

HISTORICAL AND REVISION NOTES

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

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

REFERENCES IN TEXT

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

PRIOR PROVISIONS

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

AMENDMENTS

- 2001—Subsec. (d). Pub. L. 107-107 added subsec. (d).
 1996—Subsec. (a). Pub. L. 104-106 struck out “281, 592, 1002, 1005, 1006, 1007, 1374, 3217, 3218, 3219, 3220, 3352(a) (last sentence),” after “armed force:”, “5414, 5457, 5458, 5506,” after “3855,”, and “8217, 8218, 8219,” after “6410,” and substituted “8855, 10214, 12003, 12004, 12005, 12007, 12202, 12213(a) (second sentence), 12642, 12645, 12646, 12647, 12771, 12772, and 12773” for “and 8855”.
 1994—Pub. L. 103-337 substituted “Authority to suspend officer personnel laws during war or national emergency” for “Suspension of certain provisions of law relating to reserve commissioned officers” as section catchline and amended text generally, substituting subssecs. (a) to (c) for former subssecs. (a) and (b).
 1981—Subsec. (a). Pub. L. 97-22 struck out references to sections 3494 and 8494.
 1980—Subsec. (a). Pub. L. 96-513 struck out references to sections 3571, 3847, 5867, 8370, 8571, and 8847.
 1967—Subsec. (a). Pub. L. 90-130 struck out reference to section 3391.
 1966—Subsec. (a). Pub. L. 89-718 struck out reference to section 5907.
 1960—Subsec. (a). Pub. L. 86-559 inserted references to sections 281, 3855, and 8855 and struck out references to sections 3841, 3842, 3849, 8841, 8842, and 8849.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(3) of Pub. L. 96-513, striking out references to sections 3571, 5867, and 8571, effective Sept. 15, 1981, and amendment by section 511(1) of Pub. L. 96-513, striking out references to sections 3847,

8370, and 8847, effective Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

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

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 1(11) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

DELEGATION OF AUTHORITY

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

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

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

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

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

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

(c) STATUTORY END STRENGTH.—In this section, the term “statutory end strength” means any end-strength limitation with respect to a

fiscal year that is prescribed by law for any military or civilian component of the armed forces or of the Department of Defense.

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

PRIOR PROVISIONS

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

AMENDMENTS

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

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

DELEGATION OF AUTHORITY

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

§ 123b. Forces stationed abroad: limitation on number

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

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

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

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

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 102-484, div. A, title XIII, §1302, Oct. 23, 1992, 106 Stat. 2545, which was set out as a note

under section 113 of this title, prior to repeal by Pub. L. 103-337, §1312(c).

EFFECTIVE DATE

Pub. L. 103-337, div. A, title XIII, §1312(b), Oct. 5, 1994, 108 Stat. 2894, provided that: “Section 123b of title 10, United States Code, as added by subsection (a), does not apply with respect to a fiscal year before fiscal year 1996.”

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

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

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

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

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

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

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

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

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

PRIOR PROVISIONS

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

AMENDMENTS

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

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

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

“(a) CONDITION.—Except as provided in subsection (b), none of the funds appropriated or otherwise made available to the Department of Defense for any fiscal year may be obligated or expended for the purpose of im-