title, as so transferred and redesignated, is
21 amended by striking “section 2324(l) of this title” in subsection (b) and inserting
22 “section 3741 of this title”.

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(3) CONFORMING REPEALS.—The following provisions of law are **repealed**:

(A) Sections **2325** of title 10, United States Code.

(B) Section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; **10 USC 2324 note**).

(C) Section 841 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 103-160; **10 USC 2324 note**).

(c) **AMENDMENTS TO TITLE 41, UNITED STATES CODE.**—Title 41, United States Code, is amended as follows:

(1) CORRECTION OF TYPOGRAPHIC ERROR.—Section 4304(a)(15) is amended by striking “personal service” and inserting “personal services”.

(2) CONFORMING DELETION OF UNNECESSARY WORDS.—Section 4305(b) is amended by striking “, at a minimum,” in the matter preceding paragraph (1).

(3) CROSS-REFERENCE AMENDMENT.—Section 4710(e) is amended by striking “section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364, 10 U.S.C. 2324 note)” and inserting “section 3764 of title 10”.

Commented [CR634]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

SEC. 403. PROPRIETARY CONTRACTOR DATA AND RIGHTS IN TECHNICAL DATA.

(a) **NEW CHAPTER.**—

(1) **IN GENERAL.**—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal

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1 Year 2019 (Public Law 115-232), is amended by striking chapter 275 and inserting the
2 following:

3 "CHAPTER 275—PROPRIETARY CONTRACTOR DATA AND RIGHTS

4 IN TECHNICAL DATA

"Subchapter Sec.
I. Rights in Technical Data [from 10 U.S.C. 2320]3771
II. Validation Of Proprietary Data Restrictions [from 10 U.S.C. 2321]3781
III. Other Provisions Relating To Proprietary Contractor Data And Rights in
Technical Data.....3791

5 SUBCHAPTER I—RIGHTS IN TECHNICAL DATA

Sec.
3771 [10 USC 2320(a); 41 U.S.C. 2302(a)-(d)]. Rights in technical data: regulations.
3772 [10 USC 2320(b), (c); 41 USC 2302(e)]. Rights in technical data: provisions required in
contracts.
3773 [10 USC 2320(d)]. Domestic business concerns: programs for replenishment parts.
3774 [10 USC 2320(e), (f); sec. 824(a) of PL 111-383 (10 USC 2320 note)]. Major weapon
systems and subsystems: long-term technical data needs.
3775 [10 USC 2320(g), (h)]. Definitions.

6 § 3771 [10 USC 2320(a); 41 U.S.C. 2302(a)-(d)]. Rights in technical data: regulations

7 (a) [10 USC 2320(a)(1); 41 U.S.C. 2302(a), (b)] REGULATIONS REQUIRED.—

8 (1) [2320(a)(1) 1st sent] IN GENERAL.—The Secretary of Defense shall prescribe
9 regulations to define the legitimate interest of the United States and of a contractor or
10 subcontractor in technical data pertaining to an item or process. Such regulations shall be
11 included in regulations of the Department of Defense prescribed as part of the Federal
12 Acquisition Regulation.

13 (2) [2320(a)(1) 2d sent] OTHER RIGHTS NOT IMPAIRED.—Regulations prescribed
14 under paragraph (1) may not impair—

Commented [CR635]: "Rights in" is an addition to the chapter heading in section 801 of the FY2019 NDAA.

Commented [CR636]: Subchapter I restates 10 U.S.C. 2320

Commented [CR637]: Note as to T41: While T41 has a section on Rights in Technical Data, it is substantially different from 10 USC 2320, which has much more detail. The proposal here is to restate the T10 section in five sections, as shown. The bracketed notes referring to T41 provisions are to provisions that generally deal with the same subject matter, but the wording may be different from the T10 section. So, parallelism with T41 is not a goal in this case.

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1 (A) any right of the United States or of any contractor or subcontractor
2 with respect to patents or copyrights or any other right in technical data otherwise
3 established by law; or

4 (B) the right of a contractor or subcontractor to receive from a third party a
5 fee or royalty for the use of technical data pertaining to an item or process
6 developed exclusively at private expense by the contractor or subcontractor,
7 except as otherwise specifically provided by law.

8 (b) [10 USC 2320(a)(2) ; 41 U.S.C. 2302(c), (d)] REQUIRED PROVISIONS.—Regulations
9 prescribed under subsection (a) shall include the following provisions:

10 (1) [2320(a)(2)(A)] DEVELOPMENT EXCLUSIVELY WITH FEDERAL FUNDS.—In the
11 case of an item or process that is developed by a contractor or subcontractor exclusively
12 with Federal funds (other than an item or process developed under a contract or
13 subcontract to which regulations under section 9(j)(2) of the Small Business Act (15
14 U.S.C. 638(j)(2)) apply), the United States shall have the unlimited right to—

15 (A) use technical data pertaining to the item or process; or

16 (B) release or disclose the technical data to persons outside the
17 government or permit the use of the technical data by such persons.

18 (2) [2320(a)(2)(B)] DEVELOPMENT EXCLUSIVELY AT PRIVATE EXPENSE.—Except
19 as provided in paragraphs (3), (4), and (7), in the case of an item or process that is
20 developed by a contractor or subcontractor exclusively at private expense, the contractor
21 or subcontractor may restrict the right of the United States to release or disclose technical

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1 data pertaining to the item or process to persons outside the ~~government~~ **Government** or
2 permit the use of the technical data by such persons.

3 (3) [2320(a)(2)(C)] EXCEPTION TO PARAGRAPH (2).—Paragraph (2) does not apply
4 to technical data that—

5 (A) constitutes a correction or change to data furnished by the United
6 States;

7 (B) relates to form, fit, or function;

8 (C) is necessary for operation, maintenance, installation, or training (other
9 than detailed manufacturing or process data, including such data pertaining to a
10 major system component); or

11 (D) is otherwise publicly available or has been released or disclosed by the
12 contractor or subcontractor without restriction on further release or disclosure.

13 (4) [2320(a)(2)(D)] EXCEPTION TO PARAGRAPH (2).—Notwithstanding paragraph
14 (2), the United States may release or disclose technical data to persons outside the
15 Government, or permit the use of technical data by such persons, if—

16 (A) such release, disclosure, or use—

17 (i) is necessary for emergency repair and overhaul;

18 (ii) is a release, disclosure, or use of technical data pertaining to an
19 interface between an item or process and other items or processes
20 necessary for the segregation of an item or process from, or the
21 reintegration of that item or process (or a physically or functionally
22 equivalent item or process) with, other items or processes; or

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1 (iii) is a release or disclosure of technical data (other than detailed
2 manufacturing or process data) to, or use of such data by, a foreign
3 government that is in the interest of the United States and is required for
4 evaluational or informational purposes;

5 (B) such release, disclosure, or use is made subject to a prohibition that the
6 person to whom the data is released or disclosed may not further release, disclose,
7 or use such data; and

8 (C) the contractor or subcontractor asserting the restriction is notified of
9 such release, disclosure, or use.

10 (5) [2320(a)(2)(E)] DEVELOPMENT WITH MIXED FUNDING.—Except as provided in
11 paragraphs (6) and (7), in the case of an item or process that is developed in part with
12 Federal funds and in part at private expense, the respective rights of the United States and
13 of the contractor or subcontractor in technical data pertaining to such item or process
14 shall be established as early in the acquisition process as practicable (preferably during
15 contract negotiations) and shall be based on negotiations between the United States and
16 the contractor, except in any case in which the Secretary of Defense determines, on the
17 basis of criteria established in the regulations, that negotiations would not be practicable.
18 The establishment of such rights shall be based upon consideration of all of the following
19 factors:

20 (A) The statement of congressional policy and objectives in section 200 of
21 title 35, the statement of purposes in section 2(b) of the Small Business

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1 Innovation Development Act of 1982 (15 U.S.C. 638 note), and the declaration of
2 policy in section 2 of the Small Business Act (15 U.S.C. 631).

3 (B) The interest of the United States in increasing competition and
4 lowering costs by developing and locating alternative sources of supply and
5 manufacture.

6 (C) The interest of the United States in encouraging contractors to develop
7 at private expense items for use by the Government.

8 (D) Such other factors as the Secretary of Defense may prescribe.

9 (6) [2320(a)(2)(F)] INTERFACES DEVELOPED WITH MIXED FUNDING.—

10 Notwithstanding paragraph (5), the United States shall have government purpose rights in
11 technical data pertaining to an interface between an item or process and other items or
12 processes that was developed in part with Federal funds and in part at private expense,
13 except in any case in which the Secretary of Defense determines, on the basis of criteria
14 established in the regulations, that negotiation of different rights in such technical data
15 would be in the best interest of the United States.

16 (7) [2320(a)(2)(G)] MAJOR SYSTEM INTERFACES DEVELOPED EXCLUSIVELY AT
17 PRIVATE EXPENSE OR WITH MIXED FUNDING.—

18 (A) [2320(a)(2)(G) 1ST sent] Notwithstanding paragraphs (2) and (5), the
19 United States shall have government purpose rights in technical data pertaining to
20 a major system interface developed exclusively at private expense or in part with
21 Federal funds and in part at private expense and used in a modular open system
22 approach pursuant to section ~~2446a~~ **4401** of this title, except in any case in which

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1 the Secretary of Defense determines that negotiation of different rights in such
2 technical data would be in the best interest of the United States.

3 (B) [2320(a)(2)(G) 2d sent] ~~Such major system interface~~ *A major system*
4 *interface referred to in subparagraph (A)* shall be identified in the contract
5 solicitation and the contract.

6 (C) [2320(a)(2)(G) 3rd sent] For technical data pertaining to a major
7 system interface developed exclusively at private expense for which the United
8 States asserts government purpose rights, the Secretary of Defense shall negotiate
9 with the contractor the appropriate and reasonable compensation for such
10 technical data.

11 (8) [2320(a)(2)(H)] *LIMITATIONS ON REQUIREMENTS RELATED TO CONTRACTOR*
12 *OR SUBCONTRACTOR RIGHTS IN TECHNICAL DATA.*—A contractor or subcontractor (or a
13 prospective contractor or subcontractor) may not be required, as a condition of being
14 responsive to a solicitation or as a condition for the award of a contract—

15 (A) to sell or otherwise relinquish to the United States any rights in
16 technical data except—

17 (i) rights in technical data described in paragraph (1) for which a
18 use or release restriction has been erroneously asserted by a contractor or
19 subcontractor;

20 (ii) rights in technical data described in paragraph (3); or

21 (iii) under the conditions described in paragraph (4); or

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1 (B) to refrain from offering to use, or from using, an item or process to
2 which the contractor is entitled to restrict rights in data under paragraph (2).

3 (9) [2320(a)(2)(I)(i)&(iii)] *ACTIONS AUTHORIZED IF NECESSARY TO DEVELOP*
4 *ALTERNATIVE SOURCES OF SUPPLY AND MANUFACTURE.*—The Secretary of Defense
5 may—

6 (A) negotiate and enter into a contract with a contractor or subcontractor
7 for the acquisition of rights in technical data not otherwise provided under
8 paragraph (3) or (4), if necessary to develop alternative sources of supply and
9 manufacture; or

10 (B) permit a contractor or subcontractor to license directly to a third party
11 the use of technical data which the contractor is otherwise allowed to restrict, if
12 necessary to develop alternative sources of supply and manufacture.

13 (10) [2320(a)(2)(I)(ii)] *RESTRICTION ON RIGHTS IN TECHNICAL DATA*
14 *OTHERWISE ACCORDED TO THE UNITED STATES IF ROYALTY-FREE LICENSE RECEIVED.*—
15 The Secretary of Defense may agree to restrict rights in technical data otherwise accorded
16 to the United States under this section if the United States receives a royalty-free license
17 to use, release, or disclose the data for purposes of the United States (including purposes
18 of competitive procurement).

19 (c) [10 USC 2320(a)(3)] *SECRETARY OF DEFENSE TO DEFINE TERMS.*—The Secretary of
20 Defense shall define the terms "developed", "exclusively with Federal funds", and "exclusively
21 at private expense" in regulations prescribed under subsection (a). In defining such terms, the
22 Secretary shall specify —

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1 (1) the manner in which indirect costs shall be treated; and

2 (2) that amounts spent for independent research and development and bid and
3 proposal costs shall not be considered to be Federal funds for the purposes of the
4 definitions under this subsection.

5 **§3772 [10 USC 2320(b), (c); 41 USC 2302(e)]. Rights in technical data: provisions required**
6 **in contracts**

7 (a) [10 USC 2320(b)] CONTRACT PROVISIONS RELATING TO TECHNICAL DATA.—

8 Regulations prescribed under section 3771 of this title shall require that, whenever practicable, a
9 contract for supplies or services entered into by an agency named in section ~~2303-3063~~ of this
10 title contain appropriate provisions relating to technical data, including provisions—

11 (1) defining the respective rights of the United States and the contractor or
12 subcontractor (at any tier) regarding any technical data to be delivered under the contract
13 and providing that, in the case of a contract for a commercial product, the product shall
14 be presumed to be developed at private expense unless shown otherwise in accordance
15 with section ~~2321(f)~~ 3784 of this title;

16 (2) specifying the technical data, if any, to be delivered under the contract and
17 delivery schedules for such delivery;

18 (3) establishing or referencing procedures for determining the acceptability of
19 technical data to be delivered under the contract;

20 (4) establishing separate contract line items for the technical data, if any, to be
21 delivered under the contract;

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1 (5) to the maximum practicable extent, identifying, in advance of delivery,
2 technical data which is to be delivered with restrictions on the right of the United States
3 to use the data;

4 (6) requiring the contractor—

5 (A) to revise any technical data delivered under the contract to reflect
6 engineering design changes made during the performance of the contract and
7 affecting the form, fit, and function of the items specified in the contract; and

8 (B) to deliver such revised technical data to an agency within a time
9 specified in the contract;

10 (7) establishing remedies to be available to the United States when technical data
11 required to be delivered or made available under the contract is found—

12 (A) to be incomplete or inadequate; or

13 (B) to not satisfy the requirements of the contract concerning technical
14 data;

15 (8) authorizing the head of the agency to withhold payments under the contract
16 (or exercise such other remedies as the head of the agency considers appropriate) during
17 any period if the contractor does not meet the requirements of the contract pertaining to
18 the delivery of technical data;

19 (9) providing that, in addition to technical data that is already subject to a contract
20 delivery requirement, the United States may require, until the date occurring six years
21 after acceptance of the last item (other than technical data) under a contract or the date of
22 contract termination, whichever is later, the delivery of technical data that has been

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1 generated in the performance of the contract, and compensate the contractor only for
2 reasonable costs incurred for having converted and delivered the data in the required
3 form, upon a determination that—

4 (A) the technical data is needed for the purpose of procurement,
5 sustainment, modification, or upgrade (including through competitive means) of a
6 major system or subsystem thereof, a weapon system or subsystem thereof, or any
7 noncommercial product or process; and

8 (B) the technical data—

9 (i) pertains to an item or process developed in whole or in part with
10 Federal funds; or

11 (ii) is described in paragraphs (4)(A)(ii), (6), and (7) of **section**
12 **3771(b) of this title**; and

13 (10) providing that the United States is not foreclosed from requiring the delivery
14 of the technical data by a failure to challenge, in accordance with the requirements
15 of **section ~~2321(d)~~ 3782** of this title, the contractor's assertion of a use or release
16 restriction on the technical data.

17 (b) [**10 USC 2320(c)**] Nothing in this subchapter or in section ~~2305(d)~~ **3208** of this
18 title prohibits the Secretary of Defense from—

19 (1) prescribing standards for determining whether a contract entered into by the
20 Department of Defense shall provide for a time to be specified in the contract after which
21 the United States shall have the right to use (or have used) for any purpose of the United

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1 States all technical data required to be delivered to the United States under the contract or
2 providing for such a period of time (not to exceed 7 years) as a negotiation objective;

3 (2) notwithstanding any limitation upon the license rights conveyed under section
4 3771 of this title, allowing a covered Government support contractor access to and use of
5 any technical data delivered under a contract for the sole purpose of furnishing
6 independent and impartial advice or technical assistance directly to the Government in
7 support of the Government's management and oversight of the program or effort to which
8 such technical data relates; or

9 (3) prescribing reasonable and flexible guidelines, including negotiation
10 objectives, for the conduct of negotiations regarding the respective rights in technical
11 data of the United States and the contractor.

12 **§3773 [10 USC 2320(d)]. Domestic business concerns: programs for replenishment parts**

13 (a) [10 USC 2320(d) 1st sent] The Secretary of Defense shall by regulation establish
14 programs which provide domestic business concerns an opportunity to purchase or borrow
15 replenishment parts from the United States for the purpose of design replication or modification,
16 to be used by such concerns in the submission of subsequent offers to sell the same or like parts
17 to the United States.

18 (b) [10 USC 2320(d) 2^d sent] Nothing in subsection (a) limits the authority of the head
19 of an agency to impose restrictions on a program under subsection (a) related to—

- 20 (1) national security considerations;
- 21 (2) inventory needs of the United States;
- 22 (3) the improbability of future purchases of the same or like parts; or

Commented [CR638]: By referring to subsection (a), the scope of the original is retained, which referred to the preceding sentence, now subsection (a). By using "subsection (a)", rather than "this section", the original meaning still applies even if a new subsection is later added at the end.

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(4) any additional restriction otherwise required by law.

§3774 [10 USC 2320(e), (f); sec. 824(a) of PL 111-383 (10 USC 2320 note)]. Major weapon

systems and subsystems: long-term technical data needs

(a) [10 USC 2320(e) 1st & 2^d sent] ASSESSMENTS AND ACQUISITIONS STRATEGIES.—

(1) The Secretary of Defense shall require program managers for major weapon systems and subsystems of major weapon systems to—

(A) assess the long-term technical data needs of such systems and subsystems; and

(B) establish corresponding acquisition strategies that provide for technical data rights needed to sustain such systems and subsystems over their life cycle.

(2) Such strategies may include—

(A) the development of maintenance capabilities within the Department of Defense; or

(B) competition for contracts for sustainment of such systems or subsystems.

(b) [10 USC 2320(e) 3^d sent] REQUIREMENTS RELATING TO ASSESSMENTS AND ACQUISITION STRATEGIES.—Assessments and corresponding acquisition strategies developed

under subsection (a) with respect to a weapon system or subsystem shall—

(1) be developed before issuance of a contract solicitation for the weapon system or subsystem;

Commented [CR639]: Original says “this section” referring to all of 2320. But, the context indicates that the meaning is “this subsection” (meaning 2320(e)), so “subsection (a)” is used here rather than “subchapter”. In addition, the new subsection (c) below was not part of the original.

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(2) address the merits of including a priced contract option for the future delivery of technical data that were not acquired upon initial contract award;

(3) address the potential for changes in the sustainment plan over the life cycle of the weapon system or subsystem; and

(4) apply to weapon systems and subsystems that are to be supported by performance-based logistics arrangements as well as to ~~weapons~~ *weapon* systems and subsystems that are to be supported by other sustainment approaches.

Commented [CR640]: Use of "weapons" [plural] here in the original is inconsistent with rest of the section, including the "apply to" clause at the beginning of the same paragraph (4). This appears to have been a minor drafting error, which would be corrected by this edit.

(c) [Sec. 824(a) of PL 111-383 (10 USC 2320 note)]. GUIDANCE RELATING TO COMPETITION.—Guidance issued by the military departments on the implementation of subsections (a) and (b) shall be designed to ensure that the United States—

(1) preserves the option of competition for contracts for the production and sustainment of systems or subsystems that are developed exclusively with Federal funds ~~as defined in accordance with the amendments made by this section~~ *as defined pursuant to section 3771(c) of this title*; and

(2) is not required to pay more than once for the same technical data.

(d) [10 USC 2320(f)] PREFERENCE FOR SPECIALLY NEGOTIATED LICENSES.—

(1) The Secretary of Defense shall, to the maximum extent practicable, negotiate and enter into a contract with a contractor for a specially negotiated license for technical data to support the product support strategy of a major weapon system or subsystem of a major weapon system.

(2) In performing the assessment and developing the corresponding strategy required under subsection (a) for such a system or subsystem, a program manager shall

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1 consider the use of specially negotiated licenses to acquire customized technical data
2 appropriate for the particular elements of the product support strategy.

3 **§3775 [10 USC 2320(g), (h)]. Definitions**

4 (a) [10 USC 2320(g)] COVERED GOVERNMENT SUPPORT CONTRACTOR.—In this
5 subchapter, the term "covered Government support contractor" means a contractor under a
6 contract the primary purpose of which is to furnish independent and impartial advice or technical
7 assistance directly to the Government in support of the Government's management and oversight
8 of a program or effort (rather than to directly furnish an end item or service to accomplish a
9 program or effort), which contractor—

10 (1) is not affiliated with the prime contractor or a first-tier subcontractor on the
11 program or effort, or with any direct competitor of such prime contractor or any such
12 first-tier subcontractor in furnishing end items or services of the type developed or
13 produced on the program or effort; and

14 (2) executes a contract with the Government agreeing to and acknowledging—

15 (A) that proprietary or nonpublic technical data furnished will be accessed
16 and used only for the purposes stated in that contract;

17 (B) that the covered Government support contractor will enter into a non-
18 disclosure agreement with the contractor to whom the rights to the technical data
19 belong;

20 (C) that the covered Government support contractor will take all
21 reasonable steps to protect the proprietary and nonpublic nature of the technical
22 data furnished to the covered Government support contractor during the program

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1 or effort for the period of time in which the Government is restricted from
2 disclosing the technical data outside of the Government;

3 (D) that a breach of that contract by the covered Government support
4 contractor with regard to a third party's ownership or rights in such technical data
5 may subject the covered Government support contractor—

6 (i) to criminal, civil, administrative, and contractual actions in law
7 and equity for penalties, damages, and other appropriate remedies by the
8 United States; and

9 (ii) to civil actions for damages and other appropriate remedies by
10 the contractor or subcontractor whose technical data is affected by the
11 breach; and

12 (E) that such technical data provided to the covered Government support
13 contractor under the authority of this section shall not be used by the covered
14 Government support contractor to compete against the third party for Government
15 or non-Government contracts.

16 (b) [10 USC 2320(h)] ADDITIONAL DEFINITIONS.—In this subchapter, the terms "major
17 system component", "major system interface", and "modular open system approach" have the
18 meanings given those terms in section ~~2446a~~ 4401 of this title.

19 SUBCHAPTER II—VALIDATION OF PROPRIETARY DATA

20 RESTRICTIONS

Sec.
3781 [10 USC 2321(a)-(c); 41 USC 4703(a)]. Technical data: contractor justification for
restrictions; review.

Commented [CR641]: Subchapter II restates 10 U.S.C. 2321

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3782 [10 USC 2321(d); 41 USC 4703(b)]. Technical data: challenges to contractor restrictions.

3783 [10 USC 2321(e); 41 USC 4703(c), (d)]. Technical data: time for contractors to submit justifications.

3784 [10 USC 2321(f)] Technical data under contracts for commercial items: presumption of development exclusively at private expense.

3785 [10 USC 2321(g), (h); 41 USC 4703(e), (f)]. Technical data: decision by contracting officer; claims.

3786 [10 USC 2321(i); 41 USC 4703(g)]. Technical data: final disposition of challenge.

3787 [10 USC 2321(j)]. Use or release restriction: definition.

1 **§3781 [10 USC 2321(a)-(c); 41 U.S.C. 4703(a)]. Technical data: contractor justification for**
2 **restrictions; review**

3 (a) [10 USC 2321(a)] CONTRACTS COVERED BY SUBCHAPTER.—This subchapter applies
4 to any contract for supplies or services entered into by the Department of Defense that includes
5 provisions for the delivery of technical data.

6 (b) [10 USC 2321(b)] CONTRACTOR JUSTIFICATION FOR RESTRICTIONS.—A contract
7 subject to this subchapter shall provide that a contractor under the contract and any subcontractor
8 under the contract at any tier shall be prepared to furnish to the contracting officer a written
9 justification for any use or release restriction (as defined in section 3787 of this title) asserted by
10 the contractor or subcontractor.

11 (c) [10 USC 2321(c)] REVIEW OF RESTRICTIONS.—

12 (1) The Secretary of Defense shall ensure that there is a thorough review of the
13 appropriateness of any use or release restriction asserted with respect to technical data by
14 a contractor or subcontractor at any tier under a contract subject to this subchapter.

15 (2) The review of an asserted use or release restriction under paragraph (1) shall
16 be conducted before the end of the three-year period beginning on the later of—

17 (A) the date on which final payment is made on the contract under which
18 the technical data is required to be delivered; or

Commented [CR642]: T10 original refers to subsection (i), which is “Rights and Liability Upon Final Disposition” – and which corresponds to new section 3786. However, this is clearly a mistake in current law – the intent is clearly to refer to the definition at the end of the current section, in subsection (j) [now 3787]. When added to 2321 by amendment in 1987, that final provision, with the definition, was subsection (i). In 1994, FASA inserted a new subsection (f) and redesignated the following subsections, with (i) becoming (j). But the reference to (i) in subsection (b) was not amended to conform to the redesignation.

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1 (B) the date on which the technical data is delivered under the contract.

2 **§3782 [10 USC 2321(d); 41 USC 4703(b)]. Technical data: challenges to contractor**
3 **restrictions**

4 (a) [10 USC 2321(d)(1)] CHALLENGES BY SECRETARY OF DEFENSE.—The Secretary of
5 Defense may challenge a use or release restriction asserted with respect to technical data by a
6 contractor or subcontractor at any tier under a contract subject to this subchapter if the Secretary
7 finds that—

8 (1) reasonable grounds exist to question the current validity of the asserted
9 restriction; and

10 (2) the continued adherence by the United States to the asserted restriction would
11 make it impracticable to procure the item to which the technical data pertain
12 competitively at a later time.

13 (b) [10 USC 2321(d)(2)] TIME LIMIT FOR CHALLENGES; EXCEPTIONS.—

14 (1) A challenge to a use or release restriction asserted by the contractor in
15 accordance with applicable regulations may not be made under subsection (a) after the
16 end of the six-year period described in paragraph (2) unless the technical data involved—

17 (A) are publicly available;

18 (B) have been furnished to the United States without restriction;

19 (C) have been otherwise made available without restriction; or

20 (D) are the subject of a fraudulently asserted use or release restriction.

21 (2) The six-year period referred to in paragraph (1) is the six-year period
22 beginning on the later of—

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1 (A) the date on which final payment is made on the contract under which
2 the technical data are required to be delivered; or

3 (B) the date on which the technical data are delivered under the contract.

4 (c) [10 USC 2321(d)(3); 41 USC 4703(b)] WRITTEN NOTICE TO CONTRACTOR OR
5 SUBCONTRACTOR.— If the Secretary challenges an asserted use or release restriction under
6 subsection (a), the Secretary shall provide written notice of the challenge to the contractor or
7 subcontractor asserting the restriction. Any such notice shall—

- 8 (1) state the specific grounds for challenging the asserted restriction;
- 9 (2) require a response within 60 days justifying the current validity of the asserted
10 restriction; and

11 (3) state that evidence of a justification described in subsection (d) may be
12 submitted.

13 (d) [10 USC 2321(d)(4)] JUSTIFICATION.—It is a justification of an asserted use or
14 release restriction challenged under subsection (a) that, within the three-year period preceding
15 the challenge to the restriction, the Department of Defense validated a restriction identical to the
16 asserted restriction if—

- 17 (1) such validation occurred after a challenge to the validated restriction under
18 this section; and
- 19 (2) the validated restriction was asserted by the same contractor or subcontractor
20 (or a licensee of such contractor or subcontractor).

21 **§3783 [10 USC 2321(e); 41 USC 4703(c), (d)]. Technical data: time for contractors to**
22 **submit justifications**

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1 (a) [10 USC 2321(e) 1st sent; 41 USC 4703(c)] ADDITIONAL TIME TO SUBMIT
2 JUSTIFICATIONS.—If a contractor or subcontractor asserting a use or release restriction submits to
3 the contracting officer a written request, showing the need for additional time to comply with the
4 requirement to justify the current validity of the asserted restriction, additional time to adequately
5 permit the submission of such justification shall be provided by the contracting officer as
6 appropriate.

7 (b) [10 USC 2321(e) 2nd sent; 41 USC 4703(d)] MULTIPLE CHALLENGES; SCHEDULE OF
8 RESPONSES.—If a party asserting a restriction receives notices of challenges to restrictions on
9 technical data from more than one contracting officer, and notifies each contracting officer of the
10 existence of more than one challenge, the contracting officer initiating the first in time challenge,
11 after consultation with the party asserting the restriction and the other contracting officers, shall
12 formulate a schedule of responses to each of the challenges that will afford the party asserting the
13 restriction with an equitable opportunity to respond to each such challenge.

14 ~~§3784 [10 USC 2321(f)]. Technical data under contracts for commercial items:~~
15 **presumption of development exclusively at private expense**

16 In the case of a challenge to a use or release restriction that is asserted with respect to
17 technical data of a contractor or subcontractor under a contract for **commercial items**, the
18 contracting officer shall presume that the contractor or subcontractor has justified the restriction
19 on the basis that **the item** was developed exclusively at private expense, whether or not the
20 contractor or subcontractor submits a justification in response to the notice provided pursuant to
21 section **3782(c)** of this title. In such a case, the challenge to the use or release restriction may be

Commented [CR643]: 2321(f)(2) is repealed by sec 865 of the FY19 NDAA, so 2321(f) is now the content of the old (f)(1).

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1 sustained only if information provided by the Department of Defense demonstrates that **the item**
2 was not developed exclusively at private expense.

3 **§3785 [10 USC 2321(g), (h); 41 USC 4703(e), (f)]. Technical data: decision by contracting**
4 **officer; claims**

5 (a) [10 USC 2321(g); 41 USC 4703(e)] DECISION BY CONTRACTING OFFICER.—

6 (1) Upon a failure by the contractor or subcontractor to submit any response under
7 section 3782(c) of this title, the contracting officer shall issue a decision pertaining to the
8 validity of the asserted restriction.

9 (2) After review of any justification submitted in response to the notice provided
10 pursuant to section 3782(c) of this title, the contracting officer shall, within 60 days of
11 receipt of any justification submitted, issue a decision or notify the party asserting the
12 restriction of the time within which a decision will be issued.

13 (b) [10 USC 2321(h); 41 USC 4703(f)] CLAIM DEEMED CLAIM WITHIN CHAPTER 71 OF
14 TITLE 41.—If a claim pertaining to the validity of the asserted restriction is submitted in writing
15 to a contracting officer by a contractor or subcontractor at any tier, the claim shall be considered
16 a claim within the meaning of chapter 71 of title 41.

17 **§3786 [10 USC 2321(i); 41 USC 4703(g)]. Technical data: final disposition of challenge**

18 (a) [10 USC 2321(i)(1); 866(b)&(c) of FY19 NDAA] CONTINUATION OF TECHNICAL
19 DATA RIGHTS DURING CHALLENGES.—

20 (1) [2321(i)(1)] EXERCISE OF RIGHTS IN TECHNICAL DATA BEFORE FINAL
21 DISPOSITION OF A CHALLENGE.—Upon filing of a suit or appeal under the contract dispute
22 statute by a contractor or subcontractor in an agency Board of Contract Appeals or United

Commented [CR644]: New para (1) was added to sub (i) by Sec. 866(a) of FY19 NDAA. Subsections (b) & (c) of section 866 would be codified as new paragraphs (2) and (3) here. Subsection (d) would be codified as a new 3793, below.

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1 States Claims Court related to a decision made by a contracting officer under section
2 **3785(a)** of this title, the Secretary of Defense, or a Secretary of a military department for
3 programs for which milestone decision authority has been delegated, on a nondelegable
4 basis, may, following notice to the contractor or subcontractor, authorize use of the
5 technical data in dispute if the Secretary determines in writing that compelling mission
6 readiness requirements will not permit awaiting the final decision by the agency Board of
7 Contract Appeals or the United States Claims Court.

8 (2) [Sec. 866(b) of **FY19** NDAA] ~~REVISION OF THE IMPLEMENTATION THROUGH~~
9 ~~DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT.—Not later than 180 days after~~
10 ~~the date of the enactment of this Act, the~~ *The* Secretary of Defense shall ~~revise~~
11 *implement paragraph (1) through* the Defense Federal Acquisition Regulation
12 Supplement, ~~by interim or final rule, to implement the amendments made by subsection~~
13 ~~(a). An interim or final rule to revise the Defense Federal Acquisition Regulation~~
14 *Supplement to provide for such implementation shall be issued by the Secretary not*
15 *later than 180 days after the date of the enactment of the John S. McCain National*
16 *Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232).*

17 (3) [Sec. 866(c) of **FY19** NDAA] ~~EFFECTIVE DATE APPLICABILITY.—The~~
18 ~~amendments made by subsection (a) and the revision required by subsection (b) shall~~
19 ~~become effective on the date of publication of the interim or final rule (whichever is~~
20 ~~earlier) required by subsection (b) and~~ *Paragraph (1) and the revision to the Defense*
21 *Federal Acquisition Regulation Supplement required by paragraph (2)* shall apply to
22 solicitations issued by Department of Defense contracting activities after ~~that date the~~

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1 *date of publication of an interim or final rule (whichever is earlier), as required by*
2 *paragraph (2), unless the senior procurement executive of the agency concerned grants a*
3 *waiver on a case-by-case basis.*

4 (b) [10 USC 2321(i)(2); 41 USC 4703(g)(1)] RIGHTS AND LIABILITY WHEN CHALLENGE

5 IS SUSTAINED.—If, upon final disposition, the contracting officer's challenge to the use or release
6 restriction is sustained—

7 (1) the restriction shall be cancelled; and

8 (2) if the asserted restriction is found not to be substantially justified, the
9 contractor or subcontractor asserting the restriction shall be liable to the United States for
10 payment of the cost to the United States of reviewing the asserted restriction and the fees
11 and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the
12 United States in challenging the asserted restriction, unless special circumstances would
13 make such payment unjust.

14 (c) [10 USC 2321(i)(3); 41 USC 4703(g)(2)] RIGHTS AND LIABILITY WHEN CHALLENGE

15 IS NOT SUSTAINED.—If, upon final disposition, the contracting officer's challenge to the use or
16 release restriction is not sustained—

17 (1) the United States shall continue to be bound by the restriction; and

18 (2) the United States shall be liable for payment to the party asserting the
19 restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28)
20 incurred by the party asserting the restriction in defending the asserted restriction if the
21 challenge by the United States is found not to be made in good faith.

22 **§3787 [10 USC 2321(j)]. Use or release restriction: definition**

Commented [CR645]: This was 2321(i)(1) before redesignation of (1) as (2) by Sec. 866(a) of FY19 NDAA.

Commented [CR646]: This was 2321(i)(2) before redesignation of (2) as (3) by Sec. 866(a) of FY19 NDAA.

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1 In this subchapter, the term "use or release restriction", with respect to technical data
2 delivered to the United States under a contract subject to this subchapter, means a restriction by
3 the contractor or subcontractor on the right of the United States—

- 4 (1) to use such technical data; or
- 5 (2) to release or disclose such technical data to persons outside the Government or
6 permit the use of such technical data by persons outside the Government.

7 “SUBCHAPTER III—OTHER PROVISIONS RELATING TO PROPRIETARY
8 CONTRACTOR DATA AND RIGHTS IN TECHNICAL DATA

Sec.
3791 [10 USC 2322(a)]. Management of intellectual property matters within the Department of
Defense.
3792 [Sec. 822 of PL 110-417 (10 USC 2320 note)]. Technical data rights: non-FAR agreements.
3793 [Sec. 866(d) of FY19 NDAA (10 USC 2321 note)]. Technical data rights: noncommercial
software.
3794 [10 USC 2386]. Copyrights, patents, designs, etc.; acquisition.
3795 [10 USC 2328]. Release of technical data under Freedom of Information Act: recovery of
costs.

9 § 3791 [10 USC 2322(a)]. Management of intellectual property matters within the
10 Department of Defense

11 (a) POLICY REQUIRED.—The Secretary of Defense, acting through the Under Secretary of
12 Defense for Acquisition and Sustainment, shall develop policy on the acquisition or licensing of
13 intellectual property—

- 14 (1) to enable coordination and consistency across the military departments and the
15 Department of Defense in strategies for acquiring or licensing intellectual property and
16 communicating with industry;

Commented [CR647]: NOTE: Sec. 2322 was added to title 10 by the FY18 NDAA, sec. 802.

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(2) to ensure that program managers are aware of the rights afforded the Federal Government and contractors in intellectual property and that program managers fully consider and use all available techniques and best practices for acquiring or licensing intellectual property early in the acquisition process; and

(3) to encourage customized intellectual property strategies for each system based on, at a minimum—

(A) the unique characteristics of the system and its components.;

(B) the product support strategy for the system;

(C) the organic industrial base strategy of the military department concerned; and

(D) the commercial market.

(b) CADRE OF INTELLECTUAL PROPERTY EXPERTS.—For a provision requiring establishment of a cadre of personnel who are experts in intellectual property matters, see section 1707 of this title.

§ 3792 [Sec. 822 of PL 110-417 (10 USC 2320 note)]. Technical data rights: non-FAR agreements

"(a) POLICY GUIDANCE.—The Secretary of Defense shall issue policy guidance with respect to rights in technical data under a non-FAR agreement. The guidance shall—

"(1) establish criteria for defining the legitimate interests of the United States and the party concerned in technical data pertaining to an item or process to be developed under the agreement;

Commented [CR648]: The content of current 10 U.S.C.2322(b), relating to a personnel cadre of IP experts, is recommended below for codification as a new section 1707 in chapter 87 of title 10, the chapter on acquisition workforce. See title X below.

Commented [CR649]: The original says "Not later than 270 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall issue ...". The NLT clause is omitted.

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"(2) require that specific rights in technical data be established during agreement negotiations and be based upon negotiations between the United States and the potential party to the agreement, except in any case in which the Secretary of Defense determines, on the basis of criteria established in such policy guidance, that the establishment of rights during or through agreement negotiations would not be practicable; and

"(3) require the program manager for a major weapon system or an item of personnel protective equipment that is to be developed using a non-FAR agreement to assess the long-term technical data needs of such system or item.

"(b) REQUIREMENT TO INCLUDE PROVISIONS IN NON-FAR AGREEMENTS.—A non-FAR agreement shall contain appropriate provisions relating to rights in technical data consistent with the policy guidance issued pursuant to subsection (a).

"(c) DEFINITIONS.—In this section:

"(1) NON-FAR AGREEMENT.—The term 'non-FAR agreement' means an agreement that is not subject to laws pursuant to which the Federal Acquisition Regulation is prescribed, including—

"(A) a transaction authorized under section ~~2374~~ 4002 of this title; and

"(B) a cooperative research and development agreement.

"(2) PARTY.—The term 'party', with respect to a non-FAR agreement, means a non-Federal entity and includes any of the following:

"(A) A contractor and its subcontractors (at any tier).

"(B) A joint venture.

"(C) A consortium.

Commented [CR650]: The original includes a subsection (d) requiring a report not later than 270 days after the date of enactment [Oct. 14, 2008]. That subsection is omitted in the codification as OBE.

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1 § 3793 [Sec. 866(d) of FY19 NDAA (P. L. 115-232; 10 U.S.C. 2321 note)]. Technical data
2 rights: noncommercial software

3 The Secretary of Defense shall develop policies on the negotiation of technical data
4 rights for noncommercial software that reflects reflect the Department of Defense's needs of the
5 Department of Defense for technical data rights in the event of a protest or replacement of
6 incumbent contractor to meet defense requirements in the most cost effective manner."

Commented [CR651]: Word change for agreement with "policies" on preceding line.

7 (2) CLERICAL AMENDMENTS.—The tables of chapters at the beginning of subtitle
8 A, and at the beginning of part V of subtitle A, of title 10, United States Code, are
9 amended by striking the item relating to chapter 275 and inserting the following new
10 item:

"275. Proprietary Contractor Data and Technical Data Rights3771".

11 (b) TRANSFERS.—Section 2386 and 2328 of title 10, United States Code, are transferred
12 to chapter 275 of such title, as amended by subsection (a), inserted (in that order) after section
13 3793, and redesignated as section 3794 and 3795, respectively.

14 (c) CONFORMING REPEALS.—The following provisions of law are repealed:

- 15 (1) Sections 2320, 2321, and 2322(a) of title 10, United States Code.
16 (2) Section 824(a) of the Ike Skelton National Defense Authorization Act for
17 Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2320 note).
18 (3) Section 822 of the Duncan Hunter National Defense Authorization Act for
19 Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2320 note).

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(4) Subsections (b), (c), and (d) of section 866 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2321 note).

(d) CROSS REFERENCE AMENDMENTS.—The following provisions of law are amended by striking “section 2320” and inserting “subchapter I of chapter 275”:

(1) Section 144(b)(7) of Public Law 110-417 (10 U.S.C. 113 note).

(2) Paragraphs (1) and (2) of section 8687(a) of title 10, United States Code.

(3) Section 1301(a)(3) of title 17, United States Code.

SEC. 404. CONTRACT FINANCING.

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapter 277 and inserting the following:

“CHAPTER 277—CONTRACT FINANCING

Sec.

3801. [2307(a), 41 USC 4501]. Authority of agency.

3802. [2307(b), (c), 41 USC 4502]. Payment.

3803. [2307(d), 41 USC 4503]. Security for advance payments.

3804. [2307(e), 41 USC 4504]. Conditions for progress payments.

3805. [2307(f), 41 USC 4505]. Payments for commercial products and commercial services.

3806. [2307(i), 41 USC 4506]. Action in case of fraud.

3807. [2307(h)]. Vesting of title in the United States.

§ 3801. [2307(a), 41 USC 4501]. Authority of agency

(a) [2307(a)(1), 41 USC 4501] PAYMENT AUTHORITY.—The head of an agency may—

- (1) make advance, partial, progress or other payments under contracts for property or services made by the agency; and

Commented [CR652]: This is the redesignated number, as of Feb. 1, 2019. The previous number was 7317.

Commented [CR653]: This chapter is derived from 10 USC 2307 and is conformed to the structure of 41 USC Ch. 45.

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(2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(b) [2307(a)(2)] PROMPT PAYMENTS OF SMALL BUSINESS CONTRACTORS.—

(1) PRIME CONTRACTORS.—For a prime contractor (as defined in section 8701 of title 41) that is a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if a specific payment date is not established by contract.

(2) SUBCONTRACTORS.—For a prime contractor that subcontracts with a small business concern, the Secretary of Defense shall, to the fullest extent permitted by law, establish an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if—

(A) a specific payment date is not established by contract; and

(B) the prime contractor agrees to make payments to the subcontractor in accordance with the accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

§3802. [2307(b), (c), 41 USC 4502]. Payment

(a) [2307(b)(1), 41 USC 4502(a)] PREFERENCE FOR PERFORMANCE-BASED PAYMENT.—

Whenever practicable, payments under section 3801 of this title shall be made using performance-based payments on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

Commented [CR654]: Paragraph (2) of 2307(a) was added by the FY19 NDAA, sec 852. There is no Title 41 counterpart.

Commented [CR655]: FY1 phrase “using performance-based payments” is in title 10 but is not in 41 USC 4502(a). The amendments made by sec. 831 of the FY17 NDAA to 10 U.S.C. 2307(b) added the highlighted phrase and added paragraphs (2), (3), & (4) [subsections (b), (c), and (d) here]. There were no parallel amendments to T41.

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(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

(b) [2307(b)(2)] BASIS FOR PERFORMANCE-BASED PAYMENTS.—Performance-based payments shall not be conditioned upon costs incurred in contract performance but on the achievement of performance outcomes listed in subsection (a).

(c) [2307(b)(4)] CONTRACTOR ACCOUNTING SYSTEMS.

(1) [2307(b)(4)(A)] GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—In order to receive performance-based payments, a contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles.

(2) [2307(b)(4)(A)] GOVERNMENT-UNIQUE ACCOUNTING SYSTEMS OR PRACTICES NOT REQUIRED.—There shall be no requirement for a contractor to develop Government-unique accounting systems or practices as a prerequisite for agreeing to receive performance-based payments.

(3) [2307(b)(4)(B)] DCAA.—Nothing in this section shall be construed to grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

(d) [2307(c), 41 USC 4502(b)] PAYMENT AMOUNT.—Payments made under section 3801 of this title may not exceed the unpaid contract price.

(e) [2307(b)(3)] ELIGIBILITY OF NONTRADITIONAL DEFENSE CONTRACTORS.—The Secretary of Defense shall ensure that nontraditional defense contractors and other private sector companies are eligible for performance-based payments, consistent with best commercial practices.

Commented [CR656]: Paragraph headings in subsection (c) are new. Original subparagraph (A) is divided into paragraphs (1) and (2), with original (B) renumbered as (3).

Commented [CR657]: This subsection is moved from above to put this DoD-unique provision at the end, so as to allow for greater parallelism with T41.

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1 §3803. [2307(d), 41 USC 4503]. Security for advance payments

2 (a) [2307(d) 1st sent] REQUIREMENT.—An advance payment under section 3801 of this
3 title may be made only if—

Commented [CR658]: Original says "Advance payments made under ...". This changes the text to use the singular and deletes "made" after "Advance payments". Note "made" on the next line ... "may be made only if ..."

4 (1) the contractor gives adequate security; and

5 (2) the head of the agency determines that to make the advance payment would be
6 in the public interest.

Commented [CR659]: Original says "after a determination by the head of the agency that to do so would ...". Rephrasing is suggested for readability.

7 (b) [2307(d) 2nd sent] FORM OF SECURITY.—A security under subsection (a) may be in
8 the form of a lien in favor of the United States—

9 (1) on the property contracted for;

10 (2) on the balance in an account in which such payments are deposited; and

11 (3) on such of the property acquired for performance of the contract as the parties
12 may agree.

13 (c) [2307(d) 3rd sent] STATUS OF LIEN.—A lien referred to in subsection (b)—

14 (1) is paramount to all other liens; and

15 (2) is effective immediately upon the first advancement of funds without filing,
16 notice, or any other action by the United States.

17 §3804. [2307(e), 41 USC 4504]. Conditions for progress payments

18 (a) PAYMENT COMMENSURATE WITH WORK.—The Secretary of Defense shall ensure that
19 any payment for work in progress (including materials, labor, and other items) under a defense
20 contract that provides for such payments is commensurate with the work accomplished that
21 meets standards established under the contract. The contractor shall provide such information

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1 and evidence as the Secretary of Defense determines is necessary to permit the Secretary to carry
2 out this subsection.

3 (b) LIMITATION.—The Secretary shall ensure that progress payments referred to in
4 subsection (a) are not made for more than 80 percent of the work accomplished under ~~a defense~~
5 ~~the contract~~ as long as the Secretary has not made the contractual terms, specifications, and price
6 definite.

Commented [CR660]: Reference here in original to "a defense contract" changed to "the contract", referencing back to subsection (a). Compare 41 USC 4504(b), which uses "the".

7 (c) APPLICABILITY.—This section applies to any contract in an amount greater than
8 \$25,000.

9 **§3805. [2307(f), 41 USC 4505]. Payments for commercial products and commercial**
10 **services**

11 (a) [2307(f)(1) (1st sent), 41 USC 4505(a)] TERMS AND CONDITIONS FOR PAYMENTS.—
12 Payments under section 3801 of this title for commercial products and commercial services may
13 be made under terms and conditions as the head of the agency determines are appropriate or
14 customary in the commercial marketplace and are in the best interests of the United States.

15 (b) [2307(f)(1) (2nd & 3rd sent), 41 USC 4505(b)] SECURITY FOR PAYMENTS.—

16 (1) [2307(f)(1) (2nd sent)] The head of the agency shall obtain adequate security
17 for the payments.

18 (2) [2307(f)(1) (3rd sent)] If the security is in the form of a lien in favor of the
19 United States, the lien—

20 (A) is paramount to all other liens; and

21 (B) is effective immediately upon the first payment, without filing, notice,
22 or other action by the United States.

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1 (c) [2307(f)(2), 41 USC 4505(c)] LIMITATION ON ADVANCE PAYMENTS.—Advance
2 payments made under section 3801 of this title for commercial products and commercial services
3 may include payments, in a total amount not more than 15 percent of the contract price, in
4 advance of any performance of work under the contract.

5 (d) [2307(f)(3), 41 USC 4505(d)] NONAPPLICATION OF CERTAIN CONDITIONS.—The
6 conditions of sections 3803 and 3804 of this title need not be applied if they would be
7 inconsistent, as determined by the head of the agency, with commercial terms and conditions
8 pursuant to this section.

9 **§3806. [2307(i), 41 USC 4506]. Action in case of fraud**

10 (a) [2307(i)(10), 41 USC 4506(a)] REMEDY COORDINATION OFFICIAL DEFINED.—In this
11 section, the term “remedy coordination official”, with respect to an agency, means the person or
12 entity in that agency who coordinates within that agency the administration of criminal, civil,
13 administrative, and contractual remedies resulting from investigations of fraud or corruption
14 related to procurement activities.

15 (b) [2307(i)(1), 41 USC 4506(b)] RECOMMENDATION TO REDUCE OR SUSPEND
16 PAYMENTS.—In any case in which the remedy coordination official of an agency finds that there
17 is substantial evidence that the request of a contractor for advance, partial, or progress payment
18 under a contract awarded by that agency is based on fraud, the remedy coordination official shall
19 recommend that the head of the agency reduce or suspend further payments to that contractor.

20 (c) [2307(i)(2), 41 USC 4506(c)] REDUCTION OR SUSPENSION OF PAYMENTS.—The head
21 of an agency receiving a recommendation under subsection (b) in the case of a contractor's
22 request for payment under a contract shall determine whether there is substantial evidence that

Commented [CR661]: Paragraphs from 2307(i) are reordered. Reason is to achieve [restore] parallelism with title 41 structure. In the codification of title 41, definition provisions were put at the beginning, rather than the end. To have parallel citations for parallel provisions, the same needs to be done here. So, in the future, the counterpart to, say, 10 U.S.C. 3806(b) will be 41 U.S.C. 4506(b), etc.

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1 the request is based on fraud. On making an affirmative determination, the head of the agency
2 may reduce or suspend further payments to the contractor under the contract.

Commented [CR662]: The title 10 original says "Upon making such a determination, the head ...". Changed here to conform to T41, 4506(c)

3 (d) [2307(i)(3), 41 USC 4506(d)] EXTENT OF REDUCTION OR SUSPENSION.—The extent of
4 any reduction or suspension of payments by an agency under subsection (c) on the basis of fraud
5 shall be reasonably commensurate with the anticipated loss to the United States resulting from
6 the fraud.

7 (e) [2307(i)(4), 41 USC 4506(e)] WRITTEN JUSTIFICATION.—A written justification for
8 each decision of the head of an agency whether to reduce or suspend payments under subsection
9 (c), and for each recommendation received by the agency head in connection with the decision,
10 shall be prepared and be retained in the files of the agency.

11 (f) [2307(i)(5), 41 USC 4506(f)] NOTICE.—The head of each agency shall prescribe
12 procedures to ensure that, before the head of the agency decides to reduce or suspend payments
13 in the case of a contractor under subsection (c), the contractor is afforded notice of the proposed
14 reduction or suspension and an opportunity to submit matters to the head of the agency in
15 response to the proposed reduction or suspension.

Commented [CR663]: Title 10 original has "an agency". Changed here to conform to T41.

16 (g) [2307(i)(6), 41 USC 4506(g)] REVIEW.—Not later than 180 days after the date on
17 which the head of an agency reduces or suspends payments to a contractor under subsection (c),
18 the remedy coordination official of the agency shall—

19 (1) review the determination of fraud on which the reduction or suspension is
20 based; and

21 (2) transmit a recommendation to the head of the agency whether the suspension
22 or reduction should continue.

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1 (h) [2307(i)(7), 41 USC 4506(h)] ANNUAL REPORTS.—

2 (1) IN GENERAL.—The head of an agency shall prepare for each year a report
3 containing the following:

4 (A) The recommendations made by the remedy coordination official of
5 that agency to reduce or suspend payments under subsection (c).

6 (B) The actions taken on the recommendations and the reasons for those
7 actions.

8 (C) An assessment of the effects of those actions on the United States.

9 (2) REPORTS BY SERVICE SECRETARIES TO BE TRANSMITTED TO SECRETARY OF
10 DEFENSE.—The Secretary of each military department shall transmit the annual report of
11 such department to the Secretary of Defense.

12 (3) AVAILABILITY TO MEMBERS OF CONGRESS.—Each such report shall be
13 available to any Member of Congress on request.

14 (i) [2307(i)(9), 41 USC 4506(i)] RESTRICTION ON DELEGATION.—The head of an agency
15 may not delegate responsibilities under this section to a person in a position below level IV of
16 the Executive Schedule.

17 (j) [2307(i)(8)] INAPPLICABILITY TO COAST GUARD.—This section does not apply to the
18 Coast Guard.

19 § 3807 [2307(h)]. Vesting of title in the United States

20 If a contract paid by a method authorized under section 3801(1) of this title provides for
21 title to property to vest in the United States, the title to the property shall vest in accordance with

Commented [CR664]: Title 10 and Title 41 are different here. The title 10 text is here as in the original. Title 41 has "... who receives recommendations made by the remedy coordination official of the executive agency to reduce or suspend payments under subsection (c) during a fiscal year shall prepare for that year..".

Commented [CR665]: The original says: "This subsection applies to the agencies named in paragraphs (1), (2), (3), (4), and (6) of section 2303(a) of this title." Seems clearer to just say that it does not apply to the Coast Guard (para (5) in 2303(a)).

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1 the terms of the contract, regardless of any security interest in the property that is asserted before
2 or after the contract is entered into."

3 (b) CONFORMING REPEAL.—Section 2307 (other than subsection (g)) of title 10, United
4 States Code, is repealed.

RELATIONSHIP OF 1994 AMENDMENT TO PROMPT PAYMENT REQUIREMENTS

FASA (P. L. 103–355), §2001(h) (108 Stat. 3303; 10 U.S.C. 2307 note), Oct. 13, 1994, provided:

"(h) RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS.—The amendments made by this section [amending section 2307 and 7522 of title 10 and repealing sections 7312, 7364, and 7521 of title 10] are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act [Oct. 13, 1994]), except that the Government may accept payment terms offered by a contractor offering a commercial item."

Commented [CR666]: NOTE: Section 2002(h) of FASA, which is a "note section" under 10 U.S.C. 2307, would be left "as is", for handling by the Code editors. Note that the parallel provision from FASA for title 41 was left as a "note" (rather than being codified in the new positive law title 41) and is now set out under 41 U.S.C. 4501, the first section of the chapter on Contract Financing.

5 SEC. 405. CONTRACTOR AUDITS AND ACCOUNTING.

6 (a) NEW CHAPTER.—

7 (1) IN GENERAL.—Part V of subtitle A of title 10, United States Code, as added by
8 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year
9 2019 (Public Law 115-232), is amended by striking chapter 279 and inserting the
10 following:

11 "CHAPTER 279—CONTRACTOR AUDITS AND ACCOUNTING

12 Sec.

- 3841 [10 USC 2313; 41 USC 4706]. Examination of facilities and records of contractor.
3842. [10 USC 2313b] Performance of incurred cost audits.
3843 [832 of P.L. 112-239 (10 USC 2313 note)]. Contractor internal audit reports: Department of Defense access to, use of, and safeguards and protections for.
3844 [893(a)-(g) of P.L. 111-383 (10 USC 2302 note)]. Contractor business systems.
3845 [10 USC 2410b]. Contractor inventory accounting systems: standards.

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3846 [893(h) of P.L. 111-383 (10 USC 2302 note)]. Defense Contract Audit Agency: legal resources and expertise. 3847 [10 USC 2313a]. Defense Contract Audit Agency: annual report. 3848 [10 USC 204]. Defense audit agencies: Small Business Ombudsmen. 3849 [10 USC 190]. Defense Cost Accounting Standards Board.

§3841 [10 USC 2313; 41 USC 4706]. Examination of facilities and records of contractor

(a) [2313(i); 4706(a)] DEFINITION.—In this section, the term "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether the items are in written form, in the form of computer data, or in any other form.

(b) [2313(a); 4706(b)] AGENCY AUTHORITY.—

(1) INSPECTION OF PLANT AND AUDIT OF RECORDS.—The head of an agency, acting through an authorized representative, may inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that agency under this chapter chapter ??? of this title; and

(B) a subcontractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract, or any combination of such subcontracts, under a contract referred to in subparagraph (A).

(2) EXAMINATION OF RECORDS.—The head of an agency, acting through an authorized representative, may, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to section

Commented [CR667]: Minor wording changes made to text of the title 10 section to conform more closely to text in 41 U.S.C. 4706, including moving the subsection defining "records" from the end to the beginning. New paragraph headings are drawn from the T41 counterpart provisions.

Commented [CR668]: "facilities and" inserted in the section heading for consistency with T41.

Commented [CR669]: In the original, "this chapter" means chapter 137. The reference to ch. 137 should be changed to the successor provisions of ch. 137 that provide for making a contract of the types specified.

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1 ~~2306a~~ *subchapter I of chapter 271* of this title with respect to a contract or subcontract,
2 examine all records of the contractor or subcontractor related to—

- 3 (A) the proposal for the contract or subcontract;
- 4 (B) the discussions conducted on the proposal;
- 5 (C) pricing of the contract or subcontract; or
- 6 (D) performance of the contract or subcontract.

7 (c) **[2313(b); 4706(c)]** DCAA SUBPOENA AUTHORITY.—

8 (1) AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.—The Director of the
9 Defense Contract Audit Agency (or any successor agency) may require by subpoena the
10 production of any records of a contractor **that the Secretary of Defense is authorized to**
11 **audit or examine under subsection (b).**

Commented [CR670]: Wording here differs from T41. The T10 language is retained.

12 (2) ENFORCEMENT OF SUBPOENA.—A subpoena under paragraph (1), in the case of
13 contumacy or refusal to obey, is enforceable by order of an appropriate United States
14 district court.

15 (3) AUTHORITY NOT DELEGABLE.—The authority provided by paragraph (1) may
16 not be delegated.

17 (d) **[2313(c); 4706(d)]** AUTHORITY OF COMPTROLLER GENERAL.—

18 (1) IN GENERAL.—Except as provided in paragraph (2), each contract awarded
19 after using procedures other than sealed bid procedures shall provide that the Comptroller
20 General and representatives of the Comptroller General may examine records of the
21 contractor, or any of its subcontractors, that directly pertain to, and involve transactions

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1 relating to, the contract or subcontract and **may** interview any current employee regarding
2 such transactions.

Commented [CR671]: In 41 USC 4706(d)(1), this is "to", probably left over from changing "are authorized to" to "may" before "examine records of".

3 (2) EXCEPTION FOR FOREIGN CONTRACTOR OR SUBCONTRACTOR.—Paragraph (1)
4 does not apply to a contract or subcontract with a foreign contractor or foreign
5 subcontractor if the head of the agency concerned determines, with the concurrence of the
6 Comptroller General or the designee of the Comptroller General, that applying paragraph
7 (1) to the contract or subcontract would not be in the public interest. The concurrence of
8 the Comptroller General or the designee of the Comptroller General is not required
9 when—

10 (A) the contractor or subcontractor is—

11 (i) the government of a foreign country or an agency of the
12 government of a foreign country; or

13 (ii) precluded by the laws of the country involved from making its
14 records available for examination; and

15 (B) the head of the agency determines, after taking into account the price
16 and availability of the property and services from United States sources, that the
17 public interest would be best served by not applying paragraph (1).

18 (3) ADDITIONAL RECORDS NOT REQUIRED.—Paragraph (1) ~~may not be construed to~~
19 ~~require~~ **does not require** a contractor or subcontractor to create or maintain a record that
20 the contractor or subcontractor does not maintain in the ordinary course of business or
21 pursuant to another provision of law.

Commented [CR672]: In the original in T10, this phrase is "may not be construed to require". Revised here to conform to T41.

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1 (e) [2313(d); 4706(e)] LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—The head
2 of an agency may not perform an audit of indirect costs under a contract, subcontract, or
3 modification before or after entering into the contract, subcontract, or modification when the
4 contracting officer determines that the objectives of the audit can reasonably be met by accepting
5 the results of an audit that was conducted by any other department or agency of the Federal
6 Government within one year preceding the date of the contracting officer's determination.

7 (f) [2313(e); 4706(f)] EXPIRATION OF AUTHORITY.—The authority of the head of an
8 agency under subsection (b), and the authority of the Comptroller General under subsection (d),
9 with respect to a contract or subcontract shall expire three years after final payment under the
10 contract or subcontract.

11 (g) [2313(f); 4706(g)] INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not
12 apply to the following contracts:

13 (1) Contracts for utility services at rates not exceeding those established to apply
14 uniformly to the public, plus any applicable reasonable connection charge.

15 (2) A contract or subcontract that is for an amount not greater than the simplified
16 acquisition threshold.

17 (h) [2313(g); 4706(h)] FORMS OF ORIGINAL RECORD STORAGE.—~~Nothing in this section~~
18 ~~shall be construed to preclude~~ **This section does not preclude** a contractor from duplicating or
19 storing original records in electronic form.

20 (i) [2313(h); 4706(i)] ORIGINAL RECORDS NOT REQUIRED.—The head of an agency shall
21 not require a contractor or subcontractor to provide original records in an audit carried out

Commented [CR673]: T41 wording for this provision is slightly different. T10 wording retained.

Commented [CR674]: The title 10 original says, "Nothing in this section shall be construed to preclude ...". The wording here is revised to conform to the T41 wording.

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1 pursuant to this section if the contractor or subcontractor provides photographic or electronic
2 images of the original records and meets the following requirements:

3 (1) PRESERVATION PROCEDURES ESTABLISHED.—The contractor or subcontractor
4 has established procedures to ensure that the imaging process preserves the integrity,
5 reliability, and security of the original records.

6 (2) INDEXING SYSTEM MAINTAINED.—The contractor or subcontractor maintains
7 an effective indexing system to permit timely and convenient access to the imaged
8 records.

9 (3) ORIGINAL RECORDS RETAINED.—The contractor or subcontractor retains the
10 original records for a minimum of one year after imaging to permit periodic validation of
11 the imaging systems.

12 **§3843 [832 of P.L. 112-239 (10 USC 2313 note)]. Contractor internal audit reports:**

13 **Department of Defense access to, use of, and safeguards and protections for**

14 (a) GUIDANCE.—The Director of the Defense Contract Audit Agency shall ensure that
15 guidance on access to defense contractor internal audit reports (including the Contract Audit
16 Manual) incorporates the requirements of this section.

17 (b) DOCUMENTATION REQUIREMENTS.—The guidance referred to in subsection (a) shall
18 ensure that requests for access to defense contractor internal audit reports are appropriately
19 documented. The required documentation shall include, ~~at a minimum,~~ the following:

20 (1) Written determination that access to such reports is necessary to complete
21 required evaluations of contractor business systems.

Commented [CR675]: The original says, "Not later than 180 day after the date of the enactment of this Act [Jan. 2, 2013], the Director of the Defense Contract Audit Agency shall revise guidance on access to defense contractor internal audit reports (including the Contract Audit Manual) to incorporate the requirements of this section."
In addition to dropping the "not later than" clause, the phrase "the Director ... shall revise guidance ... to incorporate .." is changed to "The Director shall ensure that guidance ... incorporates ...".

Commented [CR676]: Phrase proposed to be omitted as part of general recommendation to delete ", at a minimum," wherever appearing as being unnecessary.

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1 (2) A copy of any request from the Defense Contract Audit Agency to a
2 contractor for access to such reports.

3 (3) A record of response received from the contractor, including the contractor's
4 rationale or justification if access to requested reports was not granted.

5 (c) SAFEGUARDS AND PROTECTIONS.—The guidance shall include appropriate safeguards
6 and protections to ensure that contractor internal audit reports cannot be used by the Defense
7 Contract Audit Agency for any purpose other than evaluating and testing the efficacy of
8 contractor internal controls and the reliability of associated contractor business systems.

9 (d) RISK-BASED AUDITING.—A determination by the Defense Contract Audit Agency that
10 a contractor has a sound system of internal controls shall provide the basis for increased reliance
11 on contractor business systems or a reduced level of testing with regard to specific audits, as
12 appropriate. Internal audit reports provided by a contractor pursuant to this section may be
13 considered in determining whether or not a contractor has a sound system of internal controls,
14 but shall not be the sole basis for such a determination.

15 **§3844 [893(a)-(g) of P.L. 111-383 (10 USC 2302 note)]. Contractor business systems**

16 (a) IMPROVEMENT PROGRAM.—The Secretary of Defense shall ~~develop and initiate~~ *carry*
17 *out* a program for the improvement of contractor business systems to ensure that such systems
18 provide timely, reliable information for the management of Department of Defense programs by
19 the contractor and by the Department.

20 "(b) APPROVAL OR DISAPPROVAL OF BUSINESS SYSTEMS.—The program ~~developed~~
21 *carried out* pursuant to subsection (a) shall—

Commented [CR677]: The original had a final provision requiring a GAO review and report. It is omitted here as OBE.

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1 (1) include clear and specific business system requirements that are identified and
2 made publicly available for each type of contractor business system covered by the
3 program;

4 (2) establish a process for reviewing contractor business systems and identifying
5 significant deficiencies in such systems;

6 (3) identify officials of the Department of Defense who are responsible for the
7 approval or disapproval of contractor business systems;

8 (4) provide for the approval of any contractor business system that does not have
9 a significant deficiency; and

10 (5) provide for—

11 (A) the disapproval of any contractor business system that has a
12 significant deficiency; and

13 (B) reduced reliance on, and enhanced scrutiny of, data provided by a
14 contractor business system that has been disapproved.

15 (c) REVIEW BY THIRD-PARTY INDEPENDENT AUDITORS.—The review process for
16 contractor business systems pursuant to subsection (b)(2) shall—

17 (1) if a registered public accounting firm attests to the internal control assessment
18 of a contractor, pursuant to section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
19 7262(b)), allow the contractor, subject to paragraph (3), to submit certified
20 documentation from such registered public accounting firm that the contractor business
21 systems of the contractor meet the business system requirements referred to in subsection

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1 (b)(1) and to thereby eliminate the need for further review of the contractor business
2 systems by the Secretary of Defense;

3 (2) limit the review, subject to paragraph (3), of the contractor business systems
4 of a contractor that is not a covered contractor to confirming that the contractor uses the
5 same contractor business system for its Government and commercial work and that the
6 outputs of the contractor business system based on statistical sampling are reasonable;
7 and

8 (3) allow a milestone decision authority to require a review of a contractor
9 business system of a contractor that submits documentation pursuant to paragraph (1) or
10 that is not a covered contractor after determining in writing that such a review is
11 necessary to appropriately manage contractual risk.

12 (d) REMEDIAL ACTIONS.—The program ~~developed~~ *carried out* pursuant to subsection (a)
13 shall provide the following:

14 (1) In the event a contractor business system is disapproved pursuant to
15 subsection (b)(5), appropriate officials of the Department of Defense will be available to
16 work with the contractor to develop a corrective action plan defining specific actions to
17 be taken to address the significant deficiencies identified in the system and a schedule for
18 the implementation of such actions.

19 (2) An appropriate official of the Department of Defense may withhold up to 10
20 percent of progress payments, performance-based payments, and interim payments under
21 covered contracts from a covered contractor, as needed to protect the interests of the
22 Department and ensure compliance, if one or more of the contractor business systems of

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1 the contractor has been disapproved pursuant to subsection (b)(5) and has not
2 subsequently received approval.

3 (3) The amount of funds to be withheld under paragraph (2) shall be reduced if a
4 contractor adopts an effective corrective action plan pursuant to paragraph (1) and is
5 effectively implementing such plan.

6 (e) GUIDANCE AND TRAINING.—The program ~~developed~~ *carried out* pursuant to
7 subsection (a) shall provide guidance and training to appropriate government officials on—

8 (1) the data that is produced by contractor business systems; and

9 (2) the manner in which such data should be used to effectively manage

10 Department of Defense programs.

11 (f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit an
12 official of the Department of Defense from reviewing, approving, or disapproving a contractor
13 business system pursuant to any applicable law or regulation in force as of January 7, 2011,

14 during the period between that date and the date on which the Secretary implements the
15 requirements of this section (or section 893 of the Ike Skelton National Defense Authorization
16 Act for Fiscal Year 2011 (Public Law 111-383) before the repeal of that section) with respect to
17 such system.

18 (g) CONSENT TO SUBCONTRACT.—If the contractor on a Department of Defense contract
19 requiring a contracting officer’s written consent before the contractor entering into a subcontract
20 has an approved purchasing system, the contracting officer may not withhold such consent
21 without the written approval of the program manager.

22 (h) DEFINITIONS.—In this section:

Commented [CR678]: Is this subsection OBE? That is, have the requirements of section 893 been implemented with respect to all contractor business systems? If so, it would appear that this subsection could be omitted.

Commented [CR679]: Sub (g) is added by sec. 824(a)(2) of the FY19 NDAA (as a new subsec (i)).

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(1) The term “contractor business system” means an accounting system, estimating system, purchasing system, earned value management system, material management and accounting system, or property management system of a contractor.

(2) The term “covered contractor” means a contractor that has covered contracts with the United States Government accounting for greater than 1 percent of its total gross revenue, except that the term does not include any contractor that is exempt, under section 1502 of title 41 or regulations implementing that section, from using full cost accounting standards established in that section.

(3) The term “covered contract” means a contract that is subject to the cost accounting standards promulgated pursuant to section 1502 of title 41 that could be affected if the data produced by a contractor business system has a significant deficiency.

(4) The term “significant deficiency”, in the case of a contractor business system, means a shortcoming in the system that materially affects the ability of officials of the Department of Defense and the contractor to rely upon information produced by the system that is needed for management purposes.

(5) The term “approved purchasing system” has the meaning given the term in section 44.101 of the Federal Acquisition Regulation (or any similar regulation).

Commented [CR680]: Para (5) was added by sec. 824(a)(1) of the FY19 NDAA

§3845 [10 USC 2410b]. Contractor inventory accounting systems: standards

(a) REQUIREMENT FOR STANDARDS.—The Secretary of Defense shall prescribe in regulations—

(1) standards for inventory accounting systems used by contractors under contract with the Department of Defense; and

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(2) appropriate enforcement requirements with respect to such standards.

(b) EXCEPTIONS.—The regulations prescribed pursuant to subsection (a) shall not apply—

(1) to a contract that is for an amount not greater than the simplified acquisition threshold; or

(2) to a contract for the purchase of commercial products.

§ 3846 [893(h) of P. L. 111-383 (10 USC 2302 note)]. Defense Contract Audit Agency: legal resources and expertise

The Secretary of Defense shall ensure that—

(1) the Defense Contract Audit Agency has sufficient legal resources and expertise to conduct its work in compliance with applicable Department of Defense policies and procedures; and

(2) such resources and expertise are provided in a manner that is consistent with the audit independence of the Defense Contract Audit Agency.

§ 3847 [10 USC 2313a]. Defense Contract Audit Agency: annual report

(a) [2313a(b)] REQUIRED REPORT.—Not later than March 30 of each year, the Director of the Defense Contract Audit Agency shall submit to the congressional defense committees a report of the activities of the Agency during the previous fiscal year.

(b) [2313a(a)] REQUIRED ELEMENTS.—Each report under subsection (a) shall include, ~~at a minimum,~~ the following:

(1) A description of significant problems, abuses, and deficiencies encountered during the conduct of contractor audits.

(2) Statistical tables showing—

Commented [CR681]: Phrase proposed to be omitted as part of general recommendation to delete ", at a minimum," wherever appearing as being unnecessary.

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1 (A) the total number and dollar value of audit reports completed and
2 pending, set forth separately by type of audit;

3 (B) the priority given to each type of audit;

4 (C) the length of time taken for each type of audit, both from the date of
5 receipt of a qualified incurred cost submission and from the date the audit begins;

6 (D) the sustained questioned costs, set forth separately by type of audit,
7 both as a total value and as a percentage of the total questioned costs for the audit;

8 (E) the total number and dollar value of incurred cost audits completed,
9 and the method by which such incurred cost audits were completed;

10 (F) the aggregate cost of performing audits, set forth separately by type of
11 audit;

12 (G) the ratio of sustained questioned costs to the aggregate costs of
13 performing audits, set forth separately by type of audit; and

14 (H) the total number and dollar value of audits that are pending for a
15 period longer than one year as of the end of the fiscal year covered by the report,
16 and the fiscal year in which the qualified submission was received, set forth
17 separately by type of audit.

18 (3) A summary of any recommendations of actions or resources needed to
19 improve the audit process.

20 (4) A summary, set forth separately by dollar amount and percentage, of indirect
21 costs for independent research and development incurred by contractors in the previous
22 fiscal year.

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(5) A summary, set forth separately by dollar amount and percentage, of indirect costs for bid and proposal costs incurred by contractors in the previous fiscal year.

(6) A description of outreach actions toward industry to promote more effective use of audit resources.

(7) Any other matters the Director considers appropriate.

(c) [2313a(c)] PUBLIC AVAILABILITY.—Not later than 60 days after the submission of ~~an annual report~~ **a report** to the congressional defense committees under subsection (a), the Director shall make the report available on the publicly available website of the Agency or such other publicly available website as the Director considers appropriate.

Commented [CR682]: Note that subsection (a) requires a report "each year". The change to delete "annual" is suggested because "annual" here seems redundant. Note that subsection (b) above refers to "Each report under subsection (a)", without "annual".

(d) [2313a(d)] DEFINITIONS.—In this section:

(1) The terms "incurred cost audit" and "qualified incurred cost submission" have the meaning given those terms in section 3842 of this title.

(2) The term "sustained questioned costs" means questioned costs that were recovered by the Federal Government as a result of contract negotiations related to such questioned costs."

