

duced or used by or for, or useful to, that department:

- (1) Copyrights, patents, and applications for patents.
- (2) Licenses under copyrights, patents, and applications for patents.
- (3) Design and process data, technical data, and computer software.
- (4) Releases for past infringement of patents or copyrights or for unauthorized use of technical data or computer software.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Pub. L. 86-726, § 3, Sept. 8, 1960, 74 Stat. 855; Pub. L. 103-355, title III, § 3063, Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104-106, div. A, title VIII, § 813, Feb. 10, 1996, 110 Stat. 395.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2386	31:649b.	Aug. 1, 1953, ch. 305, § 609, 67 Stat. 350.

The words “equipment, and materials” are omitted as covered by the word “supplies”. The word “hereafter” is omitted as executed. The words “may be used” are substituted for the words “shall * * * be available”. The words “if the acquisition relates to” are substituted for 31:649b (1st 8 words of last sentence). In clauses (1), (2), and (4), the word “patents” is substituted for the words “letters patent”.

AMENDMENTS

1996—Par. (3). Pub. L. 104-106 amended par. (3) generally, substituting “Design and process data, technical data, and computer software” for “Technical data and computer software”.

1994—Pars. (3), (4). Pub. L. 103-355 added pars. (3) and (4) and struck out former pars. (3) and (4) which read as follows:

“(3) Designs, processes, and manufacturing data.

“(4) Releases, before suit is brought, for past infringement of patents or copyrights.”

1960—Pub. L. 86-726 inserted “or copyrights” after “patents” in cl. (4).

[§ 2387. Repealed. Pub. L. 114-328, div. A, title VIII, § 833(b)(4)(A), Dec. 23, 2016, 130 Stat. 2285]

Section, added Pub. L. 85-861, § 1(45), Sept. 2, 1958, 72 Stat. 1458, related to limitation on procurement of table and kitchen equipment for officers’ quarters.

[§ 2388. Renumbered § 2922]

§ 2389. Ensuring safety regarding insensitive munitions

The Secretary of Defense shall ensure, to the extent practicable, that insensitive munitions under development or procurement are safe throughout development and fielding when subject to unplanned stimuli.

(Added Pub. L. 107-107, div. A, title VIII, § 834(a)(1), Dec. 28, 2001, 115 Stat. 1191.)

PRIOR PROVISIONS

A prior section 2389, added Pub. L. 89-696, § 1(1), Oct. 19, 1966, 80 Stat. 1056; amended Pub. L. 100-370, § 1(h)(1), July 19, 1988, 102 Stat. 847, related to purchases from Commodity Credit Corporation and price adjustments for contracts for procurement of milk, prior to repeal by Pub. L. 103-160, div. A, title VIII, § 821(a)(4), Nov. 30, 1993, 107 Stat. 1704.

REPORT REQUIREMENT

Pub. L. 107-107, div. A, title VIII, § 834(b), Dec. 28, 2001, 115 Stat. 1191, directed the Secretary of Defense to submit to committees of Congress a report on insensitive munitions at the same time that the budgets for fiscal years 2003 through 2005 were submitted.

§ 2390. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense

(a)(1) Except as provided in subsections (b) and (c), the sale outside the Department of Defense of any defense article designated or otherwise classified as Prepositioned Material Configured to Unit Sets, as decrement stock, or as Prepositioned War Reserve Stocks for United States Forces is prohibited.

(2) In this section, the term “decrement stock” means such stock as is needed to bring the armed forces from a peacetime level of readiness to a combat level of readiness.

(b) The President may authorize the sale outside the Department of Defense of a defense article described in subsection (a) if—

(1) he determines that there is an international crisis affecting the national security of the United States and the sale of such article is in the best interests of the United States; and

(2) he reports to the Congress not later than 60 days after the transfer of such article a plan for the prompt replenishment of the stocks of such article and the planned budget request to begin implementation of that plan.

(c)(1) Nothing in this section shall preclude the sale of stocks which have been designated for replacement, substitution, or elimination or which have been designated for sale to provide funds to procure higher priority stocks.

(2) Nothing in this section shall preclude the transfer or sale of equipment to other members of the North Atlantic Treaty Organization.

(Added Pub. L. 95-485, title VIII, § 815(a), Oct. 20, 1978, 92 Stat. 1625, § 975; amended Pub. L. 100-26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; renumbered § 2390, Pub. L. 101-189, div. A, title XVI, § 1622(b)(1), Nov. 29, 1989, 103 Stat. 1604.)

PRIOR PROVISIONS

A prior section 2390, added Pub. L. 95-79, title VIII, § 815(a), July 30, 1977, 91 Stat. 337; amended Pub. L. 96-470, title I, § 104(a), Oct. 19, 1980, 94 Stat. 2238; Pub. L. 96-513, title V, § 511(80), Dec. 12, 1980, 94 Stat. 2927, directed Secretary of Defense to request each commissioned officer, and each civilian employee above grade GS-12, who was scheduled for retirement and who was or had been at any time within one year prior to such scheduled retirement, assigned to, or employed in, military procurement to submit suggestions for methods to improve procurement policies, prior to repeal by Pub. L. 98-94, title XII, § 1259(a), Sept. 24, 1983, 97 Stat. 703.