(2) **TRANSFER OF SECTION 2313b.**—Section 2313b of title 10, United States Code, is **transferred** to chapter 279 of such title, as amended by paragraph (1), **inserted** after section 3841, **redesignated** as section 3842, and **amended**—

(A) in subsection (b)(1)(E)(i), by striking "more than 12 months before the date of the enactment of this section" and inserting "before December 12, 2016";

(B) in subsection (d), by striking "an task order" both places it appears and inserting "a task order";

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1 (C) in subsection (g)(3), by striking “on or after the date of the enactment
2 of this section” and inserting “after December 11, 2017”; and

3 (D) in subsection (g)(5), by striking “section 2313a” and inserting
4 “section 3847”.

5 (3) **TRANSFER OF SECTION 204.**—Section 204 of title 10, United States Code, is
6 **transferred** to chapter 279 of such title, as amended by paragraph (1), **inserted** after
7 section 3847, and **redesignated** as section 3848.

8 (4) **TRANSFER OF SECTION 190.**—Section 190 of title 10, United States Code, is
9 **transferred** to chapter 279 of such title, as amended by paragraph (1), **inserted** after
10 section 3848 (as added by paragraph (3)), ~~and~~ **redesignated** as section 3849, *and*
11 *amended by striking “(as defined in section 2302(9) of this title)”*.

Commented [CR683]: As an FYI, the Section 809 Panel recommended repeal of 10 USC 190 in Vol. II of the Panel report as a substantive policy recommendation. IF that recommendation is adopted by Congress, paragraph (4) here should be deleted.

12 (b) **CONFORMING REPEALS.**—The following provisions of law are **repealed**:

13 (1) Section 2313 of title 10, United States Code.

14 (2) Section 832 of the National Defense Authorization Act for Fiscal Year 2013
15 (Public Law 112-239; 10 U.S.C. 2313 note).

16 (3) Section 893 of the Ike Skelton National Defense Authorization Act for Fiscal
17 Year 2011 (Public Law 111-383; 10 U.S.C. 2302 note).

18 (4) Section 2410b of title 10, United States Code.

19 (5) Section 2313a of title 10, United States Code.

Commented [CR684]: 2302(9) is restated as sec. 3021 and will apply to all of Part V, making the “as defined in” clause unnecessary.

20 (c) [**Sec. 824(b) of FY19 NDAA**] **PRESERVATION OF REQUIREMENT FOR CONFORMING**
21 **REGULATIONS.**—Not later than 120 days after the date of the enactment of the John S. McCain
22 National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), the Secretary of

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1 Defense shall revise the Defense Federal Acquisition Regulation Supplement to conform with
2 the amendments to section 893 of the Ike Skelton National Defense Authorization Act for Fiscal
3 Year 2011 (Public Law 111-383; 10 U.S.C. 2302 note) made by this section subsection (g) of
4 section 3844 of title 10, United States Code, as added by subsection (a)(1).

5 SEC. 406. CLAIMS AND DISPUTES.

6 (a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by
7 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
8 (Public Law 115-232), is amended by striking chapter 281 and inserting the following:

9 “CHAPTER 281—CLAIMS AND DISPUTES

Sec.

- 3861 [2354]. Research and development contracts: indemnification provisions.
3862 [2410]. Requests for equitable adjustment or other relief: certification.
3863 [2410m]. Retention of amounts collected from contractor during the pendency of contract
dispute.
3864 [Sec. 827 of P. L. 115-91 (10 USC 2304 note)]. Bid protests denied by Government
Accountability Office: pilot program for requiring contractor reimbursement of
Department of Defense for costs incurred.

10 § 3861 [2354]. Research and development contracts: indemnification provisions

11 (a) IN GENERAL.—

12 (1) Subject to approval as provided in paragraph (2), any contract of the

13 Department of Defense for research or development, or both, may provide that the United
14 States, subject to paragraph (3), will indemnify the contractor against either or both of the
15 following:

- 16 (A) Claims (including reasonable expenses of litigation or settlement) by
17 third persons, including employees of the contractor, for death, bodily injury, or

Commented [CR685]: “Research and development” added to the section heading. The original is in chapter 139, under the chapter heading “Research and Development”, so this change incorporates that heading into the section heading here.

Commented [CR686]: 10 USC 2354 revised to include SecDef with respect to DoD elements outside the military departments (referred to as the “4th Estate”). The original on its face only applies to the military departments.

DoD - OSD/OGC(A&L) – please advise as to whether the revisions to sec 2354 would make any substantive change or is consistent with current practice. That is, is the addition of SecDef merely conforming to current practice, or is it a substantive change? And, if the latter, is it advisable? And are the other wording changes nonsubstantive?

NOTE that many of the remaining comments in this section relate to revisions to include SecDef with respect to the 4th Estate. If SecDef is not included, those comments become moot.

Commented [CR687]: Approval clause in current law proposed for restatement as a paragraph (2), to allow for incorporation of SecDef for the 4th Estate.

Commented [CR688]: Original, from 1952, says “of a military department”. Proposal is to change to “Department of Defense” to reflect changes in practice, including contracting through Defense Agencies and other DoD entities outside the military departments.

Commented [CR689]: “but only to the extent that” clause in original proposed for restatement as a paragraph (3) for readability (so that the phrase “the following” is followed by a colon and leads in immediately to the list).

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1 loss of or damage to property, from a risk that the contract defines as unusually
2 hazardous.

3 (B) Loss of or damage to property of the contractor from a risk that the
4 contract defines as unusually hazardous.

5 (2) A contract may provide for indemnification under paragraph (1) only with the
6 approval of—

7 (A) the Secretary of Defense, in the case of a contract of an element of the
8 Department of Defense other than a military department; or

9 (B) the Secretary of the military department concerned, in the case of a
10 contract of a military department.

11 (3) Under an indemnification provision included in a contract under paragraph
12 (1), the United States will indemnify the contractor against the matters specified in
13 subparagraphs (A) and (B) of that paragraph only—

14 (A) to the extent that they arise out of the direct performance of the
15 contract; and

16 (B) to the extent not compensated by insurance or otherwise.

17 (b) REQUIRED PROVISIONS.—A contract that under subsection (a) provides for
18 indemnification must shall also provide for—

19 (1) notice to the United States of any claim or suit against the contractor for the
20 death, bodily injury, or loss of or damage to property; and

21 (2) control of or assistance in the defense by the United States, at its election, of
22 that suit or claim.

Commented [CR690]: SecDef for the 4th Estate is not in the original

Commented [CR691]: This is the "but only to the extent that clause" from the original.

Commented [CR692]: DoD: Should "either or both of" be added between "against" and "the", to be consistent with (a)(1)? [".. against either or both of the matters"] Please advise.

Commented [CR693]: Original says "A contract, made under subsection (a), that provides ...". Revised because the contract is not made under subsection (a); rather, subsection (a) provides for a contract to provide for indemnification.

Commented [CR694]: Changed for general title 10 usage.

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1 (c) REQUIREMENT THAT AMOUNT OF INDEMNIFICATION PAYMENT BE CERTIFIED AS JUST
2 AND REASONABLE.—A payment may not be made under an indemnification provision included
3 in a contract under subsection (a) unless the amount of the payment is certified to be just and
4 reasonable by—

5 (1) the Secretary of Defense or an officer or official of the Department of Defense
6 designated by the Secretary, in the case of a contract of an element of the Department of
7 Defense other than a military department; or

8 (2) the Secretary of the military department concerned or an officer or official of
9 that military department designated by the Secretary concerned, in the case of a contract
10 of a military department.

11 (d) SOURCE OF FUNDS FOR INDEMNIFICATION PAYMENTS.—Upon approval by the
12 Secretary approving the inclusion in a contract of an indemnification provision under subsection

13 (a), payments under the indemnification provision may be made from—

- 14 (1) funds obligated for the performance of the contract concerned;
15 (2) funds available for research or development, or both, and not otherwise
16 obligated; or
17 (3) funds appropriated for those payments.

18 § 3864 [Sec. 827 of P.L. 115-91 (10 USC 2304 note)]. Bid protests denied by Government
19 Accountability Office: pilot program for requiring contractor
20 reimbursement of Department of Defense for costs incurred

Commented [CR695]: This heading, and the other subsection headings, are new.

Commented [CR696]: Revised to put the negative on the verb (i.e., the action) rather than on the noun.

Commented [CR697]: Phrase "an indemnification provision included in a contract under" inserted between "under" and "subsection (a)" because the payment is not made under subsection (a) (the statute) but under the contract provision.

Commented [CR698]: Original restructured to put the certifying official at the end to accommodate inclusion of SecDef for the 4th Estate, below.

Commented [CR699]: SecDef for the 4th Estate is not in the original

Commented [CR700]: "Secretary concerned" changed to "Secretary approving ..." because of inclusion of SecDef for the 4th Estate. ("Secretary concerned" means the Secretaries of the military departments)

Commented [CR701]: The original has "payments under subsection (a) may be made from ...". Changed to "payments under the indemnification provision may be made from ..." because subsection (a) provides for inclusion of an indemnification provision in a contract, not for making payments

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1 (a) PILOT PROGRAM.—The Secretary of Defense shall carry out a pilot program to
2 determine the effectiveness of requiring contractors to reimburse the Department of Defense for
3 costs incurred in processing covered protests.

4 (b) DURATION.—The pilot program shall—

5 (1) begin on December 12, 2019; and

6 (2) end on December 12, 2022.

7 (c) REPORT.—Not later than 90 days after the date on which the pilot program under
8 subsection (a) ends, the Secretary shall submit to the Committees on Armed Services of the
9 Senate and the House of Representatives a report assessing the feasibility of making the pilot
10 program permanent.

11 (d) COVERED PROTEST DEFINED.—In this section, the term 'covered protest' means a bid
12 protest that was—

13 (1) denied in an opinion issued by the Government Accountability Office;

14 (2) filed by a party with revenues in excess of \$250,000,000 (based on fiscal year
15 2017 constant dollars) during the previous year; and

16 (3) filed on or after October 1, 2019 and on or before September 30, 2022.”

17 (b) TRANSFER OF SECTIONS.—Sections 2410 and 2410m of title 10, United States Code,
18 are transferred to chapter 281 of such title, as amended by paragraph (1), inserted (in that
19 order) after section 3861, and redesignated as sections 3862 and 3863, respectively.

20 (c) CONFORMING REPEALS.—The following provisions of law are repealed:

21 (1) Section 2354 of title 10, United States Code.

Commented [CR702]: Original has “provide”. Changes to “submit” for usual title 10/NDAA wording.

Commented [CR703]: “a report” moved from before the names of the committees to after the names so the “assessing” phrase is directly modifying the word “report”. This is customary title 10/NDAA usage.

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(2) Section 827 of the National Defense Authorization Act for Fiscal Year 2018

(Public Law 115-91; 10 U.S.C. 2304 note).

(d) CROSS REFERENCE AMENDMENTS.—

(1) Sections 301(a)(7) and 405(b)(1) of the Public Health Service Act (42 U.S.C. 241(a)(7), 284(b)(1)) are amended by striking “2354” and inserting “3861”.

(2) Title II of the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986, is amended by striking “section 2354” in the last proviso in the paragraph under the heading “National Science Foundation — Research and Related Activities” (42 U.S.C. 1887) and inserting “section 3861”.

SEC. 407. FOREIGN ACQUISITIONS.

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapter 283 and inserting the following:

“CHAPTER 283—FOREIGN ACQUISITIONS

Subchapter I—General 3881
II—Prohibition on Contracting with the Enemy 3891

SUBCHAPTER I—GENERAL

- 3881 [10 USC 2327]. Contracts: consideration of national security objectives.
3882 [899A(a)-(c),(e) of P. L. 114-328 (10 USC 2302 note)]. Products and services produced in Africa in support of certain activities.
3883 [1211 of P. L. 109-163 (10 USC 2302 note)]. Procurements from Communist Chinese military companies: prohibition.
3884 [1614 of P. L. 114-92 (10 USC note prec 2381)]. Reliance on China and Russia for space-based weather data: prohibition.

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1 (b) **TRANSFER OF SECTION 2327.**—Section 2327 of title 10, United States Code, is
2 **transferred** to chapter 283 of such title, as amended by subsection (a), **inserted** after the table of
3 sections at the beginning of subchapter I, **redesignated** as section 3881, and **amended** in
4 subsection (f)(2) by striking “This section” and all that follows and inserting “In this section, the
5 term ‘head of an agency’ means the Secretary of Defense and the Secretary of each military
6 department.”.

Commented [CR704]: Note that 10 USC 2327 does not apply to Coast Guard or NASA (see subsec. (f)(2)). Since that section is in ch. 137, the definition of “head of an agency” in 2302(1) otherwise applies. To preserve the current meaning in the new chapter, subsection (f)(2) would be changed as shown.

7 (c) **CODIFICATION OF FY2017 NDAA SECTION.**—

8 (1) **CODIFICATION.**—Chapter 283 of title 10, United States Code, as amended by
9 subsection (a), is further amended by inserting after section 3881, as transferred and
10 redesignated by subsection (b), a new section 3882 consisting of—

11 (A) a heading as follows:

12 “§ 3882 [Sec 899A(a)–(c),(e) of P. L. 114-328 (10 USC 2302 note)]. **Products and services**
13 **produced in Africa in support of certain activities”;** and

14 (B) a text consisting of the text of subsections (a), (b), (c), and (e) of
15 section 899A of the National Defense Authorization Act for Fiscal Year 2017
16 (Public Law 114-328); 10 U.S.C. **2302 note**), revised—

Commented [CR705]: Subsection (d) of the original is a requirement for a one-time report due Dec. 31, 2017. It is omitted here as OBE. The report was received on 3/27/18 (ID28179).

17 (i) by striking “, United States Code,” in subsections (b)(2)(B) and

18 (c);

19 (ii) by redesignating subsection (e) as subsection (d); and

20 (iii) in subsection (d), as so redesignated—

21 (I) in paragraph (2), by striking “United States Armed

22 Forces” and inserting “armed forces”; and

Commented [CR706]: For usage of “armed forces” [lower case] inside title 10, see 10 U.S.C. 101(a)(4).

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1 (II) in paragraph (3), by striking “Armed Forces” and
2 inserting “armed forces”.

3 (2) **CONFORMING REPEAL.**—Subsections (a)-(e) of section 899A of the National
4 Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. **2302**
5 **note**) are **repealed**.

6 (d) **CODIFICATION OF FY2006 NDAA SECTION.**—

7 (1) **CODIFICATION.**—Such chapter is further amended by inserting after section
8 3882, as added by subsection (c), a new section 3883 consisting of—

9 (A) a heading as follows:

10 “§ 3883 [Sec. 1211 of P.L. 109-163 (10 USC 2302 note)]. **Procurements from Communist**
11 **Chinese military companies: prohibition”; and**

12 (B) a text consisting of the text of section 1211 of the National Defense
13 Authorization Act for Fiscal Year 2006 (Public Law 109-163; 10 U.S.C. **2302**
14 **note**).

15 (2) **CONFORMING REPEAL.**—Section 1211 of the National Defense Authorization
16 Act for Fiscal Year 2006 (Public Law 109-163; 10 U.S.C. **2302 note**) is repealed.

17 (e) **CODIFICATION OF FY2016 NDAA SECTION.**—

18 (1) **CODIFICATION.**—Such chapter is further amended by inserting after section
19 3884, as added by subsection (d), a new section 3883 consisting of—

20 (A) a heading as follows:

21 “§ 3884 [Sec 1614 of P.L. 114-92 (10 USC note prec 2381)]. **Reliance on China and Russia**
22 **for space-based weather data: prohibition”; and**

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(B) a text consisting of the text of subsection (a) of section 1614 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. note prec 2381) (other than the subsection designation and subsection heading).

(2) CONFORMING REPEAL.—Section 1614 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. prec. 2381 note) is repealed.

(f) CODIFICATION OF SECTIONS 841-843 OF FY2015 NDAA.—

(1) NEW SUBCHAPTER.—Chapter 283 of title 10, United States Code, is further amended by adding at the end the following:

“SUBCHAPTER II—PROHIBITION ON CONTRACTING WITH THE ENEMY

- Sec. 3891 [Sec 841 of P. L. 113-291 (10 USC 2302 note)]. Prohibition on providing funds to the enemy. 3892 [Sec 842 of P. L. 113-291 (10 USC 2302 note)]. Additional access to records. 3893 [Sec 843 of P. L. 113-291 (10 USC 2302 note)]. Definitions.”

(2) SECTION 841.—Such chapter is further amended by inserting after the table of sections at the beginning of subchapter II, as added by paragraph (1), a new section 3891 consisting of—

(A) a heading as follows:

“§3891 [Sec 841 of P. L. 113-291 (10 USC 2302 note)]. Prohibition on providing funds to the enemy”; and

(B) a text consisting of the text of section 841 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 10 U.S.C. 2302 note), revised—

Commented [CR707]: This section has two subsections. Subsection (a) would be codified here; subsection (b) was a requirement for a specified certification to be submitted NLT 90 days after Nov. 25, 2015, and is omitted as OBE.

Commented [CR708]: Note that sec. 841(n), as amended by sec. 872 of the FY2019 NDAA, provides, “Sunset.--The provisions of this section shall cease to be effective on December 31, 2021.”

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1 (i) in subsection (c), by striking “Not later than 270 days” and all
2 the follows through “shall be revised to provide” and inserting “The
3 Federal Acquisition Regulation, the Defense Federal Acquisition
4 Regulation Supplement, and the Uniform Administrative Requirements,
5 Cost Principles, and Audit Requirements for Federal Awards shall
6 provide”;

7 (ii) in subsection (d)(1)—

8 (I) in the matter preceding subparagraph (A), by striking
9 “Not later than 270 days” and all the follows through “shall be
10 revised to require” and inserting “The Federal Acquisition
11 Regulation, the Defense Federal Acquisition Regulation
12 Supplement, and the Uniform Administrative Requirements, Cost
13 Principles, and Audit Requirements for Federal Awards shall
14 require”;

15 (II) in subparagraph (A), by striking “the date of the
16 enactment of this Act” and inserting “December 19, 2014”; and

17 (III) in subparagraph (B), by striking “the date of the
18 enactment of this Act” and inserting “December 19, 2014.”;

19 (iii) in subsection (e)—

20 (I) by striking “Not later than 270 days” and all the follows
21 through “as follows:” and inserting “The Federal Acquisition
22 Regulation, the Defense Federal Acquisition Regulation

Commented [CR709]: DOD, PLEASE PROVIDE the actual date that is being applied here, that is, the date that is 270 days after December 19, 2014. Perhaps 9/15/15, but please confirm.

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Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall include provisions that—;

(II) by striking “To” at the beginning of paragraphs (1) and (2); and

(III) by striking the period at the end of paragraph (1) and inserting “; and”; and

(iv) in subsection (m), by striking “COORDINATION WITH” and all that follows through “In providing” and inserting “USE OF SUPERSEDED AUTHORITIES IN IMPLEMENTATION OF REQUIREMENTS.—In providing”.

(3) SECTION 842.—Such chapter is further amended by inserting after section 3891, as added by paragraph (2), a new section 3892 consisting of—

(A) a heading as follows:

“§3892 [Sec 842 of P. L. 113-291 (10 USC 2302 note)]. Additional access to records”; and

(B) a text consisting of the text of section 842 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 10 U.S.C. 2302 note), revised—

(i) in subsection (a)(1)—

(I) by striking “Not later than 270 days” and all the follows through “the clause” and inserting “Applicable regulations shall provide that, except as provided in subsection (c), the clause”; and

Commented [CR710]: This amendment omits paragraphs (1) & (2) of subsection (m), so that only para (3) is codified. Paragraphs (1) & (2) repealed earlier provisions of law that were superseded by sec. 841.

Commented [CR711]: Sec. 842 has 3 subsections. Sub (a) is proposed to be codified. Subsection (b) required reports NLT March 1 of 2016, 2017, and 2018. It would be codified as is, notwithstanding the expired dates. In subsection (c), only paragraph (1) should be codified, as paragraph (2) amended another statute. The text from subsection (c) is modified below so that the text of paragraph (1) be the only text of subsection (c).

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1 (II) by striking “on or after the date of the enactment of this
2 Act” and inserting “after December 18, 2014,”; and

3 (ii) in subsection (c)—

4 (I) by striking “CENTCOM.—” and all that follows through
5 “This section shall” and inserting “CENTCOM.—This section
6 shall”; and

7 (II) by striking paragraph (2).

8 (4) SECTION 843.—Such chapter is further amended by inserting after section
9 3892, as added by paragraph (3), a new section 3893 consisting of—

10 (A) a heading as follows:

11 “§3893 [§ 843 of P. L. 113-291 (10 USC 2302 note)]. Definitions”; and

12 (B) a text a text consisting of the text of section 843 of the Carl Levin and
13 Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year
14 2015 (Public Law 113-291; 10 U.S.C. 2302 note), revised—

15 (i) by striking “In this subtitle:” and inserting “In this subchapter:”;

16 (ii) by striking paragraph (2);

17 (iii) by redesignating paragraphs (3) through (9) as paragraphs (2)
18 through (8), respectively;

19 (iv) in paragraphs (4) and (5), as so redesignated, by striking

20 “Armed Forces” and inserting “armed forces”; and

21 (v) in paragraph (6), as so redesignated, by striking “, United States
22 Code”.

Commented [CR712]: Paragraph (2) defines contingency operation by reference to 10 USC 101(a)(13). It should be omitted in the codification because the definition in 10 USC 101 will now apply on its own once this provision becomes part of title 10.

Commented [CR713]: For usage of “armed forces” [lower case] inside title 10, see 10 U.S.C. 101(a)(4).

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(5) CONFORMING REPEAL.—Subtitle E of title VIII of the Carl Levin and

Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015

(Public Law 113-291; 10 U.S.C. 2302 note) is repealed.

SEC. 408. SOCIOECONOMIC PROGRAMS.

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by

section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019

(Public Law 115-232), is amended by striking chapter 287 and inserting the following:

“CHAPTER 285 — SOCIOECONOMIC PROGRAMS

Sec.

3901 [2304e]. Contracts: prohibition on competition between Department of Defense and small businesses and certain other entities.

3902 [2323a]. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education.

3903 [2410d] Subcontracting plans: credit for certain purchases.

3904 [Sec 853 of P. L. 108-136, sec 888 of P.L. 115-232 (2302 note)] Demonstration project for contractors employing persons with disabilities.

3905 [Sec 8025 of P. L. 108-87 (2410d note)]. Contract participation by agencies for the blind or other severely handicapped.

3906 [2362; Sec. 233 of P.L. 114-92 (2362 note)]. Research and educational programs and activities: historically black colleges and universities and minority-serving institutions of higher education.

3907 [2410n; Sec. 827(b) of P.L. 110-181 (2410n note)]. Products of Federal Prison Industries: procedural requirements.

(b) TRANSFER OF SECTION 2304e.—Section 2304e of title 10, United States Code, is

transferred to chapter 285 of such title, as added by subsection (a), inserted after the table of

sections, redesignated as section 3901, and amended in the section heading, by striking the last

four words.

(c) TRANSFER OF SECTION 2323a.—Section 2323a of title 10, United States Code, is

transferred to chapter 285 of such title, as added by subsection (a), inserted after section 3901,

as transferred and redesignated by subsection (b), redesignated as section 3902, and amended—

Commented [CR714]: The original ch. 285 in Part V, relating to Small Business Programs, is to be renumbered as ch. 387 and moved to the subpart relating to Defense Industrial Base. Some coordination may be required between this amendment and the similar amendment for that other chapter.

Commented [CR715]: In the section heading, the last four words are “and certain other entities”, as shown in the table of contents above. The recommendation to strike those words is due to the repeal of 10 U.S.C. 2323 in the McCain Act, section 812(a)(2) and the conforming amendments made by subparagraph (C) of that section to other provisions, including sec 2304e. (Section 2323 had expired at the close of FY2009.)

Clause (vi) of 812(a)(2)(C) amended 10 USC 2304e to strike (b)(2), deleting a reference to activity under 2323. The words in the section heading relate to the stricken material and thus probably should have been stricken as part of the conforming amendments in the McCain Act.

In other words, the amendment to the section heading here is NOT due to the reorganization but is a clean-up from last year.

One option would be to (1) leave the heading alone here, and (2) include amendments to make this change in the annual technical amendments package that HASC includes in the NDAA each year.

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(1) in the section heading, by striking the last six words; and

(2) in subsection (e) —

(A) in paragraph (1), by striking “102 Stat. 2468;”;

(B) in paragraph (2), by striking “(25 U.S.C. 450b(d))” and inserting “(25 U.S.C. 5304(d))”; and

(C) in paragraph (3), by striking “(25 U.S.C. 450b(e))” and inserting “(25 U.S.C. 5304(e))”.

(d) TRANSFER OF SECTION 2410d.—Section 2410d of title 10, United States Code, is transferred to chapter 285 of such title, as added by subsection (a), inserted after section 3902, as transferred and redesignated by subsection (c), and redesignated as section 3903.

(e) CODIFICATION OF NDAA SECTIONS.—

(1) CODIFICATION OF FY2004 NDAA SECTION.—Chapter 285 of title 10, United States Code, as added by subsection (a), is further amended by inserting after section 3903, as transferred and redesignated by paragraph (4), a new section 3904 consisting of—

(A) a heading as follows

“§ 3904 [Sec 853 of P.L. 108-136, sec 888 of P.L. 115-232 (10 U.S.C. 2302 note)].

Demonstration project for contractors employing persons with disabilities”; and

(B) a text consisting of the text of section 853 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C. 2302 note).

Commented [CR716]: Same comment as above in (b)(1). See clause (vii) of sec. 812(a)(2)(C) of the McCain Act.

Commented [CR717]: 1. Stat cite to be omitted as obsolete and used only when there is no USC cite. 2. The change in T25 section numbers in (ii) and (iii) is because of editorial reclassification See LRC website, here All three changes made by paragraph (2) are independent of the reorganization and could be made as part of a general technical amendments package.

Commented [CR718]: Note that this section was amended by clause (i) of sec. 812(a)(2)(C) of the FY2019 NDAA.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(2) [Sec 888 of P.L. 115-232 (10 U.S.C. 2302 note)] CODIFICATION OF FY2019

NDAA SECTION.—Section 3904 of title 10, United States Code, as added by paragraph

(1), is amended by adding at the end of subsection (a) the following new sentence: “The

Secretary shall include in the Defense Federal Acquisition Regulatory Supplement an

instruction on the ~~pilot program~~ **demonstration project** authorized under this section.”.

(3) CONFORMING REPEALS.—The following provisions of law are **repealed**:

(A) Section 853 of the National Defense Authorization Act for Fiscal Year

2004 (Public Law 108–136; 10 U.S.C. 2302 note).

(B) Section 888 of the John S. McCain National Defense Authorization

Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2302 note).

(f) CODIFICATION OF PERMANENT APPROPRIATIONS SECTION.—

(1) CODIFICATION.—Chapter 285 of title 10, United States Code, is further

amended by **inserting after section 3904**, as transferred and redesignated by subsection

(e), the following new section:

“§ 3905 [Sec 8025 of P.L. 108-87 (10 U.S.C. 2410d note)]. **Contract participation by**

agencies for the blind or other severely handicapped

“(a) Of the funds for the procurement of supplies or services appropriated by ~~this Act and~~

~~hereafter~~ **for the military functions of the Department of Defense**, qualified nonprofit agencies

for the blind or other severely handicapped shall be afforded the maximum practicable

opportunity to participate as subcontractors and suppliers in the performance of contracts let by

the Department of Defense.

Commented [CR719]: The original has “NLT 180 days after [Aug 13, 2018], omitted here as OBE.

Commented [CR720]: The FY19 section uses “pilot program”. The law being amended (sec. 853 of the FY2004 NDAA) uses “demonstration project”. For consistency, the FY19 language is changed to “demonstration project” to conform to the underlying law.

Commented [CR721]: In the original, “this Act” was the Department of Defense Appropriations Act, 2004 (Public Law 108–87). In the original, “and hereafter” made it permanent. Replacement clause is intended to have the same scope as the DoD Appropriations Act.

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1 “(b) ~~During the current fiscal year and hereafter, a~~ A business concern which has
2 negotiated with a military service or defense agency a subcontracting plan for the participation
3 by small business concerns pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d))
4 shall be given credit toward meeting that subcontracting goal for any ~~purchases~~ **purchase** made
5 from ~~a~~ qualified nonprofit ~~agencies~~ **agency** for the blind or other severely handicapped.

6 “(c) ~~For the purpose of~~ **In** this section, the ~~phrase term~~ 'qualified nonprofit agency for the
7 blind or other severely handicapped' means a nonprofit agency for the blind or other severely
8 handicapped that has been approved by the Committee for the Purchase from the Blind and
9 Other Severely Handicapped under chapter 85 of title 41, ~~United States Code.~~”.

10 (2) **CONFORMING REPEAL.**— Section 8025 of the Department of Defense
11 **Appropriations Act, 2004 (Public Law 108–87; 10 U.S.C. 2410d note)** is **repealed**.

12 (g) **TRANSFER OF SECTION 2362.**—

13 (1) **TRANSFER.**—Section **2362** of title 10, United States Code, is **transferred** to
14 chapter 285 of such title, as added by subsection (a), **inserted** after section 3905, as
15 added by subsection (f), **redesignated** as section **3906**, and **amended** by striking
16 “Assistant Secretary of Defense for Research and Engineering” both places it appears in
17 subsection (a) and inserting “Under Secretary of Defense for Research and Engineering”].

18 (2) **CODIFICATION OF FY2016 NDAA SECTION.**—Section 3906 of title 10, United
19 States Code, as transferred and redesignated by paragraph (1), is amended—

20 (A) by redesignating subsection (e) as subsection (f); and

21 (B) by inserting after subsection (d) the following new subsection (e):

Commented [CR722]: Amendments to change ASD(R&E) to USD(R&E) intended to be a technical revision in light of the new USD position.
DoD: If this should be something else, please advise.

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1 “(e) [Sec. 233 of P.L. 114-92 (10 U.S.C. 2362 note)] STRATEGIES FOR ENGAGEMENT
2 WITH COVERED EDUCATIONAL INSTITUTIONS.—

3 “(1) [233(a)(1)] STRATEGY BY BASIC RESEARCH ENTITIES.— The ~~heads~~ *head* of
4 each basic research entity shall ~~each~~ develop a strategy for how to engage with and
5 support the development of scientific, technical, engineering, and mathematics
6 capabilities of covered educational institutions in carrying out this section.

7 “(2) [233(a)(2)] ELEMENTS.—Each strategy under paragraph (1) shall include the
8 following:

9 “(A) Goals and vision for maintaining a credible and sustainable program
10 relating to the engagement and support under the strategy.

11 “(B) Metrics to enhance scientific, technical, engineering, and
12 mathematics capabilities at covered educational institutions, including with
13 respect to measuring progress toward increasing the success of such institutions to
14 compete for broader research funding sources other than set-aside funds.

15 “(C) Promotion of mentoring opportunities between covered educational
16 institutions and other research institutions.

17 “(D) Regular assessment of activities that are used to develop, maintain,
18 and grow scientific, technical, engineering, and mathematics capabilities.

19 “(E) Inclusion of faculty of covered educational institutions into program
20 reviews, peer reviews, and other similar activities.

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1 “(F) Targeting of undergraduate, graduate, and postgraduate students at
2 covered educational institutions for inclusion into research or internship
3 opportunities within the military department.

4 “(3) [233(b)] OFFICE OF THE SECRETARY.—The Secretary of Defense shall
5 develop and implement a strategy for how to engage with and support the development of
6 scientific, technical, engineering, and mathematics capabilities of covered educational
7 institutions pursuant to the strategies developed under paragraph (1).

8 “(4) [233(d)(1)] BASIC RESEARCH ENTITY DEFINED.—In this subsection, the term
9 'basic research entity' means an entity of the Department of Defense that executes
10 research, development, test, and evaluation budget activity 1 funding, as described in the
11 Department of Defense Financial Management Regulation.”

12 (3) **CONFORMING REPEAL**.—Section 233 of the National Defense Authorization
13 Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2362 note) is **repealed**.

14 (h) **TRANSFER OF SECTION 2410n**.—

15 (1) **TRANSFER**.—Section 2410n of title 10, United States Code, is **transferred** to
16 chapter 285 of such title, as added by subsection (a), **inserted** after section 3906, as
17 transferred and redesignated by subsection (g), and **redesignated** as section 3907.

18 (2) **CODIFICATION OF NDAA SECTION**.—Section 3907 of title 10, United States
19 Code, as transferred and redesignated by paragraph (1), is amended by inserting at the
20 end of subsection (b) the following new paragraph:

21 “(3) [Sec. 827(b) of P.L. 110-181 (10 U.S.C. 2410n note)] (A) ~~Not later than 60 days~~
22 ~~after January 28, 2008,~~ **The** Secretary of Defense shall publish a list of product categories for

Commented [CR723]: In the original, subsection (c) established reporting requirements for reports to be submitted NLT 180 days and NLT one year after Nov. 25, 2015. That subsection is omitted here as OBE.

Commented [CR724]: NLT clause to be omitted as OBE

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1 which Federal Prison Industries' share of the Department of Defense market is greater than 5
2 percent, based on the most recent fiscal year for which data is available.

3 "(B) The Secretary may modify the list published under subparagraph (A) (which initially
4 was required to be published not later than 60 days after January 28, 2008, and to be based on the
5 most recent fiscal year for which data was then available) at any time if the Secretary determines
6 that new data require adding a product category to the list or omitting a product category from
7 the list.

8 "(C) The Secretary shall carry out this paragraph in consultation with the Administrator
9 for Federal Procurement Policy."

10 (2) CONFORMING REPEAL.—Section 827(b) of the National Defense
11 Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2410n note) is
12 repealed.

13 TITLE V—RESEARCH AND ENGINEERING (PART V, SUBPART E)

14 SEC. 501. RESEARCH AND ENGINEERING GENERALLY.

15 (a) SWITCHING OF SUBPARTS E AND F.—

16 (1) NEW SUBPART E.—Part V of subtitle A of title 10, United States Code, as
17 added by section 801 of the John S. McCain National Defense Authorization Act for
18 Fiscal Year 2019 (Public Law 115-232), is amended—

19 (A) by striking subparts E and F;

20 (B) by inserting after subpart D the following new subpart E:

Commented [CR725]: This "based on" clause, as written, applied on its face to the initial list, published in accordance with the NLT clause.

Commented [CR726]: Parenthetical clause is not in original and is proposed for the codification to provide the basis for the list. Although the law does not expressly require that a modification be based on data available on a fiscal year basis, there may be an inference drawn from the requirement as to the original list.

Commented [CR727]: Subparts E and F as enacted in the FY2019 NDAA are being switched so that the subpart on R&E precedes the subpart on Major Systems and MDAPs. Subsection (a) here deletes the current shell subparts E & F (including their shell chapters) and inserts a new subpart E for the R&E chapters. The new subpart F, for Major Systems and MDAPs, will be inserted by further amendments below

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“Subpart E— ~~Special Categories Of Contracting: Research,~~

~~Development, Test, And Evaluation~~ *Research and Engineering*

Commented [CR728]: Heading of the subpart changed to “Research and Engineering”.

“CHAPTER 301— RESEARCH AND DEVELOPMENT ENGINEERING”

Commented [CR729]: Change from “Development” to “Engineering” here for consistency with new subpart heading..

GENERALLY

- Sec. 4001 [2358]. Research and development projects.
4002 [2371]. Research projects: transactions other than contracts and grants.
4003 [2371b]. Authority of the Department of Defense to carry out certain prototype projects.
4004 [2373]. Procurement for experimental purposes.
4005. [Sec. 867 of P.L. 115-91 (10 U.S.C. 2371 note)] Preference for use of other transactions and experimental authority.
4006 [Sec. 873 of P.L. 115-232, FY19 NDAA (10 USC 2371 note)]. Data, policy, and reporting on the use of other transactions.
4007 [2359]. Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation.
4008 [2374]. Merit-based award of grants for research and development.
4009 [2357]. Technology protection features activities.
4010 [Sec. 252 of P.L. 103-160, FY94 NDAA (10 USC 2358 note)]. Inclusion of women and minorities in clinical research projects.
4011 [Sec. 214 of P.L. 111-383, FY11 NDAA (10 USC 2358 note)]. Program for research, development, and deployment of advanced ground vehicles, ground vehicle systems, and components.
4012 [Sec. 227 of P.L. 115-232, FY19 NDAA (10 USC 2358 note)]. Human factors modeling and simulation activities.
4013 [Sec. 234 of P.L. 115-232, FY19 NDAA (10 USC 2358 note)]. Defense quantum information science and technology research and development program.
4014 [2364(a)] Coordination and communication of defense research activities and technology domain awareness.
4015 [2361]. Award of grants and contracts to colleges and universities: requirement of competition.
4016 [Sec. 802 of P.L. 103-160, FY94 NDAA (10 USC 2358 note)]. University research initiative support program.
4017 [Sec. 257 of P.L. 103-337, FY95 NDAA (10 USC 2358 note)]. Defense Established Program to Stimulate Competitive Research (DEPSCoR).
4018 [Sec. 217 of P.L. 115-91, FY18 NDAA (10 USC 2358 note)]. Mechanisms for expedited access to technical talent and expertise at academic institutions to support Department of Defense missions
4019 [Sec. 1286 of P.L. 115-232, FY19 NDAA (10 USC 2358 note)]. Initiative to support protection of national security academic researchers from undue influence and other security threats.”

Commented [CR730]: Note that sec. 2357 was added to title 10 by sec. 223 of the FY19 NDAA.

Commented [CR731]: Sections 4015-4019 all relate to universities. Should they be broken out separately? Separate chapter? A subchapter in this chapter?

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1 (2) TABLES OF CHAPTERS.—The tables of chapters at the beginning of subtitle A,
2 and at the beginning of part V of subtitle A, of title 10, United States Code, are amended
3 by striking the items relating to subparts E and F and inserting the following:

“SUBPART E— RESEARCH AND ENGINEERING

“301. Research and Engineering Generally 4001
“303. Innovation 4061
“305. Department of Defense Laboratories 4101
“307. Research and Development Centers and Facilities 4141
“309. Test and Evaluation4171”

4 (b) TRANSFER OF TITLE 10 SECTIONS TO NEW CHAPTER 301.—

5 (1) TRANSFERS.—Sections 2358, 2371, 2371b and 2373 of title 10, United States
6 Code, are transferred to chapter 301 of such title, as added by subsection (a), inserted
7 (in that order) after the table of sections, and redesignated as sections 4001, 4002, 4003,
8 and 4004, respectively.

9 (2) CONFORMING AMENDMENTS TO SECTION 4001.—Section 4001 of such title, as
10 transferred and redesignated by paragraph (1), is amended—

11 (A) in subsection (b)(5), by striking “sections 2371 or 2371b” and
12 inserting “sections 4002 or 4003”;

13 (B) in subsection (b)(6), by striking “section 2373” and inserting “sections
14 4004”; and

15 (C) in subsection (d), by striking “sections 2371 and 2371a” and inserting
16 “sections 4002 and 4143”.

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1 (3) CONFORMING AMENDMENTS TO SECTION 4002—Section 4002 of such title, as
2 transferred and redesignated by paragraph (1), is amended by striking “section 2358”
3 each place it appears and inserting “section 4001”.

4 (4) CONFORMING AMENDMENTS TO SECTION 4003.—Section 4003 of such title, as
5 transferred and redesignated by paragraph (1), is amended—

6 (A) by striking “section 2371” in subsections (a)(1), (b)(1), and (c)(3)(A)
7 and inserting “section 4002”;

8 (B) in subsection (e), by striking “DEFINITIONS.—In” and all that follows
9 through “The term ‘small’ and inserting “~~DEFINITION.—In this section, the term~~
10 ‘small’; and

Commented [CR732]: This amendment deletes current (e)(1), defining “nontraditional defense contractor” by reference to 2302(9). The definition will now be in ch. 201 and will apply to all of Part V.

11 (C) in subsection (f)—

12 (i) by striking “section 2304” in paragraph (2)(A) and inserting
13 “sections 3201-3205 of this title”; and

14 (ii) by striking “chapter 137” in paragraph (5) and inserting
15 “[tbd]”.

Commented [CR733]: This was para (3) before being redesignated as para (5) by sec. 211(3)(A) of the FY19 NDAA.

16 (5) CONFORMING AMENDMENT TO SECTION 4004—Section 4004 of such title, as
17 transferred and redesignated by paragraph (1), is amended by striking “chapter 137” in
18 subsection (b) and inserting “[tbd]”.

19 (c) CODIFICATION OF FY2018 NDAA SECTION.—

20 (1) CODIFICATION.—Chapter 301 of title 10, United States Code, as added by subsection
21 (a), is amended by **adding** after section 4004, as transferred and redesignated by subsection
22 (b)(1), the following new **section**:

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1 “§4005. [Sec. 867 of P.L. 115-91, FY18 NDAA (10 U.S.C. 2371 note)] Preference for use of
2 **other transactions and experimental authority**

3 “In the execution of science and technology and prototyping programs, the Secretary of
4 Defense shall establish a preference, to be applied in circumstances determined appropriate by
5 the Secretary, for using transactions other than contracts, cooperative agreements, and grants
6 entered into pursuant to sections 4002 and 4003 of this title and authority for procurement for
7 experimental purposes pursuant to section 4004 of this title.”.

8 (2) **CONFORMING REPEAL.**—Section 867 of the National Defense Authorization
9 Act for Fiscal Year 2018 (Public Law 115-91;10 U.S.C. 2371 note) is repealed.

10 **(d) CODIFICATION OF FY2019 NDAA SECTION.**—

11 (1) **CODIFICATION.**—Such chapter is further amended by adding after section
12 4005, as added by subsection (c), a new section 4006 consisting of—

13 (A) a heading as follows:

14 “§ 4006 [Sec. 873 of P.L. 115-232, FY19 NDAA (10 USC 2371 note)]. **Data, policy, and**
15 **reporting on the use of other transactions”; and**

16 (B) a text consisting of the text of section 873 of the John S. McCain
17 National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232;
18 10 U.S.C. 2371 note).

19 (2) **CONFORMING REPEAL.**—Section 873 of the John S. McCain National
20 Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2371
21 note) is repealed.

22 **(e) TRANSFER OF ADDITIONAL TITLE 10 SECTIONS TO NEW CHAPTER.**—

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1 (1) TRANSFERS.—Sections 2359, 2374, 2357, and 2361 of title 10, United States
2 Code, are **transferred** to chapter 301 of such title, as added by subsection (a), **added** (in
3 that order) after section 4006, as added by subsection (f), and **redesignated** as sections
4 4007, 4008, 4009, and 4015, respectively.

5 (2) CONFORMING AMENDMENT TO SECTION 4007.—Section 4007 of such title, as
6 transferred and redesignated by paragraph (1), is amended by striking “Under Secretary
7 of Defense for Acquisition, Technology, and Logistics” in subsection (b)(1) and **inserting**
8 “Under Secretary of Defense for Research and Engineering”.

9 (3) CONFORMING AMENDMENT TO SECTION 4008.—Section 4008 of such title, as
10 transferred and redesignated by paragraph (1), is amended by striking “section 2303(a)”
11 both places it appears and inserting “section 3063”.

12 (4) CONFORMING AMENDMENT TO SECTION 4009.—Section 4009 of such title, as
13 transferred and redesignated by paragraph (1), is amended by striking “, as defined in
14 section 2302(5) of title 10, United States Code” in subsection (c)(1).

15 **(f) CODIFICATION OF FY1994 NDAA SECTION.—**

16 (1) CODIFICATION.—Chapter 301 of title 10, United States Code, as added by
17 subsection (a), is amended by inserting after section 4009, as transferred and redesignated
18 by subsection (e)(1), a new section 4010 consisting of—

19 (A) a heading as follows:

20 **“§ 4010 [Sec. 252 of P.L. 103-160, FY94 NDAA (10 USC 2358 note)]. Inclusion of women**
21 **and minorities in clinical research projects”; and**

Commented [CR734]: NB: Amendments below will fill in sections 4010-4014.

Commented [CR735]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (B) a text consisting of the text of section 252 of the National Defense
2 Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2358
3 note), revised by striking “Armed Forces” each place it appears and inserting
4 “armed forces”.

5 (2) **CONFORMING REPEAL.**—Section 252 of the National Defense Authorization
6 Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2358 note) is repealed.

7 (g) **CODIFICATION OF FY2011 NDAA SECTION.**—

8 (1) **CODIFICATION.**—Such chapter is further amended by inserting after section
9 4010, as added by subsection (f), a new section 4011 consisting of—

10 (A) a heading as follows:

11 “§ 4011 [Sec. 214 of P.L. 111-383, FY11 NDAA (10 USC 2358 note)]. Program for research,
12 development, and deployment of advanced ground vehicles, ground vehicle
13 systems, and components”; and

14 (B) a text consisting of the text of section 214 of the Ike Skelton National
15 Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C.
16 2358 note).

17 (2) **CONFORMING REPEAL.**—Section 214 of the Ike Skelton National Defense
18 Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2358 note) is
19 repealed.

20 (h) **CODIFICATION OF FY2019 NDAA SECTION.**—

21 (1) **CODIFICATION.**—Such chapter is further amended by inserting after section
22 4011, as added by subsection (g), a new section 4012 consisting of—

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (A) a heading as follows:
2 “§ 4012 [Sec. 227 of P.L. 115-232, FY19 NDAA (10 USC 2358 note)]. **Human factors**
3 **modeling and simulation activities”;** and

4 (B) a text consisting of the text of section 227 of the John S. McCain
5 National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232;
6 10 U.S.C. 2358 note).

7 (2) **CONFORMING REPEAL.**—Section 227 of the John S. McCain National
8 Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2358
9 note) is repealed.

10 (i) **CODIFICATION OF FY2019 NDAA SECTION.**—

11 (1) **CODIFICATION.**—Such chapter is further amended by inserting after section
12 4012, as added by subsection (h), a new section 4013 consisting of—

13 (A) a heading as follows:
14 “§ 4013 [Sec. 234 of P.L. 115-232, FY19 NDAA (10 USC 2358 note)]. **Defense quantum**
15 **information science and technology research and development program.”;**
16 **and**

17 (B) a text consisting of section 234 of the John S. McCain National
18 Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C.
19 2358 note), revised by striking “not later than 180 days after the date of the
20 enactment of this Act,” in subsection (c)(3) and inserting “not later than 180 days
21 after the date of the enactment of the John S. McCain National Defense
22 Authorization Act for Fiscal Year 2019 (Public Law 115-232),”.

Commented [CR736]: DOD, PLEASE ADVISE as to the actual date is that is being used for purposes of sec. 234 of the FY2019 NDAA, that is, the date that is 180 days after Aug. 13, 2108.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (2) **CONFORMING REPEAL.**—Section 234 of the John S. McCain National
2 Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2358
3 note) is repealed.

4 (j) **TRANSFER OF SECTION 2364(a).**—The heading and subsection (a) of section 2364 of
5 title 10, United States Code, are **transferred** to chapter 301 of such title, as so amended,
6 **inserted** after section 4013, as added by subsection (i), **redesignated** as section 4014, and
7 revised by adding at the end the following new subsection:

8 “(b) **DEFINITION.**—In this section, the term ‘Defense research facility’ has the meaning
9 given that term by section 4142(b) of this title.”.

10 (k) **CODIFICATION OF FY1994 NDAA SECTION.**—

11 (1) **CODIFICATION.**—Such chapter is further amended by inserting after section
12 4015, as transferred and redesignated by subsection (e)(1), a new section 4016 consisting
13 of—

14 (A) a heading as follows:

15 “§ 4016 [Sec. 802 of P.L. 103-160, FY94 NDAA (10 USC 2358 note)]. **University research**
16 **initiative support program”;** and

17 (B) a text consisting of subsections (a) through (f) of section 802 of the
18 National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160;
19 10 U.S.C. 2358 note), revised—

20 (i) by **striking** “Assistant Secretary” each place it appears and
21 inserting “Under Secretary”; and

Commented [CR737]: For the reorganization, 2364 will be split into two sections. Subsection (a) is here. Subsection (b) (“Functions of Defense research facilities”) will be in the chapter on R&D Centers and Facilities, as sec. 4142.

Commented [CR738]: Subsection (g) of the original authorized funds for FY1994 and is omitted in the codification.

Commented [CR739]: This amendment would substitute USD(R&E). for ASD(R&E), as a conforming amendment to the recent reorganization. Is that change OK?

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(ii) in subsection (e), by striking “section 2361(a) of title 10,

United States Code” and inserting “section 4015(a) of this title”.

(2) **CONFORMING REPEAL.**—Section 802 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2358 note) is repealed.

(I) CODIFICATION OF FY1995 NDAA SECTION.—

(1) **CODIFICATION.**—Such chapter is further amended by adding after section 4016, as added by subsection (k), a new section 4017 consisting of—

(A) a heading as follows:

“§ 4017 [Sec. 257 of P.L. 103-337, FY95 NDAA (10 USC 2358 note)]. **Defense Established Program to Stimulate Competitive Research (DEPSCoR)**”; and

(B) a text consisting of the text of section 257 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 10 U.S.C. 2358 note), revised—

(i) in subsection (a), by striking “Assistant Secretary” and inserting “Under Secretary”; and

(ii) in subsection (d)—

(I) in paragraph (1), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Research and Engineering”; and

(II) in paragraph (2), by striking “of Defense for Acquisition, Technology, and Logistics”.

(2) **CONFORMING REPEALS.**—The following provisions of law are repealed:

Commented [CR740]: This amendment would substitute USD(R&E) for ASD(R&E), as a conforming amendment to the recent reorganization. Is that change OK?

Commented [CR741]: OK to change references here from USD(AT&L) to USD(R&E)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (A) Section 257 of the National Defense Authorization Act for Fiscal Year
2 1995 (Public Law 103-337; 10 U.S.C. 2358 note).

3 (B) Section 307 of the 1997 Emergency Supplemental Appropriations Act
4 for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts,
5 Including Those in Bosnia (Public Law 105-18; 10 U.S.C. 2358 note).

6 (m) CODIFICATION OF FY2018 NDAA SECTION.—

7 (1) CODIFICATION.—Such chapter is further amended by adding after section
8 4017, as added by subsection (l), a new section 4018 consisting of—

9 (A) a heading as follows:

10 “§ 4018 [Sec. 217 of P.L. 115-91, FY18 NDAA (10 USC 2358 note)]. Mechanisms for
11 expedited access to technical talent and expertise at academic institutions to
12 support Department of Defense missions”; and

13 (B) a text consisting of the text of section 217 of the National Defense
14 Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2358
15 note).

16 (2) CONFORMING REPEAL.—Section 217 of the National Defense Authorization
17 Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2358 note) is repealed.

18 (n) CODIFICATION OF FY2019 NDAA SECTION.—

19 (1) CODIFICATION.—

20 (A) IN GENERAL.—Such chapter is further amended by adding after section
21 4018, as added by subsection (m), a new section 4019 consisting of—

22 (i) a heading as follows:

Commented [CR742]: Sec. 307 of P.L. 105-18 is classified as a note next to sec. 257 of the FY95 NDAA. Sec. 307 expanded the coverage of sec. 257 by defining “State” to include the territories, etc. Subsection (f) of sec. 257, added year later the same year by the FY98 NDAA, provided the same content, apparently making sec. 307 of P.L. 105-18 obsolete.

Commented [CR743]: Note that this section was amended by the FY19 NDAA, sec 236, including an extension of the sunset in subsection (f) to 9/30/22.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “§ 4019 [Sec. 1286 of P.L. 115-232, FY19 NDAA (10 USC 2358 note)]. Initiative to support
2 protection of national security academic researchers from undue influence
3 and other security threats”; and

4 (ii) a text consisting of the text of subsections (a), (b), (c), and (f)
5 of section 1286 of the John S. McCain National Defense Authorization
6 Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2358 note),
7 revised by redesignating subsection (f) as subsection (d).

8 (B) TRANSITION PROVISION.—Any reference in subsections (d) and (e) of
9 section 1286 of the John S. McCain National Defense Authorization Act for
10 Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2358 note) to “subsection (a)”
11 shall be treated as including a reference to section 4019 of title 10, United States
12 Code, as added by subparagraph (A).

13 (2) CONFORMING REPEAL.—Subsections (a), (b), (c), and (f) of section 1286 of
14 the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public
15 Law 115-232; 10 U.S.C. 2358 note) are repealed.

16 (o) CROSS-REFERENCE AMENDMENTS.—

17 (1) Sections 1746(d)(1) and 2165(f)(1) of title 10, United States Code, are
18 amended by striking “section 2358” and inserting “section 4001”.

19 (2) Section 2284(b)(1)(D) of such title is amended by striking “section 2371” and
20 inserting “section 4002”.

21 (3) Section 1904(a)(1) of title 41, United States Code, is amended by striking
22 “section 2371” both places it appears and inserting “section 4002”

Commented [CR744]: Subsection (d) requires a briefing NLT 120 after enactment of the FY19 NDAA. Subsection (e) requires a report NLT one year after enactment of the FY19 NDAA. They will not be codified, but since they may still be ongoing, they will also not be repealed in the general repeal section at the end. And see subparagraph (B) immediately below.

Commented [CR745]: See note immediately above.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (4) Section 2311 of title 41, United States Code, is amended by striking “section
2 2371” and inserting “section 4002”.

3 (5) Section 218(b)(1) of the National Defense Authorization Act for Fiscal Year
4 2016 (Public Law 114-92; 10 U.S.C. 2501 note) is amended by striking “section 2371b”
5 and inserting “section 4003”.

6 **SEC. 502. INNOVATION.**

7 (a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
8 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
9 (Public Law 115-232), is amended by inserting after chapter 301, as added by section 501, the
10 following new chapter:

11 **“CHAPTER 303—INNOVATION**

Sec.

4061 [2359a]. Defense Research and Development Rapid Innovation Program.

4062 [2359b]. Defense Acquisition Challenge Program.

4063 [Sec. 225 of P.L. 115-91, FY18 NDAA (10 USC 2359 note)]. Support for national security
innovation and entrepreneurial education.

4064 [2374a]. Prizes for advanced technology achievements.

4065 [Sec. 812(a)-(c),(e) of P.L. 106-65, FY00 NDAA (10 USC 2302 note)]. Program to increase
business innovation in defense acquisition programs.

4066 [Sec. 236 of P.L. 114-328, FY17 NDAA (10 USC 2358 note)]. Enhanced interaction
between the Defense Advanced Research Projects Agency and the service academies:
pilot program.

4067 [Sec. 252(a),(c),(d) of P.L. 112-239, FY13 NDAA (10 USC 2358 note)]. Regional advanced
technology clusters: support.

4068 [2365]. Global Research Watch Program.

4069 [Sec. 218 of P.L. 109-364, FY07 NDAA (10 USC 2358 note)]. Hypersonics development.

4070 [Sec. 1504 of P.L. 110-417, FY09 NDAA (10 USC 2358 note)]. Science and technology
investment strategy to defeat or counter improvised explosive devices.

4071 [Sec. 212(a),(b) of P.L. 108-375, FY05 NDAA (10 USC 2358 note)]. Collaborative
program for research and development of vacuum electronics technologies.

4072 [Sec. 234(a)-(c) of P.L. 108-136, FY04 NDAA (10 USC 2358 note)]. Program to expand
high-speed, high-bandwidth capabilities for network-centric operations.

4073 [Sec. 1601 of P.L. 108-136, FY04 NDAA (10 USC 2358 note)]. Research and development
of defense biomedical countermeasures.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

- 4074 [Sec. 245(a)-(d) of P.L. 107-314, FY03 NDAA (10 USC 2358 note)]. Vehicle fuel cell program.
4075 [Sec. 246 of P.L. 107-314, FY03 NDAA (10 USC 2358 note)]. Nanotechnology research and development program.
4076 [Sec. 220 of P.L. 115-232, FY19 NDAA (10 USC 2364 note)]. Innovators information repository.
4077 [Sec. 238 of P.L. 115-232, FY19 NDAA (10 USC 2358 note)]. Joint artificial intelligence research, development, and transition activities.
4078 [Sec. 230 of P.L. 115-232, FY19 NDAA (10 USC 2358 note)]. National security innovation activities."

(b) TRANSFER OF TITLE 10 SECTIONS.—

(1) TRANSFERS.—Sections 2359a, 2359b, 2374a, and 2365 of title 10, United States Code, are transferred to chapter 303 of such title, as added by subsection (a), inserted (in that order) after the table of sections, and redesignated as sections 4061, 4062, 4064, and 4068, respectively.

(2) CONFORMING AMENDMENTS TO SECTION 4061.—Section 4061 of such title, as transferred and redesignated by paragraph (1), is amended in subsection (b)(5), by striking "section 2302e" and inserting "section 3345".

(3) CONFORMING AMENDMENTS TO SECTION 4062.—Section 4062 of such title, as transferred and redesignated by paragraph (1), is amended—

(A) in subsection (c)(4)(A)—

(i) in clause (i), by striking "section 2433(d)" and inserting "section 4374"; and

(ii) in clause (ii), by striking "section 2433(e)(2)(A)" and inserting "section ????"

(B) in subsection (j), by striking "chapter 137" and inserting "TBA"; and

Commented [CR746]: 10 U.S.C. 2359a was added by sec. 224 of the FY19 NDAA.

Commented [CR747]: Following the 2009 amendments made by WSARA, 2433(e)(2) no longer has a subparagraph (A). The content of 2433(e)(2) as in effect before those amendments appears to now be in 2433a. Note that (e)(2) now refers to 2433a. What is the correct replacement for the reference to 2433(e)(2)(A)?

Commented [CR748]: What provisions of chapter 137 are covered by the reference here to "the use of competitive procedures for purposes of chapter 137"?

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (C) in subsection (k)(2), by striking “(as defined in section 2302(5) of this
2 title)”.

Commented [CR749]: This definition will apply to all of the new Part V, so the cross reference will no longer be needed.

3 (4) CONFORMING AMENDMENTS TO SECTION 4064—Section 4064 of such title, as
4 transferred and redesignated by paragraph (1), is amended by striking “section 2304” in
5 subsection (f) and inserting “sections 3201-3205”.

Commented [CR750]: Do all parts of sec. 2304 have to be cited in the context of a reference to “the use of competitive procedures for the purposes of section 2304”? Or could this list be shortened with no loss of meaning?

6 (c) CODIFICATION OF FY2018 NDAA SECTION.—

7 (1) CODIFICATION.—Chapter 303 of title 10, United States Code, as amended by
8 subsection (a), is amended by inserting after section 4062, as transferred and redesignated
9 by subsection (b)(1), a new section 4063 consisting of—

10 (A) a heading as follows:

11 “§ 4063 [Sec. 225 of P.L. 115-91, FY18 NDAA (10 USC 2359 note)]. Support for national
12 security innovation and entrepreneurial education”; and

13 (B) a text consisting of the text of section 225 of the National Defense
14 Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2359
15 note), revised by striking “Armed Forces” in subsection (d) and inserting “armed
16 forces”.

17 (2) CONFORMING REPEAL.—Section 225 of the National Defense Authorization
18 Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2359 note) is repealed.

19 (d) CODIFICATION OF FY2000 NDAA SECTION.—

20 (1) CODIFICATION.—Such chapter is further amended by inserting after section
21 4064, as transferred and redesignated by subsection (b)(1), a new section 4065 consisting
22 of—

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(A) a heading as follows:

“§ 4065 [Sec. 812(a)-(c),(e) of P.L. 106-65, FY00 NDAA (10 USC 2302 note)]. Program to increase business innovation in defense acquisition programs”; and

(B) a text consisting of the text of subsections (a), (b), (c), and (e) of section 812 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 10 U.S.C. 2302 note), revised—

(i) by striking subsections (a) and (b) and inserting the following:

“(a) IMPLEMENTATION OF PROGRAM.— The Secretary of Defense shall implement a program to provide for increased innovative technology for acquisition programs of the Department of Defense from commercial private sector entities, including small-business concerns.”;

(ii) by redesignating subsection (c) as subsection (b) and in that subsection striking “ELEMENTS OF PLAN.—The plan” and inserting “ELEMENTS OF PROGRAM.—The program”; and

(iii) by redesignating subsection (e) as subsection (c).

(2) CONFORMING REPEAL.—Section 812 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 10 U.S.C. 2302 note) is repealed.

(e) CODIFICATION OF FY2017 NDAA SECTION.—

(1) CODIFICATION.—Such chapter is further amended by inserting after section 4065, as added by subsection (d), a new section 4066 consisting of—

(A) a heading as follows:

Commented [CR751]: Is the program still in effect? That is, is the SecDef still implementing the plan required under this section?
DOD, PLEASE ADVISE AS TO ABOVE.

Commented [CR752]: Subsection (d) of the original is not part of the note section. It was a one-time report requirement that was editorially omitted from the note.

Commented [CR753]: Note the word “program” in the section heading of the original.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “§ 4066 [Sec. 236 of P.L. 114-328, FY17 NDAA (10 USC 2358 note)]. Enhanced interaction
2 between the Defense Advanced Research Projects Agency and the service
3 academies: pilot program”; and

4 (B) a text consisting of the text of section 236 of the National Defense
5 Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2358
6 note).

7 (2) **CONFORMING REPEAL.**—Section 236 of the National Defense Authorization
8 Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2358 note) is repealed.

9 **(f) CODIFICATION OF FY2013 NDAA SECTION.**—

10 (1) **CODIFICATION.**—Such chapter is further amended by inserting after section
11 4066, as added by subsection (e), a new section 4067 consisting of—

12 (A) a heading as follows:

13 “§ 4067 [Sec. 252(a),(c),(d) of P.L. 112-239, FY13 NDAA (10 USC 2358 note)]. Regional
14 advanced technology clusters: support”; and

15 (B) a text consisting of the text of subsections (a), (c), and (d) of section
16 252 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law
17 112-239; 10 U.S.C. 2358 note), revised—

18 (i) by redesignating subsections (c) and (d) as subsections (b) and
19 (c), respectively; and

20 (ii) in subsection (c), as so redesignated, by striking
21 “DEFINITIONS.—In this” and all the follows through “The term ‘regional’
22 and inserting “DEFINITION.—In this section, the term ‘regional’”.

Commented [CR754]: Subsection (b) of the original required a report NLT 180 days after [Jan. 2, 2013] and is omitted.

Commented [CR755]: This amendment deletes a definition that is only used in the original subsection (b), omitted as OBE. [see above note]

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (2) **CONFORMING REPEAL.**—Section 252 of the National Defense Authorization
2 Act for Fiscal Year 2013 (Public Law 112-239; 10 U.S.C. 2358 note) is repealed.

3 (f) **CODIFICATION OF FY2007 NDAA SECTION.**—

4 (1) **CODIFICATION.**—Such chapter is further amended by adding after section
5 4068, as transferred and redesignated by subsection (b)(1), a new section 4069 consisting
6 of—

7 (A) a heading as follows:

8 “§ 4069 [Sec. 218 of P.L. 109-364, FY07 NDAA (10 USC 2358 note)]. Hypersonics
9 development”; and

10 (B) a text consisting of the text of subsection (a) through (d) of section 218
11 of the John Warner National Defense Authorization Act for Fiscal Year 2007
12 (Public Law 109-364; 10 U.S.C. 2358 note), revised by striking the comma in
13 subsection (c)(4) after “warfighter”.

14 (2) **CONFORMING REPEAL.**—Section 218 of the John Warner National Defense
15 Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2358 note) is
16 repealed.

17 (g) **CODIFICATION OF FY2009 NDAA SECTION.**—

18 (1) **CODIFICATION.**—Such chapter is further amended by adding after section
19 4069, as added by subsection (f), a new section 4070 consisting of—

20 (A) a heading as follows:

Commented [CR756]: The original has a subsection (e) which terminated with the budget submission for FY2016 and is omitted as OBE.

Commented [CR757]: This corrects an existing typo and is not essential for the codification.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “§ 4070 [Sec. 1504 of P.L. 110-417, FY09 NDAA (10 USC 2358 note)]. Science and
2 technology investment strategy to defeat or counter improvised explosive
3 devices”; and

4 (B) a text consisting of the text of section 1504 of the Duncan Hunter
5 National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417;
6 10 U.S.C. 2358 note), revised—

7 (i) in subsection (a), by striking “The Director of the Joint
8 Improvised Explosive Device Defeat Organization (JIEDDO), jointly with
9 the Assistant Secretary of Defense for Research and Engineering” and
10 inserting “The Director of the Joint Improvised-Threat Defeat
11 Organization (JIDO), jointly with the Under Secretary of Defense for
12 Research and Engineering”;

13 (ii) in subsection (b)—

14 (I) by striking “JIEDDO” each place it appears and
15 inserting “JIDO”; and

16 (II) by striking “Assistant Secretary” in paragraph (9) and
17 inserting “Under Secretary”.

18 (2) CONFORMING REPEAL.—Section 1504 of the Duncan Hunter National
19 Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2358
20 note) is repealed.

21 (h) CODIFICATION OF FY2005 NDAA SECTION.—

Commented [CR758]: JIEDDO has been renamed JIDO and is under the Defense Threat Reduction Agency, which reports to the ASD(A&S). http://www.dtra.mil/Mission/JIDO/History/

Commented [CR759]: Are these the correct replacements for references to the Director of JIEDDO and to the ASD(R&E)? Should the function now in the Director of a Defense Agency be moved up, in the statute, to the parent Defense Agency (DTRA) or to the USD(A&S)?

DOD: PLEASE ADVISE AS TO THE ABOVE AND THE APPROPRIATE CHANGE HERE TO THE CURRENT REFERENCE TO JIEDDO.

Commented [CR760]: This should conform to whatever decision is made above as to the current reference in subsection (a) to the ASD(R&E).

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (1) CODIFICATION.—Such chapter is further amended by adding after section
2 4070, as added by subsection (g), a new section 4071 consisting of—

3 (A) a heading as follows:

4 “§ 4071 [Sec. 212(a),(b) of P.L. 108-375, FY05 NDAA (10 USC 2358 note)]. Collaborative
5 program for research and development of vacuum electronics technologies”;
6 and

7 (B) a text consisting of the text of subsections (a) and (b) of section 212 of
8 the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005
9 (Public Law 108-375; 10 U.S.C. 2358 note), revised by striking “Assistant
10 Secretary” in subsection (b) and inserting “Under Secretary”.

11 (2) CONFORMING REPEAL.—Section 212 of the Ronald W. Reagan National
12 Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375; 10 U.S.C. 2358
13 note) is repealed.

14 (i) CODIFICATION OF FY2004 NDAA SECTION.—

15 (1) CODIFICATION.—Such chapter is further amended by adding after section
16 4071, as added by subsection (h), a new section 4072 consisting of—

17 (A) a heading as follows:

18 “§ 4072 [Sec. 234(a)-(c) of P.L. 108-136, FY04 NDAA (10 USC 2358 note)]. Program to
19 expand high-speed, high-bandwidth capabilities for network-centric
20 operations”; and

Commented [CR761]: Subsection (c) of the original required a report NLT Jan. 31, 2005, and is omitted.

Commented [CR762]: This should conform to whatever decision is made above as to the current reference in subsection (a) to the ASD(R&E).

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(B) a text consisting of the text of subsections (a), (b), and (c) of section 234 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 10 U.S.C. 2358 note), revised—

(i) by striking “Armed Forces” each place it appears and inserting “armed forces”; and

(ii) by striking “Joint Forces Command” in subsection (c)(4) and inserting “????”.

(2) CONFORMING REPEAL.—Section 234 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 10 U.S.C. 2358 note) is repealed.

(j) CODIFICATION OF FY2004 NDAA SECTION.—

(1) CODIFICATION.—Such chapter is further amended by adding after section 4072, as added by subsection (i), a new section 4073 consisting of—

(A) a heading as follows:

“§ 4073 [Sec. 1601 of P.L. 108-136, FY04 NDAA (10 USC 2358 note)]. Research and development of defense biomedical countermeasures”; and

(B) a text consisting of the text of section 1601 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 10 U.S.C. 2358 note), revised—

(i) in subsection (a)—

(I) by striking “(in this section referred to as the ‘Secretary’)”;

(II) by striking “but not limited to”; and

Commented [CR763]: Subsection (d) of the original required a report with the budget submission for FY2006 and is omitted.

Commented [CR764]: DOD, PLEASE ADVISE as to how the reference to “Joint Forces Command” should be updated. Or should it just be omitted, on the basis that SecDef will coordinate with whatever DoD entities are appropriate.

Commented [CR765]: In the notes under 10 USC 2358, there are two sections under the header “Research and Development Of Defense Biomedical Countermeasures”. The first section, codified here, is sec. 1604 of the FY04 NDAA. The second section, from two years earlier, is sec. 1044(a) of the FY02 NDAA. See the amendments made by subsection (k) below.

Commented [CR766]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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(III) by striking “Armed Forces” and inserting “armed forces”;

(ii) in subsection (c)(1)—

(I) by striking “, United States Code” after “title 41”; and

(II) by striking “sections 2371 and 2371b of title 10, United States Code” and inserting “sections 4002 and 4003 of this title”;

(iii) in subsection (c)(2)—

(I) by striking “, United States Code” after “title 40”;

(II) by striking “, United States Code” after “title 41”; and

(III) by striking “Section 2313 of title 10, United States Code” and inserting “Section 3841 of this title”;

(iv) in subsection (d)—

(I) by striking “title 10, United States Code,” in paragraph (2) and inserting “this title”; and

(II) by striking “title 10, United States Code” in paragraph (6) and inserting “this title”;

(v) in subsection (e)(1), by striking “title 10, United States Code,” and inserting “this title”;

(vi) in subsection (f)—

(I) by striking “section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721)” and inserting “section 4175(a) of this title”;

Commented [CR767]: Note that subsection (e) relates to personal services contracts and should be revisited IF the 809 Panel recommendations relating to personal services contracts are adopted.

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(II) by striking "section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261)" and inserting "section 1599h of this title"; and

(III) by striking "section 1101 of this Act" and inserting "section 1101 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136)"; and

(vii) in subsections (d), (e), and (f), by striking "under this section" and inserting "under subsection (a)".

(2) CONFORMING REPEAL.—Section 1601 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 10 U.S.C. 2358 note) is repealed.

(k) CODIFICATION OF FY2002 NDAA SECTION.—

(1) CODIFICATION.—[Sec. 1044(a) of P.L. 107-107, FY02 NDAA (10 USC 2358 note)]. Such chapter is further amended by adding at the end of section 4073, as added by subsection (j), a new subsection (g) consisting of the text of subsection (a) of section 1044 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 10 U.S.C. 2358 note), revised by striking "(a) AGGRESSIVE PROGRAM REQUIRED.—

(1) The" and inserting "(g) ADDITIONAL PROGRAM.—(1) In addition to the program required under subsection (a), the".

(2) CONFORMING REPEAL.—Section 1044(a) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 10 U.S.C. 2358 note) is repealed.

(l) CODIFICATION OF FY2003 NDAA SECTION.—

Commented [CR768]: See amendments made by sec. 1121(a) & (b) of the FY17 NDAA (P.L. 114-328), repealing section 1101 and enacting 10 U.S.C.1599h. (This amendment probably should have been made as a conforming amendment at that time.)

Commented [CR769]: Sec. 1101 of P.L. 108-136 enacted ch. 99 of title 5, which has been substantially amended since then.

DOD: PLEASE ADVISE: What authority (if any) is being applied under this reference now? Specifically, how should this reference be changed/updated to reflect current practice under sec. 1601(f) of P.L. 108-136 (10 U.S.C.2358 note)?

Commented [CR770]: In the notes under 10 USC 2358, there are two sections under the header "Research and Development Of Defense Biomedical Countermeasures". The first section, codified above, is sec. 1604 of the FY04 NDAA. The second section, codified here, was enacted two years earlier.

DOD: PLEASE ADVISE-- Should the second section, from the FY02 NDAA, be codified, as shown here? Or, was it superseded by the FY04 provision and now obsolete? If so, would it be appropriate to repeal it without codification?

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1 (1) CODIFICATION.—Such chapter is further amended by adding after section
2 4073, as added by subsection (j), a new section 4074 consisting of—

3 (A) a heading as follows:

4 “§ 4074 [Sec. 245(a)-(e) of P.L. 107-314, FY03 NDAA (10 USC 2358 note)]. Vehicle fuel cell
5 program”; and

6 (B) a text consisting of the text of subsections (a) through (e) of section
7 245 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003
8 (Public Law 107-314; 10 U.S.C. 2358 note).

9 (2) CONFORMING REPEAL.—Section 245 of the Bob Stump National Defense
10 Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2358 note) is
11 repealed.

12 (m) CODIFICATION OF FY2003 NDAA SECTION.—

13 (1) CODIFICATION.—Such chapter is further amended by adding after section
14 4074, as added by subsection (l), a new section 4075 consisting of—

15 (A) a heading as follows:

16 “§ 4075 [Sec. 246 of P.L. 107-314, FY03 NDAA (10 USC 2358 note)]. Nanotechnology
17 research and development program”; and

18 (B) a text consisting of the text of section 246 of the Bob Stump National
19 Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C.
20 2358 note), revised—

21 (i) in subsection (b)(4), by striking “Armed Forces” and inserting
22 “armed forces”.

Commented [CR771]: Is this program still in effect? DOD, PLEASE ADVISE as to the status of this program. Still in effect? Concluded? And this provision of law? Ongoing applicability? Obsolete?
Commented [CR772]: Subsection (f) of the original provided for initial funding (for FY03) and is omitted as OBE.

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(ii) in subsection (c), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Research and Engineering”;

(iii) In subsection (d)(1), by striking “Assistant Secretary of Defense for Research and Engineering, the military departments,” and inserting “the military departments”; and

(iv) in subsection (e), by striking “of Defense for Acquisition, Technology, and Logistics”.

(2) CONFORMING REPEAL.—Section 246 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2358 note) is repealed.

(n) CODIFICATION OF FY2019 NDAA SECTION.—

(1) CODIFICATION.—Such chapter is further amended by adding after section 4075, as added by subsection (m), a new section 4076 consisting of—

(A) a heading as follows:

“§ 4076 [Sec. 220 of P.L. 115-232, FY19 NDAA (10 USC 2364 note)]. Establishment of innovators Innovators information repository in the Department of Defense”; and

(B) a text consisting of the text of section 220 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2364 note), revised—

Commented [CR773]: OK to change reference here from USD(AT&L) to USD(R&E)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F). DoD, please confirm.