AMENDMENTS

1989—Pub. L. 101-189 renumbered section 975 of this title as this section.

1987—Subsec. (a)(2). Pub. L. 100-26 inserted “the term” after “In this section,”.

§ 2391. Military base reuse studies and community planning assistance

(a) REUSE STUDIES.—Whenever the Secretary of Defense or the Secretary of the military de-

partment concerned publicly announces that a military installation is a candidate for closure or that a final decision has been made to close a military installation and the Secretary of Defense determines, because of the location, facilities, or other particular characteristics of the installation, that the installation may be suitable for some specific Federal, State, or local use potentially beneficial to the Nation, the Secretary of Defense may conduct such studies, including the preparation of an environmental impact statement in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), in connection with such installation and such potential use as may be necessary to provide information sufficient to make sound conclusions and recommendations regarding the possible use of the installation.

(b) ADJUSTMENT AND DIVERSIFICATION ASSISTANCE.—(1) The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments in planning community adjustments and economic diversification required (A) by the proposed or actual establishment, realignment, or closure of a military installation, (B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, (C) by a publicly announced planned major reduction in Department of Defense spending that would directly and adversely affect a community, (D) by the encroachment of a civilian community on a military installation, or (E) by the closure or the significantly reduced operations of a defense facility as the result of the merger, acquisition, or consolidation of the defense contractor operating the defense facility, if the Secretary determines that an action described in clause (A), (B), (C), or (E) is likely to have a direct and significantly adverse consequence on the affected community or, in the case of an action described in clause (D), if the Secretary determines that the encroachment of the civilian community is likely to impair the continued operational utility of the military installation.

(2) In the case of the establishment or expansion of a military installation, assistance may be made under paragraph (1) only if (A) community impact assistance or special impact assistance is not otherwise available, and (B) the establishment or expansion involves the assignment to the installation of (i) more than 2,000 military, civilian, and contractor Department of Defense personnel, or (ii) more military, civilian, and contractor Department of Defense personnel than the number equal to 10 percent of the number of persons employed in counties or independent municipalities within fifteen miles of the installation, whichever is lesser.

(3) In the case of a publicly announced planned reduction in Department of Defense spending, the closure or realignment of a military installation, the cancellation or termination of a Department of Defense contract, or the failure to proceed with a previously approved major defense acquisition program, assistance may be made under paragraph (1) only if the reduction,

closure or realignment, cancellation or termination, or failure will have a direct and significant adverse impact on a community or its residents.

(4)(A) In the case of a State or local government eligible for assistance under paragraph (1), the Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist the State or local government to carry out a community adjustment and economic diversification program (including State industrial extension or modernization efforts to facilitate the economic diversification of defense contractors and subcontractors) in addition to planning such a program.

(B) The Secretary shall establish criteria for the selection of community adjustment and economic diversification programs to receive assistance under subparagraph (A). Such criteria shall include a requirement that the State or local government agree—

(i) to provide not less than 10 percent of the funding for the program from non-Federal sources;

(ii) to provide business planning and market exploration services under the program to defense contractors and subcontractors that seek modernization or diversification assistance; and

(iii) to provide training, counseling, and placement services for members of the armed forces and dislocated defense workers.

(C) The Secretary shall carry out this paragraph in coordination with the Secretary of Commerce.

(5)(A) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State or local government in planning community adjustments and economic diversification even though the State or local government is not currently eligible for assistance under paragraph (1) if the Secretary determines that a substantial portion of the economic activity or population of the geographic area to be subject to the advance planning is dependent on defense expenditures.

(B) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State in enhancing its capacities—

(i) to assist communities, businesses, and workers adversely affected by an action described in paragraph (1);

(ii) to support local adjustment and diversification initiatives; and

(iii) to stimulate cooperation between statewide and local adjustment and diversification efforts.

(C) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State or local government in enhancing the capabilities of the government to support efforts of the Department of Defense to privatize, contract for, or diversify the performance of military family support services in cases in which the capability of the Department to provide such services is adversely affected by an action described in paragraph (1).

(6) Funds provided to State and local governments and regional organizations under this section may be used as part or all of any required non-Federal contribution to a Federal grant-in-aid program for the purposes stated in paragraph (1).

(7) To the extent practicable, the Secretary of Defense shall inform a State or local government applying for assistance under this subsection of the approval or rejection by the Secretary of the application for such assistance as follows:

(A) Before the end of the 7-day period beginning on the date on which the Secretary receives the application, in the case of an application for a planning grant.

(B) Before the end of the 30-day period beginning on such date, in the case of an application for assistance to carry out a community adjustments and economic diversifications program.