Commented [CR774]: Here, it seems that there is nothing to insert in place of ASD(R&E).

Commented [CR775]: In the context of a section in title 10, “Establishment of” seems unnecessary; the requirement will be permanent.

Commented [CR776]: In the context of a section in title 10, “in the Department of Defense” seems unnecessary.

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(i) in subsection (a), by striking “Not later than one year after the date of the enactment of this Act, the Secretary” and inserting “The Secretary”; and

(ii) in subsection (d), by striking “After the” and all the follows through “the Secretary” and inserting “The Secretary”.

(2) CONFORMING REPEAL.—Section 220 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2364 note) is repealed.

(3) TRANSITION PROVISION.—The innovators information repository required to be established within the Department of Defense pursuant to section 4076 of title 10, United States Code, as added by paragraph (1), shall be established not later than August 13, 2019.

(o) CODIFICATION OF FY2019 NDAA SECTION.—

(1) CODIFICATION.—Such chapter is further amended by adding after section 4076, as added by subsection (n), a new section 4077 consisting of—

(A) a heading as follows:

“§ 4077 [Sec. 238 of P.L. 115-232, FY19 NDAA (10 USC 2358 note)]. Joint artificial intelligence research, development, and transition activities”; and

(B) a text consisting of the text of subsections (a) through (d), (f), and (g) of section 238 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2358 note), revised—

Commented [CR777]: A savings provision for the one-year requirement is included in paragraph (3) below.

Commented [CR778]: In the original, subsection (e) is a one-time report requirement due NLT Aug. 13, 2019, and is omitted from the codification. Subsection (e) is not included in the repeal provision and would remain as a note.

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(i) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively; and

(ii) by striking “Not later than one year after the date of the enactment of this Act, the” in subsection (b) and in subsection (e) (as redesignated by clause (i)) and inserting “The”.

(2) **CONFORMING REPEAL.**—Subsections (a)-(d), (f), and (g) of section 238 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2358 note) are repealed.

(3) **TRANSITION PROVISIONS.**—

(A) The designation required under subsection (b) of section 4077 of title 10, United States Code, as added by paragraph (1), and the definition required under subsection (e) of such section (as redesignated by this section), shall be made and delineated, respectively, not later than August 13, 2019.

(B) Section 238(e)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2358 note) is amended by inserting after “under subsection (b)” the following: “or section 4077(b) of title 10, United States Code,”.

(p) **CODIFICATION OF FY2019 NDAA SECTION.**—

(1) **CODIFICATION.**—Such chapter is further amended by adding after section 4078, as added by subsection (o), a new section 4078 consisting of—

(A) a heading as follows:

Commented [CR779]: A savings provision for these one-year requirements is included in subsection (d) below.

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1 “§ 4078 [Sec. 230 of P.L. 115-232, FY19 NDAA (10 USC 2358 note)]. National security
2 **innovation activities”;** and
3 (B) a text consisting of the text of subsections (a) through (d) and ~~(f)~~ of
4 section 230 of the John S. McCain National Defense Authorization Act for Fiscal
5 Year 2019 (Public Law 115-232; 10 U.S.C. 2358 note), revised by redesignating
6 subsection (f) as subsection (e) and in that subsection—
7 (i) in paragraph (3), by striking “Section 2368” and inserting
8 “Section 4146”;
9 (ii) in paragraph (4), by striking “Section 2374a” and inserting
10 “Section 4064”;
11 (iii) in paragraph (6), by striking “Section 2521” and inserting
12 “Section 4841”; and
13 (iv) in paragraphs (7) and (9), by striking “United States Code.”
14 (2) **CONFORMING REPEAL.**—Subsections (a)-(d) and (f) of section 230 of the
15 John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law
16 115-232; 10 U.S.C. 2358 note) are repealed.
17 (3) **TRANSITION PROVISIONS.**—Section 230 of the John S. McCain National
18 Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2358
19 note) is amended—
20 (A) in subsections (e)(1) and (h), by inserting before the period at the end
21 the following: “and section 4078 of title 10, United States Code”; and

Commented [CR780]: In the original, subsection (e) is a requirement for a plan due NLT Aug. 13, 2019, and is omitted from the codification. Subsection (e) is not included in the repeal provision and would remain as a note.

Commented [CR781]: In the original subsection (g) has two one-time notice requirements and subsection (h) is a funding provision for FY2019. Both are omitted from the codification and are not included in the repeal provision and would remain as a note.

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1 (B) in subsection (g), by inserting “of this section or, if such authority is
2 not exercised before the date of the enactment of section 4078 of title 10, United
3 States Code, under subsection (d) of that section” after “subsection (d)”.

4 (q) **CROSS-REFERENCE AMENDMENTS.**—

5 (1) Section 233(e) of the National Defense Authorization Act for Fiscal Year
6 2015 (Public Law 113-291; 10 U.S.C. 2193a note) is amended by striking “sections 2601,
7 2605, and 2374a” and inserting “sections 2601, 2605, and 4064”.

8 (2) Section 1089(a) of the National Defense Authorization Act for Fiscal Year
9 2018 (Public Law 115-91; 10 U.S.C. 2374a note) is amended by striking “section 2374a”
10 and inserting “section 4064”.

11 (3) Section 905(a)(1) of the John S. McCain National Defense Authorization Act
12 for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2364 note) is amended by striking
13 “section 2365” and inserting “section 4068”.

NOTE: There were 3 note sections that were reviewed for inclusion in the Innovation chapter that were not included and are recommended to be **left as is**.

1. Pilot program to use agile or iterative development methods to tailor major software-intensive warfighting systems and defense business systems – sec. 873 of the FY18 NDAA, as amended by sec. 869(e) of the FY20 NDAA (10 U.S.C. 2322a note). The FY19 NDAA also set out certain requirements for implementation of the program, sec. 869(a)-(d). The program is new and was just modified by Congress.

2. Proof of Concept Commercialization Pilot Program – sec. 1603 of the FY20 NDAA (10 U.S.C. 2359 note). This pilot expires on 9/30/2019, and it appears to be limited under subsection (f) to a total expenditure of \$5M.

3. Nontraditional and Small Contractor Innovation Prototyping Program – sec. 884 of the FY2017 NDAA (Public Law 114-328; 10 U.S.C. 2302 note).

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1 **SEC. 503. DEPARTMENT OF DEFENSE LABORATORIES.**

2 (a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
 3 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
 4 (Public Law 115-232), is amended by inserting after chapter 303, as added by section 502, the
 5 following new chapter:

6 **“CHAPTER 305—DEPARTMENT OF DEFENSE LABORATORIES**

Subchapter	Sec
I—General Matters	4101
II—Personnel-Related Matters	4111

7 **SUBCHAPTER I—GENERAL MATTERS**

- Sec.
4101 [Sec. 211 of P.L. 114-328, FY17 NDAA (10 USC 2358 note)]. Laboratory quality enhancement program.
- 4102 [Sec. 2803 of P.L. 114-92, FY16 NDAA (10 USC 2358 note)]. Defense laboratory modernization pilot program.
- 4103. [2363]. Mechanisms to provide funds for defense laboratories for research and development of technologies for military missions.
- 4104 [Sec. 222 of P.L. 115-232, **FY19** NDAA (10 USC 2364 note)]. Collaboration between defense laboratories, industry, and academia; open campus program.

8 **SUBCHAPTER II—PERSONNEL-RELATED MATTERS**

- Sec.
4111 [2358a]. Authorities for certain positions at science and technology reinvention laboratories.
- 4112 [Sec. 1124 of P.L. 114-328, FY17 NDAA (10 USC 2358 note)]. Enhanced pay authority for certain research and technology positions in science and technology reinvention laboratories: pilot program.
- 4113 [Sec. 1109 of P.L. 114-92, FY16 NDAA (10 USC 2358 note)]. Dynamic shaping of the workforce to improve technical skills and expertise at certain Department of Defense laboratories: pilot program.
- 4114 [Sec. 232 of P.L. 113-291, FY15 NDAA (10 USC 2358 note)]. Assignment to Defense Advanced Research Projects Agency of private sector personnel with critical research and development expertise: pilot program.
- 4115. [Sec. 342(b) of P.L. 103-337; sec. 1107 of P.L. 110-181; sec. 1105 of P.L. 111-84 (10 USC 2358 note)]. Defense laboratories personnel demonstration projects.

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4116 [2360]. Research and development laboratories: contracts for services of university students.;

(b) TRANSFER OF TITLE 10 SECTIONS.—

(1) TRANSFER TO SUBCHAPTER I.—Section 2363 of title 10, United States Code, is transferred to subchapter I of chapter 305 of such title, as added by subsection (a), inserted after the table of sections, and redesignated as section 4103.

Commented [CR782]: Sec. 2363 was added to T10 by sec. 220 of the FY18 NDAA and was amended by sec. 250 of the FY19 NDAA.

(2) TRANSFERS TO SUBCHAPTER II.—Sections 2358a and 2360 of title 10, United States Code, are transferred to subchapter II of chapter 305 of such title, as added by subsection (a), inserted (in that order) after the table of sections, and redesignated as sections 4111 and 4116, respectively.

Commented [CR783]: This section was amended by sec. 1112(a) of the FY19 NDAA.

(3) CONFORMING AMENDMENTS TO SECTION 4111.—Section 4111 of such title, as transferred and redesignated by paragraph (2), is amended—

(A) in subsection (b), by striking “section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2358 note)” in paragraphs (1) and (3) and inserting “section 4115(d) of this title”;

(B) in subsection (d), by striking “section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 2358 note)” in paragraphs (2) and (3) and inserting “section 4115(a) of this title”; and

(C) in subsection (f)(1), by striking “section 196” and inserting “section 4173”.

(c) CODIFICATION OF FY2017 NDAA SECTION.—

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1 (1) CODIFICATION.—Chapter 305 of title 10, United States Code, as added by
2 subsection (a), is amended by inserting before section 4103, as transferred and
3 redesignated by subsection (b)(1), a new section 4101 consisting of—

4 (A) a heading as follows:

5 “§ 4101 [Sec. 211 of P.L. 114-328, FY17 NDAA (10 USC 2358 note)]. **Laboratory quality**
6 **enhancement program”;** and

7 (B) a text consisting of the text of subsections (a) through (e) of section
8 211 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law
9 114-328; 10 U.S.C. 2358 note), revised by adding at the end the following:

10 “(f) SCIENCE AND TECHNOLOGY REINVENTION LABORATORY DEFINED.—In this section,
11 the term ‘science and technology reinvention laboratory’ means a science and technology
12 reinvention laboratory designated under section 4115(d) of this title.”.

13 (2) CONFORMING REPEAL.—Section 211 of the National Defense Authorization
14 Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2358 note) is repealed.

15 (d) CODIFICATION OF FY2016 NDAA SECTION.—

16 (1) CODIFICATION.—Such chapter is further amended by inserting after section
17 4101, as added by subsection (c), a new section 4102 consisting of—

18 (A) a heading as follows:

19 “§ 4102 [Sec. 2803 of P.L. 114-92, FY16 NDAA (10 USC 2358 note)]. **Defense laboratory**
20 **modernization pilot program”;** and

Commented [CR784]: The original has a subsection (f) amending another provision of law and a subsection (g) which is provided in updated form as new subsection (f) below.

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1 (B) a text consisting of the text of section 2803 of the National Defense
2 Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2358
3 note), revised—

4 (i) in subsection (a)(1), by striking “section 1105(a)” and all that
5 follows in that paragraph and inserting “section 4115(d) of this title”;

6 (ii) in subsection (c)(1), by striking “, United States Code”; and

7 (iii) in subsection (d)(4), by striking “of title 10, United States
8 Code” and inserting “of this title”.

9 (2) **CONFORMING REPEAL.**—Section 2803 of the National Defense Authorization
10 Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2358 note) is repealed.

11 (e) **CODIFICATION OF FY2019 NDAA SECTION.**—

12 (1) **CODIFICATION.**— Such chapter is further amended by inserting after section
13 4103, as transferred and redesignated by subsection (b)(1), a new section 4104 consisting
14 of—

15 (A) a heading as follows:

16 “§ 4104 [Sec. 222 of P.L. 115-232, FY19 NDAA (10 USC 2364 note)]. Collaboration between
17 defense laboratories, industry, and academia; open campus program”; and

18 (B) a text consisting of the text of section 222 of the John S. McCain
19 National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232;
20 10 U.S.C. 2364 note).

Commented [CR785]: This section was amended by sec. 2808 of the FY19 NDAA, including extension of the sunset to 10/1/25

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1 (2) **CONFORMING REPEAL.**—Section 222 of the John S. McCain National
2 Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2364
3 note) is repealed.

4 (f) **CODIFICATION OF FY2017 NDAA SECTION.**—

5 (1) **CODIFICATION.**—Such chapter is further amended by inserting after section
6 4111, as transferred and redesignated by subsection (b)(2), a new section 4112 consisting
7 of—

8 (A) a heading as follows:

9 “§ 4112 [Sec. 1124 of P.L. 114-328, FY17 NDAA (10 USC 2358 note)]. Enhanced pay
10 authority for certain research and technology positions in science and
11 technology reinvention laboratories: pilot program”; and

12 (B) a text consisting of the text of section 1124 of the National Defense
13 Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2358
14 note), revised by striking “section 1105(a)” in subsection (g) and all that follows
15 in that subsection and inserting “section 4115(d) of this title”.

16 (2) **CONFORMING REPEAL.**—Section 1124 of the National Defense Authorization
17 Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2358 note) is repealed.

18 (g) **CODIFICATION OF FY2016 NDAA SECTION.**—

19 (1) **CODIFICATION.**—Such chapter is further amended by inserting after section
20 4112, as added by subsection (f), a new section 4113 consisting of—

21 (A) a heading as follows:

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1 “§ 4113 [Sec. 1109 of P.L. 114-92, FY16 NDAA (10 USC 2358 note)]. Dynamic shaping of
2 the workforce to improve technical skills and expertise at certain
3 Department of Defense laboratories: pilot program”; and

4 (B) a text consisting of the text of section 1109 of the National Defense
5 Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2358
6 note), revised—

- 7 (i) in subsection (b)(1), by striking subparagraph (D);
8 (ii) in subsection (b)(2), by striking “United States Code.”;
9 (iii) in subsections (b)(3) and (b)(4), by striking “, United States
10 Code.”; and

11 (iv) by striking “section 1105(a)” in subsection (c) and all that
12 follows in that subsection and inserting “section 4115(d) of this title”.

13 (2) CONFORMING REPEAL.—Section 1109 of the National Defense Authorization
14 Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2358 note) is repealed.

15 (h) CODIFICATION OF FY2015 NDAA SECTION.—

16 (1) CODIFICATION.—Such chapter is further amended by inserting after section
17 4113, as added by subsection (g), a new section 4114 consisting of—

18 (A) a heading as follows:

19 “§ 4114 [Sec. 232 of P.L. 113-291, FY15 NDAA (10 USC 2358 note)]. Assignment to Defense
20 Advanced Research Projects Agency of private sector personnel with critical
21 research and development expertise: pilot program”; and

Commented [CR786]: This section was amended by sec. 1112(b) of the FY19 NDAA

Commented [CR787]: Subparagraph (D) provides a rule for use in compliance with sec. 955 of P.L. 112-239 (10 U.S.C. 129a note). That section was repealed by Pub. L. 114-328, §915, Dec. 23, 2016. Given that repeal, it appears that subparagraph (D) does not have any continuing meaning. Assuming it has no continuing meaning, it could be deleted as shown here.

DOD, PLEASE VERIFY THE ABOVE.

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(B) a text consisting of the text of section 232 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 10 U.S.C. 2358 note), revised—

(i) in subsection (b)(3), by striking “, United States Code” each place it appears;

(ii) in subsection (f)(2), by striking “(as defined in section 2302 of title 10, United States Code)”.

(2) **CONFORMING REPEAL.**—Section 232 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 10 U.S.C. 2358 note) is repealed.

(i) **CODIFICATION OF FY1995, FY2008, AND FY2010 NDAA SECTIONS.**—

(1) NDAA SECTIONS RELATING TO DEFENSE LABORATORIES PERSONNEL DEMONSTRATION PROJECTS.—

(A) **CODIFICATION.**—Such chapter is further amended by inserting after section 4114, as added by subsection (h), the following new section:

“§ 4115 [Sec. 342(b) of P.L. 103-337; sec. 1107 of P.L. 110-181; sec. 1105 of P.L. 111-84 (10 USC 2358 note)]. **Defense laboratories personnel demonstration projects**

“(a) [Sec. 342(b) of P.L. 103-337] **IN GENERAL.**—

“(1) [Sec. 342(b)(1) of P.L. 103-337] The Secretary of Defense may carry out personnel demonstration projects at Department of Defense laboratories designated by the Secretary as Department of Defense science and technology reinvention laboratories.

Commented [CR788]: Since this section is being codified in Part V, the “as defined in” clause is no longer necessary. The reference is to the new 3021.

Commented [CR789]: The three sections codified here in the new 4115 are set out as a single note under 10 U.S.C. 2358.

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1 "(2) [Sec. 342(b)(2) of P.L. 103-337] (A) Each personnel demonstration project
2 carried out under the authority of paragraph (1) shall be generally similar in nature to the
3 China Lake demonstration project.

4 "(B) For purposes of subparagraph (A), the China Lake demonstration project is
5 the demonstration project that is authorized by section 6 of the Civil Service
6 Miscellaneous Amendments Act of 1983 (Public Law 98-224; 98 Stat. 49) to be
7 continued at the Naval Weapons Center, China Lake, California, and at the Naval Ocean
8 Systems Center, San Diego, California.

9 "(3) [Sec. 342(b)(3) of P.L. 103-337] If the Secretary carries out a demonstration
10 project at a laboratory pursuant to paragraph (1), section 4703 of title 5 shall apply to the
11 demonstration project, except that—

12 "(A) subsection (d) of such section 4703 shall not apply to the
13 demonstration project;

14 "(B) the authority of the Secretary to carry out the demonstration project is
15 that which is provided in paragraph (1) rather than the authority which is provided
16 in such section 4703; and

17 "(C) the Secretary shall exercise the authorities granted to the Office of
18 Personnel Management under such section 4703 through the Under Secretary of
19 Defense for Research and Engineering (who shall place an emphasis in the
20 exercise of such authorities on enhancing efficient operations of the laboratory
21 and who may, in exercising such authorities, request administrative support from

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1 science and technology reinvention laboratories to review, research, and
2 adjudicate personnel demonstration project proposals).

3 "(4) [Sec. 342(b)(4) of P.L. 103-337] The employees of a laboratory covered by a
4 personnel demonstration project carried out under this ~~section~~ *subsection* shall be exempt
5 from, and may not be counted for the purposes of, any constraint or limitation in a statute
6 or regulation in terms of supervisory ratios or maximum number of employees in any
7 specific category or categories of employment that may otherwise be applicable to the
8 employees. The employees shall be managed by the director of the laboratory subject to
9 the supervision of the Under Secretary of Defense for ~~Acquisition, Technology, and~~
10 ~~Logistics~~ *Research and Engineering*.

11 "(5) [Sec. 342(b)(5) of P.L. 103-337] The limitations in section 5373 of title 5 do
12 not apply to the authority of the Secretary under this ~~section~~ *subsection* to prescribe
13 salary schedules and other related benefits.

14 "(b) [Sec. 1107 of P.L. 110-181] REQUIREMENT FOR FULL IMPLEMENTATION OF
15 PERSONNEL DEMONSTRATION PROJECTS.—

16 (1) [1107(a)] REQUIREMENT.—The Secretary of Defense shall take all necessary
17 actions to fully implement and use the authorities provided to the Secretary under
18 subsection (a) to carry out personnel management demonstration projects at Department
19 of Defense laboratories designated by subsection (d) as Department of Defense science
20 and technology reinvention laboratories.

Commented [CR790]: OK to change reference here from USD(AT&L) to USD(R&E)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

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1 "(2) [1107(b)] PROCESS FOR FULL IMPLEMENTATION.—The Secretary shall also
2 implement a process and implementation plan to fully utilize the authorities described in
3 paragraph (1) to enhance the performance of the missions of the laboratories.

4 "(3) [1107(c)] OTHER LABORATORIES.—Any flexibility available to any
5 demonstration laboratory shall be available for use at any other laboratory designated by
6 subsection (d) as a Department of Defense science and technology reinvention laboratory.

7 "(c) SUBMISSION OF LIST AND DESCRIPTION.—

8 "~~(1) [1107(d)] ANNUAL REPORT.—~~Not later than March 1 of each year *through*
9 ~~2021~~, the Secretary of Defense shall submit to Congress a report containing a list and
10 description of the demonstration project notices, amendments, and changes requested by
11 the laboratories during the preceding calendar year. The list shall include all approved
12 and disapproved notices, amendments, and changes, and the reasons for disapproval or
13 delay in approval.

14 "~~(e) STATUS REPORTS.—~~

15 "~~(1) IN GENERAL.—~~The Secretary shall include in each report under subsection
16 ~~(d) the information described in paragraph (2).~~

17 "(2) [1107(e)(2)] INFORMATION REQUIRED.—Each report under ~~subsection (d)~~
18 *paragraph (1)* shall ~~describe~~ *include a description of* the following:

19 "(A) The actions taken by the Secretary of Defense under subsection
20 (b)(1) during the year covered by the report.

21 "(B) The progress made by the Secretary of Defense during such year in
22 developing and implementing the plan required by subsection (b)(2), including

Commented [CR791]: The following codifier's note is included in the note for this section under 10 U.S.C. 2358: "[For termination, effective Dec. 31, 2021, of annual reporting provisions in section 1107(d) of Pub. L. 110–181, ... see section 1061 of Pub. L. 114–328, set out as a note under [10 U.S.C.] 111.]" To preserve the effect of that pending report termination provision, it is suggested that "through 2021" be included here.

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1 the anticipated date for completion of such plan and a list and description of any
2 issues relating to the development or implementation of such plan.

3 "(C) With respect to any applications by any Department of Defense
4 laboratories seeking to be designated as a demonstration laboratory or to
5 otherwise obtain any of the personnel flexibilities available to a demonstration
6 laboratory—

7 "(i) the number of applications that were received, pending, or
8 acted on during such year;

9 "(ii) the status or disposition of any applications under clause (i),
10 including, in the case of any application on which a final decision was
11 rendered, the laboratory involved, what the laboratory had requested, the
12 decision reached, and the reasons for the decision; and

13 "(iii) in the case of any applications under clause (i) on which a
14 final decision was not rendered, the date by which a final decision is
15 anticipated.

16 "(3) DEFINITION.—In this subsection, the term 'demonstration laboratory' means a
17 laboratory designated by the Secretary of Defense under the provisions of subsection (a).

18 "(d) [Sec. 1105(a) of P.L. 111-84] DESIGNATION OF LABORATORIES.—Each of the
19 following is hereby designated as a Department of Defense science and technology reinvention
20 laboratory (as described in subsection (a)):

21 "(e) [1105(b) of P.L. 111-84] CONVERSION PROCEDURES.—The Secretary of Defense
22 shall implement procedures to convert the civilian personnel of each Department of Defense

Commented [CR792]: The list of labs is inserted below, without the full list being set out in text here.

Commented [CR793]: Given the 18-month requirement in paragraph (3) below, it appears that this provision no longer authorizes conversions. However, paragraphs (1) and (2) may still be applicable to converted personnel.

Consider the revised subsection (e) below, which is intended to delete the obsolete conversion authority while preserving the portion applicable on an ongoing basis to converted personnel.

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1 science and technology reinvention laboratory, as so designated by subsection (d), from the
2 personnel system which applies as of the date of the enactment of this Act October 28, 2009, to
3 the personnel system under an appropriate demonstration project (as referred to in subsection
4 (a)). Any conversion under this subsection—

5 "(1) shall not adversely affect any employee with respect to pay or any other term
6 or condition of employment;

7 "(2) shall be consistent with section 4703(f) of title 5;

8 "(3) shall be completed within 18 months after the date of the enactment of this
9 Act October 28, 2009; and

10 "(4) shall not apply to prevailing rate employees (as defined by section 5342(a)(2)
11 of title 5) or senior executives (as defined by section 3132(a)(3) of such title).

[ALTERNATIVE TO SUBSECTION (e) ABOVE]

"(e) [1105(b) of P.L. 111-84] STATUS OF CONVERTED PERSONNEL.—In the case of civilian
personnel of a Department of Defense science and technology reinvention laboratory who were
converted under section 1105(b) of Public Law 111-84 from the personnel system which applied
to them as of October 28, 2009, to a personnel system under an appropriate demonstration
project (as referred to in such subsection (a)), such conversion—

"(1) shall not adversely affect any employee with respect to pay or any other term
or condition of employment; and

"(2) shall be consistent with section 4703(f) of title 5.

13 "(f) [1105(c) of P.L. 111-84] LIMITATION.—The science and technology reinvention
14 laboratories, as designated by subsection (d), may not implement any personnel system, other
15 than a personnel system under an appropriate demonstration project (as referred to in subsection
16 (a)), without prior congressional authorization."

17 (B) LIST OF LABORATORIES.—Section 4115 of title 10, United States Code,
18 as added by subparagraph (A), is amended by inserting at the end of subsection

Commented [CR794]: DoD: Please advise as to whether the
alternative here accurately captures those elements of current
(e) that have ongoing applicability while deleting those that are
OBE.

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(d) the text of paragraphs (1) through (22) of section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 2358 note).

Commented [CR795]: The amendment here is to insert the list of 22 labs by reference, for economy of words, as opposed to setting forth the full list in the text above.

(2) CONFORMING REPEALS.—The following provisions of law are repealed:

(A) Section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 10 U.S.C. 2358 note).

(B) Section 1107 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2358 note).

(C) Section 1105 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 2358 note).

(j) CROSS-REFERENCE AMENDMENT.—Section 2805(d)(1)(B) of title 10, United States Code, is amended by striking “section 2363(a)” and inserting “under section 4103(a)”.

SEC. 504. RESEARCH AND DEVELOPMENT CENTERS AND FACILITIES.

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by inserting after chapter 305, as added by section 503, the following new chapter:

“CHAPTER 307— RESEARCH AND DEVELOPMENT CENTERS AND FACILITIES

Sec. 4141 [2353]. Contracts: acquisition, construction, or furnishing of test facilities and equipment. 4142 [2364(b),(c)]. Functions of defense research facilities. 4143 [2371a]. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980.

Commented [CR796]: Heading from 2364(b). See note below with new sec. 4142.

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- 4144 [2681]. Use of test and evaluation installations by commercial entities.
- 4145 [2350]. Cooperative agreements for reciprocal use of test facilities: foreign countries and international organizations.
- 4146 [2368]. Centers for Science, Technology, and Engineering Partnership.
- 4147 [2367]. Use of federally funded research and development centers.
- 4148 [Sec. 218(b)(2) of P.L. 100-180, FY88 NDAA (10 USC 2364 note)]. Coordination of high-temperature superconductivity research and development.
- 4149 [Sec. 235 of P.L. 114-328, FY17 NDAA (10 USC 2367 note)]. Disclosure of certain sensitive information to federally funded research and development centers: pilot program.
- 4150 [Sec. 233 of P.L. 114-328, FY17 NDAA (10 USC 2358 note)]. Enhancement of the research, development, test, and evaluation centers of the Department of Defense: pilot program.

(b) TRANSFER OF TITLE 10 SECTIONS.—

(1) **IN GENERAL.**—The sections of title 10, United States Code, specified in the left-hand column of the table below are **transferred** to chapter 307 of such title, as added by subsection (a), **inserted** after the table of sections (in that order), and **redesignated** as shown in the right-hand column:

Current Section #	New Section #
2353	4141
2371a	4143
2681	4144
2350	4145
2368	4146
2367	4147

Commented [CR797]: Note that this section is currently in ch. 159, on Real Property. Because this section relates to **test facilities**, it is proposed for inclusion in the new chapter.

Commented [CR798]: Note that this section is currently in ch 138, on Cooperative Agreements With NATO Allies and Other Countries. This section provides for cooperative agreements with foreign countries and international organizations for reciprocal use of **test facilities**. Because this section relates to test facilities, it is proposed for inclusion in the new chapter.

(2) **CLERICAL AMENDMENTS.**—

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1 (A) The table of sections at the beginning of subchapter II of chapter 138
2 of title 10, United States Code, is amended by striking the item relating to section
3 2350L.

4 (B) The table of sections at the beginning of chapter 159 of such title is
5 amended by striking the item relating to section 2681.

6 (c) CONFORMING AMENDMENTS TO TRANSFERRED SECTIONS.—

7 (1) SECTION 4146.—Section 4146 of such title, as transferred and redesignated by
8 subsection (b), is amended—

9 (A) in subsection (b)(3)(B)(ii), by striking “2358, 2371, 2511, 2539b,” and
10 inserting “4001, 4002, 4831, 4892,”;

11 (B) in subsection (d)(2), by striking “section 219” and all that follows and
12 inserting “section 4153 of this title.”; and

13 (C) in subsection (h)(3), by striking “section 1105” and all that follows
14 and inserting “section 4175(d) of this title.”.

15 (2) SECTION 4147.—Section 4147 of such title, as transferred and redesignated by
16 subsection (b), is amended—

17 (A) in subsection (c), by striking paragraph (2); and

18 (B) in subsection (d), by striking “Committee on” the first place it appears
19 and all that follows through “of Representatives” and inserting “congressional
20 defense committees”.

21 (d) TRANSFER OF SECTION 2364(b) AND (c).—

Commented [CR799]: Section 219 of P.L. 110-417, referred to here, was repealed by section 220(c) of the FY18 NDAA, and replaced by new 10 U.S.C. 2363. A conforming cross-reference amendment was made to 10 U.S.C. 2805, but not to section 2368.

Commented [CR800]: Previous subsection (g) was redesignated (h) by sec. 231 of FY19 NDAA.

Commented [CR801]: Paragraph (2) incorporates the definition in sec. 2302(1). The definition will apply to all of Part V and a separate statement is not needed.

Commented [CR802]: See 10 U.S.C. 101(a)(16)

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(1) Chapter 307 of title 10, United States Code, as amended by subsection (a), is further amended by inserting after section 4141, as transferred and redesignated by subsection (b), the following:

“§ 4142 [2364(b),(c)]. Functions of defense research facilities”.

(2) Subsections (b) and (c) of section 2364 of such title are transferred to chapter 307 of such title, as so amended, inserted after the section heading for section 4142 added by paragraph (1), and redesignated as subsections (a) and (b), respectively.

(e) CODIFICATION OF FY1988 NDAA SECTION.—

(1) CODIFICATION.—Chapter 307 of title 10, United States Code, as amended by subsection (a), is further amended by adding after section 4147, as transferred and redesignated by subsection (b), a new section 4148 consisting of—

(A) a heading as follows:

“§ 4148 [Sec. 218(b)(2) of P.L. 100-180, FY88 NDAA (10 USC 2364 note)]. Coordination of high-temperature superconductivity research and development”; and

(B) a text consisting of the text of subsection (b)(2) of section 218 of the National Defense Authorization Act for Fiscal Year 1988 (Public Law 100-180; 10 U.S.C. 2364 note), revised by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics,” and inserting “Under Secretary of Defense for Research and Engineering”.

(2) CONFORMING REPEAL.—Section 218(b)(2) of the National Defense Authorization Act for Fiscal Year 1988 (Public Law 100-180; 10 U.S.C. 2364 note) is repealed.

Commented [CR803]: Subsection (a) of 2364 seems broader than the subject of this chapter and will be added as a separate section in the chapter for R&D generally.

Commented [CR804]: There are six note sections that appear in the Code under 10 U.S.C. 2364. This is one. Two were repealed by the FY19 NDAA, sec. 812(b). And three are new, from the FY19 NDAA. Two are codified in other chapters; one is left as is. See the Distribution table for Note sections.

Commented [CR805]: OK to change reference here from USD(AT&L) to USD(R&E)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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1 (f) CODIFICATION OF FY2017 NDAA SECTION.—

2 (1) CODIFICATION.—Such Chapter is further amended by adding after section
3 4148 as added by subsection (e), a new section 4149 consisting of—

4 (A) a heading as follows:

5 “§ 4149 [Sec. 235 of P.L. 114-328, FY17 NDAA (10 USC 2367 note)]. Disclosure of certain
6 sensitive information to federally funded research and development centers:
7 pilot program”; and

8 (B) a text consisting of the text of section 235 of the National Defense
9 Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2367
10 note), revised—

11 (i) in subsection (c)—

12 (I) by striking “United States Code,” after “title 18,”; and

13 (II) by striking “, United States Code” after “title 41”; and

14 (ii) in subsection (g)—

15 (I) by striking “, United States Code,” after “title 5”; and

16 (II) by striking “, United States Code” after “title 18”.

17 (2) CONFORMING REPEAL.—Section 235 of the National Defense Authorization
18 Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2367 note) is repealed.

19 (g) CODIFICATION OF FY2017 NDAA SECTION.—

20 (1) CODIFICATION.—Such chapter is further amended by adding after section
21 4149 as added by subsection (f), a new section 4150 consisting of—

22 (A) a heading as follows:

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1 “§ 4150 [Sec. 233 of P.L. 114-328, FY17 NDAA (10 USC 2358 note)]. Enhancement of the
2 research, development, test, and evaluation centers of the Department of
3 Defense: pilot program”; and

4 (B) a text consisting of the text of subsections (a) through (e) of section
5 233 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law
6 114-328; 10 U.S.C. 2358 note), revised by striking “section 1105(a)” in
7 subparagraph (A) of subsection (a)(2) and all that follows in that subparagraph
8 and inserting “section 4175(d) of this title;”.

9 (2) **CONFORMING REPEAL.**—Subsections (a) through (e) of section 233 of the
10 National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10
11 U.S.C. 2358 note) are repealed.

12 (h) **CROSS-REFERENCE AMENDMENTS.**—

13 (1) Section 114(b) of title 10, United States Code, is amended by striking “section
14 2353” and inserting “section 4141”.

15 (2) Section 1644(f)(2) of the John S. McCain National Defense Authorization
16 Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2224 note) is amended by
17 striking “section 2368” and inserting “section 4146”.

18 **SEC. 505. TEST AND EVALUATION.**

19 (a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
20 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
21 (Public Law 115-232), is amended by inserting after chapter 307, as added by section 504, the
22 following new chapter:

Commented [CR806]: The original had a subsection (f) which required a report NLT Dec. 23, 2017. That subsection is omitted from the codification. Pending determination of whether the report has been submitted, the repeal provision does not include (f), which will remain as a note section pending the report.

DOD, PLEASE ADVISE if the report has been submitted.

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CHAPTER 309—OPERATIONAL TEST AND EVALUATION;

DEVELOPMENTAL TEST AND EVALUATION

Sec.

- 4171 [2399]. Operational test and evaluation of defense acquisition programs.
4172. [2366]. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production.
4173 [196]. Department of Defense Test Resource Management Center.
4174 [Sec. 839(a) of P.L. 115-91, FY2018 NDAA (10 U.S.C. 2399 note)]. Additional test and evaluation duties of military department secretaries and defense agency heads.
4175 [Sec. 839(b) of P.L. 115-91, FY2018 NDAA (10 U.S.C. 2399 note)]. Requirements for collection of cost data on test and evaluation.
4176. [Sec. 887(b) of P.L. 115-232, FY2019 NDAA (10 U.S.C. 139 note) Access by developmental and operational testing activities to data regarding modeling and simulation activity.
4177 [Sec. 1043(a), (b), & (j) of FY10 NDAA, P.L. 111-84 (10 U.S.C. 2353 note)]. Limitations on modifications of certain Government-furnished equipment.

Commented [CR807]: Recommend that the chapter heading be changed to just "TEST AND EVALUATION".

(b) TRANSFER OF TITLE 10 SECTIONS.—Sections 2399, 2366, and 196 of title 10, United States Code, are transferred to chapter 309 of such title, as amended by subsection (a), inserted after the table of sections (in that order), and redesignated as section 4171, 4172, and 4173, respectively.

(c) CODIFICATION OF FY2018 NDAA SECTION.—

(1) CODIFICATION.—Chapter 309 of title 10, United States Code, as amended by subsection (a), is further amended by adding after section 4173, as transferred and redesignated by subsection (b), the following new sections:

§ 4174 [Sec. 839(a)] of P.L. 115-91, FY2018 NDAA (10 U.S.C. 2399 note). Additional test and evaluation duties of military department secretaries and defense agency heads

Commented [CR808]: 839(a)&(b) are codified separately. 839(a) is codified here (with the definition from subsection (c)); 839(b) is codified as a separate section, immediately below, in new 4175.

Commented [CR809]: FYI, there are 2 note provisions that appear in the Code under 2399. This codifies one of them; the other, relating to assessment of risk, was repealed by the FY2019 NDAA.

(a) [839(a)(1)] REPORT ON COMPARISON OF OPERATIONAL TEST AND EVALUATION

RESULTS TO LEGACY ITEMS OR COMPONENTS.—Concurrent with the submission of a report

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1 required under section 4171(b)(2) of this title, the Secretary of a military department or the head
2 of a Defense Agency may provide to the congressional defense committees and the Secretary of
3 Defense a report describing the performance of the items or components evaluated as part of the
4 operational test and evaluation for each major defense acquisition program conducted under such
5 section by the Director of Operational Test and Evaluation in relation to comparable legacy items
6 or components, if such items or components exist and relevant data are available without
7 requiring additional testing.

8 "(b) [839(a)(2)] ADDITIONAL REPORT ON OPERATIONAL TEST AND EVALUATION
9 ACTIVITIES.—Within 45 days after the submission of an annual report required by section 139(h)
10 of this title, the Secretaries of the military departments may each submit to the congressional
11 defense committees a report addressing any concerns related to information included in the
12 annual report, or providing updated or additional information, as appropriate.

13 "~~(c) [839(c)] MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—In this section, the~~
14 ~~term 'major defense acquisition program' has the meaning provided in section 2430 of this title.~~
15 "§ 4175 [Sec. 839(b) of P.L. 115-91, FY2018 NDAA (10 U.S.C. 2399 note)]. Requirements

for collection of cost data on test and evaluation

17 "(a) [839(b)(1)] IN GENERAL.—~~Not later than December 12, 2018, and subject~~ *Subject* to
18 subsection (b), the Director of Operational Test and Evaluation, the senior official of the
19 Department of Defense with responsibility for developmental testing, and the Director of the
20 Test Resource Management Center shall jointly develop policies, procedures, guidance, and a
21 method to collect data that ensures that consistent and high quality data are collected on the full

Commented [CR810]: The NLT clause is not codified, but is saved in paragraph (2) Once it is known that subsection (a) has been complied with, that paragraph could be dropped as OBE.
DOD, PLEASE ADVISE as to the status of development of the policies, procedures, guidance, and method required by sec. 839(b) of the FY18 NDAA NLT 12/12/2018.

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1 range of estimated and actual developmental, live fire, and operational testing costs for major
2 defense acquisition programs.

3 "(b) [839(b)(2)] CONCURRENCE AND COORDINATION REQUIRED.—Before implementing
4 the policies, procedures, guidance, and method developed under subsection (a), the Director of
5 Operational Test and Evaluation, the senior official of the Department of Defense with
6 responsibility for developmental testing, and the Director of the Test Resource Management
7 Center shall—

8 "(1) obtain the concurrence of the Director for Cost Assessment and Program
9 Evaluation; and

10 "(2) coordinate with the Secretaries of the military departments.

11 "(c) [839(b)(3)] DATA REQUIREMENTS.—

12 "(1) ELECTRONIC DATABASE.—Data on estimated and actual developmental, live
13 fire, and operational testing costs shall be maintained in an electronic database
14 maintained by the Director for Cost Assessment and Program Evaluation or another
15 appropriate official of the Department of Defense, and shall be made available for
16 analysis by testing, acquisition, and other appropriate officials of the Department of
17 Defense, as determined by the Director of Operational Test and Evaluation, the senior
18 official of the Department of Defense with responsibility for developmental testing, or
19 the Director of the Test Resource Management Center.

20 "(2) DISAGGREGATION BY COSTS.—To the maximum extent practicable, data
21 collected under this section shall be set forth separately by costs for developmental
22 testing, operational testing, and training."

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1 ~~“(d) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—In this section, the term ‘major~~
2 ~~defense acquisition program’ has the meaning provided in section 2430 of this title.~~

3 (2) **TRANSITION PROVISION.**—The policies, procedures, guidance, and method
4 required by section 4175 of title 10, United States Code, as added by paragraph (1), shall
5 be developed in accordance with that section not later than December 12, 2018.

6 (3) **CONFORMING REPEAL.**—Section 839 of the National Defense Authorization
7 Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2399 note) is repealed.

8 (d) **CODIFICATION OF FY2019 NDAA SECTION.**—

9 (1) **CODIFICATION.**—Chapter 309 of title 10, United States Code, is amended by
10 adding after section 4175, as added by subsection (c), the following new section:

11 “§ 4176. [Sec. 887(b) of P.L. 115-232, FY2019 NDAA (10 U.S.C. 139 note) Access by
12 **developmental and operational testing activities to data regarding modeling**
13 **and simulation activity**

14 “Developmental Test and Evaluation activities under the leadership of the Under
15 Secretary of Defense for Research and Engineering and the Under Secretary of Defense for
16 Acquisition and Sustainment shall have prompt access to all data regarding modeling and
17 simulation activity proposed to be used by military departments and defense agencies in support
18 of developmental test and evaluation of military capabilities. ~~This~~ **Such** access shall include data
19 associated with verification, validation, and accreditation activities.”.

20 (2) **CONFORMING REPEAL.**—Section 887(b) of the John S. McCain National
21 Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 139
22 note) is repealed.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(e) CODIFICATION OF FY2010 NDAA SECTION.—

(1) IN GENERAL.—Chapter 309 of title 10, United States Code, is amended by adding after section 4176, as added by subsection (d), the following new section:

“§ 4177 [Sec. 1043(a), (b), (j) of FY10 NDAA, P.L. 111-84 (10 U.S.C. 2353 note)].

Limitations on modifications of certain Government-furnished equipment

"(a) [1043(a)] LIMITATION.—An article of military equipment that is an end item of a major weapon system may not be furnished or transferred to a private entity for the conduct of research, development, test and evaluation under contractual agreement with the Department of Defense, if such research, development, test, and evaluation necessitates significantly modifying the military equipment, until the senior acquisition official of a military department, or his designee, submits to the congressional defense committees certification in writing—

"(1) that the modification of such article of military equipment is necessary to execute the contractual scope of work and there is no suitable alternative to modifying such article;

"(2) that the research, development, test, and evaluation effort is of sufficient interest to the military department to warrant the modification of such article of military equipment;

"(3) that—

"(A) prior to the end of the period of performance of such a contractual agreement, the article of military equipment will be restored to its original condition; or

Commented [CR811]: Subsections (a), (b), and (j) are codified here. Subsections (c)-(i) relate to a different matter and are left as is.

Commented [CR812]: Note that the term defined in subsection (c) below is "major system" not "major weapon system".

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"(B) it is not necessary to restore the article of military equipment to its original condition because the military department intends to dispose of the equipment or operate the equipment in its modified form;

"(4) that the private entity has sufficient resources and capability to fully perform the contractual research, development, test, and evaluation; and

"(5) that the military department has—

"(A) identified the scope of future test and evaluation likely to be required prior to transition of the associated technology to a program of record; and

"(B) a plan for the conduct of such future test and evaluation, including the anticipated roles and responsibilities of government and the private entity, as applicable.

"(b) [1043(b)] CERTIFICATION.—No military equipment that is an end item of a major weapons system may be transferred or furnished to a private entity for purposes of research and development as authorized under subsection (a) unless the senior officer of the military service armed force concerned certifies to the congressional defense committees that such equipment is not essential to the defense of the United States.

"(c) [1043(j)(2)] DEFINITION.—In this subsection section, the term 'contractual agreement' includes contracts, grants, cooperative agreements, and other transactions."

(2) CONFORMING REPEAL.—Subsections (a), (b), and (j) of section 1043 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 10 U.S.C. 2353 note) are repealed.

Commented [CR813]: Note that this reference is to a "major weapons system" [plural], while the reference in subsection (a) is to a "major weapon system", and the definition in subsection (j) of the original is for the term "major system".

Commented [CR814]: Change for standard usage within title 10.

Commented [CR815]: Definition of "major system" in 1043(j)(1) is omitted as it will be covered in ch. 201, Definitions. Also, note that that term is not used in the text of the section.

Commented [CR816]: This is "subsection" in the original; apparently should be "section".

Commented [CR817]: The definitions in subsection (j) apply only to subsections (a) and (b) (that is, not to subsections (c)-(i)), so it is OK to repeal (j) with (a) & (b).

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1 (f) **CONFORMING AMENDMENTS RELATING TO REPORTS TERMINATION EFFECTIVE ON**
2 **JANUARY 1, 2022.**—Section 1061(c) of the National Defense Authorization Act for Fiscal Year
3 2017 (Public Law 114-328; 10 U.S.C. 111 note) is amended—

4 (1) in paragraph (11), by striking “Section 196(d)(1), (d)(4), and (e)(3)” and
5 inserting “Section 4173(d)(1), (d)(4), and (e)(3)”; and

6 (2) in paragraph (43), by striking “Section 2399(g)” and inserting “Section
7 4171(g)”.

8 (g) **CROSS-REFERENCE AMENDMENTS.**—

9 (1) Section 139(b)(6) of title 10, United States Code, is amended by striking
10 “section 2366” and inserting “section 4172”.

11 (2) Section 171a(i)(3) of such title is amended by striking “section 2366(e)” and
12 inserting “sections 4172(e)”.

13 (3) Section 2275(g)(3) of such title is amended by striking “section 2366(e)(7)”
14 and inserting “sections 4172(e)(7)”.

15 (4) Section 130i(j)(3)(C)(ix) of such title is amended by striking “section 196(i)”
16 and inserting “sections 4173(i)”.

17 (4) Section 139(d) of such title is amended by striking “section 196” and inserting
18 “sections 4173”.

19 (5) Section 220(c) of the National Defense Authorization Act for Fiscal Year
20 2010 (Public Law 111–84; 10 U.S.C. 221 note) is amended by striking “section 196(h)”
21 and inserting “sections 4173(i)”.

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NOTE: The following 10 sections of the FY2019 NDAA (P.L. 115-232) are new "note" sections under R&D sections of title 10 and are proposed to be codified in chapters of this subpart as follows:

- 1. Sec. 220 (10 U.S.C. 2364 note) – Innovation, new sec. 4076
2. Sec. 222 (10 U.S.C. 2364 note) – DoD Labs,
3. Sec. 225 (10 U.S.C. 2358 note) – Rapid Acquisition
4. Sec. 227 (10 U.S.C. 2358 note) – R&E Generally, new sec. 4013
5. Sec. 230 (10 U.S.C. 2358 note) – Innovation, new sec. 4078
6. Sec. 234 (10 U.S.C. 2358 note) – R&E Generally, new sec. 4014
7. Sec. 238 (10 U.S.C. 2358 note) – Innovation, new sec. 4077
8. Sec. 873 (10 U.S.C. 2371 note) – R&E Generally, new sec. 4006
9. Sec. 905 (10 U.S.C. 2364 note) – DTIC functions – leave as is.
10. Sec. 1286 (10 U.S.C. 2358 note) – R&E Generally, new sec. 4019

1 TITLE VI—MAJOR SYSTEMS, MAJOR DEFENSE ACQUISITION
2 PROGRAMS, AND WEAPON SYSTEMS DEVELOPMENT (PART V,
3 SUBPART F)

Note: As enacted, there were three chapters proposed for the subpart relating to Major Programs. Given the volume and complexity of provisions relating to Major Systems & MDAPs, the material has been organized into six chapters.

4 SEC. 601. GENERAL MATTERS.

5 (a) TABLES OF CHAPTERS AMENDMENTS SHOWING CHAPTER ORGANIZATION FOR SUBPART

6 F.—The tables of chapters at the beginning of subtitle A, and at the beginning of part V of
7 subtitle A (as added by section 801 of Public Law 115-232), of title 10, United States Code, are
8 amended by inserting before the item for the heading for subpart G of part V the following:

“SUBPART F—MAJOR SYSTEMS, MAJOR DEFENSE ACQUISITION PROGRAMS, AND WEAPON SYSTEMS DEVELOPMENT

Chapter
321. General Matters4201
322. Major Systems and Major Defense Acquisition Programs Generally4211
323. Life-Cycle And Sustainment 4321

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324. Program Status—Selected Acquisition Reports..... 4351
325. Cost Growth—Unit Cost Reports (Nunn-McCurdy) 4371
327. Weapon Systems Development and Related Matters.....4401

(b) DESIGNATION OF REVISED SUBPART F AND NEW CHAPTER 321.—

(1) NEW CHAPTER AND RESTATEMENT OF SECTION 2430.—Part V of subtitle A of title 10, United State Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by inserting before subpart G the following new subpart heading and chapter:

“Subpart F—Major Systems, Major Defense Acquisition Programs, And Weapon Systems Development

“CHAPTER 321—GENERAL MATTERS

- Sec.
4201 [2430(a)]. Major defense acquisition programs: definition; exceptions
4202. [2430(b),(c), 2302d(c)]. Major defense acquisition programs; major systems: authority to increase definitional threshold amounts.
4203 [2430a.] Major subprograms.
4204 [2430(d)]. Milestone decision authority.
4204 [New]. Service chief concerned defined.
4205 [2431]. Weapon systems for which procurement funding requested in budget: development and procurement schedules.

“§ 4201 [2430(a)]. Major defense acquisition programs: definition; exceptions

(a) [2430(a)(1)] DEFINITION.—Except as provided under subsection (b), in this part, the term “major defense acquisition program” means a Department of Defense acquisition program—

- (1) that is designated by the Secretary of Defense as a major defense acquisition program; or
(2) that is estimated by the Secretary of Defense to require—

Commented [CR818]: Original shell subparts E & F are both deleted in section 501so as to put the R&E subpart before this one. To minimize cross-references to other parts of the package, this amendment is made by reference to subpart G.

Commented [CR819]: Because the authority to increase thresholds is more than what would one would expect to find in a definition, and because this definition is so integral to this subpart, it is proposed that—
(1) this section appear here, rather than in the proposed Definitions chapter (ch. 201), and be applicable to all of Part V, rather than just subpart F; and
(2) that the proposed Definitions chapter include a cross-reference to this section, for visibility throughout the new Part V.

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(A) an eventual total expenditure for research, development, test, and evaluation of more than \$300,000,000 (based on fiscal year 1990 constant dollars); or

(B) an eventual total expenditure for procurement, including all planned increments or spirals, of more than \$1,800,000,000 (based on fiscal year 1990 constant dollars).

(b) EXCEPTIONS.—

(1) [2430(a)(2)] In this part, the term “major defense acquisition program” does not include the following:

(A) [2430(a)(1)] A Department of Defense acquisition program that is a highly sensitive classified program (as determined by the Secretary of Defense).

(B) [2430(a)(2)(A)] An acquisition program or project that is carried out using the rapid fielding or rapid prototyping acquisition pathway under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114 92; 10 U.S.C. 2302 note) sections 3611-3613 of this title.

(C) [2430(a)(2)(B)] An acquisition program for a defense business system (as defined in section 2222(i)(1) of this title) carried out using the acquisition guidance issued pursuant to section 883(e) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114 92; 10 U.S.C. 2223a note) section 4572 of this title.

(2) [2430(a)(1)(B)] Subsection (a)(2) does not apply in the case of a program for the acquisition of an automated information system (either a product or a service).

Commented [CR820]: Given the parenthetical “based on fiscal year 1990 constant dollar”, the actual amount currently in effect under this provision is apparently different from (and higher than) the amount that appears in the statutory language. Could the value actually in effect be substituted for this dollar amount as a non-substantive updating (with a corresponding update to the fiscal year reference)? This would not be a new inflation adjustment, but merely to bring the statutory language into alignment with the amount actually being applied. DoDI 5000.02, Jan. 7, 2015, at p. 44, provides: “Dollar value for all increments of the program: estimated by the DAE to require an eventual total expenditure for research, development, and test and evaluation (RDT&E) of more than \$480 million in Fiscal Year (FY) 2014 constant dollars or, for procurement, of more than \$2.79 billion in FY 2014 constant dollars.”

Commented [CR821]: Same as above as to updating the dollar amount..

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1 “§ 4202. [2430(b),(c), 2302d(c)]. Major defense acquisition programs; major systems:

2 *authority to increase definitional threshold amounts*

3 (a) [2430(b), (c)] ADJUSTMENTS TO THRESHOLDS FOR MAJOR DEFENSE ACQUISITION
4 PROGRAMS.—

5 (1) [2430(b) (1st sent.)] AUTHORITY.—The Secretary of Defense may adjust the
6 amounts (and the base fiscal year) provided in section 4201(a)(2) of this title on the basis
7 of Department of Defense escalation rates.

8 (2) [2430(c)] MATTERS TO BE CONSIDERED.—For purposes of section 4201(a)(2)
9 of this title, the Secretary shall consider, as applicable, the following:

10 (A) The estimated level of resources required to fulfill the relevant joint
11 military requirement, as determined by the Joint Requirements Oversight Council
12 pursuant to section 181 of this title.

13 (B) The cost estimate referred to in section ~~2366a(a)(6)~~ 4251(a)(6) of this
14 title.

15 (C) The cost estimate referred to in section ~~2366b(a)(1)(C)~~ 4252(a)(1)(C)
16 of this title.

17 (D) The cost estimate within a baseline description as required by section
18 ~~2435~~ 4214 of this title.

19 (b) [2302d(c)] ADJUSTMENT AUTHORITY FOR MAJOR SYSTEMS.—

20 (1) [2302d(c)(1)] AUTHORITY.—The Secretary of Defense may adjust the
21 amounts and the base fiscal year provided in section 3041(c)(1) of this title on the basis
22 of Department of Defense escalation rates.

Commented [CR822]: The reference to 4201(a)(2) follows current law. But, should it actually refer to paragraph (1), immediately above?

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1 (2) [2302d(c)(2)] ROUNDING.—An amount, as adjusted under paragraph (1), that
2 is not evenly divisible by \$5,000,000 shall be rounded to the nearest multiple of
3 \$5,000,000. In the case of an amount that is evenly divisible by \$2,500,000 but not
4 evenly divisible by \$5,000,000, the amount shall be rounded to the next higher multiple
5 of \$5,000,000.

6 (c) [2302d(c)(3), 2430(b) (2nd sent.)] NOTIFICATION TO CONGRESSIONAL COMMITTEES.—
7 An adjustment under subsection (a) or (b) shall be effective after the Secretary transmits to the
8 Committee on Armed Services of the Senate and the Committee on Armed Services of the House
9 of Representatives a written notification of the adjustment.

10 “§ 4204 [2430(d); Sec. 825(c)(2) of P.L. 114-92, FY16 NDAA (10 U.S.C. 2430 note)]. Major
11 **defense acquisition programs: milestone decision authority**

12 (a) [2430(d)(1)] SERVICE ACQUISITION EXECUTIVE.—The milestone decision authority
13 for a major defense acquisition program reaching Milestone A after October 1, 2016, shall be the
14 **service acquisition executive** of the military department that is managing the program, unless the
15 Secretary of Defense designates, under subsection (b), another official to serve as the milestone
16 decision authority.

17 (b) [2430(d)(2)] DESIGNATION OF ALTERNATE MILESTONE DECISION AUTHORITY.—The
18 Secretary of Defense may designate an alternate milestone decision authority for a program with
19 respect to which any of the following applies:

20 (1) Subject to subsection (f), the Secretary determines that the program is
21 addressing a joint requirement.

Commented [CR823]: As an FYI, note 10 U.S.C. 101(a)(10), which provides that, in title 10, the term "service acquisition executive" means "the civilian official within a military department who is designated as the service acquisition executive for purposes of regulations and procedures providing for a service acquisition executive for that military department."

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1 (2) The Secretary determines that the program is best managed by a Defense
2 Agency.

3 (3) The program has incurred a unit cost increase greater than the significant cost
4 threshold or critical cost threshold under ~~section 2433~~ **sections 4371-4375** of this title.

5 (4) The program is critical to a major interagency requirement or technology
6 development effort, or has significant international partner involvement.

7 (5) The Secretary determines that an alternate official serving as the milestone
8 decision authority will best provide for the program to achieve desired cost, schedule, and
9 performance outcomes.

10 (c) **[2430(d)(3)] REVERSION TO SERVICE ACQUISITION EXECUTIVE.**—

11 (1) After designating an alternate milestone decision authority under subsection
12 (b) for a program, the Secretary of Defense may revert the position of milestone decision
13 authority for the program back to the service acquisition executive upon request of the
14 Secretary of the military department concerned. A decision on the request shall be made
15 within 180 days after receipt of the request from the Secretary of the military department
16 concerned.

17 (2) If the Secretary of Defense denies the request for reversion of the milestone
18 decision authority back to the service acquisition executive, the Secretary shall report to
19 the congressional defense committees on the basis of the Secretary's decision that an
20 alternate official serving as milestone decision authority will best provide for the program
21 to achieve desired cost, schedule, and performance outcomes. No such reversion is
22 authorized after a program has incurred a unit cost increase greater than the significant

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1 cost threshold or critical cost threshold under ~~section 2433~~ *sections 4371-4375* of this
2 title, except in exceptional circumstances.

3 (d) [2430(d)(4)(A)] CERTIFICATIONS RELATING TO PROGRAM REQUIREMENTS AND
4 FUNDING.—For each major defense acquisition program, the Secretary of the military
5 department concerned and the ~~Chief of the armed force~~ *Service chief* concerned shall, in each
6 Selected Acquisition Report required under ~~section 2432~~ *sections 4351-4358* of this title—

7 (1) **certify** that program requirements are stable and funding is adequate to meet
8 cost, schedule, and performance objectives for the program; and

9 (2) identify and report to the congressional defense committees on any increased
10 risk to the program since the last report.

11 (e) [2430(d)(4)(B)] DOCUMENTATION AND OVERSIGHT.—The Secretary of Defense shall
12 review the acquisition oversight process for major defense acquisition programs and shall—

13 (1) limit outside requirements for documentation to an absolute minimum on
14 those programs where the service acquisition executive of the military department that is
15 managing the program is the milestone decision authority; and

16 (2) ensure that any policies, procedures, and activities related to oversight efforts
17 conducted outside of the military departments with regard to major defense acquisition
18 programs shall be implemented in a manner that does not unnecessarily increase program
19 costs or impede program schedules.

20 (f) [2430(d)(5)] LIMITATION ON AUTHORITY TO DESIGNATE ALTERNATIVE MDA FOR
21 PROGRAMS ADDRESSING JOINT REQUIREMENTS.—The authority of the Secretary of Defense to
22 designate an alternative milestone decision authority for a program with respect to which the

Commented [CR824]: See proposed definition of "Service Chief concerned" in section 3005, in ch. 201 above.

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1 Secretary determines that the program is addressing a joint requirement, as set forth in subsection
2 (b)(1), shall apply only for a major defense acquisition program that reaches Milestone A after
3 October 1, 2016, and before October 1, 2019.

4 (g) [Sec. 825(c)(2) of P.L. 114-92, FY16 NDAA (10 U.S.C. 2430 note)] GUIDANCE.—

5 The Deputy Chief Management Officer of the Department of Defense, in consultation with the
6 Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and
7 Sustainment and the service acquisition executives, shall issue guidance to ensure that by not
8 later than October 1, 2016, the acquisition policy, guidance, and practices of the Department of
9 Defense conform to the requirements of subsection (d) of section 2430 of title 10, United States
10 Code, as added by subsection (a) of this section this section. The guidance shall be designed to
11 ensure a streamlined decisionmaking and approval process and to minimize any information
12 requests, consistent with the requirement of paragraph (4)(A) of such subsection (d).?

13 (2) CONFORMING REPEALS.—The following provisions of law are repealed:

14 (A) Section 2430 of title 10, United States Code.

15 (B) Section 825(c)(1) and (2) of the National Defense Authorization Act
16 for Fiscal Year 2006 (Public Law 114-92 (10 U.S.C. 2430 note)).

17 (c) TRANSFER OF SECTION 2430a.—Section 2430a of such title is transferred to chapter
18 321 of such title, as added by subsection (b), inserted after section 4202, redesignated as
19 section 4203, and amended—

20 (1) by striking “section 2432(a)” in subsection (d) and inserting “section 4351”;

21 and

22 (2) by striking “this chapter” each place it appears and inserting “this subpart(?)”.

Commented [CR825]: “Deputy” to be deleted in light of sec. 1081(f)(2)(A) of the FY19 NDAA: “Any reference in a law (other than this Act) or regulation in effect on the day before the date of the enactment of this Act [Aug. 13, 2018] to the Deputy Chief Management Officer of the Department of Defense is deemed to be a reference to the Chief Management Officer of the Department of Defense.”

Commented [CR826]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR827]: 825(c)(1) is a requirement to submit an implementation plan NLT 180 days after Nov. 25, 2015, and is omitted as OBE. 825(c)(2) is codified as new 4204(g), above. They appear as a single note in the Code under 2430.

Commented [CR828]: The term “this chapter” appears in 5 instances in 2430a, meaning current ch.144. Is it OK to substitute “this subpart”, meaning new chapters 321-327? Or, should a more specific change be made in each instance?

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1 (d) **TRANSFER OF SECTION 2431.**—

2 (1) Section 2431 of such title is **transferred** to chapter 321, as added by
3 subsection (b), added at the end, and **redesignated** as section **4205**.

4 (2) The heading of such section is amended to read as follows:

5 “§ **4205 [2431]. Weapon systems for which procurement funding requested in budget:**
6 **development and procurement schedules”.**

7 (d) **CROSS REFERENCES.**—The following provisions of law are amended by striking
8 “section 2430” or “section 2430(a)”, as the case may be, and inserting “section 4201”:

9 (1) Section 139(a)(2)(B) of title 10, United States Code.

10 (2) Section 189(c)(1) of such title.

11 (3) Section 1706(c)1) of such title.

12 (4) Sections 1733(b)(1)(B)(ii) and 1737(a)(3) of such title.

13 (5) Section 2275(g)(2) of such title.

14 (6) Section 141(a) of the Bob Stump National Defense Authorization Act for
15 Fiscal Year 2003 (Public Law 107-314; 50 U.S.C. 1521a).

16 **SEC. 602. MAJOR SYSTEMS AND MAJOR DEFENSE ACQUISITION PROGRAMS**

17 **GENERALLY.**

18 (a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
19 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
20 (Public Law 115-232), is amended by inserting after chapter 321, as added by section 601, the
21 following new chapter:

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 **“CHAPTER 322— MAJOR SYSTEMS AND MAJOR DEFENSE**

2 **ACQUISITION PROGRAMS GENERALLY**

Subchapter	Sec.
I. Management	4211
II. Contracting	4231
III. Milestones	4251
IV. Additional Provisions Applicable Specifically to Major Defense Acquisition Programs.	4271
V. Contractors	4291

3 **SUBCHAPTER I—MANAGEMENT**

- Sec.
- 4211 [2431a, 2440]. Acquisition strategy.
- 4212 [2431b]. Risk management and mitigation.
- 4213 [Sec. 812 of P.L. 111-383, FY11 NDAA (10 USC 2430 note)]. Management of manufacturing risk.
- 4214 [2435]. Baseline description.
- 4215 [Sec. 837 of P.L. 115-91, FY18 NDAA (10 USC 2337a note)]. Major weapon systems: should-cost management.
- 4216 [Sec. 102(b)(1) of P.L. 111-23, WSARA (10 USC 2430 note)]. Major defense acquisition programs: resources for developmental test and evaluation and systems engineering in the military departments and Defense Agencies.
- 4217 [Sec. 908(d) of P.L. 110-181, FY08 NDAA (10 USC 2430 note)]. Principal military deputies to service acquisition executives: duties.
- 4218 [Sec. 806 of P.L. 109-163, FY06 NDAA (10 USC 2302 note)]. Cancellation of major automated information systems: congressional notification.

4 **SUBCHAPTER II—CONTRACTING**

- Sec.
- 4231. [2400]. Major systems: determination of quantity for low-rate initial production.
- 4232 [2442]. Use of lowest price technically acceptable source selection process: prohibition.
- 4233 [Sec. 811 of P.L. 112-239, FY13 NDAA (10 USC 2430 note)]. Use of cost-type contracts: limitation.
- 4234 [Sec 818(b)-(e) of FY07 NDAA, P L 109–364 (10 USC 2306 note)]. Development programs: determination of contract type.
- 4235 [Sec. 812 of P.L. 112-239, FY13 NDAA (10 USC 2430 note)]. Development and production contracts: consideration of potential termination liability.
- 4236 [2439; Sec 835(a)(3) of FY18 NDAA (10 U.S.C. 2439 note)]. Negotiation of price for technical data before development, production, or sustainment.

Commented [CR829]: NOTE: Immediately below are the subchapter headings and table of sections for each subchapter. The sections for each subchapter are inserted by further amendments, below.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 SUBCHAPTER III—MILESTONES FOR MAJOR DEFENSE ACQUISITION

2 PROGRAMS

Sec.

4251 [2366a; Sec. 802(d)(2) of P.L. 112-92, FY16 NDAA (10 USC 2366a note)] Major defense acquisition programs: determination required before Milestone A approval.

4252 [2366b; Sec. 802(d)(3) of P.L. 112-92, FY16 NDAA (10 USC 2366b note)]. Major defense acquisition programs: certification required before Milestone B approval.

4253 [2366c]. Major defense acquisition programs: submissions to Congress on Milestone C.

4254 [Sec. 838(a)(3)&(4) of P.L. 115-91, FY18 NDAA (10 USC 2366b note)]. Major defense acquisition programs: assessment of test and evaluation processes and tools.

4255 [Sec. 1047(d) of P.L. 110-417, FY09 NDAA (10 USC 2366b note)]. Formal review process for bandwidth requirements.

3 SUBCHAPTER IV—ADDITIONAL PROVISIONS APPLICABLE

4 SPECIFICALLY TO MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.

4271 [2448a; sec. 925 of FY17 NDAA (10 U.S.C. 2448a note)]. Program cost, fielding, and performance goals in planning major defense acquisition programs.

4272 [2448b]. Independent technical risk assessments.

4273 [2438]. Performance assessments and root cause analyses.

4274 [2547(b)-(d)]. Acquisition-related functions of Service chiefs: adherence to requirements in major defense acquisition programs.

4275 [Sec. 828 of P.L. 114-92, FY16 NDAA (10 USC 2430 note)]. Cost overruns on major defense acquisition programs: annual penalty assessed military departments.

4276 [Sec. 814 of P.L. 110-417, FY09 NDAA (10 USC 2430 note)]. Cost control under major defense acquisition programs: military department Configuration Steering Boards.

4277 [Sec. 815 of P.L. 103-337, FY95 NDAA (10 USC 2430 note)]. Major defense acquisition programs: environmental impact analyses; other environmental consequence analyses.

4278 [Sec. 924 of P.L. 108-136, FY04 NDAA (10 USC 2430 note)]. Management of National Security Agency modernization program.

5 SUBCHAPTER V—CONTRACTORS

Sec.

4291 Sec. 207(a)-(c) of P.L. 111-23, WSARA (10 USC 2430 note)]. Organizational conflicts of interest in major defense acquisition programs.

4292 [Sec 802(a)-(d) of PL 110-181; FY08 NDAA (2410p note); 2410p]. Contractors as lead system integrators: prohibition on new contracts; financial interest limitations; exceptions.

4293 [2436]. Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States.

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4294 [Sec 883 of PL 114-328, FY17 NDAA (2302 note)] Weapon systems contractors: pilot program for provision of storage and distribution services support.

(b) SUBCHAPTER I (MANAGEMENT).—

(1) TRANSFER OF SECTION 2431a.—Section 2431a of 10, United States Code, is transferred to chapter 321, as added by subsection (a), inserted after the table of sections at the beginning of subchapter I, redesignated as section 4211, and amended—

(A) in subsection (b), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”;

(B) in subsection (c)(2)—

(i) in subparagraph (B), by striking “section 2440 of this title” and inserting “paragraph (3)”;

(ii) in subparagraph (D), by striking “section 2337” and inserting “section 4324;

(iii) in subparagraph (F), by striking “section 2320” and inserting “sections 3771-3775”; and

(iv) in subparagraph (H), by striking “section 2306b” and inserting “sections 3501-3511”; and

(C) in subsection (e)—

(i) by striking paragraphs (1) and (2) and redesignating paragraphs (3) through (10) as paragraphs (1) through (8), respectively;

(ii) in paragraph (2) (as so redesignated), by striking “section 2366(e)(7)” and inserting “section 4172(e)(7)”;

Commented [CR830]: Note that section 2431a includes references to major automated information systems. Is that an obsolete term in statutory usage after the repeal of chapter 144A? Should those references be deleted?

DoD: Please advise if the term “major automated information system” is still in use and, if not, what should be done with the references to MAISs in 2431a.

Commented [CR831]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

See Note 6 in Appendix F of the DoD Report, relating to 10 U.S.C. 2431a: “The USD(R&E) is responsible for the Technology Development Strategy which will be incorporated into the acquisition strategy for each project or system.” Is that a statutory requirement? Where does it appear?

Commented [CR832]: Paragraph (1) to be stricken since it refers to the definition of MDAP and is not needed since the definition in sec. 4201 above will apply.

Paragraph (2) to be stricken since it refers to the definition of major system and is not needed since the definition in sec. 3041 will apply.

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(iv) in paragraph (5) (as so redesignated), by striking “section 2433(a)(4)” and inserting “section 4371(a)(2)”;

(v) in paragraph (6) (as so redesignated), by striking “section 2433(a)(5)” and inserting “section 4371(a)(3)”.

(2) TRANSFER OF SECTION 2440.—The text of section 2440 of title 10, United States Code, is transferred to section 4211 of such title, as transferred and redesignated by paragraph (1), inserted at the end of subsection (c), and amended—

(A) by inserting “(3) TECHNOLOGY AND INDUSTRIAL BASE PLANS.—” before “The Secretary”; and

(B) by striking “section 2501” and inserting “section 4811”.

(3) TRANSFER OF SECTION 2431b.—Section 2431b of such title is transferred to chapter 322 of such title, inserted after section 4211, as transferred and redesignated by paragraph (1) and amended by paragraph (2), redesignated as section 4212, and amended—

(A) in subsection (a), by striking “section 2431a” and inserting “section 4211”;

(B) in subsection (b), by striking “, at a minimum,”; and

(C) by striking subsection (d) and inserting the following:

“(d) CONCURRENCY DEFINED.—In this section, the term ‘concurrency’ means, with respect to an acquisition strategy, the combination or overlap of program phases or activities.”.

(4) CODIFICATION OF FY2011 NDAA SECTION.—

Commented [CR833]: Note that current 2431a(e)(5) provides a definition of “milestone decision authority” for purposes of 2431. How does that definition, enacted by sec. 821 of the FY16 NDAA, relate to the different definition of “milestone decision authority” in 2430(d), enacted by sec. 825 of the FY16 NDAA?

Commented [CR834]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

Commented [CR835]: This revises subsection (d) to delete current para (2), which provides definitions that will be redundant with definitions elsewhere.

Commented [CR836]: This is not new, but restates current para (1).

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1 (A) CODIFICATION.—Such chapter is further amended by inserting after
2 section 4212, as transferred and redesignated by paragraph (3), a new section
3 4213 consisting of—

(i) a heading as follows:

“§ 4213 [Sec. 812 of P.L. 111-383, FY11 NDAA (10 USC 2430 note)]. Management of
manufacturing risk”; and

(ii) a text consisting of the text of subsections (a), (b), and (c) of
section 812 of the Ike Skelton National Defense Authorization Act for
Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2430 note), revised—

(I) in subsection (a), by striking “Not later than” and all the
follows through “the Secretary” and inserting “The Secretary”;

(II) in subsection (b), by striking “, at a minimum”; and

(III) in subsection (c), by striking “shall ensure” and all the
follows through “the need of” and inserting “shall ensure that the
need of”;

(B) CONFORMING REPEAL.—Section 812 of the Ike Skelton National
Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C.
2430 note) is repealed.

(5) TRANSFER OF SECTION 2435.—Section 2435 of title 10, United States Code,
is transferred to chapter 322 of such title, inserted after section 4213, as added by
paragraph (4), redesignated as section 4214, and amended—

Commented [CR837]: The original has a subsection (d),
omitted here, which provides that “major defense acquisition
program” has the meaning provided in 2430(a).
That 2430(a) definition will now apply to this section because of
4201(a), so there is no need to repeat it here.

Commented [CR838]: Phrase “, at a minimum” proposed to be
omitted as part of general recommendation to delete that phrase
wherever appearing as being unnecessary.

Commented [CR839]: This amendment deletes paragraph (1)
of current 812(c). That paragraph refers to a workforce plan required
under 10 USC 115b, which has been repealed, making paragraph (1)
obsolete.
However, if the content of paragraph (1) continues to be provided
through another report, perhaps the reference in paragraph (1) should
be updated, rather than repealing the paragraph.

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1 (A) in subsections (b) and (e)(2), by striking “Under Secretary of Defense
2 for Acquisition, Technology, and Logistics” and inserting “Under Secretary of
3 Defense for Acquisition and Sustainment”;

Commented [CR840]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

4 (B) in subsections (a)(2) and (d)(2), by striking “section 2433” and
5 inserting “sections 4371-4375”; and

6 (C) in subsection (d)—

7 (i) in paragraph (1), by striking “In this chapter” and inserting “In
8 this **subpart**”; and

Commented [CR841]: Should “In this chapter” [meaning ch. 144] be changed to “In this subpart” or something else?

9 (ii) in paragraph (2), by striking “subsection (d) of such section”
10 and inserting “section 4374 of this title”; and

11 (iii) in paragraph (3), by striking “section 2432” and inserting
12 “sections 4351-4358”.