(8)(A) In attempting to complete consideration of applications within the time period specified in paragraph (7), the Secretary of Defense shall give priority to those applications requesting assistance for a community described in subsection (f)(1).

(B) If an application under paragraph (7) is rejected by the Secretary, the Secretary shall promptly inform the State or local government of the reasons for the rejection of the application.

(c) RESEARCH AND TECHNICAL ASSISTANCE.—The Secretary of Defense may make grants to, or conclude cooperative agreements or enter into contracts with, another Federal agency, a State or local government, or any private entity to conduct research and provide technical assistance in support of activities under this section or Executive Order 12788 (57 Fed. Reg. 2213), as amended by section 33 of Executive Order 13286 (68 Fed. Reg. 10625) and Executive Order 13378 (70 Fed. Reg. 28413).

(d) DEFINITIONS.—In this section:

(1) The terms “military installation” and “realignment” have the meanings given those terms in section 2687 of this title. For purposes of subsection (b)(1)(D), the term “military installation” includes a military facility owned and operated by any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, even though the facility is not under the jurisdiction of the Department of Defense, if the Secretary of Defense determines that the military facility is subject to significant use for training by the armed forces.

(2) The term “defense facility” means any private facility producing goods or services pursuant to a defense contract.

(3) The terms “community adjustment” and “economic diversification” include the development of feasibility studies and business plans for market diversification within a community adversely affected by an action described in clause (A), (B), (C), or (E) of subsection (b)(1) by adversely affected businesses and labor organizations located in the community.

(e) ASSISTANCE SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to make grants under this section in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 97–86, title IX, §912(a)(1), Dec. 1, 1981, 95 Stat. 1122; amended Pub. L. 98–115, title VIII, §808, Oct. 11, 1983, 97 Stat. 789; Pub. L. 100–26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–456, div. B, title XXVIII, §2805, Sept. 29, 1988, 102 Stat. 2116; Pub. L. 101–510, div. D, title XLI, §4102(b), Nov. 5, 1990, 104 Stat. 1851; Pub. L. 102–25, title VII, §701(j)(3), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, §1052(28), div. D, title XLIII, §4301(a)–(c), Oct. 23, 1992, 106 Stat. 2500, 2696, 2697; Pub. L. 103–35, title II, §202(a)(15), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. B, title XXIX, §2913, Nov. 30, 1993, 107 Stat. 1925; Pub. L. 103–337, div. A, title XI, §§1122(a), 1123(a), (b), Oct. 5, 1994, 108 Stat. 2870, 2871; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. B, title XXVIII, §2814, Sept. 23, 1996, 110 Stat. 2790; Pub. L. 105–85, div. B, title XXVIII, §2822, Nov. 18, 1997, 111 Stat. 1997; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, §1041(a)(13), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 109–163, div. B, title XXVIII, §2832, Jan. 6, 2006, 119 Stat. 3520; Pub. L. 109–364, div. B, title XXVIII, §§2861, 2862, Oct. 17, 2006, 120 Stat. 2498; Pub. L. 110–417, div. B, title XXVIII, §2823(b), Oct. 14, 2008, 122 Stat. 4730; Pub. L. 112–239, div. B, title XXVII, §2712(c)(1), Jan. 2, 2013, 126 Stat. 2145.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

Executive Order 12788, referred to in subsec. (c), is set out below.

AMENDMENTS

2013—Subsec. (d)(1). Pub. L. 112–239 substituted “section 2687” for “section 2687(e)”.

2008—Subsec. (d)(1). Pub. L. 110–417 inserted “the Commonwealth of the Northern Mariana Islands,” after “Guam.”

2006—Subsec. (b)(3). Pub. L. 109–163, §2832(a), substituted “realignment of a military installation” for “significantly reduced operations of a defense facility”, “closure or realignment, cancellation or” for “cancellation,” and “community or its residents.” for “community and will result in the loss of—

“(A) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area or similar area (as defined by the Director of the Office of Management and Budget);

“(B) 1,000 or more employee positions, in the case of a labor market area outside of a Metropolitan Statistical Area; or

“(C) one percent of the total number of civilian jobs in that area.”

Subsec. (c). Pub. L. 109–364, §2861, added subsec. (c).

Subsec. (d)(1). Pub. L. 109–364, §2862, inserted at end “For purposes of subsection (b)(1)(D), the term ‘military installation’ includes a military facility owned and operated by any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, or the Virgin Islands, even though the facility is not under the jurisdiction of the Depart-

ment of Defense, if the Secretary of Defense determines that the military facility is subject to significant use for training by the armed forces.”

Pub. L. 109-163, § 2832(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘military installation’ means any camp, post, station, base, yard, or other installation under the jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.”

2002—Subsec. (c). Pub. L. 107-314 struck out heading and text of subsec. (c). Text read as follows: “The Secretary of Defense shall submit a report not later than December 1 of each year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives concerning the operation of this section during the preceding fiscal year. Each such report shall identify each State, unit of local government, and regional organization that received a grant under this section during such fiscal year and the total amount granted under this section during such year to each such State, unit of local government, and regional organization.”

1999—Subsec. (c). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1997—Subsec. (b)(5)(C). Pub. L. 105-85 added subpar. (C).

1996—Subsec. (b)(5). Pub. L. 104-201 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 104-106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

1994—Subsec. (b)(5) to (7). Pub. L. 103-337, § 1123(a), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 103-337, § 1123(a)(1), (b), redesignated par. (7) as (8) and substituted “paragraph (7)” for “paragraph (6)” in subpars. (A) and (B).

Subsec. (d)(3). Pub. L. 103-337, § 1122(a), added par. (3). 1993—Subsec. (b)(1). Pub. L. 103-35 made technical amendment to directory language of Pub. L. 102-484, § 4301(b)(1)(C). See 1992 Amendment note below.

Subsec. (b)(6), (7). Pub. L. 103-160 added pars. (6) and (7).

1992—Subsec. (a). Pub. L. 102-484, § 4301(c)(1), inserted heading.

Subsec. (b). Pub. L. 102-484, § 4301(c)(2), inserted heading.

Subsec. (b)(1). Pub. L. 102-484, § 4301(b)(1), as amended by Pub. L. 103-35, substituted “, (D)” for “, or (D)”, substituted “(C), or (E)” for “or (C)”, and inserted cl. (E) before first reference to “if the Secretary”.

Pub. L. 102-484, § 1052(28), substituted “publicly announced” for “publicly-announced”.

Subsec. (b)(3). Pub. L. 102-484, § 4301(b)(2), inserted “the closure or significantly reduced operations of a defense facility,” after “Defense spending,” in introductory provisions.

Subsec. (b)(4), (5). Pub. L. 102-484, § 4301(a)(1), (2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 102-484, § 4301(c)(3), inserted heading.

Subsec. (d). Pub. L. 102-484, § 4301(b)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “In this section, the term ‘military installation’ means any camp, post, station, base, yard, or other installation under the jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.”

Subsec. (e). Pub. L. 102-484, § 4301(c)(4), inserted heading.

1991—Subsec. (b)(3). Pub. L. 102-25 substituted “publicly announced” for “publicly-announced” and inserted a comma after “only if the reduction”.

1990—Subsec. (b)(3) to (6). Pub. L. 101-510 added par. (3), redesignated par. (5) as (4), and struck out former pars. (3), (4), and (6), which read as follows:

“(3) In the case of the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, assistance may be made under paragraph (1) only if the cancellation, termination, or failure to proceed involves the loss of 2,500 or more full-time Department of Defense and contractor employee positions in the locality of the affected community.

“(4) In the case of a publicly-announced planned major reduction in Department of Defense spending that will directly and adversely affect a community, assistance may be made under paragraph (1) only if the publicly-announced planned major reduction will result in the loss of 1,000 or more full-time Department of Defense and contractor employee positions over a five-year period in the locality of the affected community.

“(6) Not more than \$2,000,000 in assistance may be provided under this subsection in any fiscal year.”

1988—Subsec. (b)(1). Pub. L. 100-456, § 2805(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds made available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments, and regional organizations composed of State and local governments, in planning community adjustments required (A) by the proposed or actual establishment, realignment, or closure of a military installation, or (B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, if the Secretary of Defense determines that the action is likely to impose a significant impact on the affected community.”

Subsec. (b)(4) to (6). Pub. L. 100-456, § 2805(b), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

1987—Subsec. (d). Pub. L. 100-26 inserted “the term” after “In this section,”.

1983—Subsec. (b)(2). Pub. L. 98-115 substituted “2,000” for “2,500”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-35 applicable as if included in the enactment of Pub. L. 102-484, see section 202(b) of Pub. L. 103-35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-456, div. B, title XXVII, § 2702, Sept. 29, 1988, 102 Stat. 2115, provided that: “Except as otherwise specifically provided, this division [amending this section and sections 2662, 2672, 2809, and 2828 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1988, or the date of enactment of this Act [Sept. 29, 1988], whichever is later.”

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-115, title VIII, § 808, Oct. 11, 1983, 97 Stat. 789, provided that the amendment made by that section is effective Oct. 1, 1983.

ADVANCE ADJUSTMENT PLANNING

Pub. L. 102-484, div. D, title XLIII, § 4301(d), Oct. 23, 1992, 106 Stat. 2697, authorized Secretary of Defense, during fiscal year 1993, to make grants and other assistance available under 10 U.S.C. 2391(b) to assist a State or local government in planning community adjustments and economic diversification even though the State or local government currently failed to meet the criteria for assistance under such section if the Secretary determined that a substantial portion of the economic activity or population of the geographic area to be subjected to the adjustment or diversification planning was dependent on Department of Defense expenditures.