13 (6) **CODIFICATION OF FY2018 NDAA SECTION.**—

14 (A) **CODIFICATION.**—Chapter 322 of title 10, United States Code, is
15 further amended by inserting after section 4214, as transferred and redesignated
16 by paragraph (5), a new section **4215** consisting of—

17 (i) a heading as follows:

18 “§ **4215** [Sec. 837 of P.L. 115-91, FY18 NDAA (10 USC 2337a note)]. **Major weapon**
19 **systems: should-cost management**”; and

20 (ii) a text consisting of the text of section 837 of the National
21 Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10
22 U.S.C. 2337a note), revised—

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(I) in subsection (a), by striking “Not later than” and all that follows through “to provide” and inserting “The Secretary of Defense shall ensure that the Defense Supplement to the Federal Acquisition Regulation Supplement provides”; and

(II) in subsection (b), by striking “, at a minimum,”

Commented [CR842]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

(B) CONFORMING REPEAL.—Section 837 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2337a note) is repealed.

(C) SAVINGS PROVISION FOR DEADLINE FOR REVISED REGULATIONS.—

Commented [CR843]: If the regulations have been issued, this subparagraph should be deleted. OSD: Please advise if these regs have been issued.

The Secretary of Defense shall amend the Defense Federal Acquisition Regulation Supplement to provide for the regulations required by section 4215 of title 10, United States Code, as added by subparagraph (A), not later than 180 days after December 12, 2017.

(7) CODIFICATION OF WSARA PROVISION.—

(A) CODIFICATION.—Such chapter is further amended by inserting after section 4215, as added by paragraph (6), the following new section:

“§ 4216 [Sec. 102(b)(1) of P.L. 111-23, WSARA (10 USC 2430 note)]. Major defense acquisition programs: resources for developmental test and evaluation and systems engineering in the military departments and Defense Agencies

“The service acquisition executive of each military department and each Defense Agency with responsibility for a major defense acquisition program shall develop and implement plans to

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1 ~~ensure shall ensure that~~ the military department or Defense Agency concerned ~~has provided~~

Commented [CR844]: Revised for ongoing applicability.

2 *provides* appropriate resources for each of the following:

3 "(1) Developmental testing organizations with adequate numbers of trained
4 personnel in order to—

5 "(A) ensure that developmental testing requirements are appropriately
6 addressed in the translation of operational requirements into contract
7 specifications, in the source selection process, and in the preparation of requests
8 for proposals on all major defense acquisition programs;

9 "(B) participate in the planning of developmental test and evaluation
10 activities, including the preparation and approval of a developmental test and
11 evaluation plan within the test and evaluation master plan for each major defense
12 acquisition program; and

13 "(C) participate in and oversee the conduct of developmental testing, the
14 analysis of data, and the preparation of evaluations and reports based on such
15 testing.

16 "(2) Development planning and systems engineering organizations with adequate
17 numbers of trained personnel in order to—

18 "(A) support key requirements, acquisition, and budget decisions made for
19 each major defense acquisition program ~~prior to~~ *before* Milestone A approval and
20 Milestone B approval through a rigorous systems analysis and systems
21 engineering process;

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1 (B) include a robust program for improving reliability, availability,
2 maintainability, and sustainability as an integral part of design and development
3 within the systems engineering master plan for each major defense acquisition
4 program; and

5 (C) identify systems engineering requirements, including reliability,
6 availability, maintainability, and lifecycle management and sustainability
7 requirements, during the Joint Capabilities Integration Development System
8 process, and incorporate such systems engineering requirements into contract
9 requirements for each major defense acquisition program."

10 (B) **CONFORMING REPEAL.**—Section 102(b) of the Weapon Systems
11 Acquisition Reform Act of 2009 (Public Law 111-23; 10 U.S.C. 2430 note) is
12 repealed.

13 (8) **CODIFICATION OF FY2008 NDAA SECTION.**—

14 (A) **CODIFICATION.**—Such chapter is further amended by inserting after
15 section 4216, as added by paragraph (7), a new section **4217** consisting of—

16 (i) a heading as follows:

17 **“§ 4217 [Sec. 908(d) of P.L. 110-181, FY08 NDAA (10 USC 2430 note)]. Principal military**
18 **deputies to service acquisition executives: duties”; and**

19 (ii) a text consisting of the text of section 908(d) of the National
20 Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10
21 U.S.C. 2430 note), revised—

22 (I) by striking “Duties of Principal Military Deputies—.”;

Commented [CR845]: In the original, paragraphs (2) & (3) are reporting requirements through 2014 and are omitted as OBE.

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1 (II) in paragraph (1), by striking "Chief of Staff of the
2 Armed Force concerned" and inserting "Service chief concerned";
3 (II) in paragraphs (2) and (3), by striking "Chief of Staff"
4 and inserting "Service chief concerned"; and
5 (IV) in paragraph (2)(B), by striking "section 2547(c)(1) of
6 title 10, United States Code," and inserting "section 3103(c)(1) of
7 this title".

Commented [CR846]: Note new definition of "Service chief concerned" proposed in sec 3005 above.

Commented [CR847]: Sec 2547(c)(1) is now 2547(d)(1) after redesignation of (c) as (d) by sec 807(c)(1) of the FY2017 NDAA. 2547(d)(1) becomes 3103(c)(1) in chapter 205, "Defense Acquisition System".

ALTERNATIVE:

"(a) ARMY.—The Principal Military Deputy to the service acquisition executive for the Department of the Army shall be responsible for—

"(1) keeping the Chief of Staff of the Army informed of the progress of major defense acquisition programs;

"(2) informing the Chief of Staff on a continuing basis of any developments described in subsection (d); and

"(3) ensuring that the views of the Chief of Staff on cost, schedule, technical feasibility, and performance trade-offs are strongly considered by program managers and program executive officers in all phases of the acquisition process.

(b) NAVY.—The Principal Military Deputy to the service acquisition executive for the Department of the Navy shall be responsible for—

"(1) keeping the Chief of Naval Operations and the Commandant of the Marine Corps informed of the progress of major defense acquisition programs;

"(2) informing the Chief of Naval Operations and the Commandant on a continuing basis of any developments described in subsection (d); and

"(3) ensuring that the views of the Chief of Naval Operations and the Commandant on cost, schedule, technical feasibility, and performance trade-offs are strongly considered by program managers and program executive officers in all phases of the acquisition process.

(c) AIR FORCE.—The Principal Military Deputy to the service acquisition executive for the Department of the Air Force shall be responsible for—

"(1) keeping the Chief of Staff of the Air Force informed of the progress of major defense acquisition programs;

"(2) informing the Chief of Staff on a continuing basis of any developments described in subsection (d); and

"(3) ensuring that the views of the Chief of Staff on cost, schedule, technical feasibility, and performance trade-offs are strongly considered by program managers and program executive officers in all phases of the acquisition process.

Commented [CR848]: Consider whether this alternative, while longer than the original, states the policy more clearly.

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“(d) DEVELOPMENTS.—Developments referred to in subsections (a)(2), (b)(2), and (c)(2) are developments on major defense acquisition programs that may require new or revisited trade-offs among cost, schedule, technical feasibility, and performance, including—

- “(1) significant cost growth or schedule slippage; and
- “(2) requirements creep (as defined in section 3103(c)(1) of this title.”

1 (B) CONFORMING REPEAL.—Section 908(d) of the National Defense
2 Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2430
3 note) is repealed.

4 (9) CODIFICATION OF FY2006 NDAA SECTION.—

5 (A) CODIFICATION.—Such chapter is further amended by inserting after
6 section 4217, as added by paragraph (8), a new section 4218 consisting of—

7 (i) a heading as follows:

8 “§ 4218 [Sec. 806 of P.L. 109-163, FY06 NDAA (10 USC 2302 note). Cancellation of major
9 automated information systems: congressional notification”; and

10 (ii) a text consisting of the text of section 806 of the National
11 Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 10
12 U.S.C. 2302 note).

13 (B) CONFORMING REPEAL.—Section 806 of the National Defense
14 Authorization Act for Fiscal Year 2006 (Public Law 109-163; 10 U.S.C. 2302
15 note) is repealed.

16 (10) CROSS-REFERENCE AMENDMENT.—Section 1734(c)(2) of title 10, United
17 States Code, is amended by striking “section 2435(a)” and inserting “section 4214(a)”.

18 (c) SUBCHAPTER II (CONTRACTING).—

19 (1) TRANSFER OF SECTION 2400.—

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1 (A) Section 2400 of title 10, United States Code, is **transferred** to chapter
2 322, as added by subsection (a), **inserted** after the table of sections at the
3 beginning of subchapter II, **redesignated** as section 4231, and **amended**—

4 (i) in subsection (a)(5), by striking “section 2432” and inserting
5 “sections 4351-4358”; and

6 (ii) in subsection (b)(1), by striking “section 2399” and inserting
7 “section 4171”.

8 (B) The heading of such section is amended to read as follows:
9

10 **“§ 4231 [2400]. Major systems: determination of quantity for low-rate initial production”.**

11 (2) TRANSFER OF SECTION 2442.—Section 2442 of such title is transferred to
12 chapter 322 of such title, inserted after section 4231, as transferred and redesignated by
13 paragraph (1), redesignated as section 4232, and amended in subsection (b) by striking
14 paragraph (2) and redesignating paragraph (3) as paragraph (2).

15 (3) CODIFICATION OF FY2013 NDAA SECTION.—

16 (A) CODIFICATION.—Such chapter is further amended by inserting after
17 section 4232, as transferred and redesignated by paragraph (2), a new section
18 **4233** consisting of—

19 (i) a heading as follows:

20 **“§ 4233 [Sec. 811 of P.L. 112-239, FY13 NDAA (10 USC 2430 note)]. Use of cost-type
21 contracts: limitation”; and**

Commented [CR849]: This amendment deletes paragraph (2), which provides that “major defense acquisition program” has the meaning provided in 2430. That 2430 definition will now apply to this section because of 4201(a), so there is no need to repeat it here.

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(ii) a text consisting of the text of section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 10 U.S.C. 2430 note), revised—

(I) in subsection (a), by striking “Not later than” and all the follows through “Department of Defense to prohibit” and inserting “The Secretary of Defense shall prescribe regulations to prohibit”;

(II) in subsection (b)(1), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”;

(III) in subsection (c), by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(IV) by striking subsection (d).

(B) APPLICABILITY.—The requirements of section 4233 of title 10, United States Code, as added by subparagraph (A), shall not apply to a contract for the production of a major defense acquisition program entered into before October 1, 2014.

(C) CONFORMING REPEAL.—Section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 10 U.S.C. 2430 note) is repealed.

(4) CODIFICATION OF FY2007 NDAA SECTION.—

Commented [CR850]: This change is both to delete the NLT clause and to revise the sentence for ongoing applicability. The phrase “shall modify the acquisition regulations of the Department of Defense to prohibit ..” would be changed by this amendment to “shall prescribe regulations to prohibit..”. OK? (No harm here in removing the adjective “acquisition” before “regulations”?)

Commented [CR851]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR852]: This amendment would delete paragraph (1), which provides that “major defense acquisition program” has the meaning provided in 2430(a). That 2430 definition will now apply to this section because of 4201(a), so there is no need to repeat it here.

Commented [CR853]: Rather than including in the title 10 section a date that will become increasingly obsolete, subsection (d) would be replaced outside the title 10 section by subparagraph (B), immediately below.

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1 (A) CODIFICATION.—Such chapter is further amended by inserting after
2 section 4233, as transferred and redesignated by paragraph (3), the following new
3 section:

4 “§ 4234 [Sec. 818(b)-(e) of FY07 NDAA, P L 109–364 (10 USC 2306 note)]. **Development**
5 **programs: determination of contract type**

6 “(a) [818(b), (c) 1st sentence] The Secretary of Defense shall ensure that the regulations
7 of the Department of Defense regarding the determination of contract type for development
8 programs require the milestone decision authority for a major defense acquisition program to
9 select the contract type for a development program at the time of a decision on Milestone B
10 approval (or Key Decision Point B approval in the case of a space program) that is consistent
11 with the level of program risk for the program.

12 “(b) [818(c) 2nd sentence] CONTRACT TYPE.—The milestone decision authority may
13 select—

14 “(1) a fixed-price type contract (including a fixed price incentive contract); or

15 “(2) a cost type contract.

16 “(c) [818(d)] CONDITIONS WITH RESPECT TO AUTHORIZATION OF COST TYPE

17 CONTRACT.—The regulations shall provide that the milestone decision authority may authorize
18 the use of a cost type contract under subsections (a) and (b) for a development program only
19 upon a written determination that—

20 “(1) the program is so complex and technically challenging that it would not be
21 practicable to reduce program risk to a level that would permit the use of a fixed-price
22 type contract; and

Commented [CR854]: Subsection (a) here combines subsection (b) and the first sentence of subsection (c) from the original.

Commented [CR855]: The NLT clause in the original is omitted as OBE

Commented [CR856]: This is revised for ongoing applicability

Commented [CR857]: In the source section, “Milestone Decision Authority” is treated as a proper noun, with initial-letter capitalization. In sections in title 10, including 2430(d), the usage is “milestone decision authority”, lower case. The references in this section are changed in each instance to lower case.

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1 “(2) the complexity and technical challenge of the program is not the result of a
2 failure to meet the requirements established in section ~~2366a~~ **4251** of title 10, United
3 States Code.

4 “(d) [818(e)] JUSTIFICATION FOR SELECTION OF CONTRACT TYPE.—The regulations shall
5 require the milestone decision authority to document the basis for the contract type selected for a
6 program. The documentation shall include an explanation of the level of program risk for the
7 program and, if the milestone decision authority determines that the level of program risk is high,
8 the steps that have been taken to reduce program risk and reasons for proceeding with Milestone
9 B approval despite the high level of program risk.”

10 (B) CONFORMING REPEAL.—Section 818(b)-(e) of the John Warner
11 National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364;
12 10 U.S.C. 2306 note) is repealed.

13 (5) CODIFICATION OF FY2013 NDAA SECTION.—

14 (A) CODIFICATION.—Such chapter is further amended by inserting after
15 section 4234, as added by paragraph (4), the following new section:

16 “§ 4235 [Sec. 812 of P.L. 112-239, FY13 NDAA (10 USC 2430 note)]. **Development and**
17 **production contracts: consideration of potential termination liability**

18 "(a) ~~DEPARTMENT OF DEFENSE REVIEW~~ *CONSIDERATION OF POTENTIAL TERMINATION*
19 *LIABILITY*.—Not later than 180 days after the date of the enactment of this Act [Jan. 2, 2013], the
20 *The* Under Secretary of Defense for Acquisition, Technology, and Logistics *Acquisition and*
21 *Sustainment* shall ~~review relevant acquisition guidance and take appropriate actions to ensure~~
22 that program managers for major defense acquisition programs are preparing estimates of

Commented [CR858]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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1 potential termination liability for covered contracts, including how such termination liability is
2 likely to increase or decrease over the period of performance, and are giving appropriate
3 consideration to such estimates before making recommendations on decisions to enter into or
4 terminate such contracts.

[ALTERNATIVE:]

"(a) CONSIDERATION OF POTENTIAL TERMINATION LIABILITY.—The Under Secretary of
Defense for Technology and Sustainment shall ensure that the program manager for
a major defense acquisition program, before making a recommendation on a decision to enter
into, or to terminate, a covered contract—

(1) prepares an estimate of potential termination liability for the contract,
including how such termination liability is likely to increase or decrease over the period
of performance; and

(2) gives appropriate consideration to the estimate.

Commented [CR859]: This alternative (1) restates the text after
"ensure that" to put the text in the singular rather than the plural
(note that subsection (b) is stated in the singular) and (2) makes
organization edits.
Consider whether this alternative improves readability with no
change.

5 "(b) COVERED CONTRACTS.—For purposes of this section, a covered contract is a contract
6 for the development or production of a major defense acquisition program for which potential
7 termination liability could reasonably be expected to exceed \$100,000,000."

Commented [CR860]: The original had a subsection (b),
omitted as OBE, that required a GAO report NLT 270 days after
Jan. 2, 2013.

(B) CONFORMING REPEAL.—Section 812 of the National Defense

Authorization Act for Fiscal Year 2013 (Public Law 112-239; 10 U.S.C. 2430
note) is repealed.

Commented [CR861]: The original has a subsection (b)
requiring a one-time GAO report, which is omitted as OBE, and a
subsection (d), defining MDAP, which is not needed in light of
4201.

(6) TRANSFER OF SECTION 2439.—

(A) Section 2439 of title 10, United States Code, is transferred to chapter
322, as added by subsection (a), inserted after section 4235, as added by
paragraph (5), and redesignated as section 4236.

(B) The heading of such section is amended to read as follows:

"§ 4236 [2439; Sec 835(a)(3) of FY18 NDAA (10 U.S.C. 2439 note)]. Negotiation of price for
technical data before development, production, or sustainment"

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1 (7) CODIFICATION OF FY2018 NDAA PROVISION.—

2 (A) CODIFICATION.—Section 4236 of title 10, United States Code, as
3 added by paragraph (6), is amended—

4 (i) by inserting “(a) IN GENERAL.—” before “The Secretary”; and

5 (ii) by adding at the end the following new subsection:

6 “(b) APPLICABILITY.—Subsection (a) applies with respect to any contract for engineering
7 and manufacturing development of a major weapon system, or for the production of a major
8 weapon system, for which the contract solicitation is issued after December 11, 2018.”.

9 (B) CONFORMING REPEAL.—Section 835(a)(3) of the National Defense
10 Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2439
11 note) is repealed.

12 (d) SUBCHAPTER III (MILESTONES).—

13 (1) TRANSFER OF SECTION 2366a.—Section 2366a of title 10, United States
14 Code, is **transferred** to chapter 322 of such title, **inserted** after the table of sections at
15 the beginning of subchapter III, **redesignated** as section 4251, and **amended**—

16 (A) in subsection (a), by striking “Chief of the armed force concerned”
17 and inserting “Service chief **concerned**”;

18 (B) in subsection (b)—

19 (i) in paragraph (4), by striking “section 2448b(a)(1)” and inserting
20 “section 4272(a)(1)”; and

21 (ii) in paragraph (8), by striking “chapter 144B” and inserting
22 “chapter 327”;

Commented [CR862]: See proposed definition of “Service chief concerned” in 3005 above

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(C) in subsection (c)(1)—

(i) in subparagraph (A), by striking “section 2448a(a)” and inserting “section 4271(a)”;

(ii) in subparagraph (C), by striking “section 2334(a)(6)” and inserting “section 3221(b)(6)”;

(iii) in subparagraph (E), by striking “section 2448b” and inserting “section 4272”; and

(iv) in subsection (F), by striking “section 2366a(b)(6) of this title” and inserting “subsection (b)(6)”;

(D) in subsection (d)—

(i) by striking paragraphs (1) and (6) and redesignating paragraphs (2), (3), (4), (5), (7), (8), (9) and (10) as paragraphs (1), (2), (3), (4), (5), (6), (7) and (8), respectively;

(ii) in paragraph (3) (as so redesignated), by striking “section 2366(e)(7)” and inserting “section 4172(e)(7)”;

(iii) in paragraph (6) (as so redesignated), by striking “section 2448a(a)” and inserting “section 4271(a)”;

(iv) in paragraph (7) (as so redesignated), by striking “section 2446a(b)(3)” and inserting “section 4401(b)(3)”.

(2) CODIFICATION OF FY2016 NDAA PROVISION.—

(A) CODIFICATION.—Section 4251 of title 10, United States Code, as transferred, redesignated, and amended by paragraph (1), is further amended—

Commented [CR863]: Note that (c)(2) requires as a matter of law that an MDA (an executive branch official) take a certain action (submit information to congressional committees) upon the request of a congressional committee, that is, upon the legislative branch taking an action that does not include bicameralism and presentment.

Commented [CR864]: Amendment corrects form of internal references; this should not include its own section # when referring to another element of the same section.

Commented [CR865]: This amendment deletes paragraph (1), which provides that “major defense acquisition program” has the meaning provided in 2430. That 2430 definition will now apply to this section because of 4201(a), so there is no need to repeat it here.

Commented [CR866]: This amendment deletes paragraph (6), referring to 2430a. Since 2430a and this section (2366a) will now be in the same chapter, 2430a (new 4303) will apply own terms, making paragraph (6) unnecessary going forward.

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(i) in subsection (a)—
(I) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and
(II) by inserting after paragraph (1) the following new paragraph (2):

“(2) the views of the Chief of the armed force Service chief concerned under subsection (d) have been received;”;

(ii) by redesignating subsection (d) (as amended by paragraph (1)(D) as subsection (e); and

(iii) by inserting after subsection (c) the following new subsection (d):

“(d) [Sec. 802(d)(2) of P.L. 112-92, FY16 NDAA (10 USC 2366a note)] VIEWS OF CHIEF OF THE ARMED FORCE SERVICE CHIEF CONCERNED.—The Chief of the armed force Service chief concerned shall advise the milestone decision authority for a major defense acquisition program of the Chief’s views on cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program, as provided in subsection (a)(3), before a Milestone A decision on the program.”

(B) CONFORMING REPEAL.—Section 802(d)(2) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 112-92; 10 U.S.C. 2366a note) is repealed.

(3) TRANSFER OF SECTION 2366b.—Section 2366b of title 10, United States Code, is transferred to chapter 322 of such title, inserted after section 4251, as

Commented [CR867]: See proposed definition of “Service chief concerned” in 3005 above

Commented [CR868]: See proposed definition of “Service chief concerned” in 3005 above

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1 transferred and redesignated by paragraph (1), **redesignated** as section **4252**, and
2 **amended**—

3 (A) in subsection (a)(2) by striking “section 2448b” and inserting “section
4 4272”;

5 (B) in subsection (a)(3)—

6 (i) in subparagraph (D), by striking “section 2435” and “section
7 2448a(a)” and inserting “section 4214” and “section 4271(a)”,
8 respectively; and

9 (ii) in subparagraph (N), by striking “section 2446b(e)” and
10 inserting “section 4402(e)”;

11 (C) in subsection (c)(1)—

12 (i) in subparagraph (A), by striking “section 2448a(a)” and
13 inserting “section 4271(a)”;

14 (ii) in subparagraph (C), by striking “section 2334(a)(6)” and
15 inserting “section 3221(b)(6)”;

16 (iii) in subparagraph (E), by striking “section 2448b” and inserting
17 “section 4272”;

18 (D) in subsection (c)(2)(A), by striking “section 2432” and inserting
19 “sections 4351-4358”;

20 (E) in subsection (d)(3), by striking “section 2433a(c)” and inserting
21 “section 4377”; and

22 (F) in subsection (g)—

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(i) by striking paragraphs (1) and (2) and redesignating paragraphs (3), (4), (5), (6), (7), and (8) as paragraphs (1), (2), (3), (4), (5), and (6), respectively;

(ii) in paragraph (2) (as so redesignated), by striking “section 2366(e)(7)” and inserting “section 4172(e)(7)”;

(iii) in paragraph (4) (as so redesignated), by striking “section 2448a(a)” and inserting “section 4271(a)”;

(iv) in paragraph (5) (as so redesignated), by striking “section 2446a(b)(3)” and inserting “section 4401(b)(3)”.

(4) CODIFICATION OF FY2016 NDAA PROVISION.—

(A) CODIFICATION.—Section 4252 of title 10, United States Code, as transferred, redesignated, and amended by paragraph (3), is further amended—

(i) by redesignating subsections (f) and (g) (as amended by paragraph (3)) as subsections (g) and (h), respectively; and

(ii) by inserting after subsection (e) the following new subsection

(f):

“(f) [Sec. 802(d)(3) of P.L. 114-92, FY16 NDAA (10 USC 2366b note)] VIEWS OF

~~CHIEF OF THE ARMED FORCE~~ SERVICE CHIEF CONCERNED.—The Chief of the armed force

Service chief concerned shall advise the milestone decision authority for a major defense acquisition program of the Chief’s views on cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program, as provided in subsection (b)(3) (a)(3)(B), before a Milestone B decision on the program.”

Commented [CR869]: This amendment deletes paragraph (1), which provides that “major defense acquisition program” has the meaning provided in 2430. That 2430 definition will now apply to this section because of 4201(a), so there is no need to repeat it here.

Commented [CR870]: This amendment deletes paragraph (2), referring to 2430a. Since 2430a and this section (2366b) will now be in the same chapter, 2430a (new 4303) will apply own terms, making paragraph (2) unnecessary going forward.

Commented [CR871]: See proposed definition of “Service chief concerned” in 3005 above

Commented [CR872]: The original refers to 2366b(b)(3). There is no (b)(3). It appears that the reference should be to (a)(3)(B). Or should it be something else? DoD: please advise if (a)(3)(B) is correct as the new reference.

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1 (B) CONFORMING REPEAL.—Section 802(d)(3) of the National Defense
2 Authorization Act for Fiscal Year 2016 (Public Law 112-92; 10 U.S.C. 2366b
3 note) is repealed.

4 (5) TRANSFER OF SECTION 2366c.—Section 2366c of title 10, United States
5 Code, is transferred to chapter 322 of such title, inserted after section 4252, as
6 transferred and redesignated by paragraph (3), redesignated as section 4253, and
7 amended in subsection (a)(2) by striking “section 2334(a)(6)” and inserting “section
8 3221(b)(6)”.

9 (6) CODIFICATION OF FY2018 NDAA PROVISIONS.—

10 (A) CODIFICATION.—Chapter 322 of title 10, United States Code, as added
11 by subsection (a), is further amended by inserting after section 4253, as
12 transferred and redesignated by paragraph (5), the following new section:

13 “§ 4254 [Sec. 838(a)(3)&(4) of P.L. 115-91, FY18 NDAA (10 USC 2366b note)]. Major
14 defense acquisition programs: assessment of test and evaluation processes
15 and tools

16 “(a) [Sec. 838(a)(3)] RESPONSIBILITY FOR CONDUCTING ASSESSMENTS.—For purposes of
17 the sufficiency assessments required by section ~~2366b(e)(1)~~ 4252(c)(1) and section ~~2366e(a)(4)~~
18 4253(a)(4) of this title with respect to a major defense acquisition program—

19 "(1) if the milestone decision authority for the program is the service acquisition
20 executive of the military department that is managing the program, the sufficiency
21 assessment shall be conducted by the senior official within the military department with
22 responsibility for developmental testing; and

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1 "(2) if the milestone decision authority for the program is the Under Secretary of
2 Defense for Acquisition and Sustainment, the sufficiency assessment shall be conducted
3 by the senior Department of Defense official with responsibility for developmental
4 testing.

5 “(b) [Sec. 838(a)(4)] REQUIRED GUIDANCE.—The senior Department of Defense official
6 with responsibility for developmental testing shall develop guidance for the sufficiency
7 assessments required by section ~~2366b(e)(1)~~ 4252(c)(1) and section ~~2366e(a)(4)~~ 4253(a)(4) of
8 this title. ~~At a minimum, the~~ *The* guidance shall ~~require~~ *include the following requirements:*

- 9 "(1) ~~for~~ *For* the sufficiency assessment required by section ~~2366b(e)(1)~~
10 4252(c)(1) of this title, that the assessment address the sufficiency of—
11 (A) the developmental test and evaluation plan;
12 (B) the developmental test and evaluation schedule, including a
13 comparison to historic analogous systems;
14 (C) the developmental test and evaluation resources (facilities, personnel,
15 test assets, data analytics tools, and modeling and simulation capabilities);
16 (D) the risks of developmental test and production concurrency; and
17 (E) the developmental test criteria for entering the production phase.

- 18 "(2) ~~for~~ *For* the sufficiency assessment required by section ~~2366e(a)(4)~~
19 4253(a)(4) of this title, that the assessment address—
20 (Ai) the sufficiency of the developmental test and evaluation completed;
21 (B) the sufficiency of the plans and resources available for remaining
22 developmental test and evaluation;

Commented [CR873]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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1 (C) the risks identified during developmental testing to the production
2 and deployment phase;

3 (D) the sufficiency of the plans and resources for remaining
4 developmental test and evaluation; and

5 (E) the readiness of the system to perform scheduled initial operational
6 test and evaluation.”

7 (B) **CONFORMING REPEAL.**—Paragraphs (3) and (4) of section 838(a) of
8 the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91;
9 10 U.S.C. 2366b note) are repealed.

10 (C) **DEADLINE FOR GUIDANCE.**—The guidance required by section
11 4334(b) of title 10, United States Code, as added by subparagraph (A), shall be
12 developed not later than December 12, 2018.

13 (7) **CODIFICATION OF FY2009 NDAA PROVISION.**—

14 (A) **CODIFICATION.**—Chapter 322 of title 10, United States Code, as added
15 by subsection (a), is further amended by inserting after section 4254, as added by
16 paragraph (6), the following new section:

17 “§ 4255 [Sec. 1047(d) of P.L. 110-417, FY09 NDAA (10 USC 2366b note)]. **Formal review**
18 **process for bandwidth requirements**

19 “The Secretary of Defense and the Director of National Intelligence shall, as part of the
20 Milestone B or Key Decision Point B approval process for any major defense acquisition
21 program or major system acquisition program, establish a formal review process to ensure that—

Commented [CR874]: Paragraphs (3) & (4) are currently set out as separate notes under 2366b.

Commented [CR875]: Subparagraph (C) is to preserve the NLT provision in section 838(a)(4) of P.L. 115-91. If the required guidance has been developed, this subparagraph should be dropped.
DoD: Please advise if this guidance has been developed.

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1 "(1) the bandwidth requirements needed to support such program are or will be
2 met; and

3 "(2) a determination will be made with respect to how to meet the bandwidth
4 requirements for such program."

5 (B) **CONFORMING REPEAL.**—Section 1047(d) of the Duncan Hunter
6 National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417;
7 10 U.S.C. 2366b note) is repealed.

8 (8) **CROSS-REFERENCE AMENDMENTS.**—

9 (A) Section 171a(i)(3) of title 10, United States Code, is amended by
10 striking "2366a(d)" and inserting "4251(d)".

11 (B) Section 181(b)(6) of title 10, United States Code, is amended by
12 striking "sections 2366a(b), 2366b(a)(4)," and inserting "sections 4251(b) and
13 4252(a)(4)".

14 (C) Section 895(b) of the National Defense Authorization Act for Fiscal
15 Year 2017 (Public Law 114-328; 40 U.S.C. 11103 note) is amended by striking
16 "section 2366a(d)(7)" and inserting "section 4251(d)(5)".

17 (e) **SUBCHAPTER IV (ADDITIONAL PROVISIONS APPLICABLE SPECIFICALLY TO**
18 **MDAPs).**—

19 (1) **TRANSFER OF SECTION 2448a.**—Section 2448a of title 10, United States
20 Code, is **transferred** to chapter 322 of such title, **inserted** after the table of sections at
21 the beginning of subchapter IV, **redesignated** as section **4271**, and **amended**—

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1 (A) in subsection (b)(1), by striking “section 2432(a)(2)” and inserting
2 “section 4351(2)”; and

3 (B) in subsection (b)(2), by striking “section 2366a(d)(2)” and inserting
4 “section 4251(d)(1)”.

5 (2) **CODIFICATION OF FY2017 NDAA SECTION.**—

6 (A) **CODIFICATION.**—**Section 4271** of title 10, United States Code, as
7 transferred and redesignated by paragraph (1), is **amended**—

8 (i) by redesignating subsection (b) as subsection (c); and

9 (ii) by inserting after subsection (a) a new subsection (b) consisting
10 of the text of subsection (b) of section 925 of the National Defense
11 Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C.
12 2448a note) (including the subsection designation and subsection
13 heading), revised—

14 (I) by striking “section 2448a of title 10, United States
15 Code,” and inserting “subsection (a)”; and

16 (II) by striking “section 2430(d)(2) of such title” and
17 inserting “section 4204(b) of this title”.

18 (B) **CONFORMING REPEAL.**—Section 925(b) of the National Defense
19 Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2448a
20 note) is repealed.

21 (3) **TRANSFER OF SECTION 2448b.**—Section 2448b of title 10, United States
22 Code, is **transferred** to chapter 322 of such title, **inserted** after section 4271, as

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1 transferred and redesignated by paragraph (1), **redesignated** as section **4272**, and
2 **amended**—

3 (A) in subsection (a)(1), by striking “section 2366a” and inserting “section
4 4251”; and

5 (B) in subsection (a)(2), by striking “section 2366b” and inserting “section
6 4252”.

7 **(4) TRANSFER OF SECTION 2438.**—Section 2438 of title 10, United States Code,
8 is **transferred** to chapter 322 of such title, **inserted** after section 4272, as transferred and
9 redesignated by paragraph (3), **redesignated** as section **4273**, and **amended**—

10 (A) in subsections (b)(1) and (b)(2), by striking “Under Secretary of
11 Defense for Acquisition, Technology, and Logistics” and inserting “Under
12 Secretary of Defense for Acquisition and Sustainment”;

13 (B) in subsection (b)(2), by striking “section 2433a(a)(1)” and inserting
14 4376(a)(1)”; and

15 (C) in subsections (b)(5)(A) and (d), by striking “section 2433a” and
16 inserting “sections 4736 and 4377”.

17 **(5) SECTION 2547(b)-(d).**—Chapter 322 of title 10, United States Code, as added
18 by subsection (a), is further amended by inserting after section 4273, as added by
19 paragraph (4), the following new section:

20 “§ 4274 [2547(b)-(d)]. ~~Acquisition-related functions of Service chiefs of the armed forces;~~
21 *adherence to requirements in major defense acquisition programs*

Commented [CR876]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR877]: Subsections (b), (c), & (d)(3) of 2547 moved here, in the MDAPs package, from the chapter on Defense Acquisition Systems (old ch. 149 / new ch. 205).

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(a) [2547(b)(1)] ROLE OF SERVICE CHIEFS IN PROGRAM CAPABILITY DOCUMENT

APPROVAL.—The Secretary of the military department concerned shall ensure that the program capability document supporting a Milestone B or subsequent decision for a major defense acquisition program may not be approved until the chief of the armed force Service chief concerned determines in writing that the requirements in the document are necessary and realistic in relation to the program cost and fielding targets established under section 2448a(a) 4271(a) of this title.

(b) [2547(b)(2)] ROLE OF SERVICE CHIEFS IN MATERIAL DEVELOPMENT DECISION AND

ACQUISITION SYSTEM MILESTONES.—Consistent with the performance of duties under subsection (a) section 3053 of this title, the Chief of the armed force Service chief concerned, or in the case of a joint program the chiefs of the armed forces Service chiefs concerned, with respect to major defense acquisition programs, shall—

(1) concur with the need for a material solution as identified in the Material Development Decision Review prior to before entry into the Material Solution Analysis Phase under Department of Defense Instruction 5000.02;

(2) concur with the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program before Milestone A approval is granted under section 2366a 4251 of this title;

(3) concur that appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life-cycle cost before Milestone B approval is granted under section 2366b 4252 of this title; and

Commented [CR878]: Note definition of "Service chief concerned" proposed in sec. 3 above

Commented [CR879]: Note that here and in (B)-(D), this literally requires the service chief to concur. It is not clear what happens if the service chief does not want to concur, since the law requires concurrence by the service chief concerned at some point before the stipulated event. As applied in practice, this almost certainly is understood to mean that the matter may not proceed unless the chief concurs. But, that is not what it says, literally. ("the Chief ... shall concur ..."). The language is unchanged here, but is flagged as possibly problematic wording. The more traditional way of stating something like this, and without the potential alternative (literal) meaning, is to use the formulation "[action] may not happen unless [the stated officer] approves".

Commented [CR880]: "prior to" changed to "before" for consistency with (B)-(D) below (and as being preferable).

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1 (4) concur that the requirements in the program capability document are necessary
2 and realistic in relation to program cost and fielding targets as required by paragraph (1)
3 **before** Milestone C approval is granted.

4 (c) [2547(c)] RULE OF CONSTRUCTION.—Nothing in this section shall be construed to
5 affect the assignment of functions under ~~section 7014(c)(1)(A), section 8014(c)(1)(A), or~~
6 **section 9014(c)(1)(A)** of this title, except as explicitly provided in this section.

Commented [CR881]: These sections numbers are as redesignated effective Feb 1, 2019.

7 (d) [2547(d)(3)] PROGRAM CAPABILITY DOCUMENT DEFINED.—In this section, the term
8 “program capability document” has the meaning provided that term in section ~~2446a(b)(5)~~
9 **4401(b)(5)** of this title.”

10 (6) CODIFICATION OF FY2016 NDAA SECTION.—

11 (A) CODIFICATION.—Chapter 322 of title 10, United States Code, as added
12 by subsection (a), is further amended by inserting after section 4274, as added by
13 paragraph (5), a new section **4275** consisting of—

14 (i) a heading as follows:
15 “§ 4275 [Sec. 828 of P.L. 114-92, FY16 NDAA (10 USC 2430 note)]. **Cost overruns on major**
16 **defense acquisition programs: annual penalty assessed military**
17 **departments”;** and

Commented [CR882]: Heading revised to add reference to military departments

18 (ii) a text consisting of the text of section 828 of the National
19 Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10
20 U.S.C. 2430 note), revised—

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(I) in subsection (b)(1), by striking "section 2432 of title 10, United States Code" and inserting "sections 4351-4358 of this title";

(II) in subsection (d)(3), by striking "section 804 of this Act" and inserting "sections 3611-3613 of this title"; and

(III) in subsection (e), by striking "section 2435(d) of title 10, United States Code," and inserting "section 4214(d) of this title".

(B) CONFORMING REPEAL.—Section 828 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2430 note) is repealed.

(7) CODIFICATION OF FY2009 NDAA SECTION.—

(A) CODIFICATION.—Chapter 322 of title 10, United States Code, as added by subsection (a), is further amended by inserting after section 4275, as added by paragraph (6), a new section 4276 consisting of—

(i) a heading as follows:

“§ 4276 [Sec. 814 of P.L. 110-417, FY09 NDAA (10 USC 2430 note)]. Cost control under major defense acquisition programs: military department Configuration Steering Boards”; and

(ii) a text consisting of the text of subsections (a), (b), and (c) of

section 814 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2430 note), revised—

Commented [CR883]: Heading revised to add reference to military departments

Commented [CR884]: The original also has (d), (e), and (f). Subsection (d) is an Applicability provision that is OBE. Subsection (e) is a deadline for issuing guidance NLT 60 days after Oct. 14, 2008 and is omitted as OBE. Subsection (f) defines MDAP and is no longer necessary now that the section will be in T10 & covered by new 4201.

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1 (I) in subsection (b)(2), by striking subparagraphs (A), (B),
2 and (C) and inserting the following:

3 “(A) The Office of the Under Secretary of Defense for *Acquisition and*
4 *Sustainment and the Office of the Under Secretary of Defense for Research and*
5 *Engineering*.

Commented [CR885]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

6 “(B) The *Service chief* concerned.

Commented [CR886]: See proposed definition of “Service Chief concerned” in 3005 above

7 “(C) Other armed forces, as appropriate.”;

8 (II) in subsection (c)(1)(A), by striking “Chief of Staff of
9 the Armed Force concerned” and inserting “*Service chief*
10 concerned”; and

11 (III) in subsection (c)(5), by striking “unless the Under
12 Secretary of Defense for Acquisition, Technology, and Logistics
13 certifies” and inserting “unless the Under Secretary of Defense for
14 *Acquisition and Sustainment and the Under Secretary of Defense*
15 *for Research and Engineering certify*.”

Commented [CR887]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

16 (B) **CONFORMING REPEAL.**—Section 814 of the Duncan Hunter National
17 Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C.
18 2430 note) is repealed.

19 (8) **CODIFICATION OF FY1995 NDAA SECTION.**—

20 (A) **CODIFICATION.**—Chapter 322 of title 10, United States Code, as added
21 by subsection (a), is further amended by inserting after section 4276, as added by
22 paragraph (7), a new section **4277** consisting of—

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(i) a heading as follows:

“§ 4277 [Sec. 815 of P.L. 103-337, FY95 NDAA (10 USC 2430 note)]. Major defense acquisition programs: environmental impact analyses; other environmental consequence analyses”; and

Commented [CR888]: Heading revised

(ii) a text consisting of the text of section 815 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 10 U.S.C. 2430 note), revised—

(I) in subsection (a), by striking “Before April 1, 1995, the Secretary” and inserting “The Secretary”;

(II) in subsection (a)(1), by striking “(as defined in section 2430 of title 10, United States Code)”; and

(III) in subsection (b), by striking “Beginning not later than March 31, 1995, the Secretary” and inserting “The Secretary”.

(B) **CONFORMING REPEAL.**—Section 815 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 10 U.S.C. 2430 note) is repealed.

(9) **CODIFICATION OF FY2004 NDAA SECTION.**—

(A) **CODIFICATION.**—Chapter 322 of title 10, United States Code, as added by subsection (a), is further amended by inserting after section 4277, as added by paragraph (8), a new section **4278** consisting of—

(i) a heading as follows:

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1 “§ 4278 [Sec. 924 of P.L. 108-136, FY04 NDAA (10 USC 2430 note)]. Management of
2 National Security Agency modernization program”; and

3 (ii) a text consisting of the text of section 924 of the National
4 Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 10
5 U.S.C. 2430 note), revised—

6 (I) by striking “Under Secretary of Defense for Acquisition,
7 Technology, and Logistics” each place it appears and inserting
8 “Under Secretary of Defense for Acquisition and Sustainment”;

9 (II) in subsection (a), by striking “the date of the enactment
10 of this Act” and inserting “November 24, 2003”;

11 (III) in subsection (b), by striking “(as defined in section
12 2430 of title 10, United States Code)”;

13 (IV) in subsection (d)(4)(A), by striking “paragraph (2) of
14 section 2430(a) of title 10, United States Code” and inserting
15 “section 4201(a)(2) of this title”; and

16 (IV) in subsection (e), by striking paragraph (1).

17 (B) CONFORMING REPEAL.—Section 924 of the National Defense
18 Authorization Act for Fiscal Year 2004 (Public Law 108-136; 10 U.S.C. 2430
19 note) is repealed.

20 (10) CROSS-REFERENCE AMENDMENTS.—

Commented [CR889]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR890]: This refers to 2302(5), which will now apply to the whole of Part V, so this paragraph is no longer needed.

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(A) Section 131(b)(8) of title 10, United States Code, is amended by striking "section 2438(a)" in the last subparagraph and inserting "section 4273(a)".

(B) Sections 7033(d)(5), 8033(d)(5), 8043(e)(5), and 9033(d)(5) of such title are amended by striking "and 2547" and inserting ", 3103, and 4274".

(f) SUBCHAPTER V (CONTRACTORS).—

(1) CODIFICATION OF WSARA SECTION.—

(A) CODIFICATION.—Chapter 322 of title 10, United States Code, is further amended by inserting after the table of sections at the beginning of subchapter V a new section 4291 consisting of—

(i) a heading as follows:

“§ 4291 [Sec. 207(a)-(c) of P.L. 111-23, WSARA (10 USC 2430 note)]. Organizational conflicts of interest in major defense acquisition programs”; and

(ii) a text consisting of the text of subsections (a) and (b) of section 207 of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111-23; 10 U.S.C. 2430 note), revised—

(I) in subsection (a), by striking “REVISED REGULATIONS REQUIRED.—Not later than” and all that follows through “existing requirements” and inserting “REGULATIONS REQUIRED.—The Secretary of Defense shall ensure that the Defense Federal Acquisition Regulation Supplement provides uniform guidance”;

Commented [CR891]: Sections numbers are as redesignated effective Feb. 1, 2019.

Commented [CR892]: The original has a subsection (c), omitted here as OBE, that related to consideration of certain recommendations in the development of the initial regulations under the source section, required to be issued NLT 270 days after May 22, 2009.

Commented [CR893]: This amendment— (1) deletes the NLT provision; (2) changes “shall revise the [DFARS] to provide ...” to “share ensure that the [DFARS] provides ...” for ongoing applicability, and (3) deletes “and tighten existing requirements”, which cannot be done on an ongoing basis and would seem to be accomplished, relative to “existing requirements”, by the revised regulations.

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(II) in subsection (b), in the matter preceding paragraph (1),

by striking “revised” and by striking “, at a minimum”.

Commented [CR894]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

(B) **CONFORMING REPEAL.**— Section 207(a)-(c) of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111-23; 10 U.S.C. 2430 note) is repealed.

(2) **CODIFICATION OF FY2008 NDAA SECTION.**—

(A) **CODIFICATION.**—Chapter 322 of title 10, United States Code, as added by subsection (a), is further amended by adding after section 4291, as added by paragraph (1), a new section **4292** consisting of—

(i) a heading as follows:

“§ 4292 [Sec 802(a)-(d) of PL 110-181; FY08 NDAA (2410p note); 2410p]. Contractors as lead system integrators: prohibition on new contracts; financial interest limitations; exceptions”; and

(ii) a text consisting of the text of subsections (a), (b), (c), and (d) of section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2410p note), revised—

Commented [CR895]: The original has a subsection (e) applicable to the Future Combat System program. Omitted on the basis that that program has been cancelled.

(I) in subsection (a)(1), by striking “Effective October 1, 2010, the Department” and inserting “The ~~Department~~ **Secretary**”;

Commented [CR896]: “Department” changed to “Secretary” so the function is vested in an officer rather than an organization. OK?

(II) in subsection (a)(1), by striking “prior to the date of the enactment of this Act” and inserting “before January 28, 2008”;

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1 (III) in subsection (a)(2), by striking “Effective on the date
2 of the enactment of this Act, the Department” and inserting “The
3 Department Secretary”;

4 (IV) by striking paragraph (2) of subsection (d); and

5 (V) by redesignating paragraph (3) of subsection (d) as
6 paragraph (2) and in that paragraph striking “section 2400 of title
7 10, United States Code” and inserting “section 4231 of this title”.

8 (B) CONFORMING REPEAL.—Section 802 of the National Defense
9 Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2410p
10 note) is repealed.

11 (3) SECTION 2410P.—

12 (A) ADDITION TO SECTION 4292.—Section 4292 of title 10, United States
13 Code, as added by paragraph (2), is amended by adding at the end the following
14 new subsection:

15 “(e) FINANCIAL INTEREST LIMITATIONS RELATING TO CONTRACTORS PERFORMING LEAD
16 SYSTEM INTEGRATOR FUNCTIONS.—

17 “(1) IN GENERAL.—Except as provided in paragraph (2), ~~no~~ an entity performing
18 lead system integrator functions in the acquisition of a major system by the Department
19 of Defense may ~~not~~ have any direct financial interest in the development or construction
20 of any individual system or element of any system of systems.

Commented [CR897]: Same as above -- “Department” changed to “Secretary” so the function is vested in an officer rather than an organization. OK?

Commented [CR898]: Definition of “major system” will now apply for all of Part V without need for cross-reference.

Commented [CR899]: Revised from “no entity may ...” to “an entity may not...” to put the negative on the verb (the action) rather than the noun.

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1 “(2) EXCEPTION.—An entity described in paragraph (1) may have a direct
2 financial interest in the development or construction of an individual system or element
3 of a system of systems if—

4 “(A) the Secretary of Defense certifies to the Committees on Armed
5 Services of the Senate and the House of Representatives that—

6 “(i) the entity was selected by the Department of Defense as a
7 contractor to develop or construct the system or element concerned
8 through the use of competitive procedures; and

9 “(ii) the Department took appropriate steps to prevent any
10 organizational conflict of interest in the selection process; or

11 “(B) the entity was selected by a subcontractor to serve as a lower-tier
12 subcontractor, through a process over which the entity exercised no control.

13 “(3) CONSTRUCTION.—Nothing in this subsection shall be construed to preclude
14 an entity described in paragraph (1) from performing work necessary to integrate two or
15 more individual systems or elements of a system of systems with each other.”

16 (B) CONFORMING REPEAL.—Section 2410p of title 10, United States
17 Code, is repealed.

18 (4) TRANSFER OF SECTION 2436.—Section 2436 of title 10, United States Code,
19 is transferred to chapter 322 of such title, inserted after section 4292, as added by
20 paragraph (2), redesignated as section 4293.

21 (5) CODIFICATION OF FY2017 NDAA SECTION.—

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1 (A) **CODIFICATION.**—Chapter 322 of title 10, United States Code, as
2 added by subsection (a), is further amended by adding after section 4293, as
3 transferred and redesignate by paragraph (4), a new section 4294 consisting of—

4 (i) a heading as follows:

5 “§ 4294 [Sec 883 of PL 114-328, FY17 NDAA (2302 note)] **Weapon systems contractors:**
6 **pilot program for provision of storage and distribution services support”;**
7 **and**

8 (ii) a text consisting of the text of section 883 of the National
9 Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10
10 U.S.C. 2302 note), revised—

11 (I) in subsection (d), by striking “, at a minimum,” in the
12 matter preceding paragraph (1); and

13 (II) in subsection (g), by striking “shall expire six years
14 after the date of the enactment of this Act” and inserting “shall
15 expire on December 23, 2022”.

16 (B) **CONFORMING REPEAL.**—Section 883 of the National Defense
17 Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2302
18 note) is repealed.

19 **SEC. 603. LIFE-CYCLE AND SUSTAINMENT.**

20 (a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
21 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019

Commented [CR900]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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1 (Public Law 115-232), is amended by inserting after chapter 322, as added by section 602, the
2 following new chapter:

3 **“CHAPTER 323—LIFE-CYCLE AND SUSTAINMENT**

Sec.

4321 [2437]. Development of major defense acquisition programs: sustainment of system to be replaced.

4322 [Sec. 801(c) of P.L. 112-81, FY12 NDAA (10 USC 2366a note)]. Major defense acquisition programs: requirements before low-rate initial production.

4323 [2441]. Sustainment reviews.

4324 [2337]. Major systems: life-cycle management and product support.

4325 [2337a]. Major weapon systems: assessment, management, and control of operating and support costs.

4326 [Sec. 202 of P.L. 111-23, WSARA (10 USC 2430 note)]. Major defense acquisition programs: acquisition strategies to ensure competition throughout program life-cycle.

4327 [2430 note.] Major defense acquisition programs: preservation of tooling.

4328 [2443; Sec 834(b)-(c) of FY18 NDAA (10 U.S.C. 2443 note)]. Weapon system design: sustainment factors.”

4 **(b) TRANSFER OF SECTION 2437.**—Section 2437 of title 10, United States Code, is
5 **transferred** to chapter 323 of such title, as added by subsection (a), **inserted** after the table of
6 sections at the beginning, and **redesignated** as section **4321**.

7 **(c) CODIFICATION OF FY2012 NDAA PROVISION.**—

8 (1) CODIFICATION.—Chapter 323 of title 10, United States Code, as added by
9 subsection (a), is amended by inserting after section 4321, as transferred and redesignated
10 by subsection (b), the following new section:

11 **“§ 4322 [Sec. 801(c) of P.L. 112-81, FY12 NDAA (10 USC 2366a note)]. Major defense**
12 **acquisition programs: requirements before low-rate initial production**

13 “Before entering into a contract for low-rate initial production of a major defense
14 acquisition program, the Secretary of Defense shall ensure that the detailed requirements for core

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1 logistics capabilities and the associated sustaining workloads required to support such
2 requirements, have been defined.”.

Commented [CR901]: This comma in the original appears to be ungrammatical and should be deleted. Alternatively, a comma could be inserted after “capabilities”. (The glitch was a result of the amendment made by sec. 322(e)(3) of P.L. 113-239.) Any problem with deleting this comma?

3 (2) **CONFORMING REPEAL.**—Section 801(c) of the National Defense
4 Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 2366a note) is
5 repealed.

6 (d) **TRANSFER OF SECTION 2441.**—Section 2441 of title 10, United States Code, is
7 **transferred** to chapter 323 of such title, **inserted** after section 4322, as added by subsection (c),
8 **redesignated** as section 4323, and **amended** in subsection (c) by striking “sections 2337 and
9 2337a” and inserting “sections 4324 and 4325”.

10 (e) **TRANSFER OF SECTIONS 2337 AND 2337A.**—

11 (1) **TRANSFER.**—Sections 2337 and 2337a of title 10, United States Code, are
12 **transferred** to chapter 323, as added by subsection (a), **inserted** (in that order) after
13 section 4323, as transferred and redesignated by subsection (d), and **redesignated** as
14 sections 4324 and 4325, respectively.

15 (2) **AMENDMENT TO TRANSFERRED SECTION 4324.**—Section 4324 of title 10,
16 United States Code, as transferred and redesignated by paragraph (1), is amended in
17 subsection (c)(5) by striking “section 2302d(a)” and inserting “section 3041(c)(1)”.

18 (3) **AMENDMENTS TO TRANSFERRED SECTION 4325.**—

19 (A) Section 4325 of such title, as transferred and redesignated by
20 paragraph (1), is amended—

21 (i) in subsection (b)—

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(I) in the matter preceding paragraph (1), by striking “, at a minimum”;

Commented [CR902]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

(II) in paragraph (1), by striking “section 2337” and inserting “section 4324”; and

(ii) in subsection (d), by striking “has the meaning” and all that follows and inserting “means a weapon system acquired pursuant to a major defense acquisition program.”.

Commented [CR903]: The original says “has the meaning given that term in section 2379(f) of this title”. This amendment inserts the wording of that definition, to eliminate a cross-reference.

(B) The heading of such section is amended to read as follows:

“§ 4325 [2337a]. Major weapon systems: assessment, management, and control of operating and support costs”.

(f) CODIFICATION OF WSARA SECTION.—

(1) CODIFICATION.—Chapter 323 of title 10, United States Code, is further amended by adding after section 4325, as transferred and redesignated by subsection (e), a new section 4326 consisting of—

(A) a heading as follows:

“§ 4326 [Sec. 202 of P.L. 111-23, WSARA (10 USC 2430 note)]. Major defense acquisition programs: acquisition strategies to ensure competition throughout program lifecycle”; and

(B) a text consisting of the text of section 202 of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111-23; 10 U.S.C. 2430 note), revised in subsection (e)—

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(i) by striking "APPLICABILITY.—" and all that follows through "the requirements" and inserting "APPLICABILITY.—The requirements";

(ii) by striking "the date of the enactment of this Act" and inserting "May 22, 2009"; and

(iii) by striking paragraph (2).

(2) CONFORMING REPEAL.— Section 202 of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111-23; 10 U.S.C. 2430 note) is repealed.

(g) CODIFICATION OF FY2009 NDAA SECTION.—

(1) CODIFICATION.— Chapter 323 of title 10, United States Code, is further amended by adding after section 4326, as added by subsection (f), a new section 4327 consisting of—

(A) a heading as follows:

“§ 4327 [Sec. 815 of P.L. 110-417, FY2009 NDAA (10 USC 2430 note)]. Major defense acquisition programs: preservation of tooling”; and

(B) a text consisting of the text of section 815 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2430 note), revised—

(i) in subsection (a), by striking “Not later than 270 days after the date of the enactment of this Act, the Secretary” and inserting “The Secretary”; and

(ii) in subsection (b)—

Commented [CR904]: DoD: please advise as to the actual date applicable here, that is, the date that is 60 days after May 22, 2009.

Commented [CR905]: These amendments delete paragraph (2). It required implementation NLT 180 days after date of enactment {May 22, 2009} and is omitted from the codification as OBE.

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1 (I) by striking paragraph (1) and redesignating paragraphs
2 (2) and (3) as paragraphs (1) and (2), respectively;

3 (II) in paragraph (1) (as so redesignated), by striking
4 “section 2366a(f)(2)” and inserting “section 4251(f)(2)”; and

5 (III) in paragraph (2) (as so redesignated), by striking
6 “section 2366(e)(8)” and inserting “section 4172(e)(8)”.

7 (B) **CONFORMING REPEAL.**— Section 815 of the Duncan Hunter National
8 Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C.
9 2430 note) is repealed.

10 (h) **TRANSFER OF SECTION 2443.**—

11 (1) Section 2443 of title 10, United States Code, is **transferred** to chapter 323, as
12 added by subsection (a), **added** after section 4237, as added by subsection (g), and
13 **redesignated** as section 4328.

14 (2) The heading of such section is amended to read as follows:
15 “§ 4328 [2443; Sec 834(b)-(c) of FY18 NDAA (10 U.S.C. 2443 note)]. **Weapon system**
16 **design: sustainment factors”.**

17 (i) **CODIFICATION OF FY2018 NDAA PROVISIONS.**—

18 (1) **CODIFICATION.**—Section 4328 of title 10, United States Code, as transferred
19 and redesignated by subsection (h), is amended—

20 (A) by adding at the end a new subsection (f) having the text of
21 subsection (c) of section 834 of the National Defense Authorization Act for Fiscal

Commented [CR906]: Note that subsection (a) of sec 2443 uses the term “defense acquisition system” without definition or reference to 2545(2).
In the reorganization, that definition will apply throughout the new Part V, unless except to the extent an exception is specifically provided
If the definition in 2545(2) should **not** be applied to 2443(a) [new 4328(a)] on the basis that it does not apply under current law, an exception could be included in new 4328(a).
But, what is the actual current administrative practice under 2443?
DoD: Please advise as to whether current practice under 2443(a) treats the reference to “defense acquisition system” in 2443(a) as having the same meaning as under 2545(2).

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1 Year 2018 (Public Law 115-91; 10 U.S.C. 2443 note), redesignated as subsection
2 (f); and

3 (B) by adding after such subsection (f), as added by subparagraph (A), the
4 following new subsection:

5 "(g) APPLICABILITY.—Subsections (c) and (d) apply with respect to any covered contract
6 for which the contract solicitation is issued after December 11, 2018.”.

7 (2) CONFORMING REPEAL.—Sections 834(b) and 834(c) of the National Defense
8 Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2443 note) are
9 repealed.

10 SEC. 604. PROGRAM STATUS—SELECTED ACQUISITION REPORTS.

11 (a) RESTATEMENT OF SECTION 2432.—Part V of subtitle A of title 10, United States
12 Code, as added by section 801 of the John S. McCain National Defense Authorization Act for
13 Fiscal Year 2019 (Public Law 115-232), is amended by inserting after chapter 323, as added by
14 section 603, the following new chapter:

15 “CHAPTER 324—PROGRAM STATUS—SELECTED ACQUISITION
16 REPORTS

- Sec. 4350 [Sec 1051(x)(4) of FY18 NDAA, P.L. 115-91 (10 U.S.C. 113 note)]. Selected Acquisition Reports: termination.
4351 [2432(a)]. Selected Acquisition Reports: definitions.
4352 [2432(b)]. Selected Acquisition Reports: requirement for quarterly reports.
4353 [2432(c)]. Selected Acquisition Reports for 1st quarter of a fiscal year: comprehensive annual report.
4354 [2432(d)]. Selected Acquisition Reports for 2nd, 3rd, & 4th quarters.
4355 [2432(e)]. Selected Acquisition Reports: Quarterly SAR report content.
4356 [2432(f)]. Selected Acquisition Reports: time for submission to Congress.
4357 [2432(g)]. Selected Acquisition Reports: termination of requirements.

Commented [CR907]: FYI, these are two separate notes under 2443. The first is designated "Effective Date"; the other as "Engineering Change Authorized".

Commented [CR908]: 10 USC 2432 is divided into 8 secs, 4351-4358

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4358 [2432(h)]. Selected Acquisition Reports: when total program reporting begins; limited reports before approval to proceed to system development and demonstration.

1 “§4350 [Sec 1051(x)(4) of FY18 NDAA, P.L. 115-91 (10 U.S.C. 113 note)]. Selected

2 Acquisition Reports: **termination**

3 Effective on December 31, 2021, the reports required under this chapter shall no longer
4 be required to be submitted to Congress.

5 **§4351 [2432(a)]. Selected Acquisition Reports: definitions**

6 In this chapter:

7 (1) PROGRAM ACQUISITION UNIT COST.—The term "program acquisition unit cost",
8 with respect to a major defense acquisition program, means the amount equal to (A) the
9 total cost for development and procurement of, and system-specific military construction
10 for, the acquisition program, divided by (B) the number of fully-configured end items to
11 be produced for the acquisition program.

12 (2) PROCUREMENT UNIT COST.—The term "procurement unit cost", with respect to
13 a major defense acquisition program, means the amount equal to (A) the total of all funds
14 programmed to be available for obligation for procurement for the program, divided by
15 (B) the number of fully-configured end items to be procured.

16 (3) MAJOR CONTRACT.—The term "major contract", with respect to a major
17 defense acquisition program, means each of the six largest prime, associate, or
18 Government-furnished equipment contracts under the program that is in excess of
19 \$40,000,000 and that is not a firm, fixed price contract.

20 (4) FULL LIFE-CYCLE COST.—The term "full life-cycle cost", with respect to a
21 major defense acquisition program, means all costs of development, procurement,

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1 military construction, and operations and support, without regard to funding source or
2 management control.

3 **§4352 [2432(b)]. Selected Acquisition Reports: requirement for quarterly reports**

4 (a) [2432(b)(1)] IN GENERAL.—The Secretary of Defense shall submit to Congress at the
5 end of each fiscal-year quarter a report on current major defense acquisition programs. Except as
6 provided in subsections (b) and (c), each such report shall include a status report on each defense
7 acquisition program that at the end of such quarter is a major defense acquisition program.
8 Reports under this chapter shall be known as Selected Acquisition Reports.

9 (b) [2432(b)(2)] REPORTS NOT REQUIRED FOR 2ND, 3RD, AND 4TH QUARTERS FOR CERTAIN
10 PROGRAMS.—A status report on a major defense acquisition program need not be included in the
11 Selected Acquisition Report for the second, third, or fourth quarter of a fiscal year if such a
12 report was included in a previous Selected Acquisition Report for that fiscal year and during the
13 period since that report there has been—

14 (1) less than a 15 percent increase in program acquisition unit cost and current
15 procurement unit cost for the program (or for each designated subprogram under the
16 program); and

17 (2) less than a six-month delay in any program schedule milestone shown in the
18 Selected Acquisition Report.

19 (c) [2432(b)(3)] SECRETARY OF DEFENSE WAIVER AUTHORITY.—

20 (1) AUTHORITY.—The Secretary of Defense may waive the requirement for
21 submission of Selected Acquisition Reports for a program for a fiscal year if—

22 (A) the program has not entered system development and demonstration;

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1 (B) a reasonable cost estimate has not been established for such program;

2 and

3 (C) the system configuration for such program is not well defined.

4 (2) NOTIFICATION TO CONGRESSIONAL COMMITTEES.—The Secretary shall submit
5 to the Committee on Armed Services of the Senate and the Committee on Armed
6 Services of the House of Representatives a written notification of each waiver under
7 paragraph (1) for a program for a fiscal year not later than 60 days before the President
8 submits the budget to Congress pursuant to section 1105 of title 31 in that fiscal year.

9 **§4353 [2432(c)]. Selected Acquisition Reports for 1st quarter of a fiscal year:**

10 **comprehensive annual report**

11 (a) [2432(c)(1)] CONTENT OF SAR SUBMITTED FOR FIRST QUARTER.—Each Selected
12 Acquisition Report for the first quarter for a fiscal year shall include the following:

13 (1) The same information, in detailed and summarized form, as is provided in
14 reports submitted under section ~~2431~~ 4205 of this title.

15 (2) For each major defense acquisition program or designated major subprogram
16 included in the report—

17 (A) the Baseline Estimate (as that term is defined in section ~~2433(a)(2)~~
18 4371(a)(4) of this title), along with the associated risk and sensitivity analysis of
19 that estimate;

20 (B) the original Baseline Estimate (as that term is defined in section
21 ~~2435(d)(1)~~ 4214(d)(1) of this title), along with the associated risk and sensitivity
22 analysis of that estimate;

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1 (C) if the original Baseline Estimate was adjusted or revised pursuant to
2 section ~~2435(d)(2)~~ **4214(d)(2)** of this title, such adjusted or revised estimate,
3 along with the associated risk and sensitivity analysis of that estimate; and

4 (D) the primary risk parameters associated with the current procurement
5 cost for the program (as that term is used in section ~~2432(e)(4)~~ **4355(4)** of this
6 title).

7 (3) A summary of the history of significant developments from the date each
8 major defense acquisition program or designated major subprogram included in the report
9 was first included in a Selected Acquisition Report and program highlights since the last
10 Selected Acquisition Report.

11 (4) The significant schedule and technical risks for each such program or
12 subprogram, identified at each major milestone and as of the quarter for which the current
13 report is submitted.

14 (5) The current program acquisition cost and program acquisition unit cost for
15 each such program or subprogram included in the report and the history of those costs
16 from the December 2001 reporting period to the end of the quarter for which the current
17 report is submitted.

18 (6) The current procurement unit cost for each such program or subprogram
19 included in the report and the history of that cost from the December 2001 reporting
20 period to the end of the quarter for which the current report is submitted.

21 (7) For each major defense acquisition program that receives Milestone B
22 approval after January 1, 2019, a brief summary description of the key elements of the

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1 modular open system approach as defined in section ~~2446a~~ 4401 of this title or, if a
2 modular open system approach was not used, the rationale for not using such an
3 approach.

4 (8) Such other information as the Secretary of Defense considers appropriate.

5 (b) [2432(c)(2)] CONGRESSIONAL COMMITTEES.—

6 (1) INFORMATION NEEDED BY CONGRESSIONAL COMMITTEES.—Each Selected
7 Acquisition Report for the first quarter of a fiscal year shall be designed to provide to the
8 Committee on Armed Services of the Senate and the Committee on Armed Services of
9 the House of Representatives the information ~~such Committees~~ *those committees* need to
10 perform their oversight functions.

11 (2) NOTIFICATION TO CONGRESSIONAL COMMITTEES OF PROPOSED CHANGES.—

12 Whenever the Secretary of Defense proposes to make changes in the content of a
13 Selected Acquisition Report, the Secretary shall submit a notice of the proposed changes
14 to the committees named in paragraph (1). The changes shall be considered approved by
15 the Secretary, and may be incorporated into the report, only after the end of the 60-day
16 period beginning on the date on which the notice is received by those committees.

17 (c) [2432(c)(3)] LIFE-CYCLE COST ANALYSES.—In addition to the material required by
18 subsections (a) and (b), each Selected Acquisition Report for the first quarter of a fiscal year
19 shall include the following:

20 (1) A full life-cycle cost analysis for each major defense acquisition program and
21 each designated major subprogram included in the report that is in the system
22 development and demonstration stage or has completed that stage. The Secretary of

Commented [CR909]: Changed for consistency with use of "those committees" at end of paragraph (2) immediately below [2d sentence of 2432(c)(2) in original].

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1 Defense shall ensure that this paragraph is implemented in a uniform manner, to the
2 extent practicable, throughout the Department of Defense.

3 (2) If the system that is included in that major defense acquisition program has an
4 antecedent system, a full life-cycle cost analysis for that system.

5 (d) [2432(c)(4)] REFERENCE TO 1ST QUARTER SAR AS COMPREHENSIVE ANNUAL SAR.—

6 Selected Acquisition Reports for the first quarter of a fiscal year shall be known as
7 comprehensive annual Selected Acquisition Reports.

8 **§4354 [2432(d)]. Selected Acquisition Reports for 2nd, 3rd, & 4th quarters**

9 (a) [2432(d)(1)] CONTINGENT REQUIRED CONTENT.—Each Selected Acquisition Report
10 for the second, third, and fourth quarters of a fiscal year shall include—

11 (1) with respect to each major defense acquisition program that was included in
12 the most recent comprehensive annual Selected Acquisition Report, the information
13 described in section 4355 of this title; and

14 (2) with respect to each major defense acquisition program that was not included
15 in the most recent comprehensive annual Selected Acquisition Report, the information
16 described in section 4353 of this title.

17 (b) [2432(d)(2)] REFERENCE TO 2ND, 3RD, & 4TH QUARTERS SARs AS QUARTERLY SARs.—

18 Selected Acquisition Reports for the second, third, and fourth quarters of a fiscal year shall be
19 known as Quarterly Selected Acquisition Reports.

20 **§4355 [2432(e)]. Selected Acquisition Reports: Quarterly SAR report content**

21 Information to be included under this section in a Quarterly Selected Acquisition Report
22 with respect to a major defense acquisition program is as follows:

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1 (1) The quantity of items to be purchased under the program.

2 (2) The program acquisition cost.

3 (3) The program acquisition unit cost for the program (or for each designated
4 major subprogram under the program).

5 (4) The current procurement cost for the program.

6 (5) The current procurement unit cost for the program (or for each designated
7 major subprogram under the program).

8 (6) The reasons for any change in program acquisition cost, program acquisition
9 unit cost, procurement cost, or procurement unit cost or in program schedule from the
10 previous Selected Acquisition Report.

11 (7) The reasons for any significant changes (from the previous Selected
12 Acquisition Report) in the total program cost for development and procurement of the
13 software component of the program or subprogram, schedule milestones for the software
14 component of the program or subprogram, or expected performance for the software
15 component of the program or subprogram that are known, expected, or anticipated by the
16 program manager.

17 (8) The major contracts under the program and designated major subprograms
18 under the program and the reasons for any cost or schedule variances under those
19 contracts since the last Selected Acquisition Report.

20 (9) Program highlights since the last Selected Acquisition Report.

21 **§4356 [2432(f)]. Selected Acquisition Reports: time for submission to Congress**

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1 Each comprehensive annual Selected Acquisition Report shall be submitted within 30
2 days after the date on which the President transmits the Budget to Congress for the following
3 fiscal year, and each Quarterly Selected Acquisition Report shall be submitted within 45 days
4 after the end of the fiscal-year quarter.

5 **§4357 [2432(g)]. Selected Acquisition Reports: termination of requirements**

6 The requirements of this chapter with respect to a major defense acquisition program or
7 designated major subprogram shall cease to apply after 90 percent of the items to be delivered to
8 the United States under the program or subprogram (shown as the total quantity of items to be
9 purchased under the program or subprogram in the most recent Selected Acquisition Report)
10 have been delivered or 90 percent of planned expenditures under the program or subprogram
11 have been made.

12 **§4358 [2432(h)]. Selected Acquisition Reports: when total program reporting begins;**
13 **limited reports before approval to proceed to system development and**
14 **demonstration**

15 (a) [2432(h)(1)] IN GENERAL.—

16 (1) COMMENCEMENT OF TOTAL PROGRAM REPORTING.—Total program reporting
17 under this chapter shall apply to a major defense acquisition program when funds have
18 been appropriated for such program and the Secretary of Defense has decided to proceed
19 to system development and demonstration of such program.

20 (2) LIMITED REPORTS.—Reporting may be limited to the development program as
21 provided in subsection (b) before a decision is made by the Secretary of Defense to
22 proceed to system development and demonstration if the Secretary notifies the

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1 Committee on Armed Services of the Senate and the Committee on Armed Services of
2 the House of Representatives of the intention to submit a limited report under this section
3 not less than 15 days before a report is due under this chapter.

4 (b) [2432(h)(2)] CONTENT OF LIMITED REPORTS.— A limited report under this section
5 shall include the following:

6 (1) The same information, in detail and summarized form, as is provided in
7 reports submitted under subsections (b)(1) and (b)(3) of section ~~2431~~ 4205 of this title.

8 (2) Reasons for any change in the development cost and schedule.

9 (3) The major contracts under the development program and designated major
10 subprograms under the program and the reasons for any cost or schedule variances under
11 those contracts since the last Selected Acquisition Report.

12 (4) Program highlights since the last Selected Acquisition Report.

13 (5) Other information as the Secretary of Defense considers appropriate.

14 (c) [2432(h)(3)] SUBMISSION OF LIMITED REPORTS.—The submission requirements for a
15 limited report under this section shall be the same as for quarterly Selected Acquisition Reports
16 for total program reporting.”

17 (b) CONFORMING AMENDMENTS.—

18 (1) Section 2432 of title 10, United States Code, is **repealed**.

19 (2) Section 1051(x) of the National Defense Authorization Act for Fiscal Year
20 2018 (Public Law 115-291; 10 U.S.C. 113 note) is amended by **striking paragraph (4)**.

21 (c) **CROSS REFERENCES**.—The following provisions of law are amended by striking
22 “section 2432” and inserting “chapter 324”:

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(1) Sections 1734(c)(2) and 8671(b)(2) of title 10, United States Code.

(2) Sections 4217(a)(2) and 4311(a)(2) of the Atomic Energy Defense Act (50 U.S.C. 2537(a)(2), 2577(a)(2)).

SEC. 605. COST GROWTH —UNIT COST REPORTS (NUNN-MCCURDY).

(a) RESTATEMENT OF SECTIONS 2433 AND 2433a.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by inserting after chapter 324, as added by section 604, the following new chapter:

“CHAPTER 325—COST GROWTH —UNIT COST REPORTS (NUNN-MCCURDY)

- Sec. 4371 [2433(a), (f), (h)]. Cost growth definitions; applicability of reporting requirements; constant base year dollars.
4372 [2433(b)]. Unit cost reports: quarterly report from program manager to service acquisition executive.
4373 [2433(c)]. Unit cost reports: immediate report from program manager to service acquisition executive upon breach of significant cost growth threshold.
4374 [2433(d)]. Breach of significant cost growth threshold or critical cost growth threshold: determinations by service acquisition executive and Secretary concerned; reports to Congress.
4375 [2433(e),(g)]. Breach of significant cost growth threshold or critical cost growth threshold: required action.
4376 [2433a(a),(b),(d)]. Breach of critical cost growth threshold: reassessment of program; presumption of program termination.
4377 [2433a(c)]. Breach of critical cost growth threshold: actions if program not terminated.
4378 [Sec. 205(c) of P.L.111-23; WSARA (10 USC 2433a note)]. Performance assessments of programs restructured after breach of critical cost growth threshold.

Commented [CR910]: 10 USC 2433 is divided into 5 secs, 4371-4375

“§ 4371 [2433(a), (f), (h)]. Cost growth definitions; applicability of reporting requirements; constant base year dollars

(a) [2433(a)] DEFINITIONS.—In this chapter:

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1 (1) **[2433(a)(1)]** PROGRAM ACQUISITION UNIT COST; PROCUREMENT UNIT COST;
2 MAJOR CONTRACT.—Except as provided in section ~~2430(a)(4)~~ **4203(d)** of this title, the
3 terms "program acquisition unit cost", "procurement unit cost", and "major contract" have
4 the same meanings as provided in section ~~2432(a)~~ **4351** of this title.