EFFECT OF 1992 AMENDMENTS ON EFFORTS OF ECONOMIC DEVELOPMENT ADMINISTRATION

Pub. L. 102-484, div. D, title XLIII, § 4301(f), Oct. 23, 1992, 106 Stat. 2698, provided that: "Nothing in this section [amending this section and enacting provisions set out as a note above] is intended to replace the efforts of the economic development program administered by the Economic Development Administration of the Department of Commerce."

PILOT PROJECT TO IMPROVE ECONOMIC ADJUSTMENT PLANNING

Pub. L. 102-484, div. D, title XLIII, § 4302, Oct. 23, 1992, 106 Stat. 2698, as amended by Pub. L. 103-160, div. A, title XIII, § 1323(a), Nov. 30, 1993, 107 Stat. 1790, authorized Secretary of Defense, during fiscal years 1993 and 1994, to conduct a pilot project to examine methods to improve the provision of economic adjustment and diversification assistance under 10 U.S.C. 2391(b)(1) to State and local governments adversely affected by the closure of military installations, the cancellation or completion of defense contracts, or reductions in defense spending.

DONATION OF REAL PROPERTY TO NONPROFIT ENTITIES PROVIDING SUPPORT TO CHILDREN WITH LIFE-THREATENING DISEASES

Pub. L. 102-172, title VIII, § 8149, Nov. 26, 1991, 105 Stat. 1214, provided that:

"(a) The Secretary of Defense, during the current fiscal year or at any time thereafter, may make a donation to an entity described in subsection (b) of a parcel of real property (including structures on such property) under the jurisdiction of the Secretary that is not currently required for the needs of the Department and that the Secretary determines is needed and appropriate for the activities of that entity.

"(b) A donation under subsection (a) may be made to a nonprofit entity which provides medical, educational, and emotional support in a recreational setting to children with life-threatening diseases and their families."

DEFENSE ECONOMIC ADJUSTMENT, DIVERSIFICATION, CONVERSION, AND STABILIZATION

Pub. L. 101-510, div. D, Nov. 5, 1990, 104 Stat. 1848, as amended by Pub. L. 102-190, div. A, title X, § 1062(c), Dec. 5, 1991, 105 Stat. 1475; Pub. L. 102-484, div. D, title XLII, § 4212(b), Oct. 23, 1992, 106 Stat. 2664; Pub. L. 104-201, div. A, title VIII, § 825, Sept. 23, 1996, 110 Stat. 2611; Pub. L. 105-277, div. A, § 101(f) [title VIII, § 405(d)(6)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-419; Pub. L. 108-136, div. A, title IX, § 932, Nov. 24, 2003, 117 Stat. 1581; Pub. L. 113-66, div. B, title XXVIII, § 2841, Dec. 26, 2013, 127 Stat. 1024, provided that:

"SEC. 4001. SHORT TITLE

"This division may be cited as the 'Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990'.

"SEC. 4002. FINDINGS AND POLICY

"(a) FINDINGS.—Congress makes the following findings:

"(1) There are likely to be significant reductions in the programs, projects, and activities of the Department of Defense during the first several fiscal years following fiscal year 1990.

"(2) Such reductions will adversely affect the economies of many communities in the United States and small businesses and civilian workers throughout the United States.

"(b) POLICY.—In view of the findings expressed in subsection (a), it is the policy of the United States that—

"(1) assistance be provided under existing planning assistance programs and economic adjustment assistance programs of the Federal Government to substantially and seriously affected communities, businesses, and workers to the extent necessary to facilitate an orderly transition for such communities, small busi-

nesses, and workers from economic reliance on Department of Defense spending to economic reliance on other sources of business, employment, and revenue; and

"(2) funding for such programs be increased by amounts necessary to meet the needs of such communities, small businesses, and workers without reducing the funding that would otherwise be available under those programs by reason of causes unrelated to the reductions referred to in subsection (a)(1).

"SEC. 4003. DEFINITIONS

"For purposes of this division:

"(1) The term 'major defense contract or subcontract' means—

"(A) any defense contract in an amount not less than \$5,000,000 (without regard to the date on which the contract was awarded); and

"(B) any subcontract which—

"(i) is entered into in connection with a contract (without regard to the effective date of the subcontract); and

"(ii) involves not less than \$500,000.

"(2) The term 'Economic Adjustment Committee' or 'Committee' means the Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note).

"(3) The term 'defense facility' means any private or government facility producing goods or services pursuant to a defense contract.

"(4) The term 'military installation' means a base, camp, post, station, yard, center, or homeport facility for any ship in the United States, or any other facility under the jurisdiction of a military department located in the United States.