5 (2) **[2433(a)(4)]** SIGNIFICANT COST GROWTH THRESHOLD.—The term "significant
6 cost growth threshold" means the following:

7 (A) In the case of a major defense acquisition program or designated
8 major defense subprogram, a percentage increase in the program acquisition unit
9 cost for the program or subprogram of—

10 (i) at least 15 percent over the program acquisition unit cost for the
11 program or subprogram as shown in the current Baseline Estimate for the
12 program or subprogram; or

13 (ii) at least 30 percent over the program acquisition unit cost for
14 the program or subprogram as shown in the original Baseline Estimate for
15 the program or subprogram.

16 (B) In the case of a major defense acquisition program or designated major
17 defense subprogram that is a procurement program, a percentage increase in the
18 procurement unit cost for the program or subprogram of—

19 (i) at least 15 percent over the procurement unit cost for the
20 program or subprogram as shown in the current Baseline Estimate for the
21 program or subprogram; or

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1 (ii) at least 30 percent over the procurement unit cost for the
2 program or subprogram as shown in the original Baseline Estimate for the
3 program or subprogram.

4 (3) [2433(a)(5)] CRITICAL COST GROWTH THRESHOLD.—The term "critical cost
5 growth threshold" means the following:

6 (A) In the case of a major defense acquisition program or designated
7 major defense subprogram, a percentage increase in the program acquisition unit
8 cost for the program or subprogram of—

9 (i) at least 25 percent over the program acquisition unit cost for the
10 program or subprogram as shown in the current Baseline Estimate for the
11 program or subprogram; or

12 (ii) at least 50 percent over the program acquisition unit cost for
13 the program or subprogram as shown in the original Baseline Estimate for
14 the program or subprogram.

15 (B) In the case of a major defense acquisition program or designated major
16 defense subprogram that is a procurement program, a percentage increase in the
17 procurement unit cost for the program or subprogram of—

18 (i) at least 25 percent over the procurement unit cost for the
19 program or subprogram as shown in the current Baseline Estimate for the
20 program or subprogram; or

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1 (ii) at least 50 percent over the procurement unit cost for the
2 program or subprogram as shown in the original Baseline Estimate for the
3 program or subprogram.

4 (4) [2433(a)(2)] BASELINE ESTIMATE.—The term "Baseline Estimate", with
5 respect to a unit cost report that is submitted under this chapter to the service acquisition
6 executive designated by the Secretary concerned on a major defense acquisition program
7 or designated major subprogram, means the cost estimate included in the baseline
8 description for the program or subprogram under section ~~2435~~ **4214** of this title.

9 (5) [2433(a)(6)] ORIGINAL BASELINE ESTIMATE.—The term "original Baseline
10 Estimate" has the same meaning as provided in section ~~2435(d)~~ **4214(d)** of this title.

11 (6) [2433(a)(3)] PROCUREMENT PROGRAM.—The term "procurement program"
12 means a program for which funds for procurement are authorized to be appropriated in a
13 fiscal year.

14 (b) [2433(h)] INAPPLICABILITY OF CHAPTER FOR A PROGRAM WITH A SAR LIMITED
15 REPORTING WAIVER.—Reporting under this chapter ~~shall~~ **does** not apply if a program has
16 received a limited reporting waiver under section ~~2432(h)~~ **4358** of this title.

17 (c) [2433(f)] USE OF CONSTANT BASE YEAR DOLLARS.—Any determination of a
18 percentage increase under this chapter shall be stated in terms of constant base year dollars (as
19 described in section ~~2430~~ **4201** of this title).

20 **§ 4372 [2433(b)]. Unit cost reports: quarterly report from program manager to service**
21 **acquisition executive**

22 (a) [2433(b) 1st & 2nd sent] REQUIRED REPORTS.—

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1 (1) REQUIREMENT.—The program manager for a major defense acquisition
2 program (other than a program not required to be included in the Selected Acquisition
3 Report for that quarter under section ~~2432(b)(3)~~ 4352(c) of this title) shall, on a quarterly
4 basis, submit to the service acquisition executive designated by the Secretary concerned a
5 written report on the unit costs of the program (or of each designated major subprogram
6 under the program). **A report under this subsection shall be known as a “unit cost
7 report”.**

8 (2) TIME FOR SUBMITTAL.—Each *unit cost* report *for a quarter* shall be submitted
9 not more than 30 calendar days after the end of that quarter.

10 (b) ~~[2433(b) 3rd sent]~~ MATTER TO BE INCLUDED IN UNIT COST REPORTS.—The program
11 manager shall include in each ~~such~~ unit cost report the following information with respect to the
12 program (as of the last day of the quarter for which the report is made):

13 (1) The program acquisition unit cost for the program (or for each designated
14 major subprogram under the program).

15 (2) In the case of a procurement program, the procurement unit cost for the
16 program (or for each designated major subprogram under the program).

17 (3) Any cost variance or schedule variance in a major contract under the program
18 since the contract was entered into.

19 (4) Any changes from program schedule milestones or program performances
20 reflected in the baseline description established under section ~~2435~~ 4214 of this title that
21 are known, expected, or anticipated by the program manager.

Commented [CR911]: This sentence is suggested as a new sentence. It is **not** in current law. Current 2432 provides by law for the name of the reports under that section to be known as “Selected Acquisition Reports”. This suggested sentence is intended to provide the same thing for reports under 2433, deriving the name from the section heading.

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(5) Any significant changes in the total program cost for development and procurement of the software component of the program or subprogram, schedule milestones for the software component of the program or subprogram, or expected performance for the software component of the program or subprogram that are known, expected, or anticipated by the program manager.

§ 4373 [2433(c)]. Unit cost reports: immediate report from program manager to service acquisition executive upon breach of significant cost growth threshold

If the program manager of a major defense acquisition program for which a unit cost report has previously been submitted under section 4372 of this title determines at any time during a quarter that there is reasonable cause to believe that the program acquisition unit cost for the program (or for a designated major subprogram under the program) or the procurement unit cost for the program (or for such a subprogram), as applicable, has increased by a percentage equal to or greater than the significant cost growth threshold; and if a unit cost report indicating an increase of such percentage or more has not previously been submitted to the service acquisition executive designated by the Secretary concerned, then the program manager shall immediately submit to such service acquisition executive a unit cost report containing the information, determined as of the date of the report, required under section 4372 of this title.

[ALTERNATIVE:]

(a) REPORT OF BREACH.—If the program manager of a major defense acquisition program for which a unit cost report has previously been submitted under section 4372 of this title makes a determination described in subsection (b) at any time during a quarter, the program manager shall immediately submit to the service acquisition executive designated by the Secretary concerned a unit cost report containing the information, determined as of the date of the report, required under section 4372 of this title.

(b) DETERMINATION OF BREACH.—A determination described in this subsection is a determination by the program manager that there is reasonable cause to believe that the program acquisition unit cost for the program (or for a designated major subprogram under the

Commented [CR912]: Text unchanged from 2433(c) (except for the internal section nos.).

Commented [CR913]: Please consider whether the Alternative states the text above more clearly with no change in meaning. Note that the action to be taken if the condition is triggered ("the program manager shall immediately ...") appears at the end of the 8th line in the original, while the Alternative reaches the action to be taken at the end of the 3rd line.

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program) or the procurement unit cost for the program (or for such a subprogram), as applicable, has increased by a percentage equal to or greater than the significant cost growth threshold.

(c) *INAPPLICABILITY IF BREACH PREVIOUSLY REPORTED.*—Subsection (a) does not apply if a unit cost report indicating an increase of such percentage or more has previously been submitted to the service acquisition executive.

1 § 4374 [2433(d)]. Unit cost reports: determinations by service acquisition executive and
2 Secretary concerned of breach of significant cost growth threshold or critical
3 cost growth threshold; reports to Congress

4 (a) [2433(d)(1)] DETERMINATION OF BREACH BY SERVICE ACQUISITION EXECUTIVE.—

5 When a unit cost report is submitted to the service acquisition executive designated by the
6 Secretary concerned under this chapter with respect to a major defense acquisition program or
7 any designated major subprogram under the program, the service acquisition executive shall
8 determine whether the current program acquisition unit cost for the program or subprogram has
9 increased by a percentage equal to or greater than the significant cost growth threshold, or the
10 critical cost growth threshold, for the program or subprogram.

11 (b) [2433(d)(2)] ADDITIONAL DETERMINATION BY SERVICE ACQUISITION EXECUTIVE
12 WHEN PROGRAM OR SUBPROGRAM IS A PROCUREMENT PROGRAM.—When a unit cost report is
13 submitted to the service acquisition executive designated by the Secretary concerned under this
14 chapter with respect to a major defense acquisition program or any designated major subprogram
15 under the program that is a procurement program, the service acquisition executive, in addition
16 to the determination under subsection (a), shall determine whether the procurement unit cost for
17 the program or subprogram has increased by a percentage equal to or greater than the significant
18 cost growth threshold, or the critical cost growth threshold, for the program or subprogram.

Commented [CR914]: The first 36 words of subsections (a) and (b) are the same. (“When a unit ...” through “under the program”).

Consider whether the text of (b) could be simplified and readability improved with no loss of meaning by revising the text of (b) up to “shall determine” so as to read:
“When a service acquisition executive makes a determination under subsection (a) with respect to a program or a subprogram that is a procurement program, the service acquisition executive shall also determine whether...”

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1 (c) [2433(d)(3)] DETERMINATION OF BREACH BY SECRETARY CONCERNED; NOTIFICATION
2 TO CONGRESS.—

3 (1) [2433(d)(3) 1st sent] IN GENERAL.—If, based upon the service acquisition
4 executive's determination, the Secretary concerned determines that the current program
5 acquisition unit cost has increased by a percentage equal to or greater than the significant
6 cost growth threshold or critical cost growth threshold or that the procurement unit cost
7 has increased by a percentage equal to or greater than the significant cost growth
8 threshold or critical cost growth threshold, the Secretary shall notify Congress in writing
9 of such determination and of the increase with respect to the program or subprogram
10 concerned.

[ALTERNATIVE:]

(1) [2433(d)(3) 1st sent] IN GENERAL.—

(A) NOTIFICATION TO CONGRESS UPON MAKING COVERED DETERMINATION.—

*If, based upon the service acquisition executive's determination **with respect to a program or subprogram**, the Secretary concerned makes a determination described in subparagraph (B), the Secretary shall notify Congress in writing of such determination and of the increase with respect to the program or subprogram ~~concerned~~ that resulted in the notification.*

(B) COVERED DETERMINATION.—*A determination described in this subparagraph is a determination by the Secretary concerned—*

(i) that the current program acquisition unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold; or

(ii) that the procurement unit cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold.

11 (2) [2433(d)(3) 2nd & 3rd sent] TIME FOR SUBMISSION OF NOTIFICATION TO
12 CONGRESS.—In the case of a determination based on a quarterly report submitted in
13 accordance with section 4372 of this title, the Secretary shall submit the notification to
14 Congress within 45 days after the end of the quarter. In the case of a determination based

Commented [CR915]: Please consider whether the Alternative states paragraph (1) more clearly with no change in meaning.

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on a report submitted in accordance with section 4373 of this title, the Secretary shall submit the notification to Congress within 45 days after the date of that report.

[ALTERNATIVE:]

(2) [2433(d)(3) 2nd & 3rd sent] TIME FOR SUBMISSION OF NOTIFICATIONS TO CONGRESS.—The Secretary shall submit a notification to Congress under paragraph (1)—

(A) in the case of a determination based on a quarterly report submitted in accordance with section 4372 of this title, within 45 days after the end of the quarter; and

(B) in the case of a determination based on a report submitted in accordance with section 4373 of this title, within 45 days after the date of that report.

(3) [2433(d)(3) 4th sent] INCLUSION OF DATE OF DETERMINATION.—The Secretary shall include in the notification the date on which the determination was made.

§ 4375 [2433(e), (g)]. Breach of significant cost growth threshold or critical cost growth threshold: required action

(a) [2433(e)(1)] BREACH OF SIGNIFICANT COST GROWTH THRESHOLD; SUBMISSION OF A SELECTED ACQUISITION REPORT.—

(1) [2433(e)(1)(A)] GENERAL RULE.—Except as provided in paragraph (2), whenever the Secretary concerned determines under section 4374 of this title that the program acquisition unit cost or the procurement unit cost of a major defense acquisition program or designated major subprogram has increased by a percentage equal to or greater than the significant cost growth threshold for the program or subprogram, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination or for the fiscal-year quarter which immediately precedes the first fiscal-year quarter ending on or after that date. The

Commented [CR916]: Please consider whether the Alternative states paragraph (2) more clearly with no change in meaning.

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1 report shall include the information described in section ~~2432(e)~~ **4355** of this title and
2 shall be submitted in accordance with section ~~2432(f)~~ **4356** of this title.

3 (2) **[2433(e)(1)(B)]** ALTERNATIVE TRANSMITTAL FOR CERTAIN 2ND QUARTER
4 DETERMINATIONS.—Whenever the Secretary makes a determination referred to in
5 paragraph (1) in the case of a major defense acquisition program or designated major
6 subprogram during the second quarter of a fiscal year and before the date on which the
7 President transmits the budget for the following fiscal year to Congress pursuant to
8 section 1105 of title 31, the Secretary is not required to file a Selected Acquisition Report
9 under paragraph (1) but shall include the information described in subsection (d)
10 regarding that program or subprogram in the comprehensive annual Selected Acquisition
11 Report submitted in that quarter.

12 (b) **[2433(e)(2)]** BREACH OF CRITICAL COST GROWTH THRESHOLD.—If the program
13 acquisition unit cost or procurement unit cost of a major defense acquisition program or
14 designated major subprogram (as determined by the Secretary under section 4374 of this title)
15 increases by a percentage equal to or greater than the critical cost growth threshold for the
16 program or subprogram, the Secretary of Defense shall take actions consistent with the
17 requirements of ~~section 2433a~~ **sections 4376 and 4377** of this title.

18 (c) **[2433(e)(3)]** PROHIBITION ON OBLIGATION OF FUNDS FOR CERTAIN PURPOSES WHEN
19 REQUIRED ACTION NOT TAKEN.—

20 (1) **[2433(e)(3) 1st sent]** PROHIBITION.—If a determination of an increase by a
21 percentage equal to or greater than the significant cost growth threshold is made by the
22 Secretary under section 4374 of this title and a Selected Acquisition Report containing

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1 the information described in subsection (d) is not submitted to Congress under subsection
2 (a), or if a determination of an increase by a percentage equal to or greater than the
3 critical cost growth threshold is made by the Secretary under section 4374 of this title and
4 the certification of the Secretary of Defense is not submitted to Congress under
5 subsection (b), funds appropriated for military construction, for research, development,
6 test, and evaluation, and for procurement may not be obligated for a major contract under
7 the program.

8 (2) [2433(e)(3) 2nd sent] TERMINATION OF PROHIBITION.—The prohibition *under*
9 *paragraph (1)* on the obligation of funds for a major defense acquisition program shall
10 cease to apply at the end of a period of 30 days of continuous session of Congress (as
11 determined under section 8677(b)(2) of this title) beginning on the date—

12 (A) on which Congress receives the Selected Acquisition Report under
13 subsection (a) or (b)(2) with respect to that program, in the case of a
14 determination of an increase by a percentage equal to or greater than the
15 significant cost growth threshold (as determined in section 4404 of this title); or

16 (B) on which Congress has received both the Selected Acquisition Report
17 under subsection (a) or (b)(2) and the certification of the Secretary of Defense
18 under subsection (b)(1) with respect to that program, in the case of an increase by
19 a percentage equal to or greater than the critical cost growth threshold (as
20 determined under section 4404 of this title).

Commented [CR917]: Subsection (b) above is 10 USC 2433(e)(2) in the original. That provision no longer provides for a SecDef certification, after the amendment made by WSARA in 2009. Should that have been changed to refer to 2433a(b)?

Commented [CR918]: See note above about 2433(e)(2). Here there is a reference to Congress receiving a SAR under subsection (b)(2) [2433(e)(2)(B) in the original]. But 2433(e)(2) is not divided into (A) and (B) and does not refer to a SAR.

Commented [CR919]: See note above about 2433(e)(2)

Commented [CR920]: See note above

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1 (d) [2433(g)(1)] MATTER TO BE INCLUDED IN REPORTS.—Except as provided in
2 subsection (e), each report under this section with respect to a major defense acquisition program
3 shall include the following:

- 4 (1) The name of the major defense acquisition program.
- 5 (2) The date of the preparation of the report.
- 6 (3) The program phase as of the date of the preparation of the report.
- 7 (4) The estimate of the program acquisition cost for the program (and for each
8 designated major subprogram under the program) as shown in the Selected Acquisition
9 Report in which the program or subprogram was first included, expressed in constant
10 base-year dollars and in current dollars.
- 11 (5) The current program acquisition cost for the program (and for each designated
12 major subprogram under the program) in constant base-year dollars and in current
13 dollars.
- 14 (6) A statement of the reasons for any increase in program acquisition unit cost or
15 procurement unit cost for the program (or for any designated major subprogram under the
16 program).
- 17 (7) The completion status of the program and each designated major subprogram
18 under the program—
 - 19 (A) expressed as the percentage that the number of years for which funds
20 have been appropriated for the program or subprogram is of the number of years
21 for which it is planned that funds will be appropriated for the program or
22 subprogram; and

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1 (B) expressed as the percentage that the amount of funds that have been
2 appropriated for the program or subprogram is of the total amount of funds which
3 it is planned will be appropriated for the program or subprogram.

4 (8) The fiscal year in which information on the program and each designated
5 major subprogram under the program was first included in a Selected Acquisition Report
6 (referred to in this paragraph as the "base year") and the date of that Selected Acquisition
7 Report in which information on the program or subprogram was first included.

8 (9) The type of the Baseline Estimate that was included in the baseline description
9 under section ~~2435~~ **4214** of this title and the date of the Baseline Estimate.

10 (10) The current change and the total change, in dollars and expressed as a
11 percentage, in the program acquisition unit cost for the program (or for each designated
12 major subprogram under the program), stated both in constant base-year dollars and in
13 current dollars.

14 (11) The current change and the total change, in dollars and expressed as a
15 percentage, in the procurement unit cost for the program (or for each designated major
16 subprogram under the program), stated both in constant base-year dollars and in current
17 dollars and the procurement unit cost for the program (or for each designated major
18 subprogram under the program) for the succeeding fiscal year expressed in constant base-
19 year dollars and in current year dollars.

20 (12) The quantity of end items to be acquired under the program and the current
21 change and total change, if any, in that quantity.

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1 (13) The identities of the military and civilian officers responsible for program
2 management and cost control of the program.

3 (14) The action taken and proposed to be taken to control future cost growth of
4 the program.

5 (15) Any changes made in the performance or schedule milestones of the program
6 and the extent to which such changes have contributed to the increase in program
7 acquisition unit cost or procurement unit cost for the program (or for any designated
8 major subprogram under the program).

9 (16) The following contract performance assessment information with respect to
10 each major contract under the program or subprogram:

11 (A) The name of the contractor.

12 (B) The phase that the contract is in at the time of the preparation of the
13 report.

14 (C) The percentage of work under the contract that has been completed.

15 (D) Any current change and the total change, in dollars and expressed as a
16 percentage, in the contract cost.

17 (E) The percentage by which the contract is currently ahead of or behind
18 schedule.

19 (F) A narrative providing a summary explanation of the most significant
20 occurrences, including cost and schedule variances under major contracts of the
21 program and any designated major subprogram under the program, contributing to

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1 the changes identified and a discussion of the effect these occurrences will have
2 on future program costs and the program schedule.

3 (17) In any case in which one or more problems with the software component of
4 the program or any designated major subprogram under the program significantly
5 contributed to the increase in program unit costs, the action taken and proposed to be
6 taken to solve such problems.

7 (e) [2433(g)(2)] BREACH DUE TO TERMINATION OR CANCELLATION OF PROGRAM OR
8 SUBPROGRAM.—

9 (1) [2433(g)(2) 1st sent] LIMITED REPORTING.—If a program acquisition unit cost
10 increase or a procurement unit cost increase for a major defense acquisition program or
11 designated major subprogram that results in a report under this section is due to
12 termination or cancellation of the entire program or subprogram, ~~only the information~~
13 ~~specified in paragraphs (1) through (6) of subsection (a) and the percentage change in~~
14 ~~program acquisition unit cost or procurement unit cost that resulted in the report need be~~
15 ~~included in the report.~~ *the report need only include—*

16 (A) *the information specified in paragraphs (1) through (6) of subsection*
17 *(a); and*

18 (B) *the percentage change in program acquisition unit cost or*
19 *procurement unit cost that resulted in the report.*

20 (2) [2433(g)(2) 2nd sent] CERTIFICATION NOT REQUIRED.—The certification of the
21 Secretary of Defense under **subsection (b)** is not required to be submitted for termination
22 or cancellation of a program or subprogram.

Commented [CR921]: In the original, this is a reference to 2433(e), which no longer has a requirement for a SecDef certification. What does this mean now? See note to subsection (c)(1) above. Should the reference have been to 2433a?

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1 § 4376 [2433a(a), (b), (d)]. Breach of critical cost growth threshold: reassessment of
2 program; presumption of program termination
3 (a) [2433a(a)] REASSESSMENT OF PROGRAM.—
4 (1) [2433a(a)(1)] DETERMINATION OF ROOT CAUSE OF CRITICAL COST GROWTH.—
5 If the program acquisition unit cost or procurement unit cost of a major defense
6 acquisition program or designated subprogram (as determined by the Secretary under
7 section ~~2433(d)~~ 4374 of this title) increases by a percentage equal to or greater than the
8 critical cost growth threshold for the program or subprogram, the Secretary of Defense
9 shall determine the root cause or causes of the critical cost growth in accordance with
10 applicable statutory requirements and Department of Defense policies, procedures, and
11 guidance.
12 (2) [2433a(a)(2)] ASSESSMENT OF PROGRAM COST.—Whenever the Secretary is
13 required to make a determination of root cause or causes under paragraph (1), the
14 Secretary shall also carry out an assessment of—
15 (A) the projected cost of completing the program if current requirements
16 are not modified;
17 (B) the projected cost of completing the program based on reasonable
18 modification of such requirements;
19 (C) the rough order of magnitude of the costs of any reasonable alternative
20 system or capability; and
21 (D) the need to reduce funding for other programs due to the growth in
22 cost of the program.

Commented [CR922]: As structured in this text, the definitions in current 2433 will now also apply to the provisions of 2433a. Sec. 2433a uses many of the same terms that are defined for purposes of 2433, but does not include definitions for them.. It seems logical that the definitions in 2433 would also apply in 2433a, but the statute does not literally provide that currently. Note that in this text, new 4371(a) says "In this chapter", which would pick up 2433a as now structured. Is this OK?

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1 (3) CONSULTATION.—

2 (A) [2433a(a) [prec. (1)]] JROC.—Whenever the Secretary is required to
3 make a determination under paragraph (1) and carry out an assessment under
4 paragraph (2), the determination may be made, and the assessment may be carried
5 out, only after consultation with the Joint Requirements Oversight Council
6 regarding program requirements.

7 (B) [2433a(a)(2)] CAPE.—An assessment under paragraph (2) shall be
8 carried out in consultation with the Director of Cost Assessment and Program
9 Evaluation.

10 (b) [2433a(b)] PRESUMPTION OF TERMINATION.—

11 (1) [2433a(b)(1)] TERMINATION UNLESS SECRETARY SUBMITS CERTIFICATION AND
12 REPORT.—After conducting the reassessment required by subsection (a) with respect to a
13 major defense acquisition program, the Secretary shall terminate the program unless the
14 Secretary submits to Congress, before the end of the 60-day period beginning on the day
15 the Selected Acquisition Report containing the information described in section 4375(d)
16 and (e) of this title is required to be submitted under section ~~2432(f)~~ 4356 of this title, a
17 written certification in accordance with paragraph (2).

18 (2) [2433a(b)(2)] CERTIFICATION.—A certification described by this paragraph
19 with respect to a major defense acquisition program is a written certification that—

20 (A) the continuation of the program is essential to the national security;

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1 (B) there are no alternatives to the program which will provide acceptable
2 capability to meet the joint military requirement (as defined in section 181(g)(1)
3 of this title) at less cost;

4 (C) the new estimates of the program acquisition unit cost or procurement
5 unit cost have been determined by the Director of Cost Assessment and Program
6 Evaluation to be reasonable;

7 (D) the program is a higher priority than programs whose funding must be
8 reduced to accommodate the growth in cost of the program; and

9 (E) the management structure for the program is adequate to manage and
10 control program acquisition unit cost or procurement unit cost.

11 (3) [2433a(b)(3)] REPORT.—A written certification under paragraph (2) shall be
12 accompanied by a report presenting the root cause analysis and assessment carried out
13 pursuant to subsection (a) and the basis for each determination made in accordance with
14 subparagraphs (A) through (E) of paragraph (2), together with supporting documentation.

15 (c) [2433a(d)] ACTIONS IF PROGRAM TERMINATED.—If a major defense acquisition
16 program is terminated pursuant to subsection (b), the Secretary shall submit to Congress a
17 written report setting forth—

18 (1) an explanation of the reasons for terminating the program;

19 (2) the alternatives considered to address any problems in the program; and

20 (3) the course the Department plans to pursue to meet any continuing joint
21 military requirements otherwise intended to be met by the program.

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1 § 4377 [2433a(c)]. Breach of critical cost growth threshold: actions if program not
2 terminated

3 (a) [2433a(c)(1)] REQUIRED ACTIONS IF PROGRAM NOT TERMINATED.—If the Secretary
4 of Defense elects not to terminate a major defense acquisition program pursuant to subsection (b)
5 of section 4376 of this title, the Secretary shall—

6 (1) restructure the program in a manner that addresses the root cause or causes of
7 the critical cost growth, as identified pursuant to subsection (a) of that section, and
8 ensures that the program has an appropriate management structure as set forth in the
9 certification submitted pursuant to subsection (b)(2)(E) of that section;

10 (2) rescind the most recent Milestone approval for the program and withdraw any
11 associated certification under section ~~2366a or 2366b~~ **4251 or 4252** of this title;

12 (3) require a new Milestone approval for the program before taking any contract
13 action to enter a new contract, exercise an option under an existing contract, or otherwise
14 extend the scope of an existing contract under the program, except to the extent
15 determined necessary by the Milestone Decision Authority, on a non-delegable basis, to
16 ensure that the program can be restructured as intended by the Secretary without
17 unnecessarily wasting resources;

18 (4) include in the report specified in subsection (b) a description of all funding
19 changes made as a result of the growth in cost of the program, including reductions made
20 in funding for other programs to accommodate such cost growth; and

21 (5) conduct regular reviews of the program in accordance with the requirements
22 of section ~~205 of the Weapon Systems Acquisition Reform Act of 2009~~ **4378 of this title**.

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1 (b) [2433a(c)(2)] IDENTIFICATION OF REPORT FOR DESCRIPTION OF FUNDING CHANGES.—
2 For purposes of subsection (a)(4), the report specified in this subsection is the first Selected
3 Acquisition Report for the program submitted pursuant to section ~~2432~~ 4352 of this title after the
4 President submits a budget pursuant to section 1105 of title 31, in the calendar year following the
5 year in which the program was restructured.

6 (c) [2433a(c)(3)] INAPPLICABILITY OF CERTAIN SUBSECTION (a) REQUIREMENTS.—
7 (1) CONDITIONS FOR INAPPLICABILITY.—The requirements of paragraphs (2), (3),
8 and (5) of subsection (a) shall not apply to a program or subprogram if—

9 (A) the Milestone Decision Authority determines in writing, on the basis
10 of a cost assessment and root cause analysis conducted pursuant to section
11 4376(a) of this title, that—

12 (i) but for a change in the quantity of items to be purchased under
13 the program or subprogram, the program acquisition unit cost or
14 procurement unit cost for the program or subprogram would not have
15 increased by a percentage equal to or greater than the cost growth
16 thresholds for the program or subprogram set forth in paragraph (2); and

17 (ii) the change in quantity of items described in clause (i) was not
18 made as a result of an increase in program cost, a delay in the program, or
19 a problem meeting program requirements;

20 (B) the Secretary determines in writing that the cost to the Department of
21 Defense of complying with such requirements is likely to exceed the benefits to
22 the Department of complying with such requirements; and

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1 (C) the Secretary submits to Congress, before the end of the 60-day period
2 beginning on the day the Selected Acquisition Report containing the information
3 described in section ~~2433(e)~~ **4375(d) and (e)** of this title is required to be
4 submitted under section ~~2432(f)~~ **4356** of this title—

5 (i) a copy of the written determination under subparagraph (A) and
6 an explanation of the basis for the determination; and

7 (ii) a copy of the written determination under subparagraph (B) and
8 an explanation of the basis for the determination.

9 (2) COST GROWTH THRESHOLDS.—The cost growth thresholds specified in this
10 paragraph are as follows:

11 (A) In the case of a major defense acquisition program or designated
12 major defense subprogram, a percentage increase in the program acquisition unit
13 cost for the program or subprogram of—

14 (i) 5 percent over the program acquisition unit cost for the program
15 or subprogram as shown in the current Baseline Estimate for the program
16 or subprogram; and

17 (ii) 10 percent over the program acquisition unit cost for the
18 program or subprogram as shown in the original Baseline Estimate for the
19 program or subprogram.

20 (B) In the case of a major defense acquisition program or designated major
21 defense subprogram that is a procurement program, a percentage increase in the
22 procurement unit cost for the program or subprogram of—

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(i) 5 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(ii) 10 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

§ 4378 [Sec. 205(c) of P.L. 111-23, WSARA(10 USC 2433a note)]. ~~Reviews~~ Performance assessments of programs restructured after breach of critical cost growth threshold

(a) SEMIANNUAL ~~REVIEWS~~ ASSESSMENTS.—The official designated to perform oversight of performance assessment pursuant to section 4273 of this title shall assess the performance of each major defense acquisition program that has exceeded critical cost growth thresholds established pursuant to section 2433(e) of this title but has not been terminated in accordance with section 4376 of this title not less often than semi-annually until one year after the date on which such program receives a new milestone approval, in accordance with section 4377(a)(3) of this title.

(b) REPORTING.—The results of ~~reviews~~ performance assessments performed under this section subsection (a) shall be reported to the Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and Sustainment and summarized in the next annual report of such designated official.

(b) CONFORMING REPEALS.—The following provisions of law are repealed:

- (1) Sections 2433 and 2433a of title 10, United States Code.

Commented [CR923]: Current 2433(e) does not establish critical cost growth thresholds. Should the underlined text say, "... of each major defense acquisition program for which the Secretary concerned has made a determination described in section 4375(e)(1) of this title [current 2433(e)(1)(A)] but which has not been terminated ...".

Commented [CR924]: Since subsection (a) states that the specified official "shall assess the performance of ..." [not "review"], the section heading and subsection (b) are revised to replace "reviews" with "performance assessments".

Commented [CR925]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

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(2) Section 205(c) of the Weapon Systems Acquisition Reform Act of 2009

(Public Law 111-23; 10 U.S.C. 2433a note).

(c) **CROSS REFERENCE.**—Section 181(b)(6) of title 10, United States Code, is amended by striking “2433(e)(2)” and inserting “4375(b)”.

SEC. 606. WEAPON SYSTEMS DEVELOPMENT AND RELATED MATTERS.

(a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by **inserting** after chapter 325, as added by section 605, the following new chapter:

“CHAPTER 327—WEAPON SYSTEMS DEVELOPMENT AND RELATED MATTERS

Subchapter	Sec.
I. Modular Open System Approach in Development of Weapon Systems.....	4401
<u>II. Development, Prototyping, and Deployment of Weapon System Components and Technology</u>	<u>4421</u>

SUBCHAPTER I—MODULAR OPEN SYSTEM APPROACH IN DEVELOPMENT OF WEAPON SYSTEMS

Sec.
4401 [2446a]. Requirement for modular open system approach in major defense acquisition programs; definitions.
4402 [2446b]. Requirement to address modular open system approach in program capabilities development and acquisition weapon system design.
4403 [2446c]. Requirements relating to availability of major system interfaces and support for modular open system approach.

SUBCHAPTER II—DEVELOPMENT, PROTOTYPING, AND DEPLOYMENT OF WEAPON SYSTEM COMPONENTS OR TECHNOLOGY

Commented [CR926]: This reference to 2433(e)(2) in 10 USC 181 (JROC) may be obsolete. WSARA (P.L. 11-23, May 22, 2009) amended (e)(2) generally. Before the amendment made by WSARA, (e)(2) referred to requirements and capabilities. Note that (e)(2) now refers to 2443a and that that section refers to requirements and alternatives. The substance of former (e)(2) seems to have been moved to become a separate section. Should the reference to 2433(e)(2) be changed to 2422a(a)? **DoD:** Please advise as to the correct reference in 10 USC 181(b)(6).

Commented [CR927]: In the original, there is a subchapter III with two sections (2448a & 2448b). Those two sections are set forth as the first two secs in subch IV of ch. 323, above (secs. 4271 & 4272), so there is no subch. III here.

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Sec.

4421 [2447a]. Weapon system component or technology prototype projects: display of budget information.

4422 [2447b]. Weapon system component or technology prototype projects: oversight.

4423 [2447c]. Requirements and limitations for weapon system component or technology prototype projects.

4424 [2447d]. Mechanisms to speed deployment of successful weapon system component or technology prototypes.

4425 [2447e]. Definition of weapon system component. ❗

1 (b) **TRANSFER OF SECTIONS OF SUBCHAPTER I OF CHAPTER 144B.—**

2 (1) TRANSFER.—Sections 2446a, 2446b, and 2446c of chapter 144B of title 10,
3 United States Code, are **transferred to chapter 327, as added by subsection (a),**
4 inserted (in that order) after the table of sections at the beginning of subchapter I, and
5 **redesignated** as sections 4401, 4402, and 4403, respectively.

6 (2) SECTION 4401.—Section 4401 of title 10, United States Code, as transferred
7 and redesignated by paragraph (1), is amended—

8 (A) in subsection (b)(1)(D), by striking “section 2320” and inserting
9 “sections 3771-3775”;

10 (B) in subsection (b)(6), by striking “section 2448a(a)” and inserting
11 “section 4271(a)”; and

12 (C) in subsection (b)(7), by striking “section 2430” and inserting “section
13 4201”; and

14 (D) in subsection (b)(8), by striking “section 2379(f)” and inserting
15 “section 3455(f)”.

16 (3) SECTION 4402.—Section 4402 of such title, as redesignated by subsection
17 (a)(2), is amended—

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1 (A) in subsection (c), by striking “section 2431a” and inserting “section
2 4211”; and

3 (B) in subsection (e), by striking “section 2366b” and inserting “section
4 4252”.

5 (c) **TRANSFER OF SECTIONS OF SUBCHAPTER II OF CHAPTER 144B.—**

6 (1) TRANSFER.—Sections 2447a, 2447b, 2447c, 2447d, and 2447e of chapter
7 144B of title 10, United States Code, are **transferred to chapter 327, as added by**
8 **subsection (a)**, inserted (in that order) after the table of sections at the beginning of
9 subchapter II, and **redesignated** as sections 4421, 4422, 4423, 4424, and 4425,
10 respectively.

11 (2) SECTION 4421.—Section 4421 of such title, as transferred and redesignated by
12 paragraph (1), is amended by striking “after fiscal year 2017” in subsection (a).¹

13 (3) SECTION 4422.—Section 4422 of such title, as transferred and redesignated by
14 paragraph (1), is amended by striking “section 2447c” in subsection (c)(3) and inserting
15 “section 4423”.

16 (4) SECTION 4423.—Section 4423 of such title, as transferred and redesignated by
17 paragraph (1), is amended—

18 (A) in subsection (b), by striking “section 2447b” and inserting “section
19 4422”; and

20 (B) in subsection (e)—

Commented [CR928]: This is a technical clean-up amendment. It is a “nice to have” but does not have to be made as part of the reorganization.

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(i) by striking “section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note)” and inserting “section 3611 of this title”; and

(ii) by striking “section 2371b” and inserting “section 4003”.

(5) SECTION 4424.—Section 4424 of such title, as transferred and redesignated by paragraph (1), is amended by striking “section 2304” in subsection (a) and inserting “sections 3201 through 3205”.

(6) SECTION 4425.—Section 4425 of such title, as transferred and redesignated by paragraph (1), is amended by striking “section 2446a” and inserting “section 4401”.

(e) CONFORMING AMENDMENTS.—

(1) Chapter 144B of title 10, United States Code, is repealed.

(2) The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of title 10, United States Code, are amended by striking the items relating to chapter 144B.

Commented [CR929]: All that this repeal does at this point is to delete the chapter and subchapter headings and the table of sections for chapter 144B, as all the sections of that chapter are transferred to chapters in the new Part V.

NOTE: Cross references have been checked for all title 10 sections included in the chapters in subpart F.

NOTE: The following four NDAA sections, which are currently notes under 10 U.S.C. 2430, are to be codified in Ch. 87 (DAWIA) rather than in the new Part V. See subsections (b)-(f) of section 1002 below.

- Sec. 801 of P.L. 109-364, FY07 NDAA (10 USC 2430 note)]. Requirements management certification training program. To become 10 USC 1744
Sec. 853 of P.L. 109-364, FY07 NDAA (10 USC 2430 note)]. Program managers: empowerment and accountability. To become 10 USC 1736
Sec. 826 of P.L. 114-92, FY16 NDAA (10 USC 2430 note)]. Program managers: tenure and accountability for program definition periods. To become 10 USC 1736a

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Sec. 827 of P.L. 114-92, FY16 NDAA (10 USC 2430 note)]. Program managers: tenure and accountability for program execution periods. To become 10 USC 1736b

TITLE VII—OTHER SPECIAL CATEGORIES OF CONTRACTING

(PART V, SUBPART G)

Note: In Part V as enacted, there was one chapter proposed for Acquisition of Services, designated as ch. 343. Given the volume of provisions relating to Acquisition of Services of Contractors Performing Private Security Functions, the material has been organized into two chapters, designated as 341 & 343. The title 10 provisions originally envisaged for ch. 341 will be left as is, in Part IV of Subtitle A.

SEC. 701. ACQUISITION OF SERVICES GENERALLY.

(a) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part V of subtitle A (as added by section 801 of Public Law 115-232), of title 10, United States Code, are amended by striking the items relating to chapters 341 and 343 and inserting the following:

Table with 2 columns: Chapter Title and Page Number. Row 1: "341. Acquisition of Services Generally4501. Row 2: "343. Acquisition of Services of Contractors Performing Private Security Functions..... 4541"

(b) NEW CHAPTER 341.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapters 341 and 343 and inserting the following:

CHAPTER 341—ACQUISITION OF SERVICES GENERALLY

Sec. 4501 [10 U.S.C. 2330(a)(1), (c)(2)]. Procurement of contract services: requirement for management structure.

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- 4502 [2330(a)(2)&(3), (b), (c)(1)]. Procurement of contract services: senior officials responsible for management of acquisition of contract services.
4503 [Sec 863(a)-(h) of FY11 NDAA, P.L. 111-383 (10 U.S.C. 2330 note)]. Acquisition of services: requirements.
4504 [Sec 808 of FY 08 NDAA, P.L. 110-181 (10 U.S.C. 2330 note)]. Contracts for services: independent management reviews.
4505 [2330a]. Procurement of services: tracking of purchases.
4506 [2329; Sec. 852 of FY18 NDAA (10 U.S.C. 2329 note)]. Procurement of services: data analysis and requirements validation.
4507 [2331]. Procurement of services: contracts for professional and technical services.
4508 [2383]. Contractor performance of acquisition functions closely associated with inherently governmental functions.
4509 [2410l; Sec. 363(b) of FY95 NDAA (10 U.S.C. 2410l note)]. Contracts for advisory and assistance services: cost comparison studies.
4510 [Sec 821(a) of FY01 NDAA (10 U.S.C. 2302 note)]. Preference for performance-based service contracting.
4511 [Sec 821(c) of FY01 NDAA (10 U.S.C. 2302 note)]. Centers of excellence in service contracting.
4512 [Sec 821(d) of FY01 NDAA (10 U.S.C. 2302 note)]. Training in service contracting.
4513 [Sec 8039 of FY16 DoD Approps Act (10 U.S.C. 2304 note)]. Contracts for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal.
4514 [Sec 832 of P.L. 109-364 (10 U.S.C. 2302 note)]. Use of service contracts for acquisition of military flight simulators: limitation.
4515 [Sec 898 of FY16 NDAA (10 U.S.C. 2304 note)]. Competition for religious services contracts."

(c) TITLE 10, SECTION 2330.—

(1) IN GENERAL.—Chapter 341 of title 10, United States Code, as amended by subsection (b), is amended by inserting after the table of sections at the beginning the following new sections:

“§4501 [2330(a)(1), (c)(2)]. Procurement of contract services: requirement for management structure

(a) [2330(a)] REQUIREMENT FOR MANAGEMENT STRUCTURE.—The Secretary of Defense shall establish and implement a management structure for the procurement of contract services for the Department of Defense. The management structure shall provide, at a minimum, for the matters specified in subsections (b), (c), (d), and (e).

Commented [CR930]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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1 (b) [2330(a)(1)(A)] POLICIES, PROCEDURES, AND BEST PRACTICES GUIDELINES.—The
2 Under Secretary of Defense for Acquisition, Technology, and Logistics *Acquisition and*
3 *Sustainment* shall develop and maintain (in consultation with the service acquisition executives)
4 policies, procedures, and best practices guidelines addressing the procurement of contract
5 services, including policies, procedures, and best practices guidelines for each of the following:

- 6 (1) Acquisition planning.
- 7 (2) Solicitation and contract award.
- 8 (3) Requirements development and management.
- 9 (4) Contract tracking and oversight.
- 10 (5) Performance evaluation.
- 11 (6) Risk management.

12 (c) [2330(a)(1)(B)] PERSONNEL AND SUPPORT.—The Under Secretary shall work with the
13 service acquisition executives and other appropriate officials of the Department of Defense—

- 14 (1) to identify the critical skills and competencies needed to carry out the
15 procurement of contract services on behalf of the Department of Defense;
- 16 (2) to develop a comprehensive strategy for recruiting, training, and deploying
17 employees to meet the requirements for such skills and competencies; and
- 18 (3) to ensure that the military departments and Defense Agencies have staff and
19 administrative support that are adequate to effectively perform their duties under this
20 section and section 4502 of this title.

21 (d) [2330(a)(1)(C)] CONTRACT SERVICES ACQUISITION CATEGORIES.—The Under
22 Secretary shall establish contract services acquisition categories, based on dollar thresholds, for

Commented [CR931]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

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1 the purpose of establishing the level of review, decision authority, and applicable procedures in
2 such categories.

3 (e) [2330(a)(1)(D)] OVERSIGHT OF IMPLEMENTATION.—The Under Secretary shall
4 oversee the implementation of the requirements of this section and section 4502 of this title and
5 the policies, procedures, and best practices guidelines established pursuant to subsection (b).

6 (f) [2330(c)(2)] CONTRACT SERVICES.—In this section, the term “contract services”
7 includes all services acquired from private sector entities by or for the Department of Defense,
8 including services in support of contingency operations. The term does not include services
9 relating to research and development or military construction.

10 **§4502 [2330(a)(2)&(3), (b), (c)(1)]. Procurement of contract services: senior officials**
11 **responsible for management of acquisition of contract services**

12 (a) [2330(a)(2)&(3)] SENIOR OFFICIALS.—The management structure implemented under
13 section 4501 of this title shall provide for the following:

14 (1) MILITARY DEPARTMENTS.—The service acquisition executive of each military
15 department shall be the senior official responsible for the management of acquisition of
16 contract services for or on behalf of the military department.

17 (2) OTHER COMPONENTS.—The Under Secretary of Defense for ~~Acquisition,~~
18 ~~Technology, and Logistics~~ **Acquisition and Sustainment** shall be the senior official
19 responsible for the management of acquisition of contract services for or on behalf of the
20 Defense Agencies and other components of the Department of Defense outside the
21 military departments.

Commented [CR932]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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1 (b) [2330(b)(1), (2)] OFFICIALS WITH RESPONSIBILITY FOR REVIEW AND APPROVAL OF
2 PROCUREMENTS IN EACH CONTRACT SERVICES ACQUISITION CATEGORY.—

3 (1) [2330(b)(1)] Except as provided in paragraph (2), the senior officials
4 responsible for the management of acquisition of contract services shall assign
5 responsibility for the review and approval of procurements in each contract services
6 acquisition category established under section 4501(d) of this title to specific Department
7 of Defense officials, subject to the direction, supervision, and oversight of such senior
8 officials.

9 (2) [2330(b)(2)] With respect to the acquisition of contract services by a
10 component or command of the Department of Defense the primary mission of which is
11 the acquisition of products and services, such acquisition shall be conducted in
12 accordance with policies, procedures, and best practices guidelines developed and
13 maintained by the Under Secretary of Defense for ~~Acquisition, Technology, and~~
14 ~~Logistics~~ *Acquisition and Sustainment* pursuant to section 4501(b) of this title, subject
15 to oversight by the senior officials referred to in paragraph (1).

16 (c) [2330(b)(3)] DUTIES AND RESPONSIBILITIES.—In carrying out subsection (b)(1), each
17 senior official responsible for the management of acquisition of contract services shall—

18 (1) implement the requirements of this section and section 4501 of this title and
19 the policies, procedures, and best practices guidelines developed by the Under Secretary
20 of Defense for ~~Acquisition, Technology, and Logistics~~ *Acquisition and Sustainment*
21 pursuant to section 4501(b) of this title;

Commented [CR933]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

Commented [CR934]: Note that (b)(2) immediately above says "developed and maintained", while this paragraph just says "developed". Both have "pursuant to section 4501(b)". Is the difference intentional? T10 original language not changed here, but should it be changed from "developed" to "maintained" or "developed and maintained?".

Commented [CR935]: Changed per DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

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1 (2) authorize the procurement of contract services through contracts entered into
2 by agencies outside the Department of Defense in appropriate circumstances, in
3 accordance with the requirements of ~~section 854 of the Ronald W. Reagan National~~
4 ~~Defense Authorization Act for Fiscal Year 2005 (10 U.S.C. 2304 note)~~ **section 3651 of**
5 **this title**, section 814 of the Strom Thurmond National Defense Authorization Act for
6 Fiscal Year 1999 (31 U.S.C. 1535 note), and the regulations implementing those sections;

7 (3) dedicate full-time commodity managers to coordinate the procurement of key
8 categories of services;

9 (4) ensure that contract services are procured by means of procurement actions
10 that are in the best interests of the Department of Defense and are entered into and
11 managed in compliance with applicable laws, regulations, directives, and requirements;

12 (5) ensure that competitive procedures and performance-based contracting are
13 used to the maximum extent practicable for the procurement of contract services; and

14 (6) monitor data collection under section ~~2330a~~ 4505 of this title, and periodically
15 conduct spending analyses, to ensure that funds expended for the procurement of contract
16 services are being expended in the most rational and economical manner practicable.

17 (d) **[2330(c)]** DEFINITIONS.—In this section:

18 (1) PROCUREMENT ACTION.—The term “procurement action” includes the
19 following actions:

- 20 (A) Entry into a contract or any other form of agreement.
- 21 (B) Issuance of a task order, delivery order, or military interdepartmental
- 22 purchase request.

Commented [CR936]: Sec. 854 of the FY05 NDAA to be codified as new sec. 3651 in the chapter relating to Contracting With or Through Other Agencies (ch. 255).

Commented [CR937]: Section 814 of the FY99 NDAA did not itself authorize procurement through other agencies but required that regulations be prescribed by a certain date. That section ceased to be effective 1 year after date on which final regulations took effect. Final regulations were published in the Federal Register Mar. 25, 1999, effective on that date. See 64 F.R. 14399. Sec 814 is no longer set out as a note under 31 U.S.C. 1535.

Is the reference to Sec. 814 OBE? Or, if not, should a change be made here to update the law? (If so, what is the successor provision to 814?)

OR, should the reference be changed to refer only to the regulations prescribed under that section? (Note that the end of this paragraph says “and the regulations implementing those sections”).
If so, it would read:

“in accordance with the requirements of section 3651 of this title and the regulations implementing that section and with the requirements of the regulations prescribed pursuant to section 814 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999”.

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1 (2) CONTRACT SERVICES.—The term “contract services” has the meaning given
2 that term in section 4501(f) of this title.”

3 (2) CONFORMING REPEAL.—Section 2330 of title 10, United States Code, is
4 repealed.

5 (d) CODIFICATION OF FY2011 NDAA SECTION.—

6 (1) CODIFICATION.—Chapter 341 of such title is further amended by adding after
7 section 4502, as added by subsection (c), a new section 4503 consisting of—

8 (A) a heading as follows:

9 “§ 4503 [Sec 863(a)-(h) of FY11 NDAA, P.L. 111-383 (10 U.S.C. 2330 note)]. Acquisition of
10 services: requirements”; and

11 (B) a text consisting of the text of subsections (a) through (h) of section
12 863 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011
13 (Public Law 111-383; 10 U.S.C. 2330 note), revised—

14 (i) in subsection (b)(1), by striking “Armed Forces” both places it
15 appears and inserting “armed forces”;

16 (ii) in subsection (d)—

17 (I) in paragraph (2), by striking “section 2330(a)(1)(C) of
18 title 10, United States Code” and inserting “section 4501(d) of this
19 title”; and

20 (II) in paragraph (9), by striking “of title 10, United States
21 Code” and inserting “of this title”;

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(iii) in subsection (e), by striking “not later than one year after the date of the enactment of this Act” and inserting “not later than January 7, 2012.”; and

(iv) in subsection (g), by striking “The term” and inserting “In this section, the term”.

(2) **CONFORMING REPEAL.**—Section 863 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2330 note) is amended by striking subsections (a) through (h).

(e) **CODIFICATION OF FY2008 NDAA SECTION.**—

(1) **CODIFICATION.**—Chapter 341 of such title is further amended by adding after section 4503, as added by subsection (d), a new section 4504 consisting of—

(A) a heading as follows:

“§ 4504 [Sec 808 of FY08 NDAA, P.L. 110-181 (10 U.S.C. 2330 note)]. **Contracts for services: independent management reviews**”; and

(B) a text consisting of the text of section 808 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2330 note), revised—

(i) in subsection (a)—

(I) by striking “Not later than 180 days after the date of the enactment of this Act, the Secretary” and inserting “The Secretary”;

(II) by striking “, at a minimum”; and

Commented [CR938]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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(III) in paragraph (5), by striking “(as defined in section 852 of the John Warner National Defense Authorization Act for Fiscal Year 2007)” and inserting “(as defined in section 3764 of this title)”;

(ii) in subsection (b)—

(I) by striking “, at a **minimum**” in the matter preceding paragraph (1); and

(II) in paragraph (1), by striking “section 2383(b)(3) of title 10, United States Code” and inserting “section 4508(b)(3) of this title”; and

(iii) in subsection (c), by striking “, at a **minimum**” in the matter preceding paragraph (1).

(2) **CONFORMING REPEAL**.—Section 808 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2330 note) is repealed.

(f) **TRANSFER OF SECTION 2330a**.—Section 2330a of title 10, United States Code, is **transferred** to chapter 341 of such title, **inserted** after section 4504, as added by subsection (e), **redesignated** as section 4505, and **amended**—

(1) in subsection (c)(1)(A)(iii), by striking “subsection (e)(1)” and inserting “subsection (d)(1)”;

(2) in subsection (e)—

(A) in paragraph (3), by striking “section 235” and inserting “section 3107”; and

Commented [CR939]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

Commented [CR940]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

Commented [CR941]: Former (d) was deleted and former subsection (e) was redesignated as (d) in FY17 NDAA, but this cross-reference to (e) was not conformed.

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1 (B) in paragraph (4), by striking “subsection (e)(3)” and inserting
2 “subsection (d)(3)”;

Commented [CR942]: Former (d) was deleted and former subsection (e) was redesignated as (d) in FY17 NDAA, but this cross-reference to (e) was not conformed.

3 (3) by striking subsection (f);
4 (4) by redesignating subsections (g) and (h) as subsections (f) and (g),

Commented [CR943]: Subsection (f) is a requirement for a GAO report due NLT March 31, 2018.

5 respectively; and
6 (5) in subsection (g), as so redesignated—

7 (A) in paragraph (3), by striking “section 2383(b)(2)” and inserting
8 “section 4508(b)(2)”;

9 (B) in paragraph (6), by striking (as that” and all that follows through “this
10 title”.

Commented [CR944]: The matter to be stricken by paragraph (6) refers to the definition in paragraph (4), immediately above.

11 (g) **TRANSFER OF SECTION 2329**.—Section 2329 of title 10, United States Code, is
12 **transferred** to chapter 341 of such title, **inserted** after section 4505, as added by subsection (f),
13 **redesignated** as section 4506, and **amended**—

14 (1) in subsection (c)(3)(C), by striking “after the date of the enactment of this
15 subsection” and inserting “after December 12, 2017”; and

16 (2) in subsection (e)(2)(B) by striking “second use to the Vice Chief” and all that
17 follows and inserting the following: “second use to the following as applicable:

Commented [CR945]: This is to revise the text to avoid using “Vice Chief of Staff” with respect to the Navy and Marine Corps.

18 “(i) The service acquisition executive of the Department of the Army and the Vice
19 Chief of Staff of the Army.

20 “(ii) The service acquisition executive of the Department of the Navy and the
21 Vice Chief of Naval Operations or Assistant Commandant of the Marine Corps, as
22 applicable.

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1 “(iii) The service acquisition executive of the Department of the Air Force and the
2 Vice Chief of Staff of the Air Force.

3 “(iv) The head of the Defense Agency concerned.

4 “(v) The ~~combatant commander~~ **commander of the combatant command**
5 concerned.

Commented [CR946]: The term generally used in title 10 is “commander of a combatant command”, rather than “combatant commander”. See 10 USC 161.

6 “(vi) The Under Secretary of Defense for Acquisition and Sustainment.”

Commented [CR947]: FYI: USD(A&S) appears in the original, enacted 12/12/2017

7 **(h) CODIFICATION OF FY2018 NDAA SECTION.—**

8 (1) CODIFICATION.—Subsection (d) of section 4506 of title 10, United States Code,
9 as transferred and redesignated by subsection (g), is amended—

10 (A) by inserting (1)” after “REQUIREMENTS EVALUATION.—”; and

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

12 “(2) [Sec. 852 of FY18 NDAA, P. L. 115-91 (10 U.S.C. 2329 note)] The Secretary of
13 Defense shall encourage the use of standard guidelines within the Department of Defense for the
14 evaluation of requirements for services contracts. Such guidelines shall be available to the
15 Services Requirements Review Boards within each Defense Agency, each Department of
16 Defense Field Activity, and each military department for the purpose of standardizing the
17 requirements evaluation required under this section.”

18 (2) CONFORMING REPEAL.—Section 852 of the National Defense Authorization
19 Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2329 note) is repealed.

20 (i) TRANSFER OF SECTIONS 2331, 2383, AND 24101 OF TITLE 10.—Sections 2331, 2383,
21 and 24101 of title 10, United States Code, are transferred to chapter 341 of such title, inserted

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1 (in that order) after section 4506, as transferred and redesignated by subsection (h), and
2 **redesignated** as sections 4507, 4508, and 4509, respectively.

3 (j) **CODIFICATION OF FY1995 NDAA SECTION.**—

4 (1) **CODIFICATION.**—Section 4509 of title 10, United States Code, as transferred
5 and redesignated by subsection (i), is amended by adding at the end the following new
6 subsection:

7 “(c) [Sec. 363(b) of FY95 NDAA, P. L. 103-337 (10 U.S.C. 2410l note)]

8 PROCEDURES.— The Secretary of Defense shall prescribe the following procedures:

9 (1) Procedures for carrying out a cost comparison study under subsection (a)(2),
10 which may contain a requirement that the cost comparison study include consideration of
11 factors that are not related to cost, including the quality of the service required to be
12 performed, the availability of Department of Defense personnel, the duration and
13 recurring nature of the services to be performed, and the consistency of the workload.

14 (2) Procedures for reviewing contracts entered into after a waiver under
15 subsection (b) to determine whether the contract is justified and sufficiently
16 documented.”.

17 (2) **CONFORMING REPEAL.**—Section 363(b) of the National Defense Authorization Act
18 for Fiscal Year 1995 (Public Law 103-337; 10 U.S.C. 2410l note) is repealed.

19 (k) **CODIFICATION OF FY2001 NDAA SECTION.**—

20 (1) **CODIFICATION.**— Chapter 341 of title 10, United States Code, as amended by
21 subsection (a), is further amended by adding after section 4509, as transferred and
22 redesignated by subsection (i) and amended by subsection (j), the following new sections:

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1 “§ 4510. [Sec 821(a) of FY01 NDAA (10 U.S.C. 2302 note)] Preference for performance-
2 based service contracting

3 (a) [Sec 821(a)] PREFERENCE.—The Federal Acquisition Regulation shall establish a
4 preference for use of contracts and task orders for the purchase of services in the following order
5 of precedence:

6 (1) A performance-based contract or performance-based task order that contains
7 firm fixed prices for the specific tasks to be performed.

8 (2) Any other performance-based contract or performance-based task order.

9 (3) Any contract or task order that is not a performance-based contract or a
10 performance-based task order.

11 (b) [Sec 821(e)(1)] DEFINITION.—In this section, the term ‘performance-based’, with
12 respect to a contract, a task order, or contracting, means that the contract, task order, or
13 contracting, respectively, includes the use of performance work statements that set forth contract
14 requirements in clear, specific, and objective terms with measurable outcomes.

15 “§ 4511. [Sec 821(c) of FY01 NDAA (10 U.S.C. 2302 note)] Centers of excellence in service
16 contracting

17 The Secretary of each military department shall establish at least one center of excellence
18 in contracting for services. Each center of excellence shall assist the acquisition community by
19 identifying, and serving as a clearinghouse for, best practices in contracting for services in the
20 public and private sectors.

21 “§ 4512. [Sec 821(d) of FY01 NDAA (10 U.S.C. 2302 note)] Training in service contracting

Commented [CR948]: This is current law, unchanged. Just as a note, the word “contracting” here, right after “contract”, seems unusual. The intent may be to refer both to a contract (noun) and the process of making a contract (verb). In this context, is that duality OK?

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1 (a) [Sec 821(d)(1)] CLASSES FOCUSING SPECIFICALLY ON CONTRACTING FOR SERVICES.—

2 The Secretary of Defense shall ensure that classes focusing specifically on contracting for
3 services—

4 (1) are offered by the Defense Acquisition University and the Defense Systems
5 Management College; and

6 (2) are otherwise available to contracting personnel throughout the Department of
7 Defense.

8 (b) [Sec 821(d)(2)] TRAINING FOCUSED SPECIFICALLY ON CONTRACTING FOR SERVICES.—

9 The Secretary of each military department and the head of each Defense Agency shall ensure
10 that the personnel of the department or agency, as the case may be, who are responsible for the
11 awarding and management of contracts for services receive appropriate training that is focused
12 specifically on contracting for services."

13 (2) **CONFORMING REPEAL.**—Section 821 of the Floyd D. Spence National
14 Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-
15 398; 10 U.S.C. 2302 note) is repealed.

16 **(I) CODIFICATION OF FY2016 PERMANENT APPROPRIATIONS SECTION.**—

17 (1) **CODIFICATION.**— Chapter 341 of title 10, United States Code, is further
18 amended by adding after section 4512, as added by subsection (k), the following new
19 section:

20 "§ 4513. [Sec 8039 of FY16 DoD **Approps** Act (10 U.S.C. 2304 note)] **Contracts for studies,**
21 **analysis, or consulting services entered into without competition on the basis**
22 **of an unsolicited proposal**

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1 (a) LIMITATION.—None of the funds appropriated by this Act [~~div. C of Pub. L. 114-113~~]
2 ~~and hereafter~~ *for the military functions of the Department of Defense* shall be available for a
3 contract for studies, analysis, or consulting services entered into without competition on the basis
4 of an unsolicited proposal unless the head of the activity responsible for the procurement
5 determines—

6 (1) as a result of thorough technical evaluation, only one source is found fully
7 qualified to perform the proposed work;

8 (2) the purpose of the contract is to explore an unsolicited proposal which offers
9 significant scientific or technological promise, represents the product of original thinking,
10 and was submitted in confidence by one source; or

11 (3) the purpose of the contract is to take advantage of unique and significant
12 industrial accomplishment by a specific concern, or to insure that a new product or idea
13 of a specific concern is given financial support.

14 (b) EXCEPTIONS.—~~This limitation~~ *The limitation in subsection (a)* shall not apply to—

15 (1) ~~contracts a contract~~ in an amount of less than \$25,000;

16 (2) ~~contracts a contract~~ related to improvements of equipment that is in
17 development or production; or

18 (3) ~~contracts a contract~~ as to which a civilian official of the Department of
19 Defense, who has been confirmed by the Senate, determines that the award of such
20 contract is in the interest of the national defense. ²

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(2) CONFORMING REPEAL.—Section 8039 of the Department of Defense

Appropriations Act, 2016 (division C of Public Law 114-113; 10 U.S.C. 2304 note), is repealed.

(m) CODIFICATION OF FY07 NDAA SECTION.—

(1) CODIFICATION.—Chapter 341 of title 10, United States Code, is further amended by inserting after section 4513, as added by subsection (l), a new section 4514 consisting of—

(A) a heading as follows:

“§ 4514 [Sec 832 of P.L. 109-364 (10 U.S.C. 2302 note)]. Use of service contracts for acquisition of military flight simulators: limitation”; and

(B) a text consisting of the text of subsections (a) through (d) of section 832 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2302 note), revised by striking “, United States Code” in subsection (d)(3).

(2) CONFORMING REPEAL.—Section 832 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2302 note), is amended by striking subsections (a) through (d).

(3) EFFECT ON CONTRACTS EXISTING AS OF OCTOBER 17, 2006.—Subsection (e) of such section is amended by striking “The limitation in subsection (a)” and inserting “The limitation in section 4514(a) of title 10, United States Code.”

(n) CODIFICATION OF FY2016 NDAA SECTION.—

Commented [CR949]: By striking (a)-(d), rather than the whole section, this leaves the “grandfather” provision in (e) in effect. See below.

Commented [CR950]: This amendment updates the “grandfather” provision in (e) to take account of the codification. However, if in fact there are no longer any contracts covered by 832(e), this paragraph (3) could be omitted and paragraph (2) could be revised to repeal all of 832, rather than just 832(a)-(d). DoD: are there any contracts still in effect that are covered by 832(e)?

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(1) CODIFICATION.— Chapter 341 of title 10, United States Code, is further amended by adding after section 4514, as added by subsection (m), the following new section:

“§ 4515. [Sec 898 of FY16 NDAA (10 U.S.C. 2304 note)] Competition for religious services contracts

“The Department of Defense may not preclude a non-profit organization from competing for a contract for religious related services on a United States military installation.”

(2) CONFORMING REPEAL.—Section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2304 note), is repealed.

SEC. 702. ACQUISITION OF SERVICES BY CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS.

(a) NEW CHAPTER 343.—

(1) CODIFICATION OF FY2008 NDAA SECTION.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by inserting after chapter 341, as added by section 701, the following new chapter:

“CHAPTER 343—ACQUISITION OF SERVICES OF CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS

Subchapter I. Contractors Performing Private Security Functions in Areas of Combat Operations or Other Significant Military Operations4541
II. Standards and Certification for Private Security Contractors..... .. 4551

Commented [CR951]: This subchapter codifies sec. 862 of the FY08 NDAA.

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1 SUBCHAPTER I—CONTRACTORS PERFORMING PRIVATE SECURITY
2 FUNCTIONS IN AREAS OF COMBAT OPERATIONS OR OTHER
3 SIGNIFICANT MILITARY OPERATIONS

Sec.

4541 [Sec. 862(a) of FY2008 NDAA, P.L. 110-181 (10 U.S.C. 2302 note)]. Contractors performing private security functions in areas of combat operations or other significant military operations: regulations.

4542 [Sec. 862(b) of P.L. 110-181 (10 U.S.C. 2302 note)]. Contractors performing private security functions: contract clause.

4543 [Sec. 862(c)&(d) of P.L. 110-181 (10 U.S.C. 2302 note)]. Contractors performing private security functions: oversight; remedies.

4544 [Sec. 862(e) of P.L. 110-181 (10 U.S.C. 2302 note)]. Rule of construction.

4545 [Sec. 862(f) of P.L. 110-181 (10 U.S.C. 2302 note)]. Areas of combat operations or other significant military operations.

4546 [Sec. 862(g)&(h), 864(b) of P.L. 110-181 (10 U.S.C. 2302 note)]. Limitation; exceptions; classified information.

4547 [Sec. 864(a) of P.L. 110-181 (10 U.S.C. 2302 note)]. Definitions.

4 § 4541 [Sec. 862(a) of FY2008 NDAA, P.L. 110-181 (10 U.S.C. 2302 note)]. Contractors
5 performing private security functions in areas of combat operations or other
6 significant military operations: regulations

7 (a) [862(a)(1)] IN GENERAL.—Not later than 120 days after the date of the enactment of
8 this Act [Jan. 28, 2008], the Secretary of Defense, in coordination with the Secretary of
9 State, shall prescribe regulations on the selection, training, equipping, and conduct of personnel
10 performing private security functions under a covered contract in an area of combat operations or
11 other significant military operations.

12 (b) [862(a)(2)] ELEMENTS.—The regulations prescribed under subsection (a) shall, at a
13 minimum, establish the following:—

Commented [CR952]: This note sets out all of subtitle F of title VIII of P.L. 110-181, consisting of sections 861-864. 861 & 863 are not codified here. -861 is country-specific, relating to contracting for contracts in Iraq or Afghanistan and would be left as is. -863 is an annual reporting requirement. Under subsection (e) of that section, last report was due Feb. 1, 2015. 862 is codified here (and repealed). 864 is codified here to continue applicability to 862 and is not repealed, so as to also continue applicability to 861.

Commented [CR953]: Note requirement that regs under this section be prescribed in coordination with the Secretary of State.

Commented [CR954]: Note: current law, in referring to subsection (a), appears to mean paragraph (1). In the codification, subsection (a) is correct.

Commented [CR955]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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1 (1) ~~A~~ process for registering, processing, accounting for, and keeping
2 appropriate records of personnel performing private security functions in an area of
3 combat operations or other significant military operations.

4 (2) ~~A~~ process for authorizing and accounting for weapons to be carried by, or
5 available to be used by, personnel performing private security functions in an area of
6 combat operations or other significant military operations.

7 (3) ~~A~~ process for the registration and identification of armored vehicles,
8 helicopters, and other military vehicles operated by contractors performing private
9 security functions in an area of combat operations or other significant military operations.

10 (4) ~~A~~ process under which contractors are required to report all incidents, and
11 persons other than contractors are permitted to report incidents, in which—

12 (A) a weapon is discharged by personnel performing private security
13 functions in an area of combat operations or other significant military operations;

14 (B) personnel performing private security functions in an area of combat
15 operations or other significant military operations are killed or injured;

16 (C) persons are killed or injured, or property is destroyed, as a result of
17 conduct by contractor personnel;

18 (D) a weapon is discharged against personnel performing private security
19 functions in an area of combat operations or other significant military operations
20 or personnel performing such functions believe a weapon was so discharged; or

21 (E) active, non-lethal countermeasures (other than the discharge of a
22 weapon) are employed by the personnel performing private security functions in

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1 an area of combat operations or other significant military operations in response
2 to a perceived immediate threat to such personnel.

3 (5) ~~a~~A process for the independent review and, if practicable, investigation of—

4 (A) incidents reported pursuant to paragraph (4); and

5 (B) incidents of alleged misconduct by personnel performing private
6 security functions in an area of combat operations or other significant military
7 operations.

8 (6) ~~r~~R requirements for qualification, training, screening (including, if practicable,
9 through background checks), and security for personnel performing private security
10 functions in an area of combat operations or other significant military operations.

11 (7) ~~g~~Guidance to the commanders of the combatant commands on the issuance
12 of—

13 (A) orders, directives, and instructions to contractors performing private
14 security functions relating to equipment, force protection, security, health, safety,
15 or relations and interaction with locals;

16 (B) predeployment training requirements for personnel performing private
17 security functions in an area of combat operations or other significant military
18 operations, addressing the requirements of this chapter, resources and assistance
19 available to contractor personnel, country information and cultural training, and
20 guidance on working with host country nationals and military; and

21 (C) rules on the use of force for personnel performing private security
22 functions in an area of combat operations or other significant military operations.

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(8) A process by which a commander of a combatant command may request an action described in section 4542(c) of this title, and

(9) A process by which the training requirements referred to in paragraph (7)(B) shall be implemented.

(c) [862(a)(3)] AVAILABILITY OF ORDERS, DIRECTIVES, AND INSTRUCTIONS.—The regulations prescribed under subsection (a) shall include mechanisms to ensure the provision and availability of the orders, directives, and instructions referred to in subsection (b)(7)(A) to contractors referred to in that subsection, including through the maintenance of a single location (including an Internet website, to the extent consistent with security considerations) at or through which such contractors may access such orders, directives, and instructions.

§ 4542 [Sec. 862(b) of P.L. 110-181 (10 U.S.C. 2302 note)]. Contractors performing private security functions: contract clause

(a) [862(b)(1)] REQUIREMENT UNDER FAR.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the The Federal Acquisition Regulation issued in accordance with section 1303 of title 41, United States Code[,] shall be revised to require the insertion into each covered contract (or, in the case of a task order, the contract under which the task order is issued) of a contract clause addressing the selection, training, equipping, and conduct of personnel performing private security functions under such contract.

(b) [862(b)(2)] CLAUSE REQUIREMENT.—The contract clause required by subsection (a) shall require, at a minimum, that the contractor concerned shall—

(1) ensure that the contractor and all employees of the contractor or any subcontractor who are responsible for performing private security functions under such

Commented [CR956]: Note: current law [862(a)(3)], in referring to subsection (a), appears to mean paragraph (1). In the codification, subsection (a) is correct.

Commented [CR957]: NLT clause to be omitted as OBE

Commented [CR958]: Citation to be omitted since there will be a definition applicable to all of Part V.

Commented [CR959]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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1 contract comply with regulations prescribed under section 4541 of this title, including
2 any revisions or updates to such regulations, and follow the procedures established in
3 such regulations for—

4 (A) registering, processing, accounting for, and keeping appropriate
5 records of personnel performing private security functions in an area of combat
6 operations or other significant military operations;

7 (B) authorizing and accounting of weapons to be carried by, or available
8 to be used by, personnel performing private security functions in an area of
9 combat operations or other significant military operations;

10 (C) registration and identification of armored vehicles, helicopters, and
11 other military vehicles operated by contractors and subcontractors performing
12 private security functions in an area of combat operations or other significant
13 military operations; and

14 (D) the reporting of incidents in which—

15 (i) a weapon is discharged by personnel performing private
16 security functions in an area of combat operations or other significant
17 military operations;

18 (ii) personnel performing private security functions in an area of
19 combat operations or other significant military operations are killed or
20 injured; or

21 (iii) persons are killed or injured, or property is destroyed, as a
22 result of conduct by contractor personnel;

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1 (2) ensure that the contractor and all employees of the contractor or any
2 subcontractor who are responsible for performing private security functions under such
3 contract comply with—

4 (A) qualification, training, screening (including, if practicable, through
5 background checks), and security requirements established by the Secretary of
6 Defense for personnel performing private security functions in an area of combat
7 operations or other significant military operations;

8 (B) applicable laws and regulations of the United States and the host
9 country, and applicable treaties and international agreements, regarding the
10 performance of the functions of the contractor;

11 (C) orders, directives, and instructions issued by the applicable
12 commander of a combatant command relating to equipment, force protection,
13 security, health, safety, or relations and interaction with locals; and

14 (D) rules on the use of force issued by the applicable commander of a
15 combatant command for personnel performing private security functions in an
16 area of combat operations or other significant military operations;

17 (3) cooperate with any investigation conducted by the Department of Defense
18 pursuant to section 4541(b)(5) of this title by providing access to employees of the
19 contractor and relevant information in the possession of the contractor regarding the
20 incident concerned; and

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(4) ensure that the contract clause is included in subcontracts awarded to any subcontractor at any tier who is responsible for performing private security functions under the contract.

(c) [862(b)(3)] NONCOMPLIANCE OF PERSONNEL WITH CLAUSE.—The contracting officer for a covered contract may direct the contractor, at its own expense, to remove or replace any personnel performing private security functions in an area of combat operations or other significant military operations who violate or fail to comply with applicable requirements of the clause required by this subsection. If the violation or failure to comply is a gross violation or failure or is repeated, the contract may be terminated for default.

(d) [862(b)(4)] **APPLICABILITY**.—The contract clause required by this section shall be included in all covered contracts awarded on or after the date that is 180 days after January 28, 2008. Federal agencies shall make best efforts to provide for the inclusion of the contract clause required by this subsection in covered contracts awarded before such date. |

§ 4543 [Sec. 862(c)&(d) of P.L. 110-181 (10 U.S.C. 2302 note)]. Contractors performing private security functions: oversight; remedies

(a) [Sec. 862(c)] OVERSIGHT.—It shall be the responsibility of the head of the contracting activity responsible for each covered contract to ensure that the contracting activity takes appropriate steps to assign sufficient oversight personnel to the contract to—

(1) ensure that the contractor responsible for performing private security functions under such contract comply with the regulatory requirements prescribed pursuant to section 4541 of this title and the contract requirements established pursuant to section 4542 of this title; and

Commented [CR960]: Is subsection (d) still needed? That is, are there any covered contracts awarded before the specified date that are still being administered? If not, (d) can be omitted as OBE. **DoD:** Please advise as to the above.