"(5) The term 'substantially and seriously affected' means—

"(A) when such term is used in conjunction with the term 'community', a community—

"(i) which has within its administrative and political jurisdiction one or more military installations or defense facilities or which is economically affected by proximity to a military installation or defense facility;

"(ii) in which the actual or threatened curtailment, completion, elimination, or realignment of a defense contract results in a workforce reduction of—

"(I) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area or similar area (as defined by the Director of the Office of Management and Budget);

"(II) 1,000 or more employee positions, in the case of a labor market area outside of a Metropolitan Statistical Area; or

"(III) one percent of the total number of civilian jobs in that area; and

"(iii) which establishes, by evidence, that any workforce reduction referred to in clause (ii) occurred as a direct result of changes in Department of Defense requirements or programs;

"(B) when such term is used in conjunction with the term 'businesses' any business which—

"(i) holds a major defense contract or subcontract (or held such contract or subcontract before a reduction in the defense budget);

"(ii) experiences a reduction, or the threat of a reduction, of—

"(I) 25 percent or more in sales or production; or

"(II) 80 percent or more of the workforce of such business in any division of such business or at any plant or other facility of such business; and

"(iii) establishes, by evidence, that the reductions referred to in clause (ii) occurred as a direct result of a reduction in the defense budget; and

"(C) when such term is used in conjunction with the term 'group of workers', any group of 100 or more workers at a defense facility who are (or who

are threatened to be), eligible to participate in the defense conversion adjustment program under section 325 of the Job Training Partnership Act [29 U.S.C. 1662d] (as added by section 4202 of this division), as in effect on the day before the date of enactment of the Workforce Investment Act of 1998 [Aug. 7, 1998].

“SEC. 4004. CONTINUATION OF ECONOMIC ADJUSTMENT COMMITTEE

“(a) TERMINATION OR ALTERATION PROHIBITED.—The Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note) may not be terminated and the duties of the Committee may not be significantly altered unless specifically authorized by a law.

“(b) CHAIRMAN.—The Secretary of Defense shall be the chairman of the Committee.

“(c) EXECUTIVE COUNCIL.—Until October 1, 1997, the National Defense Technology and Industrial Base Council shall function as an Executive Council of the Committee. Under the direction of the chairman of the Committee, the Executive Council shall develop policies and procedures to ensure that communities, businesses, and workers substantially and seriously affected by reductions in defense expenditures are advised of the assistance available to such communities, businesses, and workers under programs administered by the departments and agency comprising the Council.

“(d) DUTIES OF COMMITTEE.—The Economic Adjustment Committee shall—

“(1) coordinate and facilitate cooperative efforts among Federal agencies represented on the Committee to implement defense economic adjustment programs; and

“(2) serve as an information clearinghouse for and between Federal, State, and local entities regarding their defense economic adjustment efforts.

“TITLE XLI—ECONOMIC ADJUSTMENT PLANNING

“[SEC. 4101. Repealed. Pub. L. 104-201, div. A, title VIII, § 825, Sept. 23, 1996, 110 Stat. 2611.]

“SEC. 4102. ECONOMIC ADJUSTMENT PLANNING ASSISTANCE THROUGH THE DEPARTMENT OF DEFENSE

“(a) IN GENERAL.—Any substantially and seriously affected community shall be eligible for economic adjustment planning assistance through the Office of Economic Adjustment in the Department of Defense under subsection (b) of section 2391 of title 10, United States Code, subject to subsection (e) of such section. Such assistance shall be provided in accordance with the standards, procedures, and priorities established by the Committee under this division.

“(b) [Amended section 2391(b) of this title.]

“SEC. 4103. COMMUNITY ECONOMIC ADJUSTMENT ASSISTANCE THROUGH THE ECONOMIC DEVELOPMENT ADMINISTRATION

“(a) IN GENERAL.—A community that has been determined by the Economic Development Administration of the Department of Commerce or the Office of Economic Adjustment of the Department of Defense, in accordance with the standards and procedures established by the Economic Adjustment Committee, to be a substantially and seriously affected community shall be eligible for economic adjustment assistance authorized under title IX of the Public Works and Economic Development Act of 1965 [42 U.S.C. 3241 et seq.], subject to the availability of appropriations for such purpose and subject to meeting the eligibility requirements of such title.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Defense for fiscal year 1991 \$50,000,000 for purposes of carrying out subsection (a). Any amount appropriated pursuant to this subsection shall remain available until expended.

“TITLE XLII—ADJUSTMENT ASSISTANCE FOR EMPLOYEES

“[SEC. 4201. Repealed. Pub. L. 104-201, div. A, title VIII, § 825, Sept. 23, 1996, 110 Stat. 2611.]

“SEC. 4202. DEFENSE CONVERSION ADJUSTMENT PROGRAM

“[Enacted section 1662d of Title 29, Labor.]

“SEC. 4203. AUTHORIZATION OF APPROPRIATIONS

“(a) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Defense \$150,000,000 for fiscal year 1991 to carry out section 4201 and the amendment made by section 4202. Amounts appropriated pursuant to this subsection shall remain available until expended.