Commented [CR961]: In the original, there is a (b)(5), omitted here as OBE, which required a DoD IG report due NLT 3/30/2008.

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1 (2) make the determinations required by subsection (b).

2 (b) [Sec. 862(d)] REMEDIES.—The failure of a contractor under a covered contract to
3 comply with the requirements of the regulations prescribed under section 4541 of this title or the
4 contract clause inserted in a covered contract pursuant to section 4542 of this title, as determined
5 by the contracting officer for the covered contract—

6 (1) shall be included in appropriate databases of past performance and considered
7 in any responsibility determination or evaluation of the past performance of the
8 contractor for the purpose of a contract award decision, as provided in section 1126 of
9 title 41, ~~United States Code~~;

10 (2) in the case of an award fee contract—

11 (A) shall be considered in any evaluation of contract performance by the
12 contractor for the relevant award fee period; and

13 (B) may be a basis for reducing or denying award fees for such period, or
14 for recovering all or part of award fees previously paid for such period; and

15 (3) in the case of a failure to comply that is severe, prolonged, or repeated—

16 (A) shall be referred to the suspension or debarment official for the
17 appropriate agency; and

18 (B) may be a basis for suspension or debarment of the contractor.

19 **§ 4544 [Sec. 862(e) of P.L. 110-181 (10 U.S.C. 2302 note)]. Rule of construction**

20 The duty of a contractor under a covered contract to comply with the requirements of the
21 regulations prescribed under section 4541 of this title and the contract clause inserted into a

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1 covered contract pursuant to section 4542 of this title, and the availability of the remedies
2 provided in section 4543(b) of this title, shall not be reduced or diminished—

3 (1) by the failure of a higher or lower tier contractor under such contract to
4 comply with such requirements; or

5 (2) by a failure of the contracting activity to provide the oversight required by
6 section 4543(a) of this title.

7 **§ 4545 [Sec. 862(f) of P.L. 110-181 (10 U.S.C. 2302 note)]. Areas of combat operations or
8 other significant military operations**

9 (a) [Sec. 862(f)(1)] DESIGNATION.—The Secretary of Defense shall designate the areas
10 constituting either an area of combat operations or other significant military operations for
11 purposes of this subchapter ~~by not later than 120 days after the date of the enactment of this Act~~
12 ~~[Jan. 28, 2008]~~. In making designations under this subsection, the Secretary shall ensure that an
13 area is not designated in whole or part as both an area of combat operations and an area of other
14 significant military operations.

15 (b) [Sec. 862(f)(2)] OTHER SIGNIFICANT MILITARY OPERATIONS.—~~For purposes of~~ *In*
16 this subchapter, the term 'other significant military operations' means activities, other than
17 combat operations, as part of an overseas contingency operation that are carried out by ~~United~~
18 ~~States Armed Forces~~ *the armed forces* in an uncontrolled or unpredictable high-threat
19 environment where personnel performing security functions may be called upon to use deadly
20 force.

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1 (c) [Sec. 862(f)(3)] PARTICULAR AREAS.—Iraq and Afghanistan shall be included in the
2 areas designated as an area of combat operations or other significant military operations under
3 subsection (a).

4 (d) [Sec. 862(f)(4)] ADDITIONAL AREAS.—The Secretary may designate any additional
5 area as an area constituting an area of combat operations or other significant military operations
6 for purposes of this subchapter if the Secretary determines that the presence or potential of
7 combat operations or other significant military operations in such area warrants designation of
8 such area as an area of combat operations or other significant military operations for purposes of
9 this subchapter.

10 (e) [Sec. 862(f)(5)] MODIFICATION OR ELIMINATION OF DESIGNATION.—The Secretary
11 may modify or cease the designation of an area under this section as an area of combat
12 operations or other significant military operations if the Secretary determines that combat
13 operations or other significant military operations are no longer ongoing in such area.

14 § 4546 [Sec. 862(g)&(h), 864(b) of P.L. 110-181 (10 U.S.C. 2302 note)]. **Limitation;**
15 **exceptions; classified information**

16 (a) [Sec. 862(g)] LIMITATION.—

17 (1) [Sec. 862(g) 1st & 2nd sentences] AREAS OF OTHER SIGNIFICANT MILITARY
18 OPERATIONS.—With respect to an area of other significant military operations, the
19 requirements of this subchapter shall apply only upon agreement of the Secretary of
20 Defense and the Secretary of State. An agreement of the Secretaries under this subsection
21 may be made only on an area-by-area basis.

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(2) [Sec. 862(g) 3rd sentence] AREAS OF COMBAT OPERATIONS.—With respect to an area of combat operations, the requirements of this subchapter shall always apply.

(b) [Sec. 862(h)] EXCEPTIONS.—

(1) [Sec. 862(h)(1)] INTELLIGENCE ACTIVITIES.—The requirements of this subchapter shall not apply to contracts entered into by elements of the intelligence community in support of intelligence activities.

(2) [Sec. 862(h)(2)] NONGOVERNMENTAL ORGANIZATIONS.—The requirements of this subchapter shall not apply to a nonprofit nongovernmental organization receiving grants or cooperative agreements for activities conducted within an area of other significant military operations if the Secretary of Defense and the Secretary of State agree that such organization may be exempted. An exemption may be granted by the agreement of the Secretaries under this paragraph on an organization-by-organization or area-by-area basis. Such an exemption may not be granted with respect to an area of combat operations.

(c) [Sec. 864(b)] CLASSIFIED INFORMATION.—Nothing in this subchapter shall be interpreted to require the handling of classified information or information relating to intelligence sources and methods in a manner inconsistent with any law, regulation, executive order, or rule of the House of Representatives or of the Senate relating to the handling or protection of such information

§ 4547 [Sec. 864(a) of P.L. 110-181 (10 U.S.C. 2302 note)]. Definitions

In this subchapter:

~~(3)(I)~~ COVERED CONTRACT.—The term 'covered contract' means—

Commented [CR962]: Paragraphs (1), (2), & (7) of the original are omitted because the terms defined do not appear in 862. (They are used in 861).

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(A) a contract of a Federal agency for the performance of services in an area of combat operations, as designated by the Secretary of Defense under section 4545 of this title;

(B) a subcontract at any tier under such a contract;

(C) a task order or delivery order issued under such a contract or subcontract;

(D) a grant for the performance of services in an area of combat operations, as designated by the Secretary of Defense under section 4545 of this title; or

(E) a cooperative agreement for the performance of services in such an area of combat operations.

(4)(2) CONTRACTOR.—The term 'contractor', with respect to a covered contract, means—

(A) in the case of a covered contract that is a contract, subcontract, task order, or delivery order, the contractor or subcontractor carrying out the covered contract;

(B) in the case of a covered contract that is a grant, the grantee; and

(C) in the case of a covered contract that is a cooperative agreement, the recipient.

(5)(3) CONTRACTOR PERSONNEL.—The term 'contractor personnel' means any person performing work under contract for the Department of Defense, the Department of

Commented [CR963]: Should the references here and in (D) & (E) to "an area of combat operations" be followed by "or other significant military operations"? Note that sec. 832 of the FY11 NDAA (P.L. 111-383) amended sec. 862 of the FY08 NDAA to add "or other significant military operations" after "combat operations" each place it appeared. However, sec. 864 (Definitions) was not amended to make the same change. Could that have been an oversight? DoD: Please advise as to the question above.

Commented [CR964]: The original refers to subsection (c) of section 862. However, it appears the reference should be to subsection (f), which is where the SecDef makes a designation of areas of combat operations, not (c). Sub (c) was redesignated as (f) by sec 861 of the FY11 NDAA, but a conforming amendment was not made to sec. 864. The reference here to sec. 4545 is to the provision that was 862(f) in the original.

Commented [CR965]: Same note as above

Commented [CR966]: Note that in the operative provisions above, there are a number of references to personnel of a contractor without using the specific term "contractor personnel". As applied, do those references nevertheless incorporate this definition?

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State, or the United States Agency for International Development, in Iraq or Afghanistan, including individuals and subcontractors at any tier.

(4) PRIVATE SECURITY FUNCTIONS.—The term 'private security functions' means activities engaged in by a contractor under a covered contract as follows:

(A) Guarding of personnel, facilities, or property of a Federal agency, the contractor or subcontractor, or a third party.

(B) Any other activity for which personnel are required to carry weapons in the performance of their duties.

(2) CONFORMING REPEAL.—Section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2302 note) is repealed.

(b) NEW SUBCHAPTER.—

(1) CODIFICATION OF FY2011 NDAA SECTION.—Chapter 343 of title 10, United States Code, as added by subsection (a), is amended by adding at the end the following new subchapter:

“SUBCHAPTER II—STANDARDS AND CERTIFICATION FOR PRIVATE SECURITY CONTRACTORS

Sec. 4551 [Sec. 833 of FY2011 NDAA; P.L. 111-383 (10 U.S.C. 2302 note)]. Standards and certifications for private security contractors: regulations.

§ 4551 [Sec. 833 of FY2011 NDAA; P.L. 111-383 (10 U.S.C. 2302 note)]. Standards and certifications for private security contractors: regulations

(a) [833(b)] REGULATIONS.— Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall revise the regulations promulgated under section 862

Commented [CR967]: Note that this refers to Iraq and AFG, rather than an area of combat operations. Is that intentional here? The rest of the subchapter seems broader. For example, see the definition of "covered contract" above. This is left as in the original. (Should it be broader?)

Commented [CR968]: In the original, subsection (a) was a requirement for SecDef to take certain actions NLT 90 days after Jan. 7, 2011, and is omitted her as OBE.

Commented [CR969]: NLT clause from subsec (b) of original to be omitted as OBE

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1 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C.
2 2302 note) to ensure that such the regulations prescribed under section 4541 of this title—

3 (1) establish criteria for defining standard practices for the performance of private
4 security functions, which shall reflect input from industry representatives as well as the
5 Inspector General of the Department of Defense; and

6 (2) establish criteria for weapons training programs for contractors performing
7 private security functions, including minimum requirements for weapons training
8 programs of instruction and minimum qualifications for instructors for such programs.

9 "(b) [833(c)] INCLUSION OF THIRD-PARTY STANDARDS AND CERTIFICATIONS IN
10 REGULATIONS.—

11 "(1) STANDARDS.—If the Secretary determines that the application of operational
12 and business practice standards identified pursuant to subsection (a)(1)(A) of section 833
13 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law
14 111-383) will make a substantial contribution to the successful performance of private
15 security functions in areas of combat operations or other significant military operations,
16 the regulations prescribed pursuant to subsection (a) shall incorporate a requirement to
17 comply with such standards, subject to such exceptions as the Secretary may determine to
18 be necessary.

19 "(2) CERTIFICATIONS.—If the Secretary determines that the application of a third-
20 party certification process identified pursuant to subsection (a)(1)(B) of section 833 of
21 the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law
22 111-383) will make a substantial contribution to the successful performance of private

Commented [CR970]: Revised for ongoing applicability. Standard of "ensure that" is in the original. Note that while the regs under 862 [now 4541] are prescribed "in coordination with the Secretary of State", there is no reference to SecState here.

Commented [CR971]: This term is defined (below) for this section.

Commented [CR972]: This is referring to whether the SecDef made a certain determination under a review under (a)(1)(A) of the original, conducted during 2011. That was a requirement for a one-time determination and is not proposed for codification. However, the ongoing provision of subsection (c)(1), codified here, is contingent on that one-time determination. If the SecDef made the determination, the condition in this paragraph would have been triggered, and the paragraph should be retained, but would not need the long conditional statement at the beginning, since it would have been satisfied. On the other hand, if the SecDef did NOT make the determination, this paragraph has no effect and could/should be omitted. DoD: Please advise as to whether SecDef made the determination referred to here and, therefore, whether the requirement in this paragraph ("the regs ... shall incorporate") is in effect.

Commented [CR973]: Same question as above as to whether SecDef made the specified determination. DoD: Please advise as to whether SecDef made the determination referred to here and, therefore, whether the authority provided in this paragraph ("the regs ... may provide") is in effect.

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1 security functions in areas of combat operations or other significant military operations,
2 the regulations prescribed pursuant to subsection (a) may provide for the consideration of
3 such certifications as a factor in the evaluation of proposals for award of a covered
4 contract for the provision of private security functions, subject to such exceptions as the
5 Secretary may determine to be necessary.

6 (c) [833(e)] EXCEPTION.—The requirements of this section shall not apply to contracts
7 entered into by elements of the intelligence community in support of intelligence activities.

8 (d) [833(d)] DEFINITIONS.—In this section:

9 (1) COVERED CONTRACT.—The term 'covered contract' means—

- 10 (A) a contract of the Department of Defense for the performance of
- 11 services;
- 12 (B) a subcontract at any tier under such a contract; or
- 13 (C) a task order or delivery order issued under such a contract or
- 14 subcontract.

15 (2) CONTRACTOR.—The term 'contractor' means, with respect to a covered
16 contract, the contractor or subcontractor carrying out the covered contract.

17 (3) PRIVATE SECURITY FUNCTIONS.—The term 'private security functions' means
18 activities engaged in by a contractor under a covered contract as follows:

- 19 (A) Guarding of personnel, facilities, or property of a Federal agency, the
- 20 contractor or subcontractor, or a third party.
- 21 (B) Any other activity for which personnel are required to carry weapons
- 22 in the performance of their duties.²²

Commented [CR974]: This subsection is set forth unchanged from original.
Note that, literally, the requirements of this section are a function imposed on the SecDef to prescribe regulations and that the operative action is not one that, itself, applies to contracts, but to regulations.
Would it be clearer (with no change in meaning) to revise this to say "The regulations prescribed pursuant to the requirements of this section shall not apply ..."?

Commented [CR975]: Compared to the definition applicable to sec. 862 of P.L. 110-181 [see 4548 above], this definition—
(1) is not expressly limited to areas of combat operations but would appear apply anywhere;
(2) is limited to DoD; and
(3) does not apply to grants and cooperative agreements.

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1 (2) **CONFORMING REPEAL.**—Section 833 of the Ike Skelton National Defense
2 Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2302 note) is
3 repealed.

4 **SEC. 703. ACQUISITION OF INFORMATION TECHNOLOGY.**

5 (a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
6 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
7 (Public Law 115-232), is amended by striking chapter 345 and inserting the following:

8 **“CHAPTER 345—ACQUISITION OF INFORMATION TECHNOLOGY**

Sec.

4571 [10 U.S.C. 2223a]. Information technology acquisition: planning and oversight processes.
4572 [Sec 883(e) of P.L. 114-92 (10 U.S.C. 2223a note)]. Guidance on acquisition of business
systems.

4573 [Sec. 888(b) of P.L. 114-328 (10 U.S.C. 2305 note)]. Guidance on use of anti-competitive
specifications in information technology acquisitions.

4574 [Sec. 1645 of P.L. 114-92 (10 U.S.C. 2223a note)]. Designation of military department
entity responsible for acquisition of critical cyber capabilities.

4575 [Sec. 938 of P.L. 113-66 (10 U.S.C. 2223a note)]. Supervision of the acquisition of cloud
computing capabilities.

4576 [10 U.S.C. 2322a]. Requirement for consideration of certain matters during acquisition of
noncommercial computer software.

4577 [Sec. 804 of P.L. 107-314 (10 U.S.C. 2302 note)]. Improvement of software acquisition
processes.

4578 [Sec. 875 of P.L. 115-91 (10 U.S.C. 2223 note)]. Open source software: pilot program.

4579 [Sec. 2867 of P.L. 112-81 (10 U.S.C. 2223a note)]. Data servers and centers.

4580 [Sec. 881 of P.L. 110-181 (10 U.S.C. 2223a note)]. Clearinghouse for rapid identification
and dissemination of commercial information technologies.

4581 [Sec. 215 of P.L. 111-383 (10 U.S.C. 2223a note)]. Demonstration projects and pilot
programs on cybersecurity.”

9 (b) **TRANSFER OF SECTION 2223a.**—

10 (1) Section 2223a of title 10, United States Code, is **transferred** to chapter 345 of
11 such title, as amended by paragraph (1), **inserted** after the table of sections, and
12 **redesignated** as section **4571**.

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(2) The heading of such section is amended to read as follows:

“§ 4571. [10 U.S.C. 2223a] **Information technology acquisition: planning and oversight requirements**”.

Commented [CR976]: The section heading would be changed from the original by inserting a colon after “acquisition” and by changing the last word from “requirements” to “processes”. (Note that the requirement in subsection (a) of 2223a refers to “processes”.)

(c) **CODIFICATION OF FY2016 NDAA SECTION.**—

(1) **CODIFICATION.**—Chapter 345 of such title, as amended by subsection (a), is further amended by inserting after section 4571, as transferred and redesignated by subsection (b), a new section 4572 consisting of—

(A) a heading as follows:

“§ 4572 [Sec 883(e) of P.L. 114-92 (10 U.S.C. 2223a note)]. **Guidance on acquisition of business systems**”; and

(B) a text consisting of the text of section 883(e) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2223a note), revised by striking “(e) GUIDANCE ON ACQUISITION OF BUSINESS SYSTEMS.—”.

(2) **CONFORMING REPEAL.**—Section 883(e) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2223a note) is repealed.

(d) **CODIFICATION OF FY2017 NDAA SECTION.**—

(1) **CODIFICATION.**—Chapter 345 of such title, as amended by subsection (a), is further amended by inserting after section 4572, as added by subsection (c), the following new section:

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1 “§ 4573 [Sec. 888(b) of P.L. 114-328 (10 U.S.C. 2305 note)]. ~~Review Guidance on use of anti-~~
2 competitive specifications in information technology acquisitions

3 “(a) [888(b)(3)] GUIDANCE.—~~The Under Secretary of Defense for Acquisition,~~
4 ~~Technology, and Logistics shall revise ensure that~~ policies, guidance, and training ~~to~~ incorporate
5 such recommendations as the Under Secretary considers appropriate from the 2017 Anti-
6 Competitive Specifications in IT Acquisitions Review.

7 “(b) DEFINITION.—In this section, the term ‘2017 Anti-Competitive Specifications in IT
8 Acquisitions Review’ means the review required by section 888(b)(1) of the National Defense
9 Authorization Act for Fiscal Year 2017 (Public Law 114-328), requiring a review of the ‘policy,
10 guidance, regulations, and training related to specifications included in information technology
11 acquisitions to ensure current policies eliminate the unjustified use of potentially anti-
12 competitive specifications’ and an examination of ‘the use of brand names or proprietary
13 specifications or standards in solicitations for procurements of goods and services, as well as the
14 current acquisition training curriculum related to those areas’.”

15 (2) CONFORMING REPEAL.—Section 888(b) of the National Defense
16 Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2305 note) is
17 repealed.

18 (e) CODIFICATION OF FY2016 NDAA SECTION.—
19 (1) CODIFICATION.—Chapter 345 of such title, as amended by subsection (a), is
20 further amended by inserting after section 4573, as added by subsection (d), the following
21 new section:

Commented [CR977]: Subsection (a) of this section is to be codified in a different chapter, on Planning and Solicitation

Commented [CR978]: 888(b)(1) required a review, 888(b)(2) required a report, NLT 180 days and 270 days, respectively, after 12/23/2016, and are omitted here as OBE.

Commented [CR979]: The original began with “NLT one year after the date of the enactment of this Act [Dec. 23, 2016,]”, which is omitted here as OBE.

Commented [CR980]: How should reference to AT&L be changed? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR981]: Change from “revise ... to incorporate” to “ensure that ..”so as to reflect ongoing applicability.

Commented [CR982]: The name for the review (used here just as a shorthand) is from the heading in 888(b).

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1 “§ 4574 [Sec. 1645 of P.L. 114-92 (10 U.S.C. 2223a note)]. Designation of military
2 department entity responsible for acquisition of critical cyber capabilities

3 “(a) IN GENERAL.—The Secretary of Defense shall designate an entity within a military
4 department to be responsible for the acquisition of each critical cyber capability described in
5 subsection (b).

6 “(b) CRITICAL CYBER CAPABILITIES DESCRIBED.—The critical cyber capabilities
7 described in this subsection are the cyber capabilities that the Secretary considers critical to the
8 mission of the Department of Defense, including the following:

9 “(1) The Unified Platform described in the Department of Defense document
10 titled ‘The Department of Defense Cyber Strategy’ dated April 15, 2015.

11 “(2) A persistent cyber training environment.

12 “(3) A cyber situational awareness and battle management system.”

13 (2) CONFORMING REPEAL.—Section 1645 of the National Defense Authorization
14 Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2223a note) is repealed.

15 (f) CODIFICATION OF FY2014 NDAA SECTION.—

16 (1) CODIFICATION.—Chapter 345 of such title, as amended by subsection (a), is
17 further amended by inserting after section 4574, as added by subsection (e), the following
18 new section:

19 “§ 4575 [Sec. 938 of P.L. 113-66 (10 U.S.C. 2223a note)]. Supervision of the acquisition of
20 cloud computing capabilities

21 “(a) SUPERVISION.—

Commented [CR983]: In the original, this was (a)(1).

Commented [CR984]: The original had “NLT 90 days after the date of the enactment of this Act [Nov. 25, 2015],” which is omitted here as OBE.

Commented [CR985]: In this original, this was (a)(2).

Commented [CR986]: The original had a subsection (b) which required a report NLT 90 days after the date of enactment [Nov. 25, 2015] and which is omitted here as OBE.

[FINAL DRAFT]

DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 "(1) IN GENERAL.—The Secretary of Defense shall, ~~acting through the Under~~
2 ~~Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of~~
3 ~~Defense for Intelligence, the Chief Information Officer of the Department of Defense,~~
4 ~~and the Chairman of the Joint Requirements Oversight Council, acting through the~~
5 ~~officials of the Department specified in paragraph (2),~~ supervise the following
6 ~~functions relating to cloud computing capabilities:~~

7 "(A) Review, development, modification, and approval of requirements
8 for cloud computing solutions for data analysis and storage by the armed forces
9 and the Defense Agencies, including requirements for cross-domain, enterprise-
10 wide discovery and correlation of data stored in cloud and non-cloud computing
11 databases, relational and non-relational databases, and hybrid databases.

12 "(B) Review, development, modification, approval, and implementation of
13 plans for the competitive acquisition of cloud computing systems or services to
14 meet requirements described in subparagraph (A), including plans for the
15 transition from current computing systems to systems or services acquired.

16 "(C) Development and implementation of plans to ensure that the cloud
17 systems or services acquired pursuant to subparagraph (B) are interoperable and
18 universally accessible and usable through attribute-based access controls.

19 "(D) Integration of plans under subparagraphs (B) and (C) with enterprise-
20 wide plans of the armed forces and the Department of Defense for the Joint
21 Information Environment and the Defense Intelligence Information Environment.

Commented [CR987]: Recommend that the "acting through" clause be moved to a new paragraph (2) shown below, rather than breaking up the operative provision, with the long list, and substituting the reference ", acting through the officials specified in paragraph (2)," as shown here.

Commented [CR988]: Recommend that "functions relating to cloud computing capabilities" be inserted in the text after "supervise the following:", as shown here. The section heading suggests the overall theme of the section, but the text does not provide the "big picture" before going into the details.

[FINAL DRAFT]

DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 ~~"(2) DIRECTION.—The Secretary shall provide direction to the Armed Forces and~~
2 ~~the Defense Agencies on the matters covered by paragraph (1) by not later than March~~
3 ~~15, 2014.~~

Commented [CR989]: Original paragraph (2) proposed to be omitted as OBE.

4 ~~"(2) OFFICIALS THROUGH WHOM SECRETARY CARRIES OUT SECTION.—The Secretary,~~
5 ~~in carrying out this section, shall act through the following:~~

Commented [CR990]: New paragraph (2) is the content of the "acting through" clause in original (a)(1) above

6 ~~"(A) The Under Secretary of Defense for Acquisition, Technology, and~~
7 ~~Logistics Acquisition and Sustainment.~~

Commented [CR991]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

8 ~~"(B) The Under Secretary of Defense for Intelligence.~~

9 ~~"(C) The Chief Information Officer of the Department of Defense.~~

10 ~~"(D) The Chairman of the Joint Requirements Oversight Council.~~

11 "(b) INTEGRATION WITH INTELLIGENCE COMMUNITY EFFORTS.—The Secretary shall
12 coordinate with the Director of National Intelligence to ensure that activities under this section
13 are integrated with the Intelligence Community Information Technology Enterprise in order to
14 achieve interoperability, information sharing, and other efficiencies.

15 "(c) LIMITATION.—The requirements of subparagraphs (B), (C), and (D) of subsection
16 (a)(1) shall not apply to a contract for the acquisition of cloud computing capabilities in an
17 amount less than \$1,000,000.

18 "(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter or
19 affect the authorities or responsibilities of the Director of National Intelligence under section
20 102A of the National Security Act of 1947 (50 U.S.C. 3024)."

21 "(2) CONFORMING REPEAL.—Section 938 of the National Defense Authorization
22 Act for Fiscal Year 2014 (Public Law 113-66; 10 U.S.C. 2223a note) is repealed.

[FINAL DRAFT]

DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (g) **TRANSFER OF SECTION 2322a.**—Section 2322a of title 10, United States Code, is
2 **transferred** to chapter 345 of such title, as amended by subsection (a), **inserted** after section
3 4575, as added by subsection (f), and **redesignated** as section **4576**.

4 (h) **CODIFICATION OF FY2003 NDAA SECTION.**—

5 (1) **CODIFICATION.**—Chapter 345 of such title, as amended by subsection (a), is
6 further amended by inserting after section 4576, as transferred and redesignated by
7 subsection (g), the following new section:

8 “§ 4577 [Sec. 804 of P.L. 107-314 (10 U.S.C. 2302 note)]. **Improvement of software**
9 **acquisition processes**

10 “(a) **ESTABLISHMENT OF PROGRAMS.**—

11 “(1) **MILITARY DEPARTMENTS.**—The Secretary of each military department shall
12 establish a program to improve the software acquisition processes of that military
13 department.

14 “(2) **DEFENSE AGENCIES.**—The head of each Defense Agency that manages a
15 major defense acquisition program with a substantial software component shall establish
16 a program to improve the software acquisition processes of that Defense Agency.

17 ~~(3) The programs required by this subsection shall be established not later than~~
18 ~~120 days after the date of the enactment of this Act [Dec. 2, 2002].~~

19 “(b) **PROGRAM REQUIREMENTS.**—A program to improve software acquisition processes
20 under this section shall, ~~at a minimum,~~ include the following:

21 “(1) A documented process for software acquisition planning, requirements
22 development and management, project management and oversight, and risk management.

Commented [CR992]: To be omitted as OBE

Commented [CR993]: Phrase proposed to be omitted as part of general recommendation to delete “, at a minimum,” wherever appearing as being unnecessary.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “(2) Efforts to develop appropriate metrics for performance measurement and
2 continual process improvement.

3 “(3) A process to ensure that key program personnel have an appropriate level of
4 experience or training in software acquisition.

5 “(4) A process to ensure that each military department and Defense Agency
6 implements and adheres to established processes and requirements relating to the
7 acquisition of software.

8 “(c) DEPARTMENT OF DEFENSE GUIDANCE.—The Assistant Secretary of Defense for
9 Command, Control, Communications, and Intelligence, in consultation with the Under Secretary
10 of Defense for Acquisition, Technology, and Logistics, shall—

11 “(1) prescribe uniformly applicable guidance for the administration of all of the
12 programs established under subsection (a) and take such actions as are necessary to
13 ensure that the military departments and Defense Agencies comply with the guidance;
14 and

15 “(2) assist the Secretaries of the military departments and the heads of the
16 Defense Agencies to carry out such programs effectively by—

17 “(A) ensuring that the criteria applicable to the selection of sources
18 provides added emphasis on past performance of potential sources, as well as on
19 the maturity of the software products offered by the potential sources; and

20 “(B) identifying, and serving as a clearinghouse for information regarding,
21 best practices in software development and acquisition in both the public and
22 private sectors.

Commented [CR994]: Reference to ASD(C3I) proposed to be changed to SecDef consistent with general recommendations that statutory authority be vested in the SecDef (who has the authority to delegate, as with other laws). In addition, there no longer is an ASD(C3I). That position was redesignated as ASD(NII) in May 2003, and that position was in turn disestablished on Jan. 11, 2012. If not SecDef, what official should it be changed to?
OSD, please advise.

Commented [CR995]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR996]: Consider deletion of the phrase “all of” as being unnecessary in light of the definite article “the” immediately following. That phrase is not typically used.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(d) DEFINITIONS.—In this section,

(1) The term ‘Defense Agency’ has the meaning given the term in section

101(a)(11) of title 10, United States Code.

(2) The term ‘major defense acquisition program’ has the meaning given such

term in section 139(a)(2)(B) of this title 10, United States Code.”

(2) CONFORMING REPEAL.—Section 804 of the National Defense Authorization

Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 2302 note) is repealed.

(i) CODIFICATION OF FY2018 NDAA SECTION.—

(1) CODIFICATION.—

(A) IN GENERAL.—Chapter 345 of such title, as amended by subsection

(a), is further amended by inserting after section 4577, as added by subsection (h),

the following new section:

“§ 4578 [Sec. 875 of P.L. 115-91 (10 U.S.C. 2223 note)]. Open source software: pilot

program

The Secretary of Defense shall initiate implement for the Department of Defense the

open source software pilot program established by the Office of Management and Budget

Memorandum M-16-21 titled ‘Federal Source Code Policy: Achieving Efficiency, Transparency,

and Innovation through Reusable and Open Source Software’ and dated August 8, 2016.”

(B) CONTINUATION OF GAO REPORT REQUIREMENT.—Not later than June 1,

2019, the Comptroller General of the United States shall provide to Congress a

report on the implementation by the Secretary of Defense of the pilot program

Commented [CR997]: Paragraph (1) no longer necessary once the text is made a part of title 10, since the definition in 101(a)(11) will apply on its own terms.

Commented [CR998]: Note that many references to MDAPs use the definition in 10 USC 2430. The definition in 10 USC 139(a)(2)(B) is slightly different. It points to the 2430 definition but also includes any program designated by the Director of OT&E for purposes of 10 USC 139, relating to Operational test and evaluation. If OT&E program designations are not relevant for this section, consider changing the reference to 10 USC 2430.

DOD, PLEASE ADVISE as to (1) whether OT&E designations are relevant to this section and (2) whether there would be any change in meaning if the reference to 139(a)(2)(B) were to be changed to refer to 2430.

Commented [CR999]: The original had “NLT 180 days after the date of the enactment of this Act [Dec. 12, 2017], the [SecDef] shall initiate ...”. The NLT clause is omitted here as OBE.

Commented [CR1000]: For an ongoing requirement, “initiate” is changed to a more permanent term, and “implement” is used because of use of “implementation” in both (b) and (c) of the original.

Commented [CR1001]: In the original there is a subsection (b) requiring a report NLT 60 days after Dec. 12, 2017. It is proposed to be omitted here as OBE (and is not shown).

DOD, PLEASE ADVISE as to the status of the report required by sec. 875 of P.L. 115-91 (10 U.S.C. 2223 note).

Commented [CR1002]: Subparagraph (B), outside the new title 10 provision, was subsection (c) in the original. It is not included in the new title 10 section because of the short time before the GAO report is due.

IF the report is submitted before enactment of this provision, while it is still pending, subparagraph (B) could be dropped at that time as having become OBE.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 required by section 4578 of title 10, United States Code, as added by
2 subparagraph (A). The report shall address, ~~at a minimum,~~ —

- 3 (i) the compliance of the Secretary with the requirements of the
- 4 Office of Management and Budget Memorandum M-16-21;
- 5 (ii) the views of various software and information technology
- 6 stakeholders in the Department of Defense; and
- 7 (iii) any other matters determined by the Comptroller General.

8 **(2) CONFORMING REPEAL.**—Section 875 of the National Defense Authorization
9 Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2223 note) is repealed.

10 **(j) CODIFICATION OF FY2012 NDAA SECTION.**—

11 (1) **CODIFICATION.**—Chapter 345 of such title, as amended by subsection (a), is
12 further amended by inserting after section 4578, as added by subsection (i), the following
13 new section:

14 **“§ 4579 [Sec. 2867 of P.L. 112-81 (10 U.S.C. 2223a note)]. Data servers and centers**

15 “(a) **LIMITATION ON OBLIGATION OF FUNDS.**—

16 “(1) **LIMITATION.**—A department, agency, or component of the Department of
17 Defense may not obligate funds for a data center, or any information systems technology
18 used ~~therein~~ **in a data center**, unless that obligation —

19 “(A) is in accordance with the performance plan required by subsection
20 (b); and

21 “(B) is approved by the Chief Information Officer of the Department of
22 Defense or the Chief Information Officer of a component of the Department to

Commented [CR1003]: Phrase proposed to be omitted as part of general recommendation to delete “, at a minimum,” wherever appearing as being unnecessary.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 whom the Chief Information Officer of the Department has specifically delegated
2 such approval authority.

3 "(2) REQUIREMENT FOR APPROVAL.—An approval of the obligation of funds may
4 not be granted under paragraph (1) unless the official granting the approval determines
5 that—

6 "(A) existing resources of the Department do not meet the operation
7 requirements to be met through the obligation of funds; and

8 "(B) the proposed obligation is in accordance with the performance
9 standards and measures established by the Chief Information Officer of the
10 Department under subsection (b).

11 "(3) REPORTS.—Not later than 30 days after the end of each calendar quarter, each
12 Chief Information Officer of a component of the Department who grants an approval
13 under paragraph (1) during such calendar quarter shall submit to the Chief Information
14 Officer of the Department a report on the approval or approvals so granted during such
15 calendar quarter.

16 "(b) PERFORMANCE PLAN FOR REDUCTION OF RESOURCES REQUIRED FOR DATA SERVERS
17 AND CENTERS.—

18 "(1) COMPONENT PLANS.—

19 "(A) IN GENERAL.—Not later than January 15, 2012, the Secretaries of the
20 military departments and the heads of the Defense Agencies shall each submit to
21 the Chief Information Officer of the Department a plan for the department or
22 agency concerned to achieve the following:

Commented [CR1004]: Changed from "Requirements for approvals" for readability and clarity.

Commented [CR1005]: This word is "operation" in the original, as shown here. Should it be "operational"?
DOD, PLEASE ADVISE.

Commented [CR1006]: Subsection (b) is set out as in the original.
Interested parties may wish to consider revisions.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 "(i) A reduction in the square feet of floor space devoted to
2 information systems technologies, attendant support technologies, and
3 operations within data centers.

4 "(ii) A reduction in the use of all utilities necessary to power and
5 cool information systems technologies and data centers.

6 "(iii) An increase in multi-organizational utilization of data centers,
7 information systems technologies, and associated resources.

8 "(iv) A reduction in the investment for capital infrastructure or
9 equipment required to support data centers as measured in cost per
10 megawatt of data storage.

11 "(v) A reduction in the number of commercial and government
12 developed applications running on data servers and within data centers.

13 "(vi) A reduction in the number of government and vendor
14 provided full-time equivalent personnel, and in the cost of labor,
15 associated with the operation of data servers and data centers.

16 "(B) SPECIFICATION OF REQUIRED ELEMENTS.—The Chief Information
17 Officer of the Department shall specify the particular performance standards and
18 measures and implementation elements to be included in the plans submitted
19 under this paragraph, including specific goals and schedules for achieving the
20 matters specified in subparagraph (A).

21 "(2) DEFENSE-WIDE PLAN.—

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 "(A) IN GENERAL.—Not later than April 1, 2012, the Chief Information
2 Officer of the Department shall submit to the congressional defense committees a
3 performance plan for a reduction in the resources required for data centers and
4 information systems technologies Department-wide. The plan shall be based upon
5 and incorporate appropriate elements of the plans submitted under paragraph (1).

6 "(B) ELEMENTS.—The performance plan required under this paragraph
7 shall include the following:

8 "(i) A Department-wide performance plan for achieving the
9 matters specified in paragraph (1)(A), including performance standards
10 and measures for data centers and information systems technologies, goals
11 and schedules for achieving such matters, and an estimate of cost savings
12 anticipated through implementation of the plan.

13 "(ii) A Department-wide strategy for each of the following:

14 "(I) Desktop, laptop, and mobile device virtualization.

15 "(II) Transitioning to cloud computing.

16 "(III) Migration of Defense data and government-provided
17 services from Department-owned and operated data centers to
18 cloud computing services generally available within the private
19 sector that provide a better capability at a lower cost with the same
20 or greater degree of security.

21 "(IV) Utilization of private sector-managed security
22 services for data centers and cloud computing services.

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1 "(V) A finite set of metrics to accurately and transparently
2 report on data center infrastructure (space, power and cooling):
3 age, cost, capacity, usage, energy efficiency and utilization,
4 accompanied with the aggregate data for each data center site in
5 use by the Department in excess of 100 kilowatts of information
6 technology power demand.

7 "(VI) Transitioning to just-in-time delivery of Department-
8 owned data center infrastructure (space, power and cooling)
9 through use of modular data center technology and integrated data
10 center infrastructure management software.

11 "(3) RESPONSIBILITY.—The Chief Information Officer of the Department shall
12 discharge the responsibility for establishing performance standards and measures for data
13 centers and information systems technologies for purposes of this subsection. That
14 responsibility may not be delegated.

15 "(c) EXCEPTIONS.—

16 "(1) INTELLIGENCE COMPONENTS.—The Chief Information Officer of the
17 Department and the Chief Information Officer of the Intelligence Community may jointly
18 exempt from the applicability of this section such intelligence components of the
19 Department of Defense (and the programs and activities thereof) that are funded through
20 the National Intelligence Program (NIP) as the Chief Information Officers consider
21 appropriate.

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"(2) RESEARCH, DEVELOPMENT, TEST, AND EVALUATION PROGRAMS.—The Chief Information Officer of the Department may exempt from the applicability of this section research, development, test, and evaluation programs that use authorization of appropriations for the High Performance Computing Modernization Program (Program Element 0603461A) if the Chief Information Officer determines that the exemption is in the best interest of national security."

(2) CONFORMING REPEAL.—Section 2867 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 2223a note) is repealed.

(k) CODIFICATION OF FY2008 NDAA SECTION.—

(1) CODIFICATION.—Chapter 345 of such title, as amended by subsection (a), is further amended by inserting after section 4579, as added by subsection (j), the following new section:

“§ 4580 [Sec. 881 of P.L. 110-181 (10 U.S.C. 2223a note)]. Clearinghouse for rapid identification and dissemination of commercial information technologies

“(a) REQUIREMENT TO ESTABLISH CLEARINGHOUSE.—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the *The* Secretary of Defense, acting through the Assistant Secretary of Defense for Networks and Information Integration, shall establish a clearinghouse for identifying, assessing, and disseminating knowledge about readily available information technologies (with an emphasis on commercial off-the-shelf information technologies) that could support the warfighting mission of the Department of Defense.

“(b) RESPONSIBILITIES.—The clearinghouse established pursuant to subsection (a) shall be responsible for the following:

Commented [CR1007]: This section is referred to in sec. 834 of P.L. 113-291 (44 U.S.C. 3601 note), which is repealed as of Oct. 1, 2020 (unless extended). That sec. 834 could require a cross-reference amendment, depending on the time of enactment of this codification and the status of 834 at that time.

Commented [CR1008]: NLT clause to be omitted as OBE.

Commented [CR1009]: The position of ASD(NII) has been disestablished. What should be inserted?

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1 “(1) Developing a process to rapidly assess and set priorities and needs for
2 significant information technology needs of the Department of Defense that could be met
3 by commercial technologies, including a process for—

4 “(A) aligning priorities and needs with the requirements of the
5 commanders of the combatant command; and

6 “(B) proposing recommendations to the commanders of the combatant
7 command of feasible technical solutions for further evaluation.

8 “(2) Identifying and assessing emerging commercial technologies (including
9 commercial off-the-shelf technologies) that could support the warfighting mission of the
10 Department of Defense, including the priorities and needs identified pursuant to
11 paragraph (1).

12 “(3) Disseminating information about commercial technologies identified
13 pursuant to paragraph (2) to commanders of combatant commands and other potential
14 users of such technologies.

15 “(4) Identifying gaps in commercial technologies and working to stimulate
16 investment in research and development in the public and private sectors to address those
17 gaps.

18 “(5) Enhancing internal data and communications systems of the Department of
19 Defense for sharing and retaining information regarding commercial technology priorities
20 and needs, technologies available to meet such priorities and needs, and ongoing research
21 and development directed toward gaps in such technologies.

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1 “(6) Developing mechanisms, including web-based mechanisms, to facilitate
2 communications with industry regarding the priorities and needs of the Department of
3 Defense identified pursuant to paragraph (1) and commercial technologies available to
4 address such priorities and needs.

5 “(7) Assisting in the development of guides to help small information technology
6 companies with promising technologies to understand and navigate the funding and
7 acquisition processes of the Department of Defense.

8 “(8) Developing methods to measure how well processes developed by the
9 clearinghouse are being utilized and to collect data on an ongoing basis to assess the
10 benefits of commercial technologies that are procured on the recommendation of the
11 clearinghouse.

12 “(c) PERSONNEL.—The Secretary of Defense, ~~acting through the Assistant Secretary of~~
13 ~~Defense for Networks and Information Integration,~~ shall provide for the hiring and support of
14 employees (including detailees from other components of the Department of Defense and from
15 other Federal departments or agencies) to assist in identifying, assessing, and disseminating
16 information regarding commercial technologies under this section.

Commented [CR1010]: Same comment as in above (a), above.

17 ~~“(d) REPORT TO CONGRESS.— Not later than one year after the date of the enactment of~~
18 ~~this Act [Jan. 28, 2008], the Secretary of Defense shall submit to the congressional defense~~
19 ~~committees [Committees on Armed Services and Appropriations of the Senate and the House of~~
20 ~~Representatives] a report on the implementation of this section.”~~

Commented [CR1011]: To be omitted as OBE

21 (2) CONFORMING REPEAL.—Section 881 of the National Defense Authorization
22 Act for Fiscal Year 2008 (Public Law 110-181; 10 U.S.C. 2223a note) is repealed.

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1 (I) CODIFICATION OF FY2011 NDAA SECTION.—

2 (1) CODIFICATION.—Chapter 345 of such title, as amended by subsection (a), is
3 further amended by inserting after section 4580, as added by subsection (k), the following
4 new section:

5 “§ 4581 [Sec. 215 of P.L. 111-383 (10 U.S.C. 2223a note)]. **Demonstration projects and pilot**
6 **projects programs on cybersecurity**

7 “(a) DEMONSTRATION PROJECTS ON PROCESSES FOR APPLICATION OF COMMERCIAL
8 TECHNOLOGIES TO CYBERSECURITY REQUIREMENTS.—

9 “(1) PROJECTS REQUIRED.—The Secretary of Defense and the Secretaries of the
10 military departments shall jointly carry out demonstration projects to assess the feasibility
11 and advisability of using various business models and processes to rapidly and effectively
12 identify innovative commercial technologies and apply such technologies to Department
13 of Defense and other cybersecurity requirements.

14 “(2) SCOPE OF PROJECTS.—Any demonstration project under paragraph (1) shall
15 be carried out in such a manner as to contribute to the cyber policy review of the
16 President and the Comprehensive National Cybersecurity Initiative.

17 “(b) PILOT PROGRAMS ON CYBERSECURITY REQUIRED.—The Secretary of Defense shall
18 support or conduct pilot programs on cybersecurity with respect to the following areas:

19 “(1) Threat sensing and warning for information networks worldwide.

20 “(2) Managed security services for cybersecurity within the defense industrial
21 base, military departments, and combatant commands.

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“(3) Use of private processes and infrastructure to address threats, problems, vulnerabilities, or opportunities in cybersecurity.

“(4) Processes for securing the global supply chain.

“(5) Processes for threat sensing and security of cloud computing infrastructure.

“(c) REPORTS.—

“(1) REPORTS REQUIRED.— ~~Not later than 240 days after the date of the enactment of this Act [Jan. 7, 2011], and annually thereafter at~~ *At* or about the time of the submittal to Congress of the budget of the President for a fiscal year (as submitted pursuant to section 1105(a) of title 31, ~~United States Code~~), the Secretary of Defense shall, ~~in coordination with the Secretary of Homeland Security~~, submit to Congress a report on any demonstration projects carried out under subsection (a), and on the pilot ~~projects~~ *programs* carried out under subsection (b), during the preceding year. *Each such report shall be submitted in coordination with the Secretary of Homeland Security.*

Commented [CR1012]: NLT clause to be omitted as OBE

Commented [CR1013]: “and annually thereafter” to be omitted as covered by “for a fiscal year”.

Commented [CR1014]: Deleted for convention used in positive law titles of the US Code.

Commented [CR1015]: “in coordination with” clause moved to a separate sentence rather than break up the main message.

Commented [CR1016]: Changed to mirror the wording in subsection (b) above.

“(2) ELEMENTS.—Each report under this subsection shall include the following:

“(A) A description and assessment of any activities under the demonstration projects and pilot ~~projects~~ *programs* referred to in paragraph (1) during the preceding year.

“(B) For the pilot ~~projects~~ *programs* supported or conducted under subsection (b)(2)—

“(i) a quantitative and qualitative assessment of the extent to which managed security services covered by the pilot ~~project~~ *program* could provide effective and affordable cybersecurity capabilities for components

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1 of the Department of Defense and for entities in the defense industrial
2 base, and an assessment whether such services could be expanded rapidly
3 to a large scale without exceeding the ability of the Federal Government to
4 manage such expansion; and

5 “(ii) an assessment of whether managed security services are
6 compatible with the cybersecurity strategy of the Department of Defense
7 with respect to conducting an active, in-depth defense under the direction
8 of United States Cyber Command.

9 “(C) For the pilot ~~projects~~ **programs** supported or conducted under
10 subsection (b)(3)—

11 “(i) a description of any performance metrics established for
12 purposes of the pilot ~~project~~ **program**, and a description of any processes
13 developed for purposes of accountability and governance under any
14 partnership under the pilot ~~project~~ **program**; and

15 “(ii) an assessment of the role a partnership such as a partnership
16 under the pilot ~~project~~ **program** would play in the acquisition of
17 cyberspace capabilities by the Department of Defense, including a role
18 with respect to the development and approval of requirements, approval
19 and oversight of acquiring capabilities, test and evaluation of new
20 capabilities, and budgeting for new capabilities.

21 “(D) For the pilot ~~projects~~ **programs** supported or conducted under
22 subsection (b)(4)—

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1 “(i) a framework and taxonomy for evaluating practices that secure
2 the global supply chain, as well as practices for securely operating in an
3 uncertain or compromised supply chain;

4 “(ii) an assessment of the viability of applying commercial
5 practices for securing the global supply chain; and

6 “(iii) an assessment of the viability of applying commercial
7 practices for securely operating in an uncertain or compromised supply
8 chain.

9 “(E) For the pilot ~~projects~~ *programs* supported or conducted under
10 subsection (b)(5)—

11 “(i) an assessment of the capabilities of Federal Government
12 providers to offer secure cloud computing environments; and

13 “(ii) an assessment of the capabilities of commercial providers to
14 offer secure cloud computing environments to the Federal Government.

15 “(3) FORM.—Each report under this subsection shall be submitted in unclassified
16 form, but may include a classified annex.”

17 (2) CONFORMING REPEAL.—Section 215 of the National Defense Authorization
18 Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2223a note) is repealed.

19 **TITLE VIII—CONTRACT MANAGEMENT (PART V, SUBPART H)**

20 **SEC. 801. CONTRACT ADMINISTRATION.**

DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapter 361 and inserting the following:

CHAPTER 361—CONTRACT ADMINISTRATION

Sec.

- 4601 [10 U.S.C. 2227]. Electronic submission and processing of claims for contract payments.
4602 [10 U.S.C. 2226]. Contracted property and services: prompt payment of vouchers.
4603 [Sec. 806 of P.L. 102-190 (10 U.S.C. 2302 note)]. Payment protections for subcontractors and suppliers.
4604 [10 U.S.C. 2410g]. Advance notification of contract performance outside the United States.
4605 [Sec. 881 of P.L. 114-92 (10 U.S.C. 2302 note)]. Consideration of potential program cost increases and schedule delays resulting from oversight of defense acquisition programs.
4606 [Sec. 814 of P.L. 109-364, sec. 8105 of P.L. 110-329 (10 U.S.C. 2302 note); see 41 U.S.C. 4711]. Linking of award and incentive fees to acquisition outcomes.
4607 [Sec. 823 of P.L. 111-84 (10 U.S.C. 2302 note)]. Contractors determined to have caused or be liable for actions that caused serious bodily injury or death to Government personnel: authority for Secretary of Defense to reduce or deny award fees.
4608 [Sec. 836 of P. L. 114-328 (10 USC 2302 note)]. Contract closeout authority.

(b) TRANSFER OF TITLE 10 SECTIONS.—Sections 2227 and 2226 of title 10, United States Code, are transferred to chapter 361 of such title, as amended by subsection (a), inserted (in that order) after the table of sections at the beginning of such chapter, and redesignated as section 4601 and 4602, respectively.

(c) CODIFICATION OF FY1992 NDAA SECTION.—

(1) CODIFICATION.—Chapter 361 of such title, as amended by subsection (a), is further amended by inserting after section 4602, as transferred and redesignated by subsection (b), the following new section:

§ 4603 [Sec. 806 of P.L. 102-190 (10 U.S.C. 2302 note)]. Payment protections for subcontractors and suppliers

(a) REGULATIONS; DEFINITION.—

Commented [CR1017]: This section would codify subsections (a), (b), and (g) of section 806. Subsection (c), which deals with the FAR, would be codified in title 41 (see title X of this bill, below). Subsection (d) amended another law. Subsections (e) and (f) each required a one-time report, due NLT Feb. 1 1993 and March 1, 1993, respectively, and are omitted as OBE.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(1) [806(a)] REGULATIONS.—The Secretary of Defense shall prescribe in regulations the requirements specified in subsections (b) through (e).

(2) [806(g)] MILLER ACT DEFINED.—In this section, the term ‘Miller Act’ means sections 3131 and 3133 of title 40.

(b) [806(a)(1)(A)] INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT.—Subject to section 552(b)(1) of title 5, upon the request of a subcontractor or supplier of a contractor performing a Department of Defense contract, the Department Secretary of Defense shall promptly make available to the subcontractor or supplier the following information:

(1) Whether requests for progress payments or other payments have been submitted by the contractor to the Department of Defense in connection with that contract.

(2) Whether final payment to the contractor has been made by the Department of Defense in connection with that contract.

(c) [806(a)(2)(A)-(D)] INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT BONDS.—

(1) Upon the request of a subcontractor or supplier described in paragraph

(2), the Department Secretary of Defense shall promptly make available to the subcontractor or supplier any of the following:

- (A) The name and address of the surety or sureties on the payment bond.
(B) The penal amount of the payment bond.
(C) A copy of the payment bond.

Commented [CR1018]: Effective date provision in subparagraph (B) of the original omitted in the codification as OBE

Commented [CR1019]: Proposed to be changed for standard usage in title 10 to vest functions in officials rather than organizations. OK?

Commented [CR1020]: Effective date provision in subparagraph (E) of the original omitted in the codification as OBE

Commented [CR1021]: Proposed to be changed for standard usage in title 10 to vest functions in officials rather than organizations. OK?

[FINAL DRAFT]

DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(2) Paragraph (1) applies to—

(A) a subcontractor or supplier having a subcontract, purchase order, or other agreement to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act; and

(B) a prospective subcontractor or supplier offering to furnish labor or material for the performance of such a Department of Defense contract.

(3) With respect to the information referred to in paragraphs (1)(A) and (1)(B), the regulations shall include authority for such information to be provided verbally to the subcontractor or supplier.

(4) With respect to the information referred to in paragraph (1)(C), the regulations may impose reasonable fees to cover the cost of copying and providing requested bonds.

(d) [806(a)(3)(A)] INFORMATION PROVIDED BY CONTRACTORS RELATING TO PAYMENT

BONDS.—Upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly make available to such prospective subcontractor or supplier a copy of the payment bond.

(e) [806(a)(4)(A)-(C)] PROCEDURES RELATING TO COMPLIANCE WITH PAYMENT

TERMS.—

(1) Under procedures established in the regulations, upon the assertion by a subcontractor or supplier of a contractor performing a Department of Defense contract

Commented [CR1022]: Effective date provision in subparagraph (B) of the original omitted in the codification as OBE. Effective date was tied to the issuance of regulations.

DOD, PLEASE CONFIRM THAT regulations have been issued under sec. 806(a) of P.L. 102-190 (10 U.S.C. 2302 note) and that the effective date provision in 806(a)(3)(B) is OBE.

Commented [CR1023]: Effective date provision in subparagraph (D) of the original omitted in the codification as OBE. Effective date was tied to the issuance of regulations.

DOD, SAME AS ABOVE, PLEASE CONFIRM THAT regulations have been issued under sec. 806(a) of P.L. 102-190 (10 U.S.C. 2302 note) and that the effective date provision in 806(a)(4)(D) is OBE.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 that the subcontractor or supplier has not been paid by the prime contractor in accordance
2 with the payment terms of the subcontract, purchase order, or other agreement with the
3 prime contractor, the contracting officer may determine the following:

4 (A) With respect to a construction contract, whether the contractor has
5 made progress payments to the subcontractor or supplier in compliance with
6 chapter 39 of title 31.

7 (B) With respect to a contract other than a construction contract, whether
8 the contractor has made progress or other payments to the subcontractor or
9 supplier in compliance with the terms of the subcontract, purchase order, or other
10 agreement with the prime contractor.

11 (C) With respect to either a construction contract or a contract other than a
12 construction contract, whether the contractor has made final payment to the
13 subcontractor or supplier in compliance with the terms of the subcontract,
14 purchase order, or other agreement with the prime contractor.

15 (D) With respect to either a construction contract or a contract other than a
16 construction contract, whether any certification of payment of the subcontractor
17 or supplier accompanying the contractor's payment request to the Government is
18 accurate.

19 (2) If the contracting officer determines that the prime contractor is not in
20 compliance with any matter referred to in subparagraph (A), (B), or (C) of paragraph (1),
21 the contracting officer may, under procedures established in the regulations—

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1 (A) encourage the prime contractor to make timely payment to the
2 subcontractor or supplier; or

3 (B) reduce or suspend progress payments with respect to amounts due to
4 the prime contractor.

5 (3) If the contracting officer determines that a certification referred to in
6 subparagraph (D) of paragraph (1) is inaccurate in any material respect, the contracting
7 officer shall, under procedures established in the regulations, initiate appropriate
8 administrative or other remedial action.

9 (f) [806(b)] INAPPLICABILITY TO ~~CERTAIN~~ CONTRACTS *FOR ACQUISITION OF*
10 *COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES*.—Regulations prescribed under this section
11 shall not apply to a contract for the acquisition commercial products or commercial services.”

12 (2) **CONFORMING REPEAL**.—Section 806 (other than subsection (c)) of the
13 National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-
14 190; 10 U.S.C. 2302 note) is repealed.

15 (d) **TRANSFER OF TITLE 10 SECTION**.—Section 2410g of title 10, United States Code, is
16 **transferred** to chapter 361 of such title, as amended by subsection (a), **inserted** after section
17 4603, as added by subsection (c), and **redesignated** as section **4604**.

18 (e) **CODIFICATION OF FY2016 NDAA SECTION**.—

19 (1) **CODIFICATION**.—Chapter 361 of such title, as amended by subsection (a), is
20 further amended by inserting after section 4604, as transferred and redesignated by
21 subsection (d), the following new section:

Commented [CR1024]: Subsection (c), which deals with the FAR, would be codified in title 41 (see sec. 1012 of this bill, below).

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “§ 4605 [Sec. 881 of P.L. 114-92 (10 U.S.C. 2302 note)]. Consideration of potential program
2 cost increases and schedule delays resulting from oversight of defense
3 acquisition programs

Commented [CR1025]: The Section 809 Panel recommended repealing sec. 881 rather than codifying. The repeal recommendation was not approved in the FY19 NDAA. If the repeal recommendation is approved in the FY20 NDAA, then this section should be dropped, of course.

4 (a) AVOIDANCE OF UNNECESSARY COST INCREASES AND SCHEDULE DELAYS.—
5 (1) The officials of the Department of Defense specified in paragraph (2) shall
6 ensure that policies, procedures, and activities implemented by their *respective* offices
7 and agencies in connection with defense acquisition program oversight do not result in
8 unnecessary increases in program costs or cost estimates or delays in schedule or
9 schedule estimates.

Commented [CR1026]: Addition of “respective” recommended for clarity.

10 (2) Paragraph (1) applies to the following officials of the Department of Defense:
11 (A) The Director of Operational Test and Evaluation.
12 (B) The Chief Management Officer.
13 (C) The Director of the Defense Contract Management Agency.
14 (D) The Director of the Defense Contract Audit Agency.
15 (E) The Inspector General of the Department of Defense.
16 (F) The heads of other defense audit, testing, acquisition, and management
17 agencies.

Commented [CR1027]: FYI, sec. 1081(f)(1)(A)(iv) of the FY19 NDAA deleted “Deputy” before “Chief” here.

18 (b) CONSIDERATION OF PRIVATE SECTOR BEST PRACTICES.—In considering potential
19 cost increases and schedule delays as a result of oversight efforts pursuant to subsection (a), the
20 officials ~~described~~ *specified* in paragraph (2) of that subsection shall consider private sector best
21 practices with respect to oversight implementation.?

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(2) CONFORMING REPEAL.—Section 881 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note) is repealed.

(f) CODIFICATION OF FY2007 NDAA SECTION.—

(1) CODIFICATION.—Chapter 361 of such title, as amended by subsection (a), is further amended by inserting after section 4605, as added by subsection (e), the following new section:

“§4606 [Sec. 814 of P.L. 109-364; sec. 8015 of P.L. 110-329 (10 U.S.C. 2302 note)]; see 41 U.S.C. 4711]. Linking of award and incentive fees to acquisition outcomes

(a) [Sec. 814(a); 41 U.S.C. 4711(b)] GUIDANCE ON LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES.—The Secretary of Defense shall issue guidance for the Department of Defense on the appropriate use of award and incentive fees in Department of Defense acquisition programs. The guidance shall be issued with detailed implementation instructions, including definitions.

(b) [Sec. 814(b); 41 U.S.C. 4711(c)] ELEMENTS.—The guidance issued under subsection (a) shall—

(1) ensure that all new contracts using award fees link such fees to acquisition outcomes (which shall be defined in terms of program cost, schedule, and performance);

(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

(3) provide guidance on the circumstances in which contractor performance may be judged to be ‘excellent’ or ‘superior’ and the percentage of the available award fee which contractors should be paid for such performance;

Commented [CR1028]: The original has “NLT 180 days after date of enactment, the Secretary ...”. The NLT clause has been omitted here as OBE.

Commented [CR1029]: In the original, “, with detailed implementation instructions (including definitions),” appears as a clause in the main sentence after “shall issue guidance”. That clause is set out here as a separate sentence for readability.

Commented [CR1030]: The term “new contracts” appears problematic, but the parallel provision in T41 (41 U.S.C.4711(b)(1)) uses “new contracts” as well, so it is retained. The question is whether “new contract” means contracts entered into after the date of enactment of P. L. 109-364 (10-17-2006)? Or after the guidance is issued? That might mean that, for the codification, “new” is now OBE. OR, is “new contracts” an ongoing limitation that excludes applicability to contract extensions, renewals, etc? As a drafting note, NDAA provisions typically do not specify applicability to “new” contracts, but to contracts entered into after date of enactment, precisely to avoid this confusion. Five years after enactment, what is the reader to understand is meant by a “new contract”? DOD, PLEASE ADVISE as to how the references to “new contracts” in paragraphs (1) and (2) are applied in practice.

Commented [CR1031]: In the parallel T41 provision, “such performance” is “the performance”. The T10 wording is retained here. Similarly, in paragraph (1) immediately above, “such fees” is retained from the T10 wording, although the parallel T41 provision has “the fees”.

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1 (4) establish standards for determining the percentage of the available award fee,
2 if any, which contractors should be paid for performance that is judged to be
3 “acceptable”, “average”, “expected”, “good”, or “satisfactory”;

4 (5) ensure that no award fee may be paid for contractor performance that is judged
5 to be below satisfactory performance or performance that does not meet the basic
6 requirements of the contract;

7 (6) provide specific direction on the circumstances, if any, in which it may be
8 appropriate to roll over award fees that are not earned in one award fee period to a
9 subsequent award fee period or periods;

10 (7) ensure consistent use of guidelines and definitions relating to award and
11 incentive fees across the military departments and Defense Agencies;

12 (8) ensure that the Department of Defense—

13 (A) collects relevant data on award and incentive fees paid to contractors;

14 and

15 (B) has mechanisms in place to evaluate such data on a regular basis;

16 (9) include performance measures to evaluate the effectiveness of award and
17 incentive fees as a tool for improving contractor performance and achieving desired
18 program outcomes; and

19 (10) provide mechanisms for sharing proven incentive strategies for the
20 acquisition of different types of products and services among contracting and program
21 management officials.

Commented [CR1032]: The original had a subsection (c) requiring an assessment and a report on the assessment NLT one year after the date of enactment [Oct. 17, 2006]. That subsection (c) is omitted here as OBE.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (c) [Sec. 8105 of div. C of P.L. 110-329 (10 U.S.C. 2302 note)] None of the funds
2 appropriated or otherwise available to the Department of Defense may be obligated or expended
3 to provide award fees to any defense contractor contrary to the provisions of subsections (a) and
4 (b)."

Commented [CR1033]: Subsection (c) would codify a permanent appropriations provision. There is no parallel provision in T41.

Commented [CR1034]: The modifier "defense" from the original would be omitted as unnecessary in this context.

(2) CONFORMING REPEALS.—The following provisions of law are repealed:

(A) Section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 10 U.S.C. 2302 note).

(B) Section 8105 of the Department of Defense Appropriations Act, 2009 (division C of Public Law 110-329; 10 U.S.C. 2302 note).

(g) CODIFICATION OF FY2010 NDAA SECTION.—

(1) CODIFICATION.—Chapter 361 of such title, as amended by subsection (a), is further amended by inserting after section 4606, as added by subsection (f), the following new section:

"§4607 [Sec. 823(a)-(e) of P.L. 111-84 (10 U.S.C. 2302 note)] Contractors determined to have caused or be liable for actions that caused serious bodily injury or death to Government personnel: authority for Secretary of Defense to reduce or deny award fees

Commented [CR1035]: Effective date provision in subsection (f) of the original is omitted in the codification here as OBE

(a) [Sec. 823(a)] AUTHORITY TO REDUCE OR DENY AWARD FEES.—The guidance issued pursuant to section 4606 of this title shall ensure that all covered contracts each covered contract using award fees—

Commented [CR1036]: NLT clause omitted.

Commented [CR1037]: Revised for the codification and to state the requirement as an ongoing requirement

"(1) provides for the consideration of any incident described in subsection (b) in evaluations of contractor performance for the relevant award fee period; and

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 "(2) authorizes the Secretary of Defense to reduce or deny award fees for the
2 relevant award fee period, or to recover all or part of award fees previously paid for such
3 period, on the basis of the negative impact of such incident on contractor performance.

4 "(b) [Sec. 823(b)] COVERED INCIDENTS.—An incident referred to in subsection (a) is any
5 incident in which the contractor—

6 "(1) has been determined, through a criminal, civil, or administrative proceeding
7 that results in a disposition listed in subsection (c), in the performance of a covered
8 contract to have caused serious bodily injury or death to any civilian or military personnel
9 of the Government through gross negligence or with reckless disregard for the safety of
10 such personnel; or

11 "(2) has been determined, through a criminal, civil, or administrative proceeding
12 that results in a disposition listed in subsection (c), to be liable for actions of a
13 subcontractor of the contractor that caused serious bodily injury or death to any civilian
14 or military personnel of the Government, through gross negligence or with reckless
15 disregard for the safety of such personnel.

16 "(c) [Sec. 823(c)] LIST OF DISPOSITIONS IN CRIMINAL, CIVIL, OR ADMINISTRATIVE
17 PROCEEDINGS.—For purposes of subsection (b), the dispositions listed in this subsection are as
18 follows:

19 "(1) In a criminal proceeding, a conviction.

20 "(2) In a civil proceeding, a finding of fault and liability that results in the
21 payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or
22 more.

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1 "(3) In an administrative proceeding, a finding of fault and liability that results
2 in—

3 "(A) the payment of a monetary fine or penalty of \$5,000 or more; or

4 "(B) the payment of a reimbursement, restitution, or damages in excess of
5 \$100,000.

6 "(4) To the maximum extent practicable and consistent with applicable laws and
7 regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter
8 by consent or compromise with an acknowledgment of fault by the person if the
9 proceeding could have led to any of the outcomes specified in paragraph (1), (2), or (3).

10 "(5) In an administrative proceeding, a final determination of contractor fault by
11 the Secretary of Defense pursuant to subsection (d).

12 "(d) [Sec. 823(d)] DETERMINATIONS OF CONTRACTOR FAULT BY SECRETARY OF
13 DEFENSE.—

14 "(1) IN GENERAL.—In any case described by paragraph (2), the Secretary of
15 Defense shall—

16 "(A) provide for an expeditious independent investigation of the causes of
17 the serious bodily injury or death alleged to have been caused by the contractor as
18 described in that paragraph; and

19 "(B) make a final determination, pursuant to procedures established by the
20 Secretary for purposes of this subsection, whether the contractor, in the
21 performance of a covered contract, caused such serious bodily injury or death

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1 through gross negligence or with reckless disregard for the safety of civilian or
2 military personnel of the Government.

3 "(2) COVERED CASES.—A case described in this paragraph is any case in which
4 the Secretary has reason to believe that—

5 "(A) a contractor, in the performance of a covered contract, may have
6 caused the serious bodily injury or death of any civilian or military personnel of
7 the Government; and

8 "(B) such contractor is not subject to the jurisdiction of United States
9 courts.

10 "(3) CONSTRUCTION OF DETERMINATION.—A final determination under this
11 subsection may be used only for the purpose of evaluating contractor performance, and
12 shall not be determinative of fault for any other purpose.

13 "(e) [Sec. 823(e)] DEFINITIONS.—In this section:

14 "(1) The term 'contractor' means a company awarded a covered contract and a
15 subcontractor at any tier under such contract.

16 "(2) The term 'covered contract' means a contract awarded by the Department of
17 Defense for the procurement of goods or services.

18 "(3) The term 'serious bodily injury' means a grievous physical harm that results
19 in a permanent disability."

20 (2) CONFORMING REPEAL.—Section 823 of the National Defense Authorization
21 Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2302 note) is repealed.

22 (h) CODIFICATION OF FY2017 NDAA SECTION.—

Commented [CR1038]: The original has a subsection (f), providing "This section shall apply with respect to contracts entered into after the date occurring 180 days after the date of the enactment of this Act [Oct. 28, 2009]." It is omitted as OBE.

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1 (1) **CODIFICATION.**—Chapter 361 of such title, as amended by subsection (a), is
2 further amended by inserting after section 4607, as added by subsection (g), the following
3 new section:

4 “§ 4608 [Sec. 836 of P. L. 114-328 (10 USC 2302 note)]. **Contract closeout authority**

5 "(a) **AUTHORITY.**—The Secretary of Defense may close out a contract or group of
6 contracts as described in subsection (b) through the issuance of one or more modifications to
7 such contracts without completing a reconciliation audit or other corrective action. To
8 accomplish closeout of such contracts—

9 "(1) remaining contract balances may be offset with balances in other contract
10 line items within a contract regardless of the year or type of appropriation obligated to
11 fund each contract line item and regardless of whether the appropriation for such contract
12 line item has closed; and

13 "(2) remaining contract balances may be offset with balances on other contracts
14 regardless of the year or type of appropriation obligated to fund each contract and
15 regardless of whether the appropriation has closed.

16 "(b) **COVERED CONTRACTS.**—This section covers any contract or group of contracts
17 between the Department of Defense and a defense contractor, each one of which—

18 "(1) was entered into on a date that is at least 17 fiscal years before the current
19 fiscal year;

20 "(2) has no further supplies or services deliverables due under the terms and
21 conditions of the contract; and

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1 "(3) is determined by the Secretary of Defense to be not otherwise reconcilable
2 because—

3 "(A) the records have been destroyed or lost; or

4 "(B) the records are available but the Secretary of Defense has determined
5 that the time or effort required to determine the exact amount owed to the United
6 States Government or amount owed to the contractor is disproportionate to the
7 amount at issue.

8 "(c) NEGOTIATED SETTLEMENT AUTHORITY.—Any contract or group of contracts covered
9 by this section may be closed out through a negotiated settlement with the contractor.

10 "(d) WAIVER AUTHORITY.—

11 "(1) IN GENERAL.—The Secretary of Defense ~~is authorized to~~ **may** waive any
12 provision of acquisition law or regulation to carry out the authority under subsection (a).

13 "(2) NOTIFICATION REQUIREMENT.—The Secretary of Defense shall notify the
14 congressional defense committees not later than 10 days after exercising the authority
15 under ~~subsection (d)~~ **paragraph (1)**. The notice shall include an identification of each
16 provision of law or regulation waived.

17 "(e) ADJUSTMENT AND CLOSURE OF RECORDS.—After closeout of any contract described
18 in subsection (b) using the authority under this section, the payment or accounting offices
19 concerned may adjust and close any open finance and accounting records relating to the contract.

20 "(f) NO LIABILITY.—No liability shall attach to any accounting, certifying, or payment
21 official, or any contracting officer, for any adjustments or closeout made pursuant to the
22 authority under this section.

Commented [CR1039]: Original has "subsection (d)", but appears to be referring to paragraph (1) immediately above. This change is intended to correct an apparent error.

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1 "(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the
2 administration of the authority under this section."

3 (2) CONFORMING REPEAL.—Section 836 of the National Defense Authorization
4 Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2302 note) is repealed.

5 (i) CROSS-REFERENCE AMENDMENTS.—

6 (1) Section 2313(c)(1)(E)(i) of title 41, United States Code, is amended by
7 striking “section 823(d) of the National Defense Authorization Act for Fiscal Year 2010
8 (10 U.S.C. 2302 note; Public Law 111–84)” and inserting “section 4607(d) of title 10”.

9 (2) Section 4711(d) of title 41, United States Code, is amended by striking
10 “section 814 of the John Warner National Defense Authorization Act for Fiscal Year
11 2007 (Public Law 109–364, 10 U.S.C. 2302 note)” and inserting “section 4606 of title
12 10”.

13 **SEC. 802. PROHIBITIONS AND PENALTIES.**

14 (a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by
15 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
16 (Public Law 115-232), is amended by striking chapter 363 and inserting the following:

17 **“CHAPTER 363—PROHIBITIONS AND PENALTIES**

- Sec.
4651 [10 U.S.C. 2207]. Expenditure of appropriations: limitation with respect to contractor gratuities; remedies of the United States against the contractor.
- 4652 [10 U.S.C. 2249]. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.
- 4653 [10 U.S.C. 2392]. Prohibition on use of funds to relieve economic dislocations.
- 4654 [Sec. 8118 of P.L. 105-262 (10 U.S.C. 2241 note)] Prohibition on use of funds for contracts with persons convicted of unlawful manufacture or sale of Congressional Medal of Honor.
- 4655 [10 U.S.C. 2393]. Prohibition on doing business with certain offerors or contractors.
- 4656 [10 U.S.C. 2408]. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors.

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4657 [10 U.S.C. 2410f]. Debarment of persons convicted of fraudulent use of "Made in America" labels.
4658 [10 U.S.C. 2410i]. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel.
4659 [10 U.S.C. 2335]. Prohibition on collection of political information.
4660 [10 U.S.C. 2402; 41 U.S.C. 4704]. Prohibition of contractors limiting subcontractor sales directly to the United States."

(b) TRANSFER AND REDESIGNATION OF TITLE 10 SECTIONS.—The sections of title 10, United States Code, specified in the left-hand column of the following table are transferred to chapter 363 of such title, as amended by subsection (a), inserted (in the order shown in the following table) after the table of sections at the beginning of such chapter, and redesignated in accordance with the section numbers in the right-hand column, as follows:

Table with 2 columns: Section and Redesignated section. Rows include 2207 to 2402 and 4651 to 4660.

(c) CONFORMING AND STYLISTIC AMENDMENTS.—Sections of chapter 363 of title 10, United States Code, as transferred and redesignated by subsection (b), are further amended as follows:

(1) Section 4651, as so transferred and redesignated, is amended—

(A) by striking "or his designee" both places it appears;

(B) by striking "clause (1)" both places it appears and inserting "paragraph (1)"; and

(C) by striking the section heading and inserting the following:

Commented [CR1040]: "or his designee" proposed to be omitted for general consistency in title 10.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “§4651. Expenditure of appropriations: limitation *with respect to contractor gratuities*;
2 *remedies of the United States against the contractor*”.

3 (2) Section 4652, as so transferred and redesignated, is amended by striking “No
4 funds appropriated by the Congress may be” and inserting “Appropriated funds may not
5 be”.

6 (3) Subsection (b) of section 4653, as so transferred and redesignated, is amended
7 by striking “No funds appropriated to or for the use of the Department of Defense may
8 be” and inserting “Funds appropriated to or for the use of the Department of Defense may
9 not be”.

10 (4) Section 4655, as so transferred and redesignated, is amended—
11 (1) in the section heading, by striking “**against**” and inserting “**on**”; and
12 (2) in subsection (d), by striking “(as defined in sections 103 and 103a,
13 respectively, of title 41)”.

14 (5) Subsection (a)(4)(B) of section 4656 of such title, as transferred and
15 redesignated by subsection (b), is amended by striking “ (as defined in sections 103 and
16 103a, respectively, of title 41)”.

17 (6) Subsection (a) of section 4657, as so transferred and redesignated, is amended
18 by striking “in America, the” and inserting “in the United States, the”.

19 (7) Subsection (c)(2) of section 4659, as so transferred and redesignated, is
20 amended by striking “section 2324 of this title” and inserting “subchapter I of chapter
21 273 of this title”.