“(b) ADMINISTRATIVE EXPENSES.—Of amounts appropriated pursuant to this section, not more than five percent may be retained by the Secretary of Labor for the administration of the activities authorized by the amendment made by section 4202.

“TITLE XLIII—EXPANSION OF BUSINESS CAPITAL ASSISTANCE PROGRAMS

“SEC. 4301. EXPANSION OF SMALL BUSINESS LOAN PROGRAM

“Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the President, acting with the assistance of the Committee and after consulting experts in government and the private sector, shall transmit to the Congress recommendations regarding ways that assistance provided pursuant to the business loan program under section 7(a) of the Small Business Act of 1958 [15 U.S.C. 636(a)] may be used to respond to the consequences of defense budget reductions.

“SEC. 4302. ECONOMIC PLANNING ASSISTANCE FOR EXCEPTIONAL PROJECTS

“(a) ASSISTANCE AUTHORIZED.—The Economic Development Administration, in the case of assistance under title IX of the Public Works and Economic Development Act of 1965 [42 U.S.C. 3241 et seq.], and the Office of Economic Adjustment, in the case of planning assistance under section 2391(b) of title 10, United States Code, may award planning assistance under those programs to any substantially and seriously affected community, on behalf of a business, group of businesses, or group of workers, if such planning funds are determined by the agency concerned to be necessary and appropriate as a catalyst for projects which the agency determines, on a case-by-case basis, have exceptional promise for achieving the objectives of this division.

“(b) CONDITIONS ON ASSISTANCE.—Awards under this section shall be subject to the availability of appropriations for such purpose and shall be made in accordance with any other applicable provisions of law.

“SEC. 4303. EXPANSION OF EXPORT FINANCING FOR GOODS AND SERVICES PRODUCED BY FIRMS AND EMPLOYEES FORMERLY ENGAGED IN DEFENSE PRODUCTION

“(a) EXPORT-IMPORT BANK.—

“(1) SENSE OF CONGRESS ON PLAN FOR EXPANSION.—It is the sense of Congress that the United States businesses undergoing transition from defense production to nondefense production will need assistance in seizing export markets overseas. Therefore, in order to provide financial support for such businesses, as well as meeting other normal demands on its resources, the annual direct lending authority of the Export-Import Bank of the United States should be increased by at least 150 percent from the fiscal year 1990 level over the five-year period beginning October 1, 1990.

“(2) REPORT OF FEASIBILITY.—Before September 30, 1990, the President, acting with the assistance of the Committee and after consulting the Board of Directors of the Export-Import Bank of the United States and other experts in government and the private sector, shall transmit to the Congress a report assessing the feasibility and desirability of a program for in-

creasing the amount of direct loan authority in the manner described in paragraph (1) and the factors considered in making such assessment.

“(3) TRANSITION TO NONDEFENSE PRODUCTION REQUIRED TO BE CONSIDERED.—In determining whether to provide financial support for an export transaction, the Export-Import Bank of the United States shall take into account, to the extent feasible and in accordance with applicable standards and procedures established by the bank in consultation with the Committee, the fact that the product or service is produced or provided by any business or group of workers which—

“(A) was substantially and seriously affected by defense budget reductions; and

“(B) is in transition from defense to nondefense production.

“(b) SBA USE OF AUTHORITY FOR EXPORT FINANCING ASSISTANCE.—In determining whether to provide financial or other assistance under the Small Business Act [15 U.S.C. 631 et seq.], title VIII of the Omnibus Trade and Competitiveness Act of 1988 [Pub. L. 100-418, see Short Title of 1988 Amendments note set out under section 631 of Title 15, Commerce and Trade], or any program referred to in section 4301 to any small business involved in, or attempting to become involved in, the export of any product or service, the Administrator of the Small Business Administration shall take into account the fact that such product or service is produced or provided by any business or group of workers which—

“(1) has been substantially and seriously affected by defense budget reductions; and

“(2) is in transition from defense to nondefense production.

“(c) COORDINATION AND INTEGRATION OF ACTIVITIES AND ASSISTANCE WITH OTHER AGENCIES.—In providing additional financial assistance pursuant to any increase in loan authority under this division—

“(1) Federal agencies concerned with international trade shall participate in the process of coordination conducted by the Committee pursuant to section 4004(c)(1); and

“(2) such Federal agencies shall attempt, to the maximum extent practicable, to coordinate and integrate the activities and assistance of the agencies in support of exports, including financial assistance in the form of direct loans, loan guarantees, and insurance, general trade promotion, marketing assistance, and marketing and commercial information, in a manner consistent with the purposes of this division (and the amendments made by this division to other provisions of law).

“(d) REPORTING.—The annual reports made by the Export-Import Bank of the United States and the Administrator of the Small Business Administration and the annual economic stabilization and adjustment report under section 4004(c)(3) of this division shall include a description of the extent to which the bank and the Administrator are—

“(1) providing financing described in subsections (a)(2) and (b), respectively, to businesses or groups of workers which were substantially and seriously affected by defense budget reductions; and

“(2) coordinating and integrating export support and financing activities with other Federal agencies.