Commented [CR1041]: Reason for change here is to seek to standardize across the sections in the new chapter the usage generally of “Funds may not be” as opposed to “No funds may be”. Basic idea is to put “not” on the verb rather than the noun. Within that construct, there may still be variations from current law as to “Funds” or “Money”, etc.

Commented [CR1042]: This change is for consistency with the later-enacted NDAA provisions repealed in subsection (d) below.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(8) Subsection (d) of section 4660, as so transferred and redesignated, is amended—

(A) by striking “(1)” after “(d)”; and

(B) by striking paragraph (2).

(d) REPEAL OF PROVISIONS DUPLICATIVE WITH SECTION 2410f.—The following provisions of law are repealed:

(1) Section 825(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398; 10 U.S.C. 2410f note).

(2) Section 816(b) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 10 U.S.C. 2410f note).

(3) Section 849(b) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2410f note).

(e) CODIFICATION.—

(1) IN GENERAL.—Chapter 363 of title 10, United States Code, is further amended by inserting after section 4653, as transferred and redesignated by subsection (b), the following new section:

“§ 4654 [Sec. 8118 of P.L. 105-262 (10 U.S.C. 2241 note)] Prohibition on use of funds for contracts with persons convicted of unlawful manufacture or sale of Congressional Medal of Honor

No funds Funds appropriated or otherwise available to the Department of Defense may not be used to award a contract to, extend a contract with, or approve the award of a subcontract

Commented [CR1043]: Same comment here as in (c)(2) above

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1 to any person who within the preceding 15 years has been convicted under section 704 of title 18
2 of the unlawful manufacture or sale of the Congressional Medal of Honor.”

3 (2) CONFORMING REPEAL.—Section 8118 of the Department of Defense

4 **Appropriations** Act, 1999 (Public Law 105-262; **10 U.S.C. 2241 note**), is repealed.

5 (f) **CROSS-REFERENCE AMENDMENTS.**—

6 (1) Section 2343 of title 10, United States Code, is amended by striking “Sections
7 2207,” and inserting “**Sections 4651**,”.

8 (2) The following provisions of law are amended by striking “section 2393(c)”
9 and inserting “section **4655(c)**”:

10 (A) Subsection (b) of section 4657 of title 10, United States Code, as
11 transferred and redesignated by subsection (b).

12 (B) Section 226 of the Water Resources Development Act of 1992 (33
13 U.S.C. 569f).

14 (C) Section 306(b)(2) of the Disaster Mitigation Act of 2000 (42 U.S.C.
15 5206(b)(2)).

16 **SEC. 803. CONTRACTOR WORKFORCE.**

17 (a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
18 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
19 (Public Law 115-232), is amended by striking chapter 365 and inserting the following:

20 **“CHAPTER 365—CONTRACTOR WORKFORCE**

Sec.
4701 [2409; sec. 827(h) of P.L. 112-239 (10 U.S.C. 2324 note); see 41 U.S.C. 4712]. Contractor
employees: protection from reprisal for disclosure of certain information.

Commented [CR1044]: Note that the note section being codified for this provision is from an appropriations Act. This section is permanent law, not a recurring appropriations GP.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

4702 [2410j]. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers' aides.
4703 [2410k]. Defense contractors: listing of suitable employment openings with local employment service office.
4704 [Sec 8048 of P.L. 109-289 (10 U.S.C. 2304 note)]. Employment of State residents in States having unemployment rate in excess of national average."

1 (b) TRANSFER OF TITLE 10 SECTIONS.—Sections 2409, 2410j, and 2410k of title 10,
2 United States Code, are **transferred** to chapter 365 of such title, as amended by subsection (a),
3 **inserted** (in that order) after the table of sections, and **redesignated** as sections 4701, 4702, and
4 4703, respectively.

Commented [CR1045]: Compare 10 U.S.C. 2409 to 41 U.S.C. 4712

5 (c) CODIFICATION OF PROVISION RELATING TO STATUTORY CONSTRUCTION.—

6 (1) **CODIFICATION**.—Section 4701 of title 10, United States Code, as transferred
7 and redesignated by subsection (b), is further amended by adding at the end the following
8 new subsection:

9 “(h) [Sec. 827(h) of P.L. 112-239 (10 U.S.C. 2324 note); see 41 U.S.C. 4712(h)]

Commented [CR1046]: Note that title 41 has a provision similar to this proposed new subsection.

10 CONSTRUCTION.—Nothing in this section, or section 827 of Public Law 112-239, or the
11 amendments made by that section, shall be construed to provide any rights to disclose classified
12 information not otherwise provided by law.”

13 (2) **CONFORMING REPEAL**.—Section 827(h) of the National Defense
14 Authorization Act for Fiscal Year 2013 (Public Law 112-239; 10 U.S.C. 2324 note) is
15 **repealed**.

16 (d) CODIFICATION OF OTHER CONTRACTOR WORKFORCE PROVISION.—

17 (1) **CODIFICATION**.—Chapter 365 of title 10, United States Code, as amended by
18 subsections (a) and (b), is amended by adding at the end the following new section:

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1 “§ 4704 [Sec 8048 of P.L. 109-289 (10 U.S.C. 2304 note)]. Employment of State residents in
2 States having unemployment rate in excess of national average

3 “(a) REQUIREMENT.—Notwithstanding any other provision of law, each contract awarded
4 by the Department of Defense during the current fiscal year and hereafter for construction or
5 service performed in whole or in part in a State (as defined in section 281(d) of this title) which
6 is not contiguous with another State and has an unemployment rate in excess of the national
7 average rate of unemployment as determined by the Secretary of Labor, shall include a provision
8 requiring the contractor to employ, for the purpose of performing that portion of the contract in
9 such State that is not contiguous with another State, individuals who are residents of such State
10 and who, in the case of any craft or trade, possess or would be able to acquire promptly the
11 necessary skills.

12 “(b) CASE-BY-CASE WAIVER AUTHORITY.—The Secretary of Defense may waive the
13 requirements of this section, on a case-by-case basis, in the interest of national security.”

14 (2) CONFORMING REPEAL.—Section 8048 of the Department of Defense
15 Appropriations Act, 2007 (div. A of Public Law 109-289; 10 U.S.C. 2304 note) is
16 repealed.

17 (e) REPEAL OF REDUNDANT PROVISION.—Section 842 of the Duncan Hunter National
18 Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2409 note) is
19 repealed.

20 SEC. 804. OTHER ADMINISTRATIVE MATTERS.

Commented [CR1047]: Note that this section would codify a provision from a defense appropriations Act. The appropriations provision is permanent and a note in the U.S. Code.

Commented [CR1048]: Generally, the phrase “Notwithstanding any other provision of law,” would be omitted as surplusage. In this case, does it serve a function relating to otherwise applicable employment laws? (Why did the appropriators include it originally?) Would any inference be drawn if it is omitted? Note that this applies to contractor employees, not Federal employees. The phrase “Notwithstanding any other provision of law,” does not currently appear in acquisition-related provisions of title 10 and it would seem undesirable to start down that road. If a “notwithstanding” clause is essential here, could a particular statute or body of law be cited, rather than “any other provision of law”? Or, should it be kept in this instance since it is in current law, notwithstanding the strong general preference against it? DoD: Please advise as to the above.

Commented [CR1049]: The phrase “during the current fiscal year and hereafter” to be omitted as not needed outside an appropriations Act. That phrase is used in appropriations Acts to provide words of futurity and thereby to make a provision permanent.

Commented [CR1050]: Sec. 842 of the FY09 NDAA (10 U.S.C. 2409 note) is apparently redundant with 10 USC 2409(d), so that section would be repealed here without codification, as a clean-up matter. Note that subsection (d) of 10 USC 2409 was added to 2409 as part of the extensive amendments to 2409 made by sec. 827 of P.L. 112-239, the FY2013 NDAA, after the enactment of sec. 842. (Sec. 842 probably could have been repealed at that time as a conforming amendment.)

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended by striking chapter 367 and inserting the following:

CHAPTER 367—OTHER ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS MATTERS

- Sec. 4751 [2310; 41 U.S.C. 4701]. Determinations and decisions. 4752 [2312; 41 U.S.C. 4707]. Remission of liquidated damages. 4753 [2384]. Supplies: identification of supplier and sources. 4754 [2784; Sec. 8067 of P.L. 110-116, FY08 DoD Approp Act Perm GP (10 U.S.C. 2784 note); 41 U.S.C. 1909]. Management of purchase cards. 4755 [Sec 301 of WSARA, P.L. 111-23 (10 U.S.C. 2302 note)]. Awards for Department of Defense personnel for excellence in the acquisition of products and services. 4756 [Sec 895 of FY16 NDAA, P.L. 114-92 (10 U.S.C. 2304 note)]. Mitigating potential unfair competitive advantage of technical advisors to acquisition programs.

(b) TRANSFER OF TITLE 10 SECTIONS.—Sections 2310, 2312, 2384, and 2784 of title 10, United States Code, are transferred to chapter 367 of such title, as amended by subsection (a), inserted (in that order) after the table of sections, and redesignated as sections 4751, 4752, 4753, and 4754, respectively.

(c) AMENDMENTS TO TRANSFERRED SECTIONS.—

(1) SECTION 4751.—Section 4751 of title 10, United States Code, as transferred and redesignated by subsection (b), is amended—

(A) In subsection (a), by striking “made under this chapter” and inserting “[TBD]”; and

(B) in subsection (b)(1), by striking “section 2306(g)(1), 2307(d), or 2313(c)(2)(B)” and inserting “3531(a), 3803, and 3841(d)(2)(B)”.

Commented [CR1051]: Recommend deleting “and Miscellaneous” from the chapter heading.

Commented [CR1052]: Recommend changing “Provisions” to “Matters”.

Commented [CR1053]: Compare 10 U.S.C. 2310 to 41 U.S.C. 4701

Commented [CR1054]: Compare 10 U.S.C. 2312 to 41 U.S.C.4707

Commented [CR1055]: The reference to “this chapter” means ch. 137. How should this be updated? What determinations and decisions are covered now?

Commented [CR1056]: Note that current sec. 2310(b) (“Written Findings Required”) applies only to 3 specific sections of current law. Would it not be preferable to just add the provisions of 2313(b) into each of those 3 sections, rather than having a separate provision?

Commented [CR1057]: Note that 2306(g) was repealed and reenacted as 2306c by the FY2001 NDAA (Oct 30, 2000). DoD: Please verify that in current practice under 2310(b), the reference to section 2306(g)(1) is applied by substituting “2306c(a)”.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (2) SECTION 4752.—Section 4752 of title 10, United States Code, as transferred
2 and redesignated by subsection (b), is amended by striking “he considers” and inserting
3 “the Secretary considers”.

4 **(d) CODIFICATION OF PROVISION RELATING TO CREDITING OF REFUNDS RELATED TO**
5 **USE OF PURCHASE CARDS.—**

6 (1) **CODIFICATION.**—Section 4754 of title 10, United States Code, as transferred
7 and redesignated by subsection (b), is further amended by adding at the end the following
8 new subsection:

9 “(d) [Sec. 8067 of P.L. 110-116, FY08 DoD **Approp** Act Perm GP (10 U.S.C. 2784
10 **note); 41 U.S.C. 1909] CREDITING OF REFUNDS.—**Refunds attributable to the use of the
11 Government Purchase Card may be credited to operation and maintenance, and research,
12 development, test and evaluation accounts of the Department of Defense which are current when
13 the refunds are received.”.

14 **(2) CONFORMING AMENDMENTS.—**

15 (A) Section 8067 of the Department of Defense **Appropriations** Act, 2008
16 (division A of Public Law 110-116; 10 U.S.C. 2784 note), is amended by striking
17 “, refunds attributable to the use of the Government Purchase Card”.

18 (B) Section 1909(e) of title 41, United States Code, is amended by striking
19 “section 2784” and inserting “section 4754”.

20 (C) The table of sections at the beginning of chapter 165 of title 10, United
21 States Code, is amended by striking the item relating to section 2784.

22 **(e) CODIFICATION OF WSARA PROVISION.—**

Commented [CR1058]: Consider whether there would be any benefit in having the text of this title 10 section be parallel to the corresponding provision in title 41, particularly since both are administered by the Secretary of the Treasury. Is the current practice under the two provisions identical? If their meaning is the same in practice, should the wording of this title 10 provision be revised for parallel structure with the title 41 provision?

The text of 41 U.S.C.4707 is as follows:
“When a contract made on behalf of the Federal Government by the head of a Federal agency, or by an authorized officer of the agency, includes a provision for liquidated damages for delay, the Secretary of the Treasury on recommendation of the head of the agency may remit any part of the damages as the Secretary of the Treasury believes is just and equitable.”
A parallel text for title 10 would read as follows:
“When a contract made by the head of an agency includes a provision for liquidated damages for delay, the Secretary of the Treasury on recommendation of the head of the agency may remit any part of the damages as the Secretary of the Treasury believes is just and equitable.”

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (1) **CODIFICATION.**—Chapter 367 of title 10, United States Code, is further
2 amended by adding at the end a new section 4755 consisting of—

3 (A) a heading as follows:

4 “§ 4755 [Sec 301 of WSARA, P.L. 111-23 (10 U.S.C. 2302 note)]. Awards for Department of
5 **Defense personnel for excellence in the acquisition of products and services”;**
6 **and**

7 (B) a text consisting of the text of section 301 of the Weapon Systems
8 Acquisition Reform Act of 2009 (Public Law 111-23; 10 U.S.C. 2302 note),
9 revised—

10 (i) in subsection (a), by striking “Not later than” and all that
11 follows through “carrying out” and inserting “The Secretary of Defense
12 shall carry out”; and

13 (ii) by striking “Armed Forces” both places it appears and inserting
14 “armed forces”.

15 (2) **CONFORMING REPEAL.**—Section 301 of the Weapon Systems Acquisition
16 Reform Act of 2009 (Public Law 111-23; 10 U.S.C. 2302) is repealed.

17 (e) **CODIFICATION OF FY2016 NDAA PROVISION.**—

18 (1) **CODIFICATION.**—Chapter 367 of title 10, United States Code, is further
19 amended by adding after section 4755, as added by subsection (d), the following new
20 section:

21 “§ 4756 [Sec 895 of FY16 NDAA, P.L. 114-92 (10 U.S.C. 2304 note)]. Mitigating potential
22 **unfair competitive advantage of technical advisors to acquisition programs**

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 "Not later than 180 days after the date of the enactment of this Act [Nov. 25, 2015], the
2 The Under Secretary of Defense for Acquisition, Technology, and Logistics Acquisition and
3 Sustainment shall review, and as necessary revise or issue, issue such policy guidance as may
4 be necessary pertaining to the identification, mitigation, and prevention of potential unfair
5 competitive advantage conferred to technical advisors to acquisition programs."

Commented [CR1059]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled "Report on Allocation of Former Responsibilities of the [USD(AT&L)]" (see Appendix F).

TITLE IX-DEFENSE INDUSTRIAL BASE (PART V, SUBPART I)

Note: Below are the chapters for Part V that are derived from subchapters I-V of current ch. 148.

Part V, as enacted, would have provided these chapters as a single chapter, with 5 subchapters, as in current ch. 148.

To provide greater visibility for the different elements of Part V, and because of the volume of material, each of these subchapters is presented as a separate chapter.

Each proposed chapter is set out as a separate bill section.

These five chapters are:

- 381. Defense Industrial Base Generally
382. Policies and Planning
383. Development, Application, & Support of Dual-Use Technologies
384. Manufacturing Technology
385. Other Technology Base Policies and Programs

SEC. 901. DEFENSE INDUSTRIAL BASE GENERALLY.

(a) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part V of subtitle A (as added by section 801 of Public Law 115-232), of title 10, United States Code, are amended by striking the items relating to chapter 381 and inserting the following:

"381. Defense Industrial Base Generally4801
"382. Policies and Planning4811
"383. Development, Application, & Support of Dual-Use Technologies.....4831
"384. Manufacturing Technology4841
"385. Other Technology Base Policies and Programs4851"

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (b) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
2 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
3 (Public Law 115-232), is amended by striking chapter 381 and inserting the following:

4 **“CHAPTER 381— DEFENSE INDUSTRIAL BASE GENERALLY**

Sec.

4801 [2500]. Definitions.

4802 [Sec. 214 of FY99 NDAA, P.L. 105-261 (10 U.S.C. 2501 note)]. Sense of Congress on
Defense Science and Technology Program.

4803 [Sec. 1118 of FY1995 NDAA, P.L. 103-337 (10 U.S.C. 2501 note)]. Documentation for
awards for cooperative agreements or other transactions under defense technology
reinvestment programs.

4804 [Sec. 4471 of FY1993 NDAA, P.L. 102-484 (10 U.S.C. 2501 note)]. Notice to contractors
and employees upon proposed and actual termination or substantial reduction in major
defense programs”.

5 (b) **DEFINITIONS.**—Section 2500 of such title is **transferred** to chapter 381 of such title,
6 as amended by subsection (a), **inserted** after the table of sections at the beginning, **redesignated**
7 as section 4801, and **amended**—

8 (1) by striking “In this chapter” and inserting “In this subpart”; and

9 (2) in paragraph (8), by striking “section 2505” and section 2501(a)” and inserting
10 “section 4815” and section 4811(a)”, respectively.

11 (c) **CODIFICATION OF FY1999 NDAA SECTION.**—

12 (1) **CODIFICATION.**—Chapter 381 of such title is further amended by adding after
13 section 4801, as transferred and redesignated by subsection (b), a new section 4802
14 consisting of—

15 (A) a heading as follows:

16 “§ 4802 [Sec. 214 of FY99 NDAA, P.L. 105-261 (10 U.S.C. 2501 note)]. Sense of Congress on

17 **Defense Science and Technology Program; and**

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(B) a text consisting of the text of subsections (b) and (d) of section 214 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 10 U.S.C. 2501 note), revised by redesignating those subsections as subsections (a) and (b), respectively.

(2) CONFORMING REPEAL.—Section 214 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 10 U.S.C. 2501 note) is repealed.

(d) CODIFICATION OF FY1995 NDAA SECTION.—

(1) CODIFICATION.—Chapter 381 of such title is further amended by adding after section 4802, as added by subsection (c), the following new section:

“§ 4803 [Sec. 1118 of FY1995 NDAA, P.L. 103-337 (10 U.S.C. 2501 note)]. Documentation for awards for cooperative agreements or other transactions under defense technology reinvestment programs

“(a) At the time of the award for a cooperative agreement or other transaction under a program carried out under chapter 148 of title 10, United States Code, a provision of this title specified in subsection (b), the head of the agency concerned shall include in the file pertaining to such agreement or transaction a brief explanation of the manner in which the award advances and enhances a particular national security objective set forth in section 4811(a) of this title or a particular policy objective set forth in section 2501(b) of this title.

“(b) The provisions of this title referred to in subsection (a) are the following: sections 4801, 4811-4816, 4831-4834, 4841-4843, 4851, 4852, 4861-4864, 4871, 4872, 4881-4884, 4891, and 4892 and chapter 389.”

Commented [CR1060]: Subsections (a) and (c) are omitted as OBE. Subsec (a) relates to funding requirements for FY2000 – FY2008. Subsec (c) relates to a one-time study & report.

Commented [CR1061]: This refers to a prior 2501(b) which stated policy objectives and which was repealed by the FY1996 NDAA, with former subsection (c) being redesignated as subsection (b). That is, 2501(b) as it now exists no longer sets forth policy objectives and the reference would be repealed as erroneous. OR, does DoD apply sec. 1118 of the FY1995 NDAA by considering the policy objectives that were set forth in 10 U.S.C. 2501(b) before its repeal?

Commented [CR1062]: These are the provisions in Part V derived from current ch. 148 itself (title 10 sections only – no “note” sections).

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (2) **CONFORMING REPEAL.**—Section 1118 of the National Defense Authorization
2 Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 2501 note) is repealed.

3 (e) **CODIFICATION OF FY1993 NDAA SECTION.**—

4 (1) **CODIFICATION.**—Chapter 381 of such title is further amended by adding after
5 section 4803, as added by subsection (d), a new section 4804 consisting of—

6 (A) a heading as follows:

7 “§ 4804 [Sec. 4471 of FY1993 NDAA, P.L. 102-484 (10 U.S.C. 2501 note)]. Notice to
8 **contractors and employees upon proposed and actual termination or**
9 **substantial reduction in major defense programs”;** and

10 (B) a text consisting of the text of section 4471 of the National Defense
11 Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2501
12 note), revised in subsection (f)(1) by striking “(as defined in section 2302(5) of
13 title 10, United States Code)”.

14 (2) **CONFORMING REPEAL.**—Section 4471 of the National Defense Authorization
15 Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2501 note) is repealed.

16 (f) **CROSS-REFERENCE AMENDMENTS.**—

17 (1) Section 843(c) of the John S. McCain National Defense Authorization Act for
18 Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2302 note) is amended—

19 (A) in paragraph (4), by striking “section 2302(9)” and inserting “section
20 3021”; and

21 (B) in paragraph (5), by striking “section 2500(5)” and inserting “section
22 4801(5)”.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (2) Section 2474(a)(2) of title 10, United States Code, is amended by striking
2 “section 2500(1)” and inserting “section 4801(1)”.

3 (3) Section 881(a) of the National Defense Authorization Act for Fiscal Year
4 2017 (Public Law 114–328; 10 U.S.C. 2501 note) is amended by striking “section 2500”
5 and inserting “section 4801”.

6 (4)(A) Section 812 of the National Defense Authorization Act for Fiscal Year
7 2004 (Public Law 108–136; 10 U.S.C. 2501 note) is amended—

8 (i) in subsection (a)(1)(B), by striking “section 2501” and inserting
9 “section 4811”; and

10 (ii) in subsection (b)(3), by striking “section 2507” and inserting “section
11 4817”.

12 (B) Section 814(c) of such Act is amended by striking “section 2534” and
13 inserting “section 4864”.

14 (5) Section 1712(c)(2) of the National Defense Authorization Act for Fiscal Year
15 2018 (Public Law 115–91; 10 U.S.C. 2536 note) is amended by striking “section 2500”
16 and inserting “section 4801”.

17 (6) Section 4813(c)(1)(C) of the Atomic Energy Defense Act (50 U.S.C.
18 2794(c)(1)(C)) is amended by striking “section 2500” and inserting “section 4801”.

19 **SEC. 902. POLICIES AND PLANNING.**

20 (a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by
21 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (Public Law 115-232), is amended by adding after chapter 381, as amended by section 901, the
 2 following new chapter:

3 **“CHAPTER 382— POLICIES AND PLANNING**

Sec.

- 4811 [2501, 2506]. National security strategy for national technology and industrial base.
- 4812 [2502]. National Defense Technology and Industrial Base Council.
- 4813 [2503]. National defense program for analysis of the technology and industrial base.
- 4814 [2504]. Annual report to Congress.
- 4815 [2505]. National technology and industrial base: periodic defense capability assessments.
- 4816 [2508]. Industrial Base Fund.
- 4817 [2507]. Data collection authority of President.
- 4818 [Sec. 1071 of FY18 NDAA, P.L. 115-91 (10 U.S.C. 2501 note)]. Enhanced analytical and monitoring capability of the defense industrial base.
- 4819 [Sec. 891 of FY2011 NDAA, P.L. 111-383 (10 U.S.C. 2501 note)]. Expansion of the industrial base.
- 4820 [Sec. 1352-1354 of FY1994 NDAA, P.L. 103-160 (10 U.S.C. 2501 note) National Shipbuilding Initiative.
- 4821 [Sec. 256 of FY2009 NDAA, P.L. 110-417 (10 U.S.C. 2501 note) Executive agent for printed circuit board technology.”

4 **(b) TRANSFER AND REDESIGNATION OF TITLE 10 SECTIONS.**—The sections of title 10,
 5 United States Code, specified in the left-hand column of the following table are **transferred** to
 6 chapter 382 of such title, as added by subsection (a), **inserted** (in the order shown in the
 7 following table) after the table of sections at the beginning of such chapter, and **redesignated** in
 8 accordance with the section numbers in the right-hand column, as follows:

Section	Redesignated section
2501	4811
2502	4812
2503	4813
2504	4814
2505	4815
2508	4816
2507	4817

9 **(c) SECTION 2506.**—

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1 (1) INSERTION OF TEXT OF SECTION 2506 AT END OF SECTION 4811.—Section 4811
2 of such title, as transferred and redesignated by subsection (b), is amended by adding at
3 the end the following new subsection:

4 “(c) [2506] DEPARTMENT OF DEFENSE TECHNOLOGY AND INDUSTRIAL BASE POLICY
5 GUIDANCE.—

6 (1) DEPARTMENTAL GUIDANCE.—The Secretary of Defense shall prescribe
7 departmental guidance for the attainment of each of the national security objectives set
8 forth in subsection (a).

9 (2) PURPOSE OF GUIDANCE.—The guidance prescribed pursuant to paragraph (1)
10 shall provide for technological and industrial capability considerations to be integrated
11 into the strategy, management, budget allocation, acquisition, and logistics support
12 decision processes.”

13 (2) CONFORMING REPEAL.—Section 2506 of such title is repealed.

14 (d) CONFORMING AMENDMENTS.—Sections of chapter 382 of such title, as transferred
15 and redesignated by subsection (b), are amended as follows:

16 (1) Section 4812, as so transferred and redesignated, is amended by striking
17 “section 2501(a)” in subsection (c)(1) and inserting “section 4811(a)”.

18 (2) Section 4813, as so transferred and redesignated, is amended by striking
19 “section 2505” in subsection (c)(3)(A) and inserting “section 4815”.

20 (3) Section 4814, as so transferred and redesignated, is amended—

21 (A) in the matter preceding paragraph (1), by inserting “through 2021”
22 after “of each year”;

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1 (B) in paragraph (1), by striking “section 2506” and inserting “section
2 4811(c)”;

3 (C) in paragraph (2), by striking “section 2505” and inserting “section
4 4815”; and

5 (D) in paragraph (3), by striking “section 2501” and “section 2505” and
6 inserting “section 4811” and “section 4815”, respectively;

7 (4) Section 4815, as so transferred and redesignated, is amended—

8 (A) in subsection (a), by striking “section 2501(a)” and inserting “section
9 4811(a)”;

10 (B) in subsection (b)(6), by striking “(as the term is defined in section
11 2430 of this title)”.

12 (5) Section 4817, as so transferred and redesignated, is amended in subsection
13 (a)—

14 (A) by inserting “(1)” after “AUTHORITY.—”;

15 (B) **by striking “of this chapter” and inserting “of the provisions of
16 this title specified in paragraph (2)”**;

17 (C) by striking “under this chapter” and inserting “under those
18 provisions”; and

19 (D) by adding at the end the following new paragraph:

20 “(2) The provisions of this title referred to in paragraph (1) are the following: sections
21 **4801, 4811-4816, 4831-4834, 4841-4843, 4851, 4852, 4861-4864, 4871, 4872, 4881-4884, 4891,**
22 **and 4892 and chapter 389.”.**

Commented [CR1063]: These are the provisions in Part V derived from current ch. 148 itself (title 10 sections only – no “note” sections).

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(e) CODIFICATION OF FY2018 NDAA SECTION.—

(1) **CODIFICATION.**—Chapter 382 of such title is further amended by adding after section 4817, as transferred and redesignated by subsection (b), a new section 4818 consisting of—

(A) a heading as follows:

“§ 4818 [Sec. 1071 of FY2018 NDAA, P.L. 115-91 (10 U.S.C. 2501 note)]. Enhanced analytical and monitoring capability of the defense industrial base”; and

(B) a text consisting of the text of section 1071 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2501 note), revised—

(i) in subsection (a)—

(I) in paragraph (1), by striking “Not later than” and all that follows through “existing process,” and inserting “The Secretary of Defense shall ensure that there is in the Department of Defense a process”;

(II) in paragraph (2), by striking “companies” in subparagraph (D) and inserting “company”; and

(iii) by striking paragraph (3); and

(ii) in subsection (b)—

(I) in paragraph (1)(A)(iii), by striking “section 2504 of title 10, United States Code” and inserting “section 4814 of this title”;

Commented [CR1064]: To be omitted as an OBE reporting requirement.

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(II) by striking paragraph (2); and

(III) by redesignating paragraphs (3) and (4) as paragraphs

(2) and (3), respectively.

(2) **CONFORMING REPEAL.**—Section 1071 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2501 note) is repealed.

(f) **CODIFICATION OF FY2011 NDAA SECTION.**—

(1) **CODIFICATION.**—Chapter 382 of such title is further amended by adding after section 4818, as added by subsection (e), a new section 4819 consisting of—

(A) a heading as follows:

“§ 4819 [Sec. 891 of FY2011 NDAA, P.L. 111-383 (10 U.S.C. 2501 note)]. **Expansion of the industrial base**”; and

(B) a text consisting of the text of section 891 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 2501 note), revised in subsection (f) by striking “chapter 142 of title 10, United States Code” and inserting “chapter 388 of this title”.

(2) **CONFORMING REPEAL.**—Section 891 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 10 U.S.C. 2501 note) is repealed.

(g) **CODIFICATION OF FY1994 NDAA SECTION.**—

(1) **CODIFICATION.**—Chapter 382 of such title is further amended by adding after section 4819, as added by subsection (f), a new section 4820 consisting of—

(A) a heading as follows:

Commented [CR1065]: To be omitted as an OBE reporting requirement.

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1 “§ 4820 [Sec. 1352-1354 of FY1994 NDAA, P.L. 103-160 (10 U.S.C. 2501 note) National
2 **Shipbuilding Initiative**”; and
3 (B) a text consisting of—
4 (i) the text of section 1352 of the National Defense Authorization
5 Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2501 note),
6 followed by
7 (ii) the text of section 1353 of such Act, revised by designating
8 such text as subsection (d) and inserting before “The Secretary of
9 Defense” the following: “ DEPARTMENT OF DEFENSE PROGRAM
10 MANAGEMENT THROUGH DEFENSE ADVANCED RESEARCH PROJECTS
11 AGENCY.—”; and followed by
12 (iii) the text of section 1354 of such Act, revised by redesignating
13 subsections (a) of and (b) of such text as subsections (e) and (f).
14 (2) **CONFORMING REPEAL.**—Sections 1352, 1353, and 1354 of the National
15 Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2501
16 note) are repealed.
17 (h) **CODIFICATION OF FY2009 NDAA SECTION.**—
18 (1) **CODIFICATION.**—Chapter 382 of such title is further amended by adding after
19 section 4820, as added by subsection (g), a new section 4821 consisting of—
20 (A) a heading as follows:
21 “§ 4821 [Sec. 256 of FY2009 NDAA, P.L. 110-417 (10 U.S.C. 2501 note) Executive agent for
22 **printed circuit board technology**”; and

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1 (B) a text consisting of the text of section 256 of the Duncan Hunter
2 National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417;
3 10 U.S.C. 2501 note), revised—

4 (i) in subsection (a), by striking “Not later than” and all that
5 follows through “the Secretary” and inserting “The Secretary”; and

6 (ii) in subsection (b)(1), by striking “Not later than” and all that
7 follows through “in accordance with” and inserting “In accordance with”.

8 (2) **CONFORMING REPEAL.**—Section 256 of the Duncan Hunter National Defense
9 Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2501 note) is
10 repealed.

11 (i) **CROSS-REFERENCE AMENDMENTS.**—

12 (1) Section 2198(c) of title 10, United States Code, is amended by striking
13 “section 2505” and “section 2501(a)” and inserting “section 4815” and “section 4811(a)”,
14 respectively.

15 (2) Section 2709(a) of such title is amended by striking “section 2501” and
16 inserting “section 4811”.

17 (3) Section 8685 of such title is amended by striking “section 2501(b)” in
18 subsections (a) and (c) and inserting “section 4811(b)”.

19 (4) Section 3(c)(2) of Public Law 101-233 (22 U.S.C. 3142(c)(2) is amended by
20 striking “section 2505” and inserting “section 4815”.

21 **SEC. 903. DEVELOPMENT, APPLICATION, AND SUPPORT OF DUAL-USE**
22 **TECHNOLOGIES.**

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1 (a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by
 2 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
 3 (Public Law 115-232), is amended by adding after chapter 382, as added by section 902, the
 4 following new chapter:

5 **“CHAPTER 383—DEVELOPMENT, APPLICATION, AND SUPPORT OF**
 6 **DUAL-USE TECHNOLOGIES**

- Sec.
- 4831 [2511]. Defense dual-use critical technology program.
- 4832 [2514]. Encouragement of technology transfer.
- 4833 [2519]. Federal Defense Laboratory Diversification Program.
- 4834 [2518]. Overseas foreign critical technology monitoring and assessment financial assistance program.
- 4835 [Sec. 203(d) & (i)(2) of FY1998 NDAA, P.L. 105-85 (10 U.S.C. 2511 note)]. Financial commitment of non-Federal Government participants.
- 4836 [Sec. 203(g) of FY1998 NDAA, P.L. 105-85 (10 U.S.C. 2511 note)]. Commercial Operations and Support Savings Initiative.
- 4837 [Sec. 233 of FY2018 NDAA, P.L. 115-91 (10 U.S.C. 2514 note) Incentives for technology transfer from Department of Defense laboratories: pilot program to improve.
- 4838 [Sec. 801 of FY2014 NDAA, P.L. 113-66 (10 U.S.C. 2514 note) Technology developed at Department of Defense laboratories: enhanced transfer.
- 4839 [Sec. 218(c) of FY1998 NDAA, P.L. 100-180 (10 U.S.C. 2514 note) Technology transfer to private sector: high-temperature superconductivity technology.”

7 (b) **TRANSFER AND REDESIGNATION OF TITLE 10 SECTIONS.**—The sections of title 10,
 8 United States Code, specified in the left-hand column of the following table are **transferred** to
 9 chapter 383 of such title, as added by subsection (a), **inserted** (in the order shown in the
 10 following table) after the table of sections at the beginning of such chapter, and **redesignated** in
 11 accordance with the section numbers in the right-hand column, as follows:

Section	Redesignated section
2511	4831
2514	4832
2519	4833
2518	4834

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1 (c) **CONFORMING AMENDMENTS.**—Sections of chapter 382 of such title, as transferred
2 and redesignated by subsection (b), are amended as follows:

3 (1) Section 4831, as so transferred and redesignated, is amended—
4 (A) in subsection (a), by striking “section 2501(a)” and “section 2371” and
5 inserting “section 4811(a)” and “section 4002”, respectively; and
6 (B) in subsection (e)(1), by striking “section 2501(a)” and inserting
7 “section 4811(a)”.

8 (2) Section 4832, as so transferred and redesignated, is amended in subsection (a)
9 by striking “section 2501(a)” and inserting “section 4811(a)”.

10 (3) Section 4833, as so transferred and redesignated, is amended—
11 (A) in subsection (a), by striking “section 2501(a)” and inserting “section
12 4811(a)”;
13 (B) in subsection (c)(1), by striking “section 2371” and inserting “section
14 4002”;
15 (C) in subsection (d)(2), by striking “section 2511(c)(2)” and inserting
16 “section 4831(c)(2)”;
17 (D) in subsection (f), by striking “section 2511(e)” and inserting “section
18 4831(e)”.

19 (d) **CODIFICATION OF FY1998 NDAA PROVISIONS.**—
20 (1) **CODIFICATION.**—Chapter 383 of such title is further amended by adding after
21 section 4834, as transferred and redesignated by subsection (b), the following new
22 sections:

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “§ 4835 [Sec. 203(d) & (i)(2) of FY1998 NDAA, P.L. 105-85 (10 U.S.C. 2511 note)].

2 **Financial commitment of non-Federal Government participants**

3 “(a) IN GENERAL.—The total amount of funds provided by a military department for a
4 dual-use project entered into by the Secretary of that department shall not exceed 50 percent of
5 the total cost of the project. In the case of a dual-use project initiated after November 18, 1997,
6 the Secretary may consider in-kind contributions by non-Federal participants only to the extent
7 such contributions constitute 50 percent or less of the share of the project costs by such
8 participants.

9 “(b) DEFINITION.—The term 'dual-use project' means a project under a program of a
10 military department or a Defense Agency under which research or development of a dual-use
11 technology is carried out and the costs of which are shared by the Department of Defense and
12 non-Government entities.

13 “§ 4836 [Sec. 203(g) of FY1998 NDAA, P.L. 105-85 (10 U.S.C. 2511 note)]. **Commercial**
14 **Operations and Support Savings Initiative**

15 “(a) The Secretary of Defense shall establish a Commercial Operations and Support
16 Savings Initiative (in this section referred to as the 'Initiative') to develop commercial products
17 and processes that the military departments can incorporate into operational military systems to
18 reduce costs of operations and support.

19 “(b) Projects and participants in the Initiative shall be selected through the use of
20 competitive procedures.

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1 "(c) The budget submitted to Congress by the President for each fiscal year pursuant to
2 section 1105(a) of title 31, United States Code, shall set forth separately the funding request for
3 the Initiative."

4 (2) **CONFORMING REPEAL.**—Section 203 of the National Defense Authorization
5 Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 2511 note) is repealed.

6 (e) **CODIFICATION OF FY2018 NDAA SECTION.**—

7 (1) **CODIFICATION.**—Chapter 383 of such title is further amended by adding after
8 section 4836, as added by subsection (d), a new section 4837 consisting of—

9 (A) a heading as follows:

10 **“§ 4837 [Sec. 233 of FY2018 NDAA, P.L. 115-91 (10 U.S.C. 2514 note) Incentives for**
11 **technology transfer from Department of Defense laboratories: pilot program**
12 **to improve”;** and

13 (B) a text consisting of the text of section 233 of the National Defense
14 Authorization Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2514
15 note), revised—

16 (i) in subsection (b)(2)(A), by striking “(as defined in section
17 101(a) of title 10, United States Code”;

18 (ii) in subsection (b)(2)(B), by striking “, United States Code”;

19 (iii) in subsection (c), by striking “, United States Code,”; and

20 (iv) in subsection (e), by striking “5 years after the date of the
21 enactment of this Act” and inserting “on December 12, 2022”.

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1 (2) **CONFORMING REPEAL.**—Section 233 of the National Defense Authorization
2 Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2514 note) is repealed.

3 (f) **CODIFICATION OF FY2014 NDAA SECTION.**—

4 (1) **CODIFICATION.**—Chapter 383 of such title is further amended by adding after
5 section 4837, as added by subsection (e), a new section 4838 consisting of—

6 (A) a heading as follows:

7 “§ 4838 [Sec. 801 of FY2014 NDAA, P.L. 113-66 (10 U.S.C. 2514 note) Technology developed
8 at Department of Defense laboratories: enhanced transfer”]; and

9 (B) a text consisting of the text of section 801 of the National Defense
10 Authorization Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 2514
11 note), revised—

12 (i) in subsection (a), by striking “DEFINITIONS.—As used in” and
13 all the follows through “(2) The term” and inserting “DEFINITION.—In this
14 section, the term” and redesignating subparagraphs (A) and (B) as
15 paragraphs (1) and (2), respectively;

16 (ii) in subsections (b)(1)(A) and (b)(2), by striking “, United States
17 Code.”; and

18 (iii) in subsection (b)(1)(C), by striking “, United States Code”.

19 (2) **CONFORMING REPEAL.**—Section 801 of the National Defense Authorization
20 Act for Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 2514 note) is repealed.

21 (g) **CODIFICATION OF FY1988 NDAA SECTION.**—

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1 (1) **CODIFICATION.**—Chapter 383 of such title is further amended by adding after
2 section 4838, as added by subsection (f), a new section 4839 consisting of—

3 (A) a heading as follows:

4 “§ 4839 [Sec. 218(c) of FY1998 NDAA, P.L. 100-180 (10 U.S.C. 2514 note) **Technology**
5 **transfer to private sector: high-temperature superconductivity technology**”;
6 **and**

7 (B) a text consisting of the text of section 218(c) of the National Defense
8 Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180; 10
9 U.S.C. 2514 note), revised by striking the subsection designation and heading and
10 redesignating paragraphs (1) and (2) as subsections (a) and (b), respectively.

11 (2) **CONFORMING REPEAL.**—Section 218(c) of the National Defense
12 Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180; 10 U.S.C. 2514
13 note) is repealed.

14 **SEC. 904. MANUFACTURING TECHNOLOGY.**

15 (a) **NEW CHAPTER.**—Part V of subtitle A of title 10, United States Code, as added by
16 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
17 (Public Law 115-232), is amended by adding after chapter 383, as added by section 903, the
18 following new chapter:

19 **“CHAPTER 384— MANUFACTURING TECHNOLOGY**

Sec.
4841 [2521(a)-(d), (f)]. Manufacturing Technology Program.
4842 [2521(e)]. Joint Defense Manufacturing Technology Panel.
4843 [2522]. Armament retooling and manufacturing.
4844 [Sec. 229 of FY2019 NDAA, P.L. 115-232 (10 U.S.C. 2521 note)]. Advanced manufacturing
activities.

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4845 [Secs. 241-245 of FY2006 NDAA, P.L. 109-163 (10 U.S.C. 2521 note)]. High-performance defense manufacturing technology research and development.

4846 [Sec. 214 of FY2008 NDAA, P.L. 110-181 (10 U.S.C. 2521 note)]. Defense-wide manufacturing science and technology program: limitation on use of funds.

1 (b) **TRANSFER AND REDESIGNATION OF SECTION 2521.**—

2 (1) **TRANSFER AND REDESIGNATION.**—Section 2521 of title 10, United States
3 Code, is **transferred** to chapter 384 of such title, as added by subsection (a), **inserted**
4 after the table of sections at the beginning of such chapter, and **redesignated** as section
5 4841.

6 (2) **CROSS-REFERENCE AMENDMENTS.**—Such section is amended—

7 (A) in subsection (a), by striking “section 2501(a)” and inserting “section
8 4811(a)” and

9 (B) in subsection (d)(1), by striking “section 2374” and inserting “section
10 4008”.

11 (c) **DESIGNATION OF FORMER SECTION 2521(e) AS SECTION 4842.**—

12 (1) Such chapter is further amended—

13 (A) by transferring subsection (f) of section 4481 within that section so as
14 to appear after subsection (d) and redesignating that subsection as subsection (e);
15 and

16 (B) by redesignating as section 4842 the subsection (e) following the
17 subsection transferred and redesignated by subparagraph (A) and inserting at the
18 beginning of such section 4842 the following section heading:

19 “§ 4842 [2521(e)]. **Joint Defense Manufacturing Technology Panel**”.

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(2) Section 4842 of title 10, United States Code, as designated by paragraph

(1)(B), is amended—

(A) by striking “(e) JOINT DEFENSE MANUFACTURING TECHNOLOGY PANEL.—”;

(B) by redesignating paragraphs (1) through (6) as subsections (a) through (f), respectively;

(C) in subsection (b), as so redesignated, by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;

(D) in subsection (c), as so redesignated, by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3) respectively;

(E) in subsection (d), as so redesignated—

(i) by striking “paragraph (3)” and inserting “subsection (c)”;

(ii) by redesignating subparagraphs (A), (B), (C), and (D) as paragraphs (1), (2), (3), and (4), respectively; and

(F) in subsection (e), as so redesignated, by striking “this paragraph” and inserting “this subsection”.

(d) TRANSFER AND REDESIGNATION OF SECTION 2522.—Section 2522 of title 10, United States Code, is **transferred** to chapter 384 of such title, as added by subsection (a), **inserted** after section 4842, as designated by subsection (c)(1), and **redesignated** as section 4843.

(e) CODIFICATION OF FY2019 NDAA SECTION.—

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1 (1) **CODIFICATION.**—Chapter 384 of such title is further amended by adding after
2 section 4843, as transferred and redesignated by subsection (d), a new section 4844
3 consisting of—

4 (A) a heading as follows:

5 “§ 4844 [Sec. 229 of FY2019 NDAA, P.L. 115-232 (10 U.S.C. 2521 note)]. **Advanced**

6 **manufacturing activities”;** and

7 (B) a text consisting of the text of section 229 of the John S. McCain
8 National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232;
9 10 U.S.C. 2521 note), revised—

10 (i) in subsection (d)(2), by striking “section 2368” and inserting
11 “section 4146”;

12 (ii) in subsection (d)(3), by striking “section 2374a” and inserting
13 “section 4064”; and

14 (iii) in subsection (d)(5), by striking “section 2521” and inserting
15 “section 4841”.

16 (2) **CONFORMING REPEAL.**—Section 229 of the John S. McCain National
17 Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2514
18 note) is repealed.

19 (f) **CODIFICATION OF FY2006 NDAA PROVISIONS.**—

20 (1) **CODIFICATION.**—Chapter 384 of such title is further amended by adding after
21 section 4844, as transferred and redesignated by subsection (d), the following new
22 section:

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1 “§ 4845 [Secs. 241-245 of FY2006 NDAA, P.L. 109-163 (10 U.S.C. 2521 note)]. High-
2 performance defense manufacturing technology research and development

3 “(a) [Sec. 241] PILOT PROGRAM FOR IDENTIFICATION AND TRANSITION OF ADVANCED
4 MANUFACTURING PROCESSES AND TECHNOLOGIES.—

5 “(1) PILOT PROGRAM REQUIRED.—The Under Secretary of Defense for
6 Acquisition, Technology, and Logistics shall conduct a pilot program under the authority
7 of section 4841 of this title to identify and transition advanced manufacturing processes
8 and technologies the utilization of which would achieve significant productivity and
9 efficiency gains in the defense manufacturing base.

10 “(2) CONSIDERATION OF DEFENSE PRIORITIES.—In carrying out paragraph (1), the
11 Under Secretary shall take into consideration the defense priorities established in the
12 most current Joint Warfighting Science and Technology plan, as required under section
13 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–
14 201).”

15 “(3) IDENTIFICATION FOR TRANSITION.—In identifying manufacturing processes
16 and technologies for transition to the defense manufacturing base under the pilot
17 program, the Under Secretary shall select the most promising transformational
18 technologies and manufacturing processes, in consultation with the Assistant Secretary of
19 Defense for Research and Engineering, the Joint Defense Manufacturing Technology
20 Panel, and other such entities as may be appropriate, including the Director of the Small
21 Business Innovation Research Program.

Commented [CR1066]: Are any of these provisions of the FY2006 NDAA still in effect? If so, those still in effect should be codified, as shown here. If any of these provisions are obsolete, they should not be codified and should be considered for repeal.
DoD: Please advise.

Commented [CR1067]: If sec. 241 the FY2006 NDAA is still in effect, should the AT&L reference here be changed to A&S or R&E or both? The DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]”, did NOT review NDAA provisions for fiscal years before FY2008. (Sec. 2, Inventory Methodology).

Commented [CR1068]: The section referred to was repealed by the FY2010 NDAA (Oct. 28, 2009). See codifier’s note under 10 USC 2501. The statute being codified here refers to “the most current ... plan” under that section. The latest plan under that section does still exist (even if at least 20 years old) and is what is literally referred to as what the Under Secretary “shall take into consideration” in carrying out paragraph (1).

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “(b) [Sec. 242] TRANSITION OF TRANSFORMATIONAL MANUFACTURING PROCESSES AND
2 TECHNOLOGIES TO DEFENSE MANUFACTURING BASE.—

3 “(1) PROTOTYPES AND TEST BEDS.—The Under Secretary of Defense for
4 Acquisition, Technology, and Logistics shall undertake the development of prototypes
5 and test beds to validate the manufacturing processes and technologies selected for
6 transition under the pilot program under subsection (a).

7 “(2) DIFFUSION OF ENHANCEMENTS.—The Under Secretary shall seek the
8 cooperation of industry in adopting such manufacturing processes and technologies
9 through the following:

10 “(A) The Manufacturing Extension Partnership Program.

11 “(B) The identification of incentives for industry to incorporate and utilize
12 such manufacturing processes and technologies.

13 “(c) [Sec. 243(a)] MANUFACTURING TECHNOLOGY STRATEGIES.—The Under Secretary of
14 Defense for Acquisition, Technology, and Logistics may—

15 “(1) identify an area of technology where the development of an industry-
16 prepared roadmap for new manufacturing and technology processes applicable to defense
17 manufacturing requirements would be beneficial to the Department of Defense; and

18 “(2) establish a task force, and act in cooperation, with the private sector to map
19 the strategy for the development of manufacturing processes and technologies needed to
20 support technology development in the area identified under paragraph (1).

21 “(d) [Sec. 245)] DEFINITIONS.—In this section:

Commented [CR1069]: IF sec. 242 the FY2006 NDAA is still in effect, should the AT&L reference here be changed to A&S or R&E or both? The DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]”, did NOT review NDAA provisions for fiscal years before FY2008. (Sec. 2, Inventory Methodology).

Commented [CR1070]: Sec 243(b) is omitted as OBE. It required the Under Secretary to commence any roadmapping identified pursuant to subsection (a)(1) [(c)(1) here] not later than January 2007.

Commented [CR1071]: IF sec. 243 the FY2006 NDAA is still in effect, should the AT&L reference here be changed to A&S or R&E or both? The DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]”, did NOT review NDAA provisions for fiscal years before FY2008. (Sec. 2, Inventory Methodology).

Commented [CR1072]: Sec 244 is omitted as OBE. It required a report not later than December 31, 2007.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “(1) DEFENSE MANUFACTURING BASE.—The term ‘defense manufacturing base’
2 includes any supplier of the Department of Defense, including a supplier of raw
3 materials.

4 “(2) MANUFACTURING EXTENSION PARTNERSHIP PROGRAM.—The term
5 ‘Manufacturing Extension Partnership Program’ means the Manufacturing Extension
6 Partnership Program of the Department of Commerce.”

7 (2) **CONFORMING REPEAL.**—Subtitle D of title II of the National Defense
8 Authorization Act for Fiscal Year 2006 (Public Law 109–163; 10 U.S.C. 2521 note) is
9 repealed.

10 **(g) CODIFICATION OF FY2008 NDAA SECTION.**—

11 (1) **CODIFICATION.**—Chapter 384 of such title is further amended by adding after
12 section 4845, as transferred and redesignated by subsection (d), a new section 4846
13 consisting of—

14 (A) a heading as follows:

15 “§ 4846 [Sec. 214 of FY2008 NDAA, P.L. 110-181 (10 U.S.C. 2521 note)]. **Defense-wide**
16 **manufacturing science and technology program: limitation on use of funds”;**
17 **and**

18 (B) a text consisting of the text of section 214 of the National Defense
19 Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2521
20 note), revised in paragraph (2)(A) by striking “section 2521 of title 10, United
21 States Code” and inserting “section 4841 of this title”.

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1 (2) CONFORMING REPEAL.— Section 214 of the National Defense Authorization
2 Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2521 note) is repealed.

3 (h) CROSS-REFERENCE AMENDMENT.—Section 1644(f)(1) of the John S. McCain
4 National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 10 U.S.C. 2224
5 note) is amended by striking “section 2521” and inserting “section 4841”.

6 SEC. 905. OTHER TECHNOLOGY BASE POLICIES AND PROGRAMS.

7 (a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by
8 section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019
9 (Public Law 115-232), is amended by adding after chapter 384, as added by section 904, the
10 following new chapter:

11 “CHAPTER 385—OTHER TECHNOLOGY BASE POLICIES AND
12 PROGRAMS

Subchapter Sec.
I. Defense Trade Reciprocity and Offset Policy4851
II. Limitations on Procurement of Certain Items from Foreign Sources.....4861
III. Limitations on Procurement from Certain Foreign Sources.....4871
IV. Defense Industrial Reserve and Industrial Mobilization4881
V. Other Matters 4891

13 SUBCHAPTER I—DEFENSE TRADE RECIPROCITY AND OFFSET POLICY

Sec.
4851 [2531]. Defense memoranda of understanding and related agreements.
4852 [2532]. Offset policy; notification.
4853 [Sec 831 of FY05 NDAA, P.L. 108-375 (10 U.S.C. 2531 note)]. Defense trade reciprocity.”

14 (b) SUBCHAPTER I.—

15 (1) TRANSFER AND REDESIGNATION OF SECTIONS 2531 AND 2532.—Sections 2531
16 and 2532 of title 10, United States Code, are transferred to chapter 385 of such title, as

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 added by subsection (a), **inserted** after the table of sections at the beginning of
2 subchapter I, and **redesignated** as sections 4851 and 4852, respectively.

3 (2) CODIFICATION OF FY2005 NDAA SECTION.—

4 (A) Chapter 385 of such title is further amended by adding after section
5 4852, as transferred and redesignated by paragraph (1), a new section 4853
6 consisting of—

7 (i) a heading as follows:

8 “§ 4853 [Sec 831 of FY05 NDAA, P.L. 108-375 (10 U.S.C. 2531 note)]. Defense trade
9 reciprocity”; and

10 (ii) a text consisting of the text of section 831 of the Ronald W.
11 Reagan National Defense Authorization Act for Fiscal Year 2005 (Public
12 Law 108–375; 10 U.S.C. 2531 note), revised in subsection (d)(1)(A) by
13 striking “section 2531(a) of title 10, United States Code” and inserting
14 “section 4851(a) of this title”.

15 (B) **CONFORMING REPEAL.**— Section 831 of the Ronald W. Reagan
16 National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375;
17 10 U.S.C. 2531 note) is repealed.

18 (c) **SUBCHAPTER II.**—

19 (1) DESIGNATION OF SUBCHAPTER II.—Chapter 385 of title 10, United States Code,
20 is further amended by adding after subchapter I, as added by subsection (b), the
21 following:

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 “SUBCHAPTER II— LIMITATIONS ON PROCUREMENT OF CERTAIN
2 ITEMS FROM FOREIGN SOURCES

Sec.

4861 [2533]. Determinations of public interest under chapter 83 of title 41.

4862 [2533a]. Requirement to buy certain articles from American sources; exceptions.

4863 [2533b]. Requirement to buy strategic materials critical to national security from American sources; exceptions.

4864 [2534]. Miscellaneous limitations on the procurement of goods other than United States goods.

4865 [Sec 884 of FY08 NDAA, P.L. 110-181 (10 U.S.C. 2533b note)]. Requirements relating to waivers of certain domestic source limitations relating to specialty metals.

4866 [Sec 1601 of FY14 NDAA, P.L. 133-66; sec. 832 of FY06 NDAA, P.L. 109-163 (10 U.S.C. 2533a note)]. Periodic audits; acquisition workforce training.

4867 [Sec 829 of FY08 NDAA, P.L. 110-181 (10 U.S.C. 2533a note)]. Fire resistant rayon fiber.”

3 (2) TRANSFER AND REDESIGNATION OF SECTIONS 2533, 2533a, 2533b, AND
4 2534.—

5 (A) IN GENERAL.—Sections 2533, 2533a, 2533b, and 2534 of title 10,
6 United States Code, are **transferred** to chapter 385 of such title, as added by
7 subsection (a), **inserted** (in that order) after the table of sections at the beginning
8 of subchapter II, and **redesignated** as sections 4861, 4862, 4863, and 4864,
9 respectively.

10 (B) CROSS-REFERENCES.—

11 (i) Section 4862 of such title, as so transferred and redesignated, is
12 amended—

13 (I) in subsection (d)(4), by striking by striking “section
14 2304(c)(2)” and inserting “section 3204(a)(2)”; and

15 (II) in subsection (h), by striking “section 2304(g)” and
16 inserting “section 3205”.

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1 (ii) Section 4863 of such title, as so transferred and redesignated, is
2 amended—

3 (I) in subsection (c)(2), by striking by striking “section
4 2304(c)(2)” and inserting “section 3204(a)(2)”; and

5 (II) in subsection (f), by striking “section 2304(g)” and
6 inserting “section 3205”.

7 (iii) Section 4864 of such title, as so transferred and redesignated,
8 is amended—

9 (I) in subsection (d)(3), by striking by striking “section
10 2531” and inserting “section 4851”;

11 (II) in subsections (d)(4) and (d)(5), by striking “(as defined
12 in section 2500(1) of this title”;

13 (III) in subsection (e)(3), by striking by striking “section
14 2532(d)(1)” and inserting “section 4852(d)(1)”; and

15 (IV) in subsection (k)(2)(B), by striking “section 2500(1)”
16 both places it appears and inserting “section 4801(1)”.

17 (C) OBSOLETE PROVISIONS.— Section 4864 of such title, as so transferred
18 and redesignated, is further amended—

19 (i) by striking paragraph (4) of subsection (a) and paragraph (2) of
20 subsection (c);

21 (ii) by striking paragraph (5) of subsection (a) and paragraph (3) of
22 subsection (c);

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(iii) by striking clause (iii) of subsection (a)(3)(A), paragraph (3) of subsection (b), and paragraph (4) of subsection (c);

(iv) by striking paragraph (2) of subsection (a), paragraph (2) of subsection (b), and paragraph (5) of subsection (c); and

(v) in subsection (g), by striking “(1)” and by striking paragraph (2).

(3) CODIFICATION OF FY2008 NDAA SECTION.—

(A) Chapter 385 of such title is further amended by adding after section 4864, as transferred and redesignated by paragraph (1), a new section 4865 consisting of—

(i) a heading as follows:

“§ 4865 [Sec 884 of FY08 NDAA, P.L. 110-181 (10 U.S.C. 2533b note)]. Requirements relating to waivers of certain domestic source limitations relating to specialty metals”; and

(ii) a text consisting of the text of section 884 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2533b note), revised by striking “section 2533b(b) of title 10, United States Code,” both places it appears and inserting “section 4863(b) of this title”.

(B) **CONFORMING REPEAL.**—Section 884 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2533b note) is repealed.

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(4) CODIFICATION OF FY2014 AND FY2006 NDAA SECTIONS.—

(A) Chapter 385 of such title is further amended by adding after section 4865, as added by paragraph (1), the following new section:

“§ 4866 [Sec 1601 of FY14 NDAA, P.L. 133-66; sec. 832 of FY06 NDAA, P.L. 109-163 (10 U.S.C. 2533a note)]. **Periodic audits; acquisition workforce training**

“(a) [Sec 1601 of FY14 NDAA, P.L. 133-66 (10 U.S.C. 2533a note)]. PERIODIC AUDITS OF CONTRACTING COMPLIANCE BY INSPECTOR GENERAL OF DEPARTMENT OF DEFENSE.—

“(1) REQUIREMENT FOR PERIODIC AUDITS OF CONTRACTING COMPLIANCE.—The Inspector General of the Department of Defense shall conduct periodic audits of contracting practices and policies related to procurement under section 4862 of this title.

“(2) REQUIREMENT FOR ADDITIONAL INFORMATION IN SEMIANNUAL REPORTS.—The Inspector General of the Department of Defense shall ensure that findings and other information resulting from audits conducted pursuant to paragraph (1) are included in the semiannual report transmitted to congressional committees under section 8(f)(1) of the Inspector General Act of 1978 (5 U.S.C. App.).

“(b) [Sec. 832 of FY06 NDAA, P.L. 109-163 (10 U.S.C. 2533a note)]. TRAINING FOR DEFENSE ACQUISITION WORKFORCE ON THE REQUIREMENTS OF SECTION 4862.— The Secretary of Defense shall ensure that any training program developed or implemented after January 6, 2006, for members of the defense acquisition workforce who participate personally and substantially in the acquisition of textiles on a regular basis includes comprehensive information on the requirements of section 4862 of this title and the regulations implementing that section.”.

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1 (B) CONFORMING REPEALS.— The following provisions of law are
2 repealed:

3 (i) Section 1601 of the National Defense Authorization Act for
4 Fiscal Year 2014 (Public Law 113–66; 10 U.S.C. 2533a note).

5 (ii) Section 832 of the National Defense Authorization Act for
6 Fiscal Year 2006 (Public Law 109–163; 10 U.S.C. 2533a note).

7 (5) CODIFICATION OF FY2008 NDAA SECTION.—

8 (A) Chapter 385 of such title is further amended by adding after section
9 4866, as added by paragraph (4), a new section 4867 consisting of—

10 (i) a heading as follows:

11 “§ 4867 [Sec 829 of FY08 NDAA, P.L. 110-181 (10 U.S.C. 2533a note)]. Fire resistant rayon
12 fiber”; and

13 (ii) a text consisting of the text of subsections (a) through (d) of
14 section 829 of the National Defense Authorization Act for Fiscal Year
15 2008 (Public Law 110–181; 10 U.S.C. 2533a note), revised—

16 (I) in subsection (a)(2)(B), by striking “section 2304 of title
17 10, United States Code” and inserting “sections 3201 and 3203-
18 3205 of this title”; and

19 (II) in subsection (d)(1), by striking “section 2531 of title
20 10, United States Code” and inserting “section 4851 of this title”.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (B) CONFORMING REPEAL.—Section 829 of the National Defense
2 Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2531
3 note) is repealed.

4 (6) CROSS-REFERENCE AMENDMENTS.—

5 (A) Section 2375(e)(2) of title 10, United States Code, is amended by
6 striking “section 2533a” and “section 2533b” and inserting “section 4862” and
7 “section 4863”, respectively.

8 (B) Section 8118 of Public Law 108-287 (10 U.S.C. 2553a) is amended by
9 striking “section 2533a(f)” and inserting “section 4862(f)”.

10 (C) Section 418(d)(2)(A) of title 37, United States Code, is amended by
11 striking “section 2533a” and inserting “section 4862”.

12 (D) Section 187(b)(5) of title 10, United States Code, is amended by
13 striking “section 2533b” and inserting “section 4863”.

14 (d) SUBCHAPTER III.—

15 (1) DESIGNATION OF SUBCHAPTER III.—Chapter 385 of title 10, United States
16 Code, is further amended by adding after subchapter II, as added by subsection (c), the
17 following:

18 “SUBCHAPTER III— LIMITATIONS ON PROCUREMENT FROM CERTAIN
19 FOREIGN SOURCES

Sec.
4871 [2533c]. Acquisition of sensitive materials from non-allied foreign nations: prohibition.
4872 [2536]. Award of certain contracts to entities controlled by a foreign government: prohibition.
4873 [Sec 842 of FY19 NDAA, P.L. 115-232 (10 U.S.C. 2536 note)]. Removal of national interest
determination requirements for certain entities.

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4874 [Sec 821 of FY04 NDAA, P.L. 108-136 (10 U.S.C. 2534 note)]. Elimination of unreliable sources of defense items and components.

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(2) TRANSFER AND REDESIGNATION OF SECTIONS 2533C AND 2536.—
(A) IN GENERAL.—Sections 2533c and 2536 of title 10, United States Code, are **transferred** to chapter 385 of such title, as added by subsection (a), **inserted** (in that order) after the table of sections at the beginning of subchapter III, and **redesignated** as sections 4871 and 4872, respectively.

(B) CROSS-REFERENCE AND CLERICAL AMENDMENTS.—
(i) Section 4871 of such title, as so transferred and redesignated, is amended by striking “section 2533b(m)” in subsection (d)(3) and inserting “section 4863(m)”.
(ii) The heading of such section is amended to read as follows:

“§ 4871 [2533c]. Acquisition of sensitive materials from non-allied foreign nations: prohibition”.

(3) CODIFICATION OF FY2019 NDAA SECTION.—
(A) IN GENERAL.—Chapter 385 of such title is further amended by adding after section 4872, as transferred and redesignated by paragraph (2), a new section 4873 consisting of—

(i) a heading as follows:

“§ 4873 [Sec 842 of FY19 NDAA, P.L. 115-232 (10 U.S.C. 2536 note)]. Removal of national interest determination requirements for certain entities”; and

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1 (ii) a text consisting of the text of subsections (a) and (c) of section
2 842 of the John S. McCain National Defense Authorization Act for Fiscal
3 Year 2019 (Public Law 115–232; 10 U.S.C. 2536 note), revised—

4 (I) in subsection (a), by striking “Effective October 1, 2020,
5 a covered” and inserting “A covered”;

6 (II) by redesignating subsection (c) as subsection (b); and

7 (III) in subsection (b), as so redesignated, by striking “(as
8 defined in section 2500 of title 10, United States Code)”.

9 (B) TRANSITION PROVISIONS.—

10 (i) PRESERVATION OF EFFECTIVE DATE.—Section 4873 of title 10,
11 United States Code, as added by subparagraph (A), shall take effect
12 October 1, 2020.

13 (ii) PRESERVATION OF ACCELERATION AUTHORITY.—

14 Notwithstanding the effective date in clause (i), the Secretary of Defense,
15 in consultation with the Director of the Information Security Oversight
16 Office, may waive the requirement to obtain a national interest
17 determination for a covered NTIB entity operating under a special security
18 agreement pursuant to the National Industrial Security Program that has—

19 “(I) a demonstrated successful record of compliance with
20 the National Industrial Security Program; and

21 “(II) previously been approved for access to proscribed
22 information.

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(iii) DEFINITIONS.—In clause (ii), the terms “covered NTIB entity” and “proscribed information” have the meanings given those terms in subsection (b) of section 4873 of title 10, United States Code, as added by subparagraph (A).

(C) CONFORMING REPEAL.—Section 842 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2536 note) is repealed.

(4) CODIFICATION OF FY2004 NDAA SECTION.—

(A) IN GENERAL.—Chapter 385 of such title is further amended by adding after section 4873, as added by paragraph (3), a new section 4874 consisting of—

(i) a heading as follows:

“§ 4874 [Sec 821 of FY04 NDAA, P.L. 108-136 (10 U.S.C. 2534 note)]. Elimination of unreliable sources of defense items and components”; and

(ii) a text consisting of the text of subsections (a), (b), and (c) of section 821 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C. 2534 note), revised in subsection (a) by striking “after the date of the enactment of this Act” and inserting “after November 24, 2003”.

(B) CONFORMING REPEAL.—Section 821 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C. 2534 note) is repealed.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (5) CROSS-REFERENCE AMENDMENT.—Section 2572(e)(2)(A) of title 10, United
2 States Code, is amended by striking “section 2536(c)(1)” and inserting “section
3 4872(c)(1)”.

4 (e) **SUBCHAPTER IV.**—

5 (1) DESIGNATION OF SUBCHAPTER IV.—Chapter 385 of title 10, United States
6 Code, is further amended by adding after subchapter III, as added by subsection (d), the
7 following:

8 “SUBCHAPTER IV—DEFENSE INDUSTRIAL RESERVE AND INDUSTRIAL
9 MOBILIZATION

Sec.

4881 [2535]. Defense Industrial Reserve.

4882 [2538]. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.

4883 [2539]. Industrial mobilization: plants; lists.

4884 [2539a]. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness.

10 (2) TRANSFER AND REDESIGNATION OF SECTIONS 2535, 2538, 2539, AND 2539a.—

11 (A) IN GENERAL.—Sections 2535, 2538, 2539, and 2539a of title 10,
12 United States Code, are **transferred** to chapter 385 of such title, as added by
13 subsection (a), **inserted** (in that order) after the table of sections at the beginning
14 of subchapter IV, and **redesignated** as sections 4881, 4882, 4883, and 4884,
15 respectively.

16 (B) CROSS-REFERENCE AMENDMENT.—Section 4884 of such title, as so
17 transferred and redesignated, is amended by striking “sections 2538 and 2539”
18 and inserting “sections 4882 and 4883”.

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

1 (3) CROSS-REFERENCE AMENDMENTS.—Sections 113(e)(5) and 581(f)(1)(A) of
2 title 40, United States Code, are amended by striking “section 2535” and inserting
3 “section 4881”.

4 (f) **SUBCHAPTER V.**—

5 (1) DESIGNATION OF SUBCHAPTER V.—Chapter 385 of title 10, United States
6 Code, is further amended by adding after subchapter IV, as added by subsection (e), the
7 following:

8 “SUBCHAPTER V—OTHER MATTERS

Sec.
4891 [2537]. Improved national defense control of technology diversions overseas.
4892 [2539b]. Availability of samples, drawings, information, equipment, materials, and certain services.
4893 [Sec 818(a)-(f) of FY12 NDAA, P.L. 112-81 (10 U.S.C. 2302 note)]. Detection and avoidance of
counterfeit electronic parts.”

9 (2) TRANSFER AND REDESIGNATION OF SECTIONS 2537 AND 2539b.—Sections
10 2537 and 2539b of title 10, United States Code, are **transferred** to chapter 385 of such
11 title, as added by subsection (a), **inserted** (in that order) after the table of sections at the
12 beginning of subchapter V, and **redesignated** as sections 4891 and 4892, respectively.

13 (3) CODIFICATION OF FY2012 NDAA SECTION.—

14 (A) IN GENERAL.—Chapter 385 of such title is further amended by adding
15 after section 4892, as transferred and redesignated by paragraph (2), a new section
16 4893 consisting of—

17 (i) a heading as follows:

18 “§ 4893 [Sec 818(a)-(f) of FY12 NDAA, P.L. 112-81 (10 U.S.C. 2302 note)]. Detection and
19 avoidance of counterfeit electronic parts”; and

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(ii) a text consisting of the text of subsections (b) through (f) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 10 U.S.C. 2302 note), revised by redesignating those subsections as subsections (a) through (e), respectively, and as further revised in accordance with subparagraphs (B) through (E).

(B) The text referred to in subparagraph (A)(ii) is revised in subsection (a) (as so redesignated)—

(i) by striking “Not later than” and all that follows through “under subsection (a)—” and inserting “The Secretary of Defense shall, based on the results of the assessment required by subsection (a) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81)—”; and

(ii) in paragraph (2), by striking “subsection (c)(2)” and inserting “subsection (b)(2).

(C) The text referred to in subparagraph (A)(ii) is revised in subsection (b) (as so redesignated)—

(i) in paragraph (1), by striking “Not later than” and all that follows through “to address” and inserting “The Secretary shall ensure that the Defense Federal Acquisition Regulation Supplement addresses”;

(ii) by striking “revised” before “regulations” in paragraphs (2), (3), and (4);

Commented [CR1073]: Subsection (a) required a one-time assessment to be completed NLT 180 days after the date of enactment of the FY2012 NDAA (Dec. 31, 2011), and therefore should not be codified.

Commented [CR1074]: While subsection (a) is a one-time requirement for an assessment, the duties of the SecDef under subsection (b) are to be “based on the assessment”. This reference will bring forward into the codification that requirement. While subsection (a), requiring the assessment, will be repealed, the results of the assessment previously conducted still exist.

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1 (iii) in paragraph (2)(B)(i), by striking “subsection (e)(2)(B)” and
2 inserting “subsection (d)(2)(B)”; and

3 (iv) in paragraph (3)(C), by striking “section 2319 of title 10,
4 United States Code,” and inserting “section 3243 of this title”.

5 (D) The text referred to in subparagraph (A)(ii) is revised in subsection (d)
6 (as so redesignated)—

7 (i) in paragraph (1), by striking “Not later than” and all that
8 follows through “the Secretary” and inserting “The Secretary”; and

9 (ii) in paragraph (2)(B), by striking “section 893” and all that
10 follows in that paragraph and inserting “section 3844 of this title.”.

11 (E) The text referred to in subparagraph (A)(ii) is revised in subsection (e)
12 (as so redesignated)—

13 (i) in the matter preceding paragraph (1), by striking “subsections
14 (a) through (e) of”;

15 (ii) in paragraph (1), by striking “section 893(f)(2)” and all that
16 follows in that paragraph and inserting “section 3844(h)(2) of this title;
17 and

18 (iii) in paragraph (2), by striking “, but not limited to.”.

19 (F) **CONFORMING REPEAL.**—Subsections (a)-(f) of section 818 of the
20 National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 10
21 U.S.C. 2302 note) are repealed.

22 **SEC. 906. SMALL BUSINESS PROGRAMS.**

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DEFENSE ACQUISITION LAWS REORGANIZATION (DALR) BILL

(a) NEW CHAPTER.—

(1) IN GENERAL.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended—

(A) by striking chapter 285; and

(B) by adding at the end the following new chapter:

“CHAPTER 387— SMALL BUSINESS PROGRAMS

“Subchapter
 “I. General 4901
 “II. SBIR and STTR Programs 4921

“SUBCHAPTER I—GENERAL

- “Sec.
 “4901 [10 U.S.C. 2283; Sec. 851(b) of P.L. 115-232, FY19 NDAA (10 U.S.C. 2283 note). Department of Defense small business strategy.
 “4902 [new]. Reference to Directors and Offices of Small Business Programs.
 “4903 [new]. Reference to certain programs provided in Small Business Act.
 “4904 [Sec. 1611 of P.L. 112-239, FY13 NDAA (10 U.S.C. 144 note)]. Directors of Small Business Programs: role in Department of Defense acquisition processes.
 “4905 [Sec. 834 of P.L. 101-189, FY90 NDAA (15 U.S.C. 637 note)]. Program for negotiation of comprehensive small business subcontracting plans.”

(2) TRANSFER OF SECTION 2283.—

(A) TRANSFER.—Section 2283 of title 10, United States Code (as added by section 851 of Public Law 115-232), is **transferred** to chapter 387 of such title, as added by paragraph (1), **inserted** after the table of sections at the end of subchapter I, **redesignated** as section 4901, and **amended**—

(i) in subsections (b)(3) and (e), by striking “chapter 142” and inserting “chapter 388”; and

Commented [CR1075]: In the new Part V, chapter 285 is just a shell with a chapter header and the word “[RESERVED]”. In Part V as enacted, the shell for Small Biz Pgms is ch. 285, in subpart D. However, on further consideration, it seemed better for this chapter to be in the Defense Industrial Base group. So, these amendments would (1) strike the shell chapter from where it is currently, and (2) insert the full chapter as chapter 387.

Commented [CR1076]: NOTE: In a previous draft for this chapter, a subchapter III was provided to codify section 831 of PL101-510 (10 U.S.C. 2302 note), the long-standing DoD Mentor-Protégé program. The authority to enter into new agreements under that program expired on 9/30/2018. The program itself, including authority to carry out existing agreements, will expire on 9/30/21 (per subsection (j)).
 In light of those dates, the proposed codification has been removed.
IF the DoD Mentor-Protégé program is renewed, an updated version of the codification language from that previous draft could be provided, if desired at that time.

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(ii) in subsection (c), by striking “section 801 of” and all that follows and inserting “section 306I of this title”.

(B) CODIFICATION OF PUBLICATION REQUIREMENT.—

(i) Such section is further amended by adding at the end the following new subsection:

“(f) [851(b) of P.L. 115-232, FY19 NDAA (10 U.S.C. 2283 note)] PUBLICATION ON PUBLIC WEBSITE.—The Secretary shall publish the strategy required by subsection (a) on a public website of the Department of Defense.”.

(ii) Section 851(b) of the John S. McCain 1710 National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 10 U.S.C. 2283 note) is amended by striking paragraph (2).

(3) REFERENCE TO CERTAIN SMALL BUSINESS PROVISIONS APPLICABLE TO DEPARTMENT OF DEFENSE.—Subchapter I of chapter 387 of title 10, United States Code, as added by paragraph (1), is amended by inserting after section 4901, as transferred and amended by paragraph (2), the following new sections:

“§ 4902 [new]. Reference to Directors and Offices of Small Business Programs

“(a) DEPARTMENT OF DEFENSE.—For the Director and the Office of Small Business Programs of the Department of Defense, see section 144 of this title.

“(b) MILITARY DEPARTMENTS.—For the Director and the Office of Small Business Programs of each of the Department of the Army, the Department of the Navy, and the Department of the Air Force, see sections 7024, 8028, and 9024, respectively, of this title.

“§ 4903 [new]. Reference to certain programs provided in Small Business Act

Commented [CR1077]: This repeal assumes that the DoD Small Business Strategy will have been developed and transmitted to Congress by the time this provision becomes law. The statutory deadline is 180 days after 8/13/2018, the date of enactment of the FY19 NDAA, which is mid-Feb 2019.

Commented [CR1078]: This is suggested as a useful cross-reference. Intended to be obviously just a nonsubstantive cross-reference. (From the 809 Panel recommendations in Vol. 1 of the Panel report.)

Commented [CR1079]: Section numbers are as redesignated effective Feb. 1, 2019

Commented [CR1080]: This is suggested as a useful cross-reference. It is intended to be obviously just a nonsubstantive cross-reference. (From the 809 Panel recommendations in Vol. 1 of the Panel report.)

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1 “Numerous programs that are applicable to contracting by the Department of Defense are
2 set forth in the Small Business Act (15 U.S.C. 631et seq.), including the following:

3 “(1) The Business Development Program under section 8(a) of the Small Business
4 Act (15 U.S.C. 637(a)).

5 “(2) The Women-Owned Small Businesses Program, including the Economically
6 Disadvantaged Women-Owned Small Business Program, under section 8(m) of the Small
7 Business Act (15 U.S.C. 637(m)).

8 “(3) The Historically Underutilized Business Zones (HUBZone) Program under
9 section 31 of the Small Business Act (15 U.S.C. 657a).

10 “(4) The Service Disabled Veteran-Owned Businesses Program under section 36
11 of the Small Business Act (15 U.S.C. 657f).

12 “(5) The Small Disadvantaged Business Set-Aside Program under Executive
13 order 13170, titled, ‘Increasing Opportunities and Access for Disadvantaged Businesses’
14 (15 U.S.C. 644 note).

Commented [CR1081]: DoD: Please confirm this citation.

15 “(6) The Small Business Subcontracting Program under the Small Business Act
16 (15 U.S.C. 631et seq.).”

Commented [CR1082]: No specific citation found for this program

17 (4) CODIFICATION OF NDAA SECTION ON ROLE OF DIRECTORS OF SMALL BUSINESS
18 PROGRAMS IN DEPARTMENT OF DEFENSE ACQUISITION PROCESSES.—

19 (A) IN GENERAL.—Subchapter I of chapter 387 of title 10, United States
20 Code, as added by paragraph (1), is amended by inserting after section 4903, as
21 added by paragraph (3), the following new section:

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1 “§ 4904 [Sec. 1611 of P.L. 112-239, FY13 NDAA (10 U.S.C. 144 note)]. Directors of Small
2 **Business Programs: role in Department of Defense acquisition processes**

3 “(a) GUIDANCE REQUIRED.—The Secretary of Defense shall ~~develop and~~ issue guidance
4 to ensure that the head of each Office of Small Business Programs of the Department of Defense
5 is a participant as early as practicable in the acquisition processes—

6 “(1) of the Department, in the case of the Director of Small Business Programs of
7 the Department of Defense; and

8 “(2) of the military department concerned, in the case of the Director of Small
9 Business Programs of the Department of the Army, the Department of the Navy, and the
10 Department of the Air Force.

11 “(b) MATTERS TO BE INCLUDED.—Such guidance shall, ~~at a minimum~~—

12 “(1) require the Director of Small Business Programs of the Department of
13 Defense to provide advice—

14 “(A) to the Defense Acquisition Board; and

15 “(B) to the Information Technology Acquisition Board; and

16 “(2) require coordination between the chiefs of staff of the armed forces and the
17 service acquisition executives, as appropriate (or their designees), and the Director of
18 Small Business Programs of the military department concerned as early as practical in the
19 relevant acquisition processes.”

20 (B) **CONFORMING REPEAL**.— Section 1611 of the National Defense
21 Authorization Act for Fiscal Year 2013 (Public Law 112–239; 10 U.S.C. 144
22 note) is repealed.

Commented [CR1083]: Phrase “develop and” from original is omitted here as OBE (and as unnecessary, since the guidance can’t be issued unless it is “developed”).

Commented [CR1084]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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(5) CODIFICATION OF NDAA SECTION ON DEPARTMENT OF DEFENSE PROGRAM FOR NEGOTIATION OF COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLANS.—

(A) IN GENERAL.—Subchapter I of chapter 387 of title 10, United States Code, as added by paragraph (1), is amended by adding after section 4904, as added by paragraph (4), the following new section:

“§ 4905 [Sec. 834 of P.L. 101-189, FY90 NDAA (15 U.S.C. 637 note)]. Program for negotiation of comprehensive small business subcontracting plans

“(a) PROGRAM.—

“(1) IN GENERAL.—The Secretary of Defense shall establish carry out a test program under which contracting activities in the military departments and the Defense Agencies are authorized to undertake one or more demonstration projects to determine whether the negotiation and administration of comprehensive subcontracting plans will reduce administrative burdens on contractors while enhancing opportunities provided under Department of Defense contracts for covered small business concerns. In selecting the contracting activities to undertake demonstration projects, the Secretary shall take such action as is necessary to ensure that a broad range of the supplies and services acquired by the Department of Defense are included in the program.

“(2) CONSULTATION AND OPPORTUNITY FOR PUBLIC COMMENT.—In developing the program, the Secretary of Defense shall—

“(A) consult with the Administrator of the Small Business Administration;

and

“(B) provide an opportunity for public comment on the program.

Commented [CR1085]: This note section to be codified here is from the FY90 NDAA. While it is a note in title 15 under the Small Business Act, it applies only to DoD and seems suitable for codification in title 10.

Commented [CR1086]: The word “test” before “program” is proposed to be omitted here and wherever else appearing. The program began Oct. 1, 1990, and terminates on Dec. 31, 2027. (see subsection (e)). Note that the activities under the program are still referred to as demonstration projects.

Commented [CR1087]: Paragraph headings have been added for the codification.

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1 “(b) COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLAN.—

2 “(1) IN GENERAL.—In a demonstration project under the program, the Secretary of
3 a military department or head of a Defense Agency shall negotiate, monitor, and enforce
4 compliance with a comprehensive subcontracting plan with a Department of Defense
5 contractor described in paragraph (4).

6 “(2) ELEMENTS OF COMPREHENSIVE PLAN.—The comprehensive subcontracting
7 plan of a contractor—

8 “(A) shall apply to the entire business organization of the contractor or to
9 one or more of the contractor's divisions or operating elements, as specified in the
10 subcontracting plan; and

11 “(B) shall cover each Department of Defense contract that is entered into
12 by the contractor and each subcontract that is entered into by the contractor as the
13 subcontractor under a Department of Defense contract.

14 “(3) SEMIANNUAL REPORTS BY CONTRACTOR.—Each comprehensive
15 subcontracting plan of a contractor shall require that the contractor report to the Secretary
16 of Defense on a semiannual basis the following information:

17 “(A) The amount of first-tier subcontract dollars awarded during the six-
18 month period covered by the report to covered small business concerns, with the
19 information set forth separately—

20 “(i) by North American Industrial Classification System code;

21 “(ii) by major defense acquisition program, as defined in section

22 ~~2430(a) of this title;~~

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1 “(iii) by contract, if the contract is for the maintenance, overhaul,
2 repair, servicing, rehabilitation, salvage, modernization, or modification of
3 supplies, systems, or equipment and the total value of the contract,
4 including options, exceeds \$100,000,000; and

5 “(iv) by military department.

6 “(B) The total number of subcontracts active under the ~~test~~ program
7 during the six-month period covered by the report that would have otherwise
8 required a subcontracting plan under paragraph (4) or (5) of section 8(d) of the
9 Small Business Act (15 U.S.C. 637(d)).

10 “(C) Costs incurred in negotiating, complying with, and reporting on
11 comprehensive subcontracting plans.

12 “(D) Costs avoided by adoption of a comprehensive subcontracting plan.

13 “(4) COVERED CONTRACTORS.—A Department of Defense contractor referred to
14 in paragraph (1) is, with respect to a comprehensive subcontracting plan negotiated in any
15 fiscal year, a business concern that, during the immediately preceding fiscal year,
16 furnished the Department of Defense with supplies or services (including professional
17 services, research and development services, and construction services) pursuant to at
18 least three Department of Defense contracts having an aggregate value of at least
19 \$100,000,000.

20 “(c) WAIVER OF CERTAIN SMALL BUSINESS ACT SUBCONTRACTING PLAN
21 REQUIREMENTS.—A Department of Defense contractor is not required to negotiate or submit a

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1 subcontracting plan under paragraph (4) or (5) of section 8(d) of the Small Business Act (15
2 U.S.C. 637(d)) with respect to a Department of Defense contract if—

3 “(1) the contractor has negotiated a comprehensive subcontracting plan under the
4 ~~test~~ program that includes the matters specified in section 8(d)(6) of the Small Business
5 Act (15 U.S.C. 637(d)(6));

6 “(2) such matters have been determined acceptable by the Secretary of the
7 military department or head of a Defense Agency negotiating such comprehensive
8 subcontracting plan; and

9 “(3) the comprehensive subcontracting plan applies to the contract.

10 “(d) FAILURE TO MAKE A GOOD FAITH EFFORT TO COMPLY WITH A COMPREHENSIVE
11 SUBCONTRACTING PLAN.—

12 “(1) LIQUIDATED DAMAGES.—A contractor that has negotiated a comprehensive
13 subcontracting plan under the program shall be subject to section 8(d)(4)(F) of the Small
14 Business Act (15 U.S.C. 637(d)(4)(F)) regarding the assessment of liquidated damages
15 for failure to make a good faith effort to comply with its comprehensive subcontracting
16 plan and the goals specified in that plan. In addition, any such failure shall be a factor
17 considered as part of the evaluation of past performance of an offeror.

18 “(2) REPORT TO CONGRESS.—~~Effective in fiscal year 2016 and~~ **In** each fiscal year
19 ~~thereafter~~ **after fiscal year 2015** in which the program is in effect, the Secretary of
20 Defense shall report to Congress on any negotiated comprehensive subcontracting plan
21 that the Secretary determines did not meet the subcontracting goals negotiated in the plan
22 for the prior fiscal year.

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1 “(e) PROGRAM PERIOD.—The program authorized by subsection (a) shall terminate on
2 December 31, 2027.

Commented [CR1088]: In the original, the first sentence of this subsection provided for the program to begin on Oct. 1, 1990. That is omitted here as OBE.

3 “(f) COVERED SMALL BUSINESS CONCERN DEFINED.—In this section, the term ‘covered
4 small business concern’ includes each of the following:

Commented [CR1089]: In the original, subsection (f), omitted here, required a report NLT Sept. 30, 2015. GAO-16-27 (<https://www.gao.gov/products/GAO-16-27>) was issued 11/16/15.

5 “(1) A small business concern, as that term is defined under section 3(a) of the
6 Small Business Act (15 U.S.C. 632(a)).

7 “(2) A small business concern owned and controlled by veterans, as that term is
8 defined in section 3(q)(3) of such Act (15 U.S.C. 632(q)(3)).

9 “(3) A small business concern owned and controlled by service-disabled veterans,
10 as that term is defined in section 3(q)(2) of such Act (15 U.S.C. 632(q)(2)).

11 “(4) A qualified HUBZone small business concern, as that term is defined under
12 section 3(p)(5) of such Act (15 U.S.C. 632(p)(5)) and effective January 1, 2020, as
13 defined in section 31(b)(4) of such Act (15 U.S.C. 657a(b)(4)).

14 “(5) A small business concern owned and controlled by socially and economically
15 disadvantaged individuals, as that term is defined in section 8(d)(3)(C) of such Act (15
16 U.S.C. 637(d)(3)(C)).

17 “(6) A small business concern owned and controlled by women, as that term is
18 defined under section 3(n) of such Act (15 U.S.C. 632(n)).”

19 (B) CONFORMING REPEAL.—Section 834 of the National Defense
20 Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 15
21 U.S.C. 637 note) is repealed.

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1 (b) DEPARTMENT OF DEFENSE AUTHORITIES RELATING TO SMALL BUSINESS INNOVATION
2 RESEARCH PROGRAM AND SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM.—

3 (1) NEW SUBCHAPTER.—Chapter 387 of title 10, United States Code, as
4 added by subsection (a), is amended by adding at the end the following new
5 subchapter:

6 “SUBCHAPTER II—SBIR AND STTR PROGRAMS

“Sec.

“4921 [Sec. 1710(a) of P.L. 115-91 (10 U.S.C. 2304 note)]. Definitions.

“4922 [Sec. 1710(b)-(e) of P.L. 115-91 (10 U.S.C. 2304 note)]. SBIR and STTR Programs: pilot program for streamlined technology transition.

“4923 [Sec. 857 of P.L. 115-232, FY19 NDAA]. Consolidated budget display for Department of Defense SBIR and STTR Programs.

7 “§ 4921 [Sec. 1710(a) of P.L. 115-91 (10 U.S.C. 2304 note)]. **Definitions**

Commented [CR1090]: Separate definitions section recommended for possible future growth in this subchapter.

8 “In this subchapter:

9 “(1) [1710(a)(1) (partial)] SBIR PROGRAM.—The terms ‘Small Business
10 Innovation Research Program’ and ‘SBIR program’ have the meaning given those terms
11 in paragraph (4) of section 9(e) of the Small Business Act (15 U.S.C. 638(e)).

12 “(2) [1710(a)(1) (partial)] STTR PROGRAM.—The terms ‘Small Business
13 Technology Transfer Program’ and ‘STTR Program’ have the meaning given those terms
14 in paragraph (6) of section 9(e) of the Small Business Act (15 U.S.C. 638(e)).

15 “(3) [1710(a)(1) (partial)] The terms ‘Phase I’, ‘Phase II’, and ‘Phase III’ have the
16 meanings given those terms in paragraphs (11), (12), and (13), respectively, of section
17 9(e) of the Small Business Act (15 U.S.C. 638(e)).

18 “(4) [1710(a)(5)] The term ‘small business concern’ has the meaning given that
19 term in section 3 of the Small Business Act (15 U.S.C. 632).

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"(5) [1710(a)(3)] The term 'multiple award contract' has the meaning given that term in section 3302(a) of title 41.

“(6) [1710(a)(1) (partial)] The terms 'commercialization' and 'Federal agency' have the meanings given those terms in in paragraphs (10) and (2), respectively, of section 9(e) of the Small Business Act (15 U.S.C. 638(e)).

“§ 4922 [Sec. 1710(b)-(e) of P.L. 115-91 (10 U.S.C. 2304 note)]. SBIR and STTR Programs: pilot program for streamlined technology transition

"(a) [1710(b)] ESTABLISHMENT.—

“(1) PILOT PROGRAM.—The Secretary of Defense shall establish carry out a pilot program under which the Department of Defense shall award multiple award contracts to covered small business concerns for the purchase of technologies, supplies, or services that the covered small business concern has developed through the SBIR or STTR program.

Commented [CR1091]: The original begins with “NLT 180 days after the date of the enactment of this Act [Dec. 12, 2017],”. That is omitted here as OBE.

"(2) [1710(a)(2)] COVERED SMALL BUSINESS CONCERNS.—In this section, the term 'covered small business concern' means—

Commented [CR1092]: This definition is here rather than in 4921 above because it is specific to the policy in this section.

"(A) a small business concern that completed a Phase II award under the SBIR or STTR program of the Department of Defense; or

"(B) a small business concern that—

"(i) completed a Phase I award under the SBIR or STTR program of the Department; and

"(ii) a contracting officer for the Department recommended for inclusion in a multiple award contract described in paragraph (1).

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1 "(b) [1710(c)] WAIVER OF COMPETITION IN CONTRACTING ACT REQUIREMENTS.—The
2 Secretary of Defense may establish procedures to waive provisions of section ~~2304~~ *sections*
3 *3201-3205* of this title for purposes of carrying out the pilot program.

4 "(c) [1710(d)] USE OF CONTRACT VEHICLE.—A multiple award contract described in
5 subsection (a) may be used by any military department or component of the Department *of*
6 *Defense*.

7 "(d) [1710(e)] TERMINATION.—The pilot program established under this section shall
8 terminate on September 30, 2023.

9 "(e) [1710(f)] RULE OF CONSTRUCTION.—Nothing in this section shall be construed to
10 prevent the commercialization of products and services produced by a small business concern
11 under an SBIR or STTR program of a Federal agency through—

12 "(1) direct awards for Phase III of an SBIR or STTR program; or

13 "(2) any other contract vehicle."

14 (2) **CONFORMING REPEAL**.—Section 1710 of the National Defense Authorization
15 Act for Fiscal Year 2018 (Public Law 115–91; 10 U.S.C. 2304 note) is **repealed**.

16 (c) **CODIFICATION OF FISCAL YEAR 2019 NDAA SECTION**.—

17 (1) **IN GENERAL**.—Subchapter II of chapter 387 of title 10, United States Code, as
18 added by subsection (b), is amended by adding after section 4922 a new section 4923
19 consisting of—

20 (A) a heading as follows:

21 "§ 4923 [Sec. 857 of P.L. 115-232, **FY19 NDAA**]. Consolidated budget display for
22 **Department of Defense SBIR and STTR Programs**" and

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(B) a text consisting of the text of section 857 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232), revised—

- (i) in subsection (a), by striking “, United States Code”; and
(ii) in subsection (b)(4), by striking “of title 10, United States Code” and inserting “of this title”.

(2) CONFORMING REPEAL.—Section 857 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232) is repealed.

SEC. 907. PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM.

(a) NEW CHAPTER.—

(1) IN GENERAL.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended—

(A) by striking chapter 385 (as enacted by that Act); and

(B) by adding after chapter 387, as added by section 906, the following new chapter:

“CHAPTER 388—PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM

- Sec. 4951 [2412, 2411, 2420]. Purposes; definitions; regulations.
4952 [2413]. Cooperative agreements.
4953 [2414]. Funding.
4954 [2415]. Distribution.

Commented [CR1093]: This section is proposed for codification notwithstanding the sunset provision in subsection (e), which states, “The requirements of this section shall terminate on December 31, 2022.” If this section were later to be extended or made permanent, it would already be in the Code. If not, it could be repealed later. Codification seems particularly warranted here since this section has not been classified as a USC “note” section, either in title 10 or title 15.

Commented [CR1094]: To provide more room for the extensive material derived from ch. 148, this chapter is to be moved from 385 to appear after the Small Business programs chapter as new 388. Section numbers are changed from 4881-4889 to 4951-4959.

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- 4955 [2416]. Subcontractor information.
4956 [2418]. Authority to provide certain types of technical assistance.
4957 [2419]. Advancing small business growth.
4958 [Sec 1707 of PL 115-91 (10 U.S.C. note prec. 2411)] Cost-free Federal procurement technical assistance: notice in connection with registration of small business concerns on procurement websites of Department of Defense.
4959 [2417]. Administrative and other costs.

§ 4951 [2412, 2411, 2420]. Purposes; definitions; regulations

(a) [2412] PURPOSES.—The purposes of the program authorized by this chapter are—

(1) to increase assistance by the Department of Defense to eligible entities furnishing procurement technical assistance to business entities; and

(2) to assist eligible entities in the payment of the costs of establishing and carrying out new procurement technical assistance programs and maintaining existing procurement technical assistance programs.

(b) [2411] DEFINITIONS.—In this chapter:

(1) ELIGIBLE ENTITY.—The term "eligible entity" means any of the following:

- (A) A State.
(B) A local government.
(C) A private, nonprofit organization.
(D) A tribal organization, as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l)), or an economic enterprise, as defined in section 3(e) of the Indian Financing Act of 1974 (Public Law 93-262; 25 U.S.C. 1452(e)), whether or not such economic enterprise is organized for profit purposes or nonprofit purposes.

(2) DISTRESSED AREA.—The term "distressed area" means—

Commented [CR1095]: Three short sections combined into one.

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1 (A) the area of a unit of local government (or such area excluding the area
2 of any defined political jurisdiction within the area of such unit of local
3 government) that—

4 (i) has a per capita income of 80 percent or less of the State
5 average; or

6 (ii) has an unemployment rate that is one percent greater than the
7 national average for the most recent 24-month period for which statistics
8 are available; or

9 (B) a reservation, as defined in section 3(d) of the Indian Financing Act of
10 1974 (Public Law 93–262; 25 U.S.C. 1452(d)).

11 (3) SECRETARY.—The term "Secretary" means the Secretary of Defense acting
12 through the Director of the Defense Logistics Agency.

13 (4) STATE; LOCAL GOVERNMENT.—The terms "State" and "local government"
14 have the meaning given those terms in section 6302 of title 31.

15 (c) [2420] REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry
16 out this chapter. **?**

17 (2) TRANSFER OF SECTION 2413.—Section 2413 of title 10, United States Code, is
18 **transferred** to chapter 385 of such title, as amended by paragraph (1), **inserted** after
19 section 4951, **redesignated** as section **4952**, and **amended**—

20 (A) in subsection (a), by inserting "AUTHORITY.—" after "(a)";

21 (B) in subsection (b)—

22 (i) by inserting "AGREEMENTS.—" after "(b)"; and

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1 (ii) by striking “section 2419(b)” in paragraph (2) and inserting
2 “section 4957(b)”;
3 (C) in subsection (c), by inserting “DISTRIBUTION OF PROGRAMS.—” after
4 “(c)”;
5 (D) in subsection (d), by inserting “WEIGHT TO BE GIVEN SUCCESSFUL
6 PAST PERFORMANCE.—” after “(d)”;
7 (E) in subsection (e), by inserting “DETERMINATION OF LEVEL OF
8 FUNDING.—” after “(e)”.

9 (3) TRANSFER OF SECTION 2414.—Section 2414 of title 10, United States Code, is
10 **transferred** to chapter 385 of such title, as amended by paragraph (1), **inserted** after
11 section 4952, as transferred and redesignated by paragraph (2), **redesignated** as section
12 **4953**, and **amended**—

13 (A) by striking “clause” in paragraphs (1) and (2) of subsection (a) and
14 inserting “paragraph”;
15 (B) by striking “section 2411(1)(D)” in subsections (a)(3), (a)(4), and (b)
16 and inserting “section 4951(b)(1)(D)”;
17 (C) by striking “section 2419(b)” in subsection (c) and inserting “section
18 4957(b)”.

19 (4) TRANSFER OF SECTION 2415.—Section 2415 of title 10, United States Code, is
20 **transferred** to chapter 385 of such title, as amended by paragraph (1), **inserted** after
21 section 4953, as transferred and redesignated by paragraph (3), and **redesignated** as
22 section **4954**.

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1 (5) TRANSFER OF SECTION 2416.—Section 2416 of title 10, United States Code, is
2 **transferred** to chapter 385 of such title, as amended by paragraph (1), **inserted** after
3 section 4954, as transferred and redesignated by paragraph (4), **redesignated** as section
4 **4955**, and **amended**—

5 (A) in subsection (a), by inserting “CONTRACTORS TO PROVIDE
6 INFORMATION.—” after “(a)”;

7 (B) in subsection (b), by inserting “INFORMATION TO BE PROVIDED.—”
8 after “(b)”;

9 (C) in subsection (c), by inserting “FREQUENCY.—” after “(c)”;

10 (D) in subsection (d), by inserting “DEFINITION.—” after “(d)”.

11 (6) TRANSFER OF SECTION 2418.—Section 2418 of title 10, United States Code, is
12 **transferred** to chapter 385 of such title, as amended by paragraph (1), **inserted** after
13 section 4955, as transferred and redesignated by paragraph (5), **redesignated** as section
14 **4956**, and **amended**—

15 (A) in subsection (a), by inserting “ASSISTANCE RELATING TO CERTAIN
16 NON-DEFENSE CONTRACTS.—” after “(a)”;

17 (B) in subsection (b), by inserting “INFORMATION RELATING TO
18 ASSISTANCE AND OTHER PROGRAMS AVAILABLE.—” after “(b)”;

19 (C) in subsection (c), by inserting “EDUCATION ON REQUIREMENTS
20 APPLICABLE TO SMALL BUSINESSES UNDER CERTAIN REGULATIONS.—” after
21 “(c)”.

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1 (7) TRANSFER OF SECTION 2419.—Section 2419 of title 10, United States Code, is
2 **transferred** to chapter 385 of such title, as amended by paragraph (1), **inserted** after
3 section 4956, as transferred and redesignated by paragraph (6), **redesignated** as section
4 **4957**, and **amended** by striking “Under Secretary of Defense for Acquisition,
5 Technology, and Logistics” in subsection (a)(1) and inserting “Under Secretary of
6 Defense for **Acquisition and Sustainment**”.

Commented [CR1096]: Changed per DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

7 (8) CODIFICATION OF NDAA SECTION.—

8 (A) CODIFICATION.—Chapter 385 of title 10, United States Code, is
9 further amended by adding after section 4957, as transferred and redesignated by
10 paragraph (7), a new section **4958** consisting of—

11 (i) a heading as follows:

12 “§ 4958 [Sec 1707 of PL 115-91 (10 U.S.C. note prec. 2411)]. **Cost-free Federal procurement**
13 **technical assistance: notice in connection with registration of small business**
14 **concerns on procurement websites of Department of Defense”;** and

15 (ii) a text consisting of the text of section 1707 of the National
16 Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10
17 U.S.C. note prec. 2411), revised by striking “chapter 142 of title 10,
18 United States Code” in subsection (a) and inserting “this chapter”.

19 (B) CONFORMING REPEAL.—Section 1707 of the National Defense
20 Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. note prec.
21 2411) is repealed.

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(9) TRANSFER OF SECTION 2417.—Section 2417 of title 10, United States Code, is transferred to chapter 385 of such title, as amended by paragraph (1), inserted after section 4958, as added by paragraph (8), and redesignated as section 4959.

(b) CONFORMING REPEAL OF CHAPTER 142.—

(1) REPEAL.—Chapter 142 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of title 10, United States Code, are amended by striking the items relating to chapter 142.

SEC. 908. LOAN GUARANTEE PROGRAMS.

(a) NEW CHAPTER.—Part V of subtitle A of title 10, United States Code, as added by section 801 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), is amended—

(1) by striking chapter 383; and

(2) by adding after chapter 388, as added by section 907, the following new chapter:

“CHAPTER 389—LOAN GUARANTEE PROGRAMS

Table with 2 columns: Subchapter, Sec.
'I. Defense Export Loan Guarantees.....4971
'II. Critical Infrastructure Protection Loan Guarantees4981'

(b) TRANSFER OF EXISTING PROVISIONS.—Subchapters VI and VII of chapter 148 of such title are transferred to chapter 389 of such title, as amended by subsection (a), inserted after the table of subchapters at the beginning of the chapter, and redesignated as subchapters I and II, respectively.

Commented [CR1097]: To provide more room for the extensive material derived from ch. 148, this chapter is to be moved from 383 to appear after the new PTAC chapter (ch. 388) as ch. 389. Section numbers are changed from 4861-4875 to 4971-4985.

Commented [CR1098]: Are these 2 programs still operational? Even if not currently operational, from the point of view of the reorganization, they should be retained as an existing statutory authority that could be used in the future. DoD: Are these loan guarantee programs still operational? Please advise as to their status.

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(c) REDESIGNATION OF SECTIONS.—

(1) SUBCHAPTER I.—Sections 2540, 2540a, 2540b, 2540c and 2540d of such title are redesignated as sections 4971, 4972, 4973, 4974, and 4975, respectively, and the items relating to those sections in the table of sections at the beginning of subchapter I of chapter 389, as transferred and redesignated by subsection (b), are amended to conform to those redesignations.

(2) SUBCHAPTER II.—Sections 2541, 2541a, 2541b, 2541c and 2541d of such title are redesignated as sections 4981, 4982, 4983, 4984, and 4985, respectively, and the items relating to those sections in the table of sections at the beginning of subchapter II of chapter 389, as transferred and redesignated by subsection (b), are amended to conform to those redesignations.

(d) CODIFICATION OF LIMITATION PENDING SUBMISSION OF REPORT.—

(1) CODIFICATION.—Subsection (d)(2) of section 4974 of title 10, United States Code, as redesignated by subsection (c)(1), is amended by adding at the end the following new subparagraph:

“(C) The Secretary may not exercise the authority provided by subparagraph (A) until the Secretary submits to Congress a report on the operation of the program under this subchapter. The report for purposes of this subparagraph shall include the matter set forth in section 1081(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law 106–398).”.

Commented [CR1099]: The report has apparently NOT been submitted. This amendment would codify the contingency in current law, so it does not get lost, while leaving the details of the reporting requirement outside the text of title 10 itself. IF the report has been submitted, this amendment should be omitted and Sec. 1081(c) could be repealed, rather than amended.

Commented [CR1100]: The original refers to “a report on the operation of the Defense Export Loan Guarantee Program under subchapter V [sic] of chapter 148 of title 10, United States Code”. Subchapter V of ch. 148 is “MISCELLANEOUS TECHNOLOGY BASE POLICIES AND PROGRAMS”. Subchapter VI of ch. 148 is “DEFENSE EXPORT LOAN GUARANTEES”. The reference to subchapter V apparently should have been to subchapter VI, which becomes “this subchapter” in the codification.

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1 (2) CONFORMING AMENDMENTS.—Section 1081(c) of the Floyd D. Spence
2 National Defense Authorization Act for Fiscal Year 2001 (as enacted by Public Law
3 106–398; 10 U.S.C. 2540c note) is amended—

4 (A) by striking “The Secretary” and all that follows through “The report
5 shall include” and inserting “A report submitted to Congress pursuant to section
6 4974(d)(2)(C) of title 10, United States Code, on the operation of the Defense
7 Export Loan Guarantee Program under subchapter I of chapter 389 of such title
8 shall include”; and

9 (B) in paragraph (1), by striking “section 2540(b)” and inserting “section
10 4971(b)”.

11 (e) CROSS-REFERENCE AMENDMENTS IN 2540 NOTE SECTION.—Section 8065 of the
12 Department of Defense Appropriations Act, 2005 (Public Law 108-287; 10 U.S.C. 2540 note), is
13 amended—

14 (1) by striking “subchapter VI of chapter 148” both places it appears and inserting
15 “subchapter I of chapter 389”; and

16 (2) by striking “section 2540c(d)” and inserting “section 4974(d)”.

17 (f) CROSS-REFERENCE AMENDMENTS IN SUBCHAPTER II.—Subchapter II of chapter 389
18 of such title, as transferred and redesignated by subsection (b), is amended—

19 (1) in subsection (b)(5) of section 4981, as redesignated by subsection (c)(2), by
20 striking “section 2541d” and inserting “section 4985”;

21 (2) in subsection (b) of section 4983, as redesignated by subsection (c)(2), by
22 striking “section 2541a(c)” and inserting “section 4982(c)”; and

Commented [CR1101]: See note above as to reference to subchapter I.

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- (3) in section 4984, as redesignated by subsection (c)(2)—
(A) by striking “subchapter VI” and inserting “subchapter I”;
(B) by striking “Section 2540a” in paragraph (1) and inserting “Section 4972”;
(C) by striking “section 2540b” in paragraph (2) and inserting “section 4973”; and
(D) by striking “Section 2540d(2)” in paragraph (3) and inserting “Section 4975(2)”.

(g) CLERICAL AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part V of subtitle A, of title 10, United States Code, are amended—

- (1) by striking the items relating to chapters 285, 383, and 385; and
(2) by adding at the end the following new items:

“387. Small Business Programs 4901
388. Procurement Technical Assistance Cooperative Agreement Program..... 4951
389. Loan Guarantee Programs 4971”.

The following section would be amended by section 908(d)(2) as follows:

Sec. 1081 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001

(As enacted by Public Law 106–398; 10 U.S.C. 2540c note)

SEC. 1081. FUNDS FOR ADMINISTRATIVE EXPENSES UNDER DEFENSE EXPORT LOAN GUARANTEE PROGRAM.

- (a) ****
(b) ***

(c) LIMITATION PENDING SUBMISSION OF REPORT.—The Secretary of Defense may not exercise the authority provided by paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), until the Secretary submits to Congress a report on the

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operation of the Defense Export Loan Guarantee Program under subchapter V of chapter 148 of title 10, United States Code. The A report *submitted to Congress pursuant to section 4975(d)(2)(C) of title 10, United States Code, on the operation of the Defense Export Loan Guarantee Program under subchapter I of chapter 389 of such title* shall include the following:

(1) A discussion of the effectiveness of the loan guarantee program in furthering the sale of United States defense articles, defense services, and design and construction services to nations that are specified in section ~~2540(b)~~ **4971(b)** of such title, to include a comparison of the loan guarantee program with other United States Government programs that are intended to contribute to the sale of United States defense articles, defense services, and design and construction services and other comparisons the Secretary determines to be appropriate.

(2) A discussion of the requirements and resources (including personnel and funds) for continued administration of the loan guarantee program by the Defense Department, to include—

(A) an itemization of the requirements necessary and resources available (or that could be made available) to administer the loan guarantee program for each of the following entities: the Defense Security Cooperation Agency, the Department of Defense International Cooperation Office, and other Defense Department agencies, offices, or activities as the Secretary may specify; and

(B) for each such activity, agency, or office, a comparison of the use of Defense Department personnel exclusively to administer, manage, and oversee the program with the use of contracted commercial entities to administer and manage the program.

(3) Any legislative recommendations that the Secretary believes could improve the effectiveness of the program.

(4) A determination made by the Secretary of Defense indicating which Defense Department agency, office, or other activity should administer, manage, and oversee the loan guarantee program to increase sales of United States defense articles, defense services, and design and construction services, such determination to be made based on the information and analysis provided in the report.

The following section would be **amended** by section 908(e) as follows:

Sec. 8065 of the Department of Defense Appropriations Act, 2005

(Public Law 108-287; 10 U.S.C. **2540 note**; Aug. 5, 2004)

SEC. 8065. To the extent authorized by ~~subchapter VI of chapter 148~~ **subchapter I of chapter 389** of title 10, United States Code, for the current fiscal year **and hereafter** the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: *Provided*, That the total contingent liability of the United States for guarantees issued under the authority of this section may not exceed \$15,000,000,000: *Provided*

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further, That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: Provided further, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations [now Committee on Foreign Affairs] in the House of Representatives on the implementation of this program: Provided further, That amounts charged for administrative fees and deposited to the special account provided for under section 2540e(d) 4974(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 subchapter I of chapter 389 of title 10, United States Code.

1 TITLE X—PROVISIONS OF CURRENT ACQUISITION CHAPTERS TO
2 BE LOCATED OUTSIDE OF NEW PART V

NOTE: For a few provisions of law included in current defense acquisition chapters, the reorganization project will place them in current chapters of title 10, rather than in the new Part V. This title carries out the placement of those provisions in current title 10 chapters.

- Sec. 1001. Codification of section relating to multi-use sensitive compartmented information facilities.
Sec. 1002. Provisions relating to acquisition workforce.
Sec. 1003. Codification of provision relating to mission integration management.
Sec. 1004. Codification of provision relating to contracts for commercial imaging satellite capacities.
Sec. 1005. Codification of authority relating to agreements with foreign governments for development of land-based water resources in support of and in preparation for contingency operations.
Sec. 1006. Codification of statute relating to contracting for morale, welfare, and recreation telephone services for military personnel serving in combat zones.
Sec. 1007. Codification of Fiscal Year 2009 NDAA section in title 10 transportation chapter.
Sec. 1008. Transfer of title 10 section relating to energy security.
Sec. 1009. Codification of statute relating to advanced rotorcraft flight research and development.
Sec. 1010. Codification of statute relating to long-term lease or charter authority for certain double-hull tankers and oceanographic vessels.
Sec. 1011. Recodification of certain title 10 provisions relating to contract financing for certain Navy contracts.
Sec. 1012. Codification of statute relating to government-wide payment protections for subcontractors and suppliers.

3 SEC. 1001. CODIFICATION OF SECTION RELATING TO MULTI-USE SENSITIVE
4 COMPARTMENTED INFORMATION FACILITIES.

5 (a) CODIFICATION OF FY2018 NDAA SECTION.—

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(1) CODIFICATION.—Chapter 21 of title 10, United States Code, is amended by inserting after section 428 a new section 428a consisting of—

(A) a heading as follows:

“§ 428a [Sec. 1628 of P.L. 115-91, FY18 NDAA (10 USC 2302 note)]. Requirements relating to multi-use sensitive compartmented information facilities”; and

(B) a text consisting of the text of section 1628 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2320 note), revised by striking “section 2302 of title 10, United States Code” in subsection (b)(2) and inserting “section 3021 of this title”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of such chapter is amended by inserting after the item relating to section 428 the following new item:

“428a [Sec. 1628 of P.L. 115-91, FY18 NDAA (10 USC 2302 note)]. Requirements relating to multi-use sensitive compartmented information facilities.”.

(b) CONFORMING REPEAL.—Section 1628 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2302 note) is repealed.

SEC. 1002. PROVISIONS RELATING TO ACQUISITION WORKFORCE.

(a) RECODIFICATION OF LAW ON CADRE OF PERSONNEL WHO ARE INTELLECTUAL PROPERTY EXPERTS.—

(1) ACQUISITION WORKFORCE CHAPTER.—Chapter 87 of title 10, United States Code, is amended by inserting after section 1706 the following new section:

“§ 1707. [10 USC 2322(b)]. Intellectual property experts

Commented [CR1102]: Sec. 2322 was added to title 10 by the FY18 NDAA, sec. 802. Subsection (a) is proposed above for codification in the new chapter 275 in Part V as sec. 3791. Subsection (b) is proposed for recodification in ch. 87, here, rather than in the new chapter in Part V.

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1 “(a) [2322(b)(1)] CADRE.—The Secretary of Defense, acting through the Under Secretary
2 of Defense for Acquisition and Sustainment, shall establish a cadre of personnel who are experts
3 in intellectual property matters. The purpose of the cadre is to ensure a consistent, strategic, and
4 highly knowledgeable approach to acquiring or licensing intellectual property by providing
5 expert advice, assistance, and resources to the acquisition workforce on intellectual property
6 matters, including acquiring or licensing intellectual property.

7 “(b) [2322(b)(2)] LEADERSHIP STRUCTURE.—The Under Secretary—

8 (1) shall establish an appropriate leadership structure and office within which the
9 cadre shall be managed; and

10 (2) shall determine the appropriate official to whom members of the cadre shall
11 report.

12 “(c) [2322(b)(3)] DUTIES.—The cadre of experts shall be assigned to a program office or
13 an acquisition command within a military department to advise, assist, and provide resources to a
14 program manager or program executive officer on intellectual property matters at various stages
15 of the life cycle of a system. In performing such duties, the experts shall—

16 (1) interpret and provide counsel on laws, regulations, and policies relating to
17 intellectual property;

18 (2) advise and assist in the development of an acquisition strategy, product
19 support strategy, and intellectual property strategy for a system;

20 (3) conduct or assist with financial analysis and valuation of intellectual property;

21 (4) assist in the drafting of a solicitation, contract, or other transaction;

Commented [CR1103]: “Acquisition and Sustainment” is in the original, enacted in 2017

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1 (5) interact with or assist in interactions with contractors, including
2 communications and negotiations with contractors on solicitations and awards; and

3 (6) conduct or assist with mediation if technical data delivered pursuant to a
4 contract is incomplete or does not comply with the terms of agreements.

5 “(d) [2322(b)(4)] ADMINISTRATION.—

6 (1) [2322(b)(4)(A) 1st & 3rd sentences] In order to achieve the purpose set forth
7 in subsection (a), the Under Secretary shall ensure **that** the cadre has the appropriate
8 number of staff and **that** such staff possesses the necessary skills, knowledge, and
9 experience to carry out the duties under subsection (c), including in relevant areas of law,
10 contracting, acquisition, logistics, engineering, financial analysis, and valuation. The
11 Under Secretary may use existing authorities to staff the cadre, including those in
12 paragraphs (3), (4), (5), and (7).

13 (2) [2322(b)(4)(A) 2nd sentence] The Under Secretary, in coordination with the
14 Defense Acquisition University and in consultation with academia and industry, shall
15 develop a career path, including development opportunities, exchanges, talent
16 management programs, and training, for the cadre.

17 (3) [2322(b)(4)(B)] Civilian personnel from within the Office of the Secretary of
18 Defense, Joint Staff, military departments, Defense Agencies, and combatant commands
19 may be assigned to serve as members of the cadre, upon request of the **Director**.

20 (4) [2322(b)(4)(C)] The Under Secretary may use the authorities for highly
21 qualified experts under section 9903 of title 5, to hire experts as members of the cadre
22 who are skilled professionals in intellectual property and related matters.

Commented [CR1104]: “that” added in two instances for readability.

Commented [CR1105]: The original refers to paragraph (2), but in context apparently should refer to paragraph (3), reflected here with the reference to subsection (c).

Commented [CR1106]: Note that there is no prior reference to Director in the source law, 10 U.S.C. 2322. DoD, please advise as to what official performs this function.

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(5) [2322(b)(4)(D)] The Under Secretary may enter into a contract with a private-sector entity for specialized expertise to support the cadre. Such entity may be considered a covered Government support contractor, as defined in section 2320 3775(a) of this title.

(6) [2322(b)(4)(E)] In establishing the cadre, the Under Secretary shall give preference to civilian employees of the Department of Defense, rather than members of the armed forces, to maintain continuity in the cadre.

(7) [2322(b)(4)(F)] The Under Secretary is authorized to may use amounts in the Defense Acquisition Workforce Development Fund for the purpose of recruitment, training, and retention of the cadre, including paying salaries of newly hired members of the cadre for up to three years.

(2) CONFORMING REPEAL.—Section 2322 of title 10, United States Code (as amended by section 403(c)(1)), is repealed.

(b) CODIFICATION OF FY2007 NDAA SECTION.—

(1) CODIFICATION.—Subchapter III of chapter 87 of title 10, United States Code, is amended by inserting after section 1735 a new section 1736 consisting of—

(A) a heading as follows:

“§ 1736 [Sec. 853 of P.L. 109-364, FY07 NDAA (10 USC 2430 note)]. Program managers: empowerment and accountability”; and

(B) a text consisting of the text of subsections (a) and (b) of section 853 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2430 note), revised by striking “, at a minimum” in subsection (b).

Commented [CR1107]: The original also has subsections (c), (d), and (e). Subsection (c) is omitted as having superseded by section 826 of P.L. 114-92 (10 USC 2430 note), codified immediately below. OK? Subsection (d) is omitted as having superseded by section 827 of P.L. 114-92 (10 USC 2430 note), codified immediately after 826 below. OK? Subsection (e) is omitted as OBE, since it required two reports to be submitted in 2007.

Commented [CR1108]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

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1 (2) **CONFORMING REPEAL.**—Section 853 of the John Warner National Defense
2 Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2430 note) is
3 repealed.

4 (c) **CODIFICATION OF FY2016 NDAA SECTION.**—

5 (1) **CODIFICATION.**—Such subchapter is further amended by inserting after section
6 1736, as added by subsection (b), a new section 1736a consisting of—

7 (A) a heading as follows:

8 “§ 1736a [Sec. 826 of P.L. 114-92, FY16 NDAA (10 USC 2430 note)]. Program managers:
9 **tenure and accountability for program definition periods”; and**

10 (B) a text consisting of the text of section 826 of the National Defense
11 Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2430
12 note), revised—

13 (i) in subsection (a), by striking “REVISED GUIDANCE REQUIRED.—
14 Not later than” and all that follows through “to address” and inserting
15 “GUIDANCE REQUIRED.—The Secretary of Defense shall ensure that
16 Department of Defense guidance for major defense acquisition programs
17 addresses”; |

18 (ii) in subsection (c), by striking “revised” before “guidance” in
19 the matter preceding paragraph (1);

20 (iii) in subsection (c), by striking “section 2366a of title 10, United
21 States Code” and inserting “section 4251 of this title”; and

Commented [CR1109]: All of 853 would be repealed, (a) & (b) because of the codification and (c)-(e) for the reasons stated in the note above.

Commented [CR1110]: This section supersedes subsection (c) of Public Law 109-364 (10 U.S.C. 2430 note), as noted above.

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(iv) in subsection (e), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

Commented [CR1111]: OK to change to A&S here?

(2) **CONFORMING REPEAL.**—Section 826 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2430 note) is repealed.

(d) **CODIFICATION OF ADDITIONAL FY2016 NDAA SECTION.**—

(1) **CODIFICATION.**— Such subchapter is further amended by inserting after section 1736a, as added by subsection (c), a new section **1736b** consisting of—

(A) a heading as follows:

“§ 1736b [Sec. 827 of P.L. 114-92, FY16 NDAA (10 USC 2430 note)]. Program managers:

tenure and accountability for program execution periods”; and

(B) a text consisting of the text of section 827 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2430 note), revised—

(i) in subsection (a), by striking “REVISED GUIDANCE REQUIRED.— Not later than” and all the follows through “to address” and inserting “GUIDANCE REQUIRED.—The Secretary of Defense shall ensure that Department of Defense guidance for major defense acquisition programs addresses”; |

Commented [CR1112]: This section supersedes subsection (d) of Public Law 109-364 (10 U.S.C. 2430 note), as noted above.

(ii) in subsection (c), by striking “revised” before “guidance” in the matter preceding paragraph (1); and

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(iii) in subsection (e), by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”.

(2) **CONFORMING REPEAL.**—Section 827 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2430 note) is repealed.

(e) **CODIFICATION OF FY2007 NDAA SECTION.**—

(1) **CODIFICATION.**—Subchapter IV of chapter 87 of title 10, United States Code, is amended by inserting after section 1742 a new section 1744 consisting of—

(A) a heading as follows:

“§ 1744 [Sec. 801 of P.L. 109-364, FY07 NDAA (10 USC 2430 note)]. Requirements

management certification training program”; and

(B) a text consisting of the text of subsections (a) and (b) of section 801 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2430 note), revised—

(i) in subsection (a)(1)—

(I) by striking “Under Secretary of Defense for Acquisition, Technology, and Logistics” and inserting “Under Secretary of Defense for Acquisition and Sustainment”; and

(II) by striking “section 2430(a) of title 10, United States Code)” and inserting “section 4201 of this title”;

(ii) in subsection (a)(2), by striking “of title 10, United States Code,” and inserting “of this title”; and

Commented [CR1113]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

Commented [CR1114]: The original also has a subsection (c), omitted here, which required two reports, the latter of which was to be submitted in 2008.

Commented [CR1115]: OK to change reference here from USD(AT&L) to USD(A&S)? This provision was NOT addressed in the DoD report to Congress of March 2019, titled “Report on Allocation of Former Responsibilities of the [USD(AT&L)]” (see Appendix F).

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(iii) in subsection (b)—

(I) by striking “Effective on and after September 30, 2008, a member of the Armed Forces” and inserting “A member of the armed forces”;

(II) by striking “continue to”; and

(III) by striking “successfully completes” and inserting “has successfully completed”.

(2) **CONFORMING REPEAL.**—Section 801 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364; 10 U.S.C. 2430 note) is repealed.

(f) **CLERICAL AMENDMENTS.**—

(1) The table of sections at the beginning of subchapter I of chapter 87 of title 10, United States Code, is amended by adding at the end the following new item:

“1707. Intellectual property experts.”.

(2) The table of sections at the beginning of subchapter III of such chapter is amended by inserting after the item relating to section 1735 the following new items:

“1736 [Sec. 853 of P.L. 109-364, FY07 NDAA (10 USC 2430 note)]. Program managers: empowerment and accountability.
1736a [Sec. 826 of P.L. 114-92, FY16 NDAA (10 USC 2430 note)]. Program managers: tenure and accountability for program definition periods.
1736b [Sec. 827 of P.L. 114-92, FY16 NDAA (10 USC 2430 note)]. Program managers: tenure and accountability for program execution periods.”.

(3) The table of sections at the beginning of subchapter IV of such chapter is amended by inserting after the item relating to section 1742 the following new item:

“1744 [Sec. 801 of P.L. 109-364, FY07 NDAA (10 USC 2430 note)]. Requirements management certification training program.”.

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SEC. 1003. CODIFICATION OF PROVISION RELATING TO MISSION

INTEGRATION MANAGEMENT.

(a) CODIFICATION OF AUTHORITY.—

(1) IN GENERAL.—Chapter 131 of title 10, United States Code, is amended by inserting after section 2218a a new section 2219 consisting of—

(A) a heading as follows:

“§ 2219 [Sec 855 of FY17 NDAA, P.L. 114-328 (10 U.S.C. 2358 note)]. Mission integration management”; and

(B) a text consisting of the text of subsections (a) through (f) of section 855 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2358 note), revised—

(i) in subsection (b)—

(I) by striking “Armed Forces” and inserting “armed forces”; and

(II) by striking “, at a minimum,”;

(ii) in subsection (d)(1), by striking “section 2446c of title 10, United States Code” and inserting “section 4403 of this title”;

(iii) in subsection (e), by striking “under this subsection” and inserting “under this section”; and

(iv) in subsection (f), by striking “section 804(d) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 10 U.S.C. 2302 note)” and inserting “section 3613 of this title”.

Commented [CR1116]: Subsection (g) of the original would be omitted as OBE. That subsection required submission of a strategy to congressional committees at the same time as the FY2018 budget was submitted to Congress. Or, does that subsection implicitly require that there be such a strategy as an ongoing matter?

Commented [CR1117]: Phrase “, at a minimum” proposed to be omitted as part of general recommendation to delete that phrase wherever appearing as being unnecessary.

Commented [CR1118]: Appears that the original should have stated “section” here rather than “subsection”.

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1 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such
2 chapter is amended by inserting after the item relating to section 2218a the following new
3 item:

“2219. Mission integration management.”.

4 (b) CONFORMING REPEAL.—Section 855 of the National Defense Authorization Act for
5 Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2358 note) is repealed.

6 **SEC. 1004. CODIFICATION OF PROVISION RELATING TO CONTRACTS FOR**
7 **COMMERCIAL IMAGING SATELLITE CAPACITIES.**

8 (a) CODIFICATION OF AUTHORITY.—

9 (1) IN GENERAL.—Chapter 135 of title 10, United States Code, is amended by
10 inserting after section 2276 a new section 2277 consisting of—

11 (A) a heading as follows:

12 “§ 2277 [Sec 127 of FY11 NDAA, P.L. 111-383 (10 U.S.C. 2302 note)]. Contracts for
13 commercial imaging satellite capacities”; and

14 (B) a text consisting of the text of subsections (a) and (b) of section 855 of
15 the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public
16 Law 111-383; 10 U.S.C. 2302 note).

17 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such
18 chapter is amended by inserting after the item relating to section 2276 the following new
19 item:

“2277 [Sec 127 of FY11 NDAA, P.L. 111-383 (10 U.S.C. 2302 note)]. Contracts for commercial imaging satellite capacities.”.

Commented [CR1119]: Subsection (c) of the original would be omitted as OBE as being a “grandfather” provision. That subsection would not be repealed but would be retained as an NDAA provision.

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1 (b) CONFORMING REPEAL.—Subsections (a) and (b) of section 127 of the Ike Skelton
2 National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2302
3 note) are repealed.

4 (c) SAVINGS PROVISION.—Subsection (c) of such section is amended by striking
5 “subsection (a)” and inserting “section 2277(a) of title 10, United States Code,”.

6 **SEC. 1005. CODIFICATION OF AUTHORITY RELATING TO AGREEMENTS WITH**
7 **FOREIGN GOVERNMENTS FOR DEVELOPMENT OF LAND-BASED**
8 **WATER RESOURCES IN SUPPORT OF AND IN PREPARATION FOR**
9 **CONTINGENCY OPERATIONS.**

10 (a) CODIFICATION OF AUTHORITY.—

11 (1) IN GENERAL.—Subchapter II of **chapter 138** of title 10, United States Code
12 (relating to cooperative agreements with NATO allies and other countries), is amended
13 by adding at the end a new section 2350n consisting of—

14 (A) a heading as follows:

15 “§ 2350n [Sec 1291 of FY17 NDAA, P.L. 114-328 (10 U.S.C. 2333 note)]. Development of
16 **land-based water resources in support of and in preparation for contingency**
17 **operations: agreements with foreign governments”;** and

18 (B) a text consisting of the text of section 1291 of the National Defense
19 Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2333
20 note).

21 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such
22 subchapter is amended by adding at the end the following new item:

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“2350n. Development of land-based water resources in support of and in preparation for contingency operations: agreements with foreign governments.”.

(b) CONFORMING REPEAL.—Section 1291 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 2333 note) is repealed.

SEC. 1006. CODIFICATION OF STATUTE RELATING TO CONTRACTING FOR MORALE, WELFARE, AND RECREATION TELEPHONE SERVICES FOR MILITARY PERSONNEL SERVING IN COMBAT ZONES.

(a) CODIFICATION.—

(1) NEW SECTION IN MWR CHAPTER.—Subchapter III of chapter 147 of title 10, United States Code (relating to morale, welfare, and recreation programs), is amended by adding at the end the following new section:

“§ 2496 [Sec 885 of FY08 NDAA, P.L. 110-181 (10 USC 2304 note)]. Contracting for morale, welfare, and recreation telephone services for military personnel serving in combat zones

“(a) COMPETITIVE PROCEDURES REQUIRED.—

“(1) REQUIREMENT.—When the Secretary of Defense considers it necessary to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones, the Secretary shall use competitive procedures when entering into a contract to provide those services.

“(2) REVIEW AND DETERMINATION.—Before soliciting bids or proposals for new contracts, or considering extensions to existing contracts, to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones, the Secretary shall review and determine whether it is in the best interest of the Department

Commented [CR1120]: This note provision is proposed for codification outside the new Part V, in existing chapter 147. The note section is “2304 note”, so it needs to be dealt with as part of the reorganization project. The section is permanent and applies generally to “military personnel serving in combat zones”, so it seems appropriate to codify. Since it relates to “morale, welfare, and recreation telephone services”, it is suggested for codification in ch. 147 (Commissaries and Exchanges and Other Morale, Welfare, and Recreation Activities”), rather than in the new Part V.

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1 to require bids or proposals, or adjustments for the purpose of extending a contract, to
2 include options that minimize the cost of the telephone services to individual users while
3 providing individual users the flexibility of using phone cards from other than the
4 prospective contractor.

5 "(b) APPLICABILITY. [redacted]

6 "(1) REQUIREMENT.—Subsection (a)(1) shall apply to any new contract to provide
7 morale, welfare, and recreation telephone services for military personnel serving in
8 combat zones that is entered into after January 28, 2008.

9 "(2) REVIEW AND DETERMINATION.—Subsection (a)(2) shall apply to any new
10 contract or extension to an existing contract to provide morale, welfare, and recreation
11 telephone services for military personnel serving in combat zones that is entered into or
12 agreed upon after January 28, 2008.

13 "(c) MORALE, WELFARE, AND RECREATION TELEPHONE SERVICES DEFINED.—In this
14 section, the term 'morale, welfare, and recreation telephone services' means unofficial telephone
15 calling center services supporting calling centers provided by the Army and Air Force Exchange
16 Service, Navy Exchange Service Command, Marine Corps exchanges, or any other
17 nonappropriated fund instrumentality of the United States under the jurisdiction of the armed
18 forces which is conducted for the comfort, pleasure, contentment, or physical or mental
19 improvement of members of the armed forces."

20 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such
21 subchapter is amended by adding at the end the following new item:

"2496 [Sec 885 of FY08 NDAA, P.L. 110-181 (10 USC 2304 note)]. Contracting for morale, welfare, and
recreation telephone services for military personnel serving in combat zones."

Commented [CR1121]: Are paragraph (1) and paragraph (2) below still needed? That is, are there any contracts still in effect that were entered into before 1/28/08? Subsection (b) is in effect a "grandfather" provision to exempt contracts existing as of the enactment of this provision from the new rules. IF there are no pre-1/28/08 contracts remaining in effect (11 years later), subsection (b) could be dropped as OBE. DoD: Please advise as to whether there are any contracts covered by this section that were entered into before Jan. 28, 2008 and that are still open.

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1 (b) CONFORMING REPEAL.—Section 885 of the National Defense Authorization Act for
2 Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 2304 note) is repealed.

3 **SEC. 1007. CODIFICATION OF FISCAL YEAR 2009 NDAA SECTION IN TITLE 10**
4 **TRANSPORTATION CHAPTER.**

5 (a) CODIFICATION.—

6 (1) IN GENERAL.—Chapter 157 of title 10, United States Code, is amended by
7 adding at the end the following new section:

8 “§2653. [Sec. 884 of P.L. 110-417 (10 U.S.C. 2302 note)] Motor carrier fuel surcharges

9 “(a) PASS THROUGH TO COST BEARER.—The Secretary of Defense shall take appropriate
10 actions to ensure that, to the maximum extent practicable, ~~in all in each~~ carriage contracts ~~in~~
11 ~~which that provides for~~ a fuel-related adjustment is ~~provided for~~, any fuel-related adjustment is
12 passed through to the person who bears the cost of the fuel ~~that to which~~ the adjustment relates
13 ~~to~~.

14 “(b) USE OF CONTRACT CLAUSE.—The actions taken by the Secretary under subsection
15 (a) shall include the insertion of a contract clause, with appropriate flow-down requirements, into
16 ~~all contracts~~ **each contract** with **a** motor carriers, brokers, or freight forwarders providing or
17 arranging truck transportation or services in which a fuel-related adjustment is provided for.

18 “(c) DISCLOSURE.—The Secretary shall publicly disclose any decision by the Department
19 of Defense to pay fuel-related adjustments under contracts (or a category of contracts) covered
20 by this **section.**”

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

Commented [CR1122]: Sec. 884 of the FY2009 NDAA (10 U.S.C. 2302 note) is proposed to be codified in ch. 157, captioned “Transportation”. It seems a better fit in that chapter than a chapter in the new Part V.

Commented [CR1123]: The original has as subsection (d) requiring a one-time report not later than 270 days after Oct. 14, 2008. That subsection is omitted here as OBE.

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“2653. Motor carrier fuel surcharges.”.

1 (b) **CONFORMING REPEAL.**—Section 884 of the Duncan Hunter National Defense
2 Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2302 note) is repealed.

3 **SEC. 1008. TRANSFER OF TITLE 10 SECTION RELATING TO ENERGY SECURITY.**

4 (a) **TRANSFER.**—Section 2410q of title 10, United States Code, is **transferred to**
5 subchapter II of chapter 173 of such title, **inserted** after section 2922h, and **redesignated** as
6 section **2922i**.

Commented [CR1124]: This section of current chapter 141 is relates to multiyear contracting. But, rather than including it in the new Part V chapter 249, it appears that it would fit better in existing chapter 173, since it relates to renewable energy sources.

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

“2922i. Multiyear contracts: purchase of electricity from renewable energy sources.”.

9 **SEC. 1009. CODIFICATION OF STATUTE RELATING TO ADVANCED**
10 **ROTORCRAFT FLIGHT RESEARCH AND DEVELOPMENT.**

11 (a) **CODIFICATION OF FY2012 NDAA SECTION IN ARMY SUBTITLE.**—

12 (1) **IN GENERAL.**—Chapter 763 of title 10, United States Code, is amended by
13 adding at the end a new section 7545 consisting of—

Commented [CR1125]: This chapter was previously number as chapter 433, with sections from 4531–4544, before the redesignations effective Feb. 1, 2019.

14 (A) a heading as follows:

15 “§ 7545 [Sec. 222 of P.L. 112-81, FY12 NDAA (10 USC 2358 note)]. **Advanced rotorcraft**
16 **flight research and development**”; and

Commented [CR1126]: This section is Army specific (“The Secretary of the Army may ...”) and so is proposed for codification in the Army subtitle, rather than in Part V.

17 (B) a text consisting of the text of section 222 of the National Defense
18 Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 2358
19 note), revised in subsection (d)—

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(i) by striking "section 2304 of title 10, United States Code," and inserting "sections 3201-3205 of this title"; and

(ii) by striking "section 2330a(h) of such" and inserting "section 4505(g) of this title".

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

"7545 [Sec. 222 of P.L. 112-81, FY12 NDAA (10 USC 2358 note)]. Advanced rotorcraft flight research and development."

(b) CONFORMING REPEAL.—Section 222 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 2358 note) is repealed.

SEC. 1010. CODIFICATION OF STATUTE RELATING TO LONG-TERM LEASE OR CHARTER AUTHORITY FOR CERTAIN DOUBLE-HULL TANKERS AND OCEANOGRAPHIC VESSELS.

(c) CODIFICATION OF FY1994 NDAA SECTION IN SUBTITLE C.—

(1) IN GENERAL.—Chapter 861 of title 10, United States Code, is amended by inserting after section 8631 the following new section:

"§ 8632 [Sec. 126 of FY94 NDAA, P.L. 103-160 (10 U.S.C. 2401 note)]. Long-term lease or charter authority for certain double-hull tankers and oceanographic vessels

(a) AUTHORITY.—The Secretary of the Navy may enter into a long-term lease or charter for any double-hull tanker or oceanographic vessel constructed in a United States shipyard after the date of the enactment of this Act [Nov. 30, 1993] using assistance provided under the National Shipbuilding Initiative.

Commented [CR1127]: Since this note section, currently under 10 USC 2401, is specific to the Navy, it is proposed for codification to be placed in subtitle C (Navy), rather than in the new Part V.

Commented [CR1128]: This chapter was previously number as chapter 631, with sections from 8604–8635, before the redesignations effective Feb. 1, 2019.

Commented [CR1129]: To be omitted as OBE

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1 "(b) CONDITIONS ON OBLIGATION OF FUNDS.—Unless budget authority is specifically
2 provided in an appropriations Act for the lease or charter of vessels pursuant to subsection (a),
3 the Secretary may not enter into a contract for a lease or charter pursuant to that subsection
4 unless the contract includes the following provisions:

5 "(1) A statement that the obligation of the United States to make payments under
6 the contract in any fiscal year is subject to appropriations being provided specifically for
7 that fiscal year and specifically for that lease or charter or that kind of vessel lease or
8 charter.

9 "(2) A commitment to obligate the necessary amount for each fiscal year covered
10 by the contract when and to the extent that funds are appropriated for that lease or
11 charter, or that kind of lease or charter, for that fiscal year.

12 "(3) A statement that such a commitment given under paragraph (2) does not
13 constitute an obligation of the United States.

14 "(c) INAPPLICABILITY OF CERTAIN LAWS.—A long-term lease or charter authorized by
15 subsection (a) may be entered into without regard to the provisions of ~~section 2401 or 2401a~~
16 **sections 3671-3678** of this title.

17 "(d) DEFINITION.—In subsection (a), the term 'long-term lease or charter' has the meaning
18 given that term in paragraph (1) of section 3674(a) of this title."

19 "(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such
20 chapter is amended by inserting after the item relating to section 8631 the following new
21 item:

"8632 [Sec. 126 of FY94 NDAA, P.L. 103-160 (10 U.S.C. 2401 note)]. Long-term lease or charter authority for certain double-hull tankers and oceanographic vessels."

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(b) CONFORMING REPEAL.—Section 126 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2401 note) is repealed.

SEC. 1011. RECODIFICATION OF CERTAIN TITLE 10 PROVISIONS RELATING TO CONTRACT FINANCING FOR CERTAIN NAVY CONTRACTS.

(a) RECODIFICATION OF 2307(g).—

(1) RECODIFICATION OF PARAGRAPHS (1) AND (3).—(A) Chapter 863 of title 10, United States Code, is amended—

(i) by inserting after section 8684 the following new section:

“§ 8684a [2307(g)(1)]. Repair, maintenance, or overhaul of naval vessels: rate for progress payments

“The Secretary of the Navy shall provide that the rate for progress payments on a contract awarded by the Secretary for repair, maintenance, or overhaul of a naval vessel shall be not less than—

“(1) 95 percent, in the case of a firm considered to be a small business; and

“(2) 90 percent, in the case of any other firm.”; and

(ii) by inserting after section 8688 the following new section:

“§ 8688a [2307(g)(3)]. Construction and conversion of naval vessels: liens

“The Secretary of the Navy shall provide, in each contract for construction or conversion of a naval vessel, that, when partial, progress, or other payments are made under such contract, the United States is secured by a lien upon work in progress and on property acquired for performance of the contract on account of all payments so made. The lien is paramount to all other liens.”

Commented [CR1130]: 2307(g) is proposed to be recodified in the Navy subtitle, rather than in Part V. Note that subsection (g) was not part of the original 2307 but was added by FASA. These Navy-specific provisions had been in different sections of subtitle C and were consolidated by FASA in 2307(g). This would move them back to subtitle C. The new title 10 section numbers proposed here conform to the redesignated section numbers in subtitle C.

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1 (B) CLERICAL AMENDMENTS.—The table of sections at the beginning of such
2 chapter is amended—

3 (i) by inserting after the item relating to section 8684 the following new
4 item:

“8684a [2307(g)(1)]. Repair, maintenance, or overhaul of naval vessels: rate for progress payments.”; and

5 (ii) by inserting after the item relating to section 8688 the following new
6 item:

“8688a [2307(g)(3)]. Construction and conversion of naval vessels: liens.”.

7 (2) RECODIFICATION OF PARAGRAPH (2).—Subsection (c) of section 8702 of such
8 title is amended to read as follows:

9 “(c) [2307(g)(2)] AUTHORITY TO ADVANCE FUNDS FOR IMMEDIATE FINANCING OF
10 SALVAGE OPERATIONS.—The Secretary of the Navy may advance to private salvage companies
11 such funds as the Secretary considers necessary to provide for the immediate financing of
12 salvage operations. Advances under this subsection shall be made on terms that the Secretary
13 considers adequate for the protection of the United States.”.

14 (b) CONFORMING REPEAL.—Section 2307(g) of such title is repealed.

15 **SEC. 1012. CODIFICATION OF STATUTE RELATING TO GOVERNMENT-WIDE**
16 **PAYMENT PROTECTIONS FOR SUBCONTRACTORS AND**
17 **SUPPLIERS.**

18 (a) NEW TITLE 41 SECTION.—

19 (1) IN GENERAL.—Chapter 47 of title 41, United States Code, is amended by
20 adding at the end the following new section:

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1 “§ 4713 [Sec. 806(c) of P.L. 102-190 (10 U.S.C. 2302 note)]. Payment protections for
2 subcontractors and suppliers

3 “The Federal Acquisition Regulation shall include provisions that apply Government-
4 wide the requirements that the Secretary of Defense is required under section 4603 of title 10 to
5 prescribe in regulations applicable with respect to the Department of Defense contracts.”.

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

“4713. Payment protections for subcontractors and suppliers.”.

8 (b) CONFORMING REPEAL.—Section 806(c) of the National Defense Authorization Act
9 for Fiscal Years 1992 and 1993 (Public Law 102-190; 10 U.S.C. 2302 note) is repealed.

[NOTE: Cross-references were checked for current title 10 sections affected by this title.
No cross reference amendments needed.]

10 TITLE XI—CONFORMING AMENDMENTS TO PART IV OF SUBTITLE

11 A AND OTHER PROVISIONS OF LAW

12 SUBTITLE A— CONFORMING AMENDMENTS TO PART IV OF

13 SUBTITLE A

14 SEC. 1101. PART IV HEADING.

15 (a) HEADING.—The heading of Part IV of subtitle A of title 10, United States Code, is
16 amended to read as follows:

17 “PART IV —SERVICE, SUPPLY, AND PROPERTY”.

Commented [CR1131]: Subsection (c) of this NDAA section proposed for codification in title 41 rather than title 10, since it deals with the FAR and with Government-wide requirements.

Commented [CR1132]: The original says “The Federal Acquisition Regulatory Council (established by section 1302(a) of title 41, United States Code) shall modify the Federal Acquisition Regulation (issued pursuant to section 1303(a)(1) of such title 41[D]) to apply ...”

Commented [CR1133]: The word “the” from the original is proposed to be omitted as unnecessary (or a mistake).

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1 (b) TABLE OF CHAPTERS.—The item relating to part IV in the table of chapters at the
2 beginning of subtitle A of such title is amended to read as follows:

“PART IV —SERVICE, SUPPLY, AND PROPERTY”.

3 **SEC. 1102. REPEAL OF CHAPTERS 137, 139, AND 144.**

4 (a) REPEAL.—Chapters 137, 139, and 144 of title 10, United States Code, are repealed.

5 (b) TABLE OF CHAPTERS.—The tables of chapters at the beginning of subtitle A, and at
6 the beginning of part IV of subtitle A, of such title are amended by striking the items relating to
7 chapters 137, 139, and 144.

8 **SEC. 1103. REVISION OF CHAPTER 141.**

9 (a) CHAPTER HEADING.—

10 (1)The heading of chapter 141 of title 10, United States Code, is amended to read
11 as follows:

12 **“CHAPTER 141—MISCELLANEOUS PROVISIONS RELATING TO**
13 **PROPERTY”.**

14 (2) The item relating to such chapter in the table of chapters at the beginning of
15 subtitle A and at the beginning of part IV of subtitle A, of such title is amended to read
16 as follows:

“141. Miscellaneous Provisions Relating to Property.....2381”

17 (b) CONSOLIDATION OF REMAINING SECTIONS.—Sections 2410r and 2410s of such title
18 are transferred within chapter 141 of such title to appear before section 2389 and are
19 redesignated as sections 2387 and 2388, respectively.

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1 (c) TABLE OF SECTIONS.—The table of sections at the beginning of such chapter is
2 amended to read as follows:

“Sec.

2385. Arms and ammunition: immunity from taxation.

2387. Contract working dogs: requirement to transfer animals to 341st Training Squadron after service life.

2388. Security clearances for facilities of certain companies.

2389. Ensuring safety regarding insensitive munitions.

2390. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense.

2391. Military base reuse studies and community planning assistance.”

3 **SUBTITLE B—CONFORMING AMENDMENTS TO OTHER**

4 **PROVISIONS OF LAW**

5 **SEC. 1111. CENTRAL INTELLIGENCE AGENCY ACT OF 1949.**

6 Section 3 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 3504) is amended—

7 (1) in subsection (a), by striking “sections 2(c) (1), (2), (3), (4), (5), (6), (10), (12),

8 (15), (17), and sections 3, 4, 5, 6, and 10 of the Armed Services Procurement Act of 1947

9 (Public Law 413, Eightieth Congress, second session)” and inserting “sections **to be**

10 **added**] of title 10, United States Code”;

11 (2) in subsection (b), by striking “Agency head” and inserting “head of an

12 agency”; and

13 (3) in subsection (d)—

14 (A) in the first sentence, by striking “in paragraphs (12) and (15) of

15 section 2(c) and section 5(a) of the Armed Services Procurement Act of 1947”

16 and inserting “in sections **to be added**] of title 10, United States Code,”; and

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(B) in the second sentence, by striking “by paragraphs (12) and (15) of section 2(c), by section 4 or by section 5(a) of the Armed Services Procurement Act of 1947” and inserting “by sections [to be added] of such title”.

SEC. 1112. OTHER PROVISIONS OF LAW.

[to be added]

TITLE XII—TRANSITION AND SAVINGS PROVISIONS; EFFECTIVE DATE

SEC. 1201. TRANSITIONAL AND SAVINGS PROVISIONS.

(a) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of determining whether one provision of law supersedes another based on enactment later in time, the date of enactment of a provision enacted by this Act is deemed to be the date of enactment of the provision it replaced.

(b) REFERENCES TO PROVISIONS REPLACED.—A reference to a provision of law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation, order, or other administrative action in effect under a provision of law replaced by this Act continues in effect under the corresponding provision enacted by this Act.

(d) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense committed under a provision of law replaced by this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

Commented [CR1134]: Derived from Sec. 6 of P.L. 111-350, the law codifying title 41 as a positive law title of the U.S. Code. Please review for inclusion in the defense acquisition laws reorganization.

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1 **SEC. 1202. PRESERVATION OF SUSPENDED STATUS OF LAWS SUSPENDED AS**
2 **OF EFFECTIVE DATE.**

3 If a provision of law that is in a suspended status on the day before the effective date of
4 this title is transferred or amended by this Act, the suspended status of that provision is not
5 affected by that transfer or amendment.

6 **SEC. 1203. PRESERVATION OF PRE-EXISTING RIGHTS, DUTIES, PENALTIES,**
7 **AND PROCEEDINGS.**

8 Except as otherwise provided in this Act, the provisions of this Act and the amendments
9 made by this Act do not affect rights and duties that matured, penalties that were incurred, or
10 proceedings that were begun before the effective date of this Act.

11 **SEC. 1204. EFFECTIVE DATE.**

12 This Act and the amendments made by this Act shall take effect **on February 1, 2020**, or
13 the date of the enactment of this Act, whichever is later.

Commented [CR1135]: Derived from sec. 1692 of ROPMA (Title XVI of P.L. 103-337), the law creating subtitle E of title 10. Please review for inclusion in the defense acquisition laws reorganization.

Commented [CR1136]: Derived from sec. 1693 of ROPMA (Title XVI of P.L. 103-337). Please review for inclusion in the defense acquisition laws reorganization.