“SEC. 4304. BENEFIT INFORMATION FOR BUSINESSES

“(a) INFORMATION REQUIRED TO BE PROVIDED.—The Secretary of Commerce and the Administrator of the Small Business Administration shall provide any business affected by defense budget reductions with a complete description of available programs which provide any business, whether on an industrywide or an individual basis, with any planning assistance, financial, technical, or managerial assistance, worker retraining assistance, or other assistance authorized under this division.

“(b) EFFECTIVE NOTIFICATION SYSTEM.—The Secretary of Commerce and the Administrator of the Small Business

Administration shall take such action as may be appropriate to ensure, to the maximum extent practicable, that each business affected by defense budget reductions receives the information required to be provided under subsection (a) on a timely basis.”

COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES

Section 2819 of Pub. L. 100-456, as amended by Pub. L. 101-510, div. B, title XXIX, §2922(a), Nov. 5, 1990, 104 Stat. 1820, established Commission on Alternative Utilization of Military Facilities and required Commission to submit reports to President and Congress not later than Sept. 1 of every second year through fiscal year 1996, prior to repeal by Pub. L. 105-261, div. A, title X, §1031(b), Oct. 17, 1998, 112 Stat. 2123.

SUBMISSION DATE FOR FIRST REPORT

Pub. L. 97-86, title IX, §912(c), Dec. 1, 1981, 95 Stat. 1123, required the first report under subsec. (c) of this section to be submitted not later than Dec. 1, 1982.

EX. ORD. NO. 12682. COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES

Ex. Ord. No. 12682, July 7, 1989, 54 F.R. 29315, provided: By the authority vested in me as President by the Constitution and laws of the United States of America, including section 2819 of the Military Construction Authorization Act, 1989 (Public Law 100-456) [10 U.S.C. 2391 note], it is hereby ordered as follows:

SECTION 1. (a) I hereby establish the Commission on Alternative Utilization of Military Facilities (“Commission”).

(b) The Commission shall consist of a representative of the Department of Defense designated by the Secretary of Defense, a representative of the Federal Bureau of Prisons designated by the Attorney General, a representative of the National Institute on Drug Abuse designated by the Secretary of Health and Human Services, a representative of the General Services Administration designated by the Administrator of General Services, a representative of the Department of Housing and Urban Development designated by the Secretary of Housing and Urban Development, and a representative of the Office of National Drug Control Policy designated by the Director of the Office of National Drug Control Policy. The representative of the Department of Defense shall chair the Commission.

(c) The Secretary of Defense shall provide such personnel and support to the Commission as the Secretary determines is necessary to accomplish its mission.

SEC. 2. (a) Subject to subsection (b), the Secretary of Defense shall prepare and submit to the Commission reports listing active and nonactive military facilities that are underutilized in whole or in part or otherwise excess to the needs of the Department of Defense.

(b) The first such report shall be prepared and submitted as soon as possible for inclusion in the first report of the Commission. The second report shall be prepared and submitted on January 30, 1990, and succeeding reports shall be prepared and submitted every other year commencing on January 30, 1992, and continuing until January 30, 1996.

SEC. 3. (a) Subject to subsection (b), the Commission shall submit a report to the President and then to the Congress that identifies those facilities, or parts of facilities, from the list submitted by the Secretary of Defense under Section 2 that could be effectively utilized or renovated to serve as:

(1) minimum security facilities for nonviolent prisoners,

(2) drug treatment facilities for nonviolent drug abusers, and

(3) facilities to assist the homeless.

(b) The first report of the Commission shall be submitted to the President and then to the Congress by September 1, 1989. The second, and succeeding reports of the Commission, shall be submitted to the President and then to the Congress no later than September 1, 1990, and every second year through September 1, 1996.

GEORGE BUSH.

EX. ORD. NO. 12788. DEFENSE ECONOMIC ADJUSTMENT PROGRAM

Ex. Ord. No. 12788, Jan. 15, 1992, 57 F.R. 2213, as amended by Ex. Ord. No. 13286, § 33, Feb. 28, 2003, 68 F.R. 10625; Ex. Ord. No. 13378, May 12, 2005, 70 F.R. 28413, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 10 U.S.C. 2391 and the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990, enacted as Division D, section 4001 *et seq.*, of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510 [set out above], and to provide coordinated Federal economic adjustment assistance necessitated by changes in Department of Defense activities, it is hereby ordered as follows:

SECTION 1. *Function of the Secretary of Defense.* The Secretary of Defense shall, through the Economic Adjustment Committee, design and establish a Defense Economic Adjustment Program.

SEC. 2. *Purpose of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall (1) assist substantially and seriously affected communities, businesses, and workers from the effects of major Defense base closures, realignments, and Defense contract-related adjustments, and (2) assist State and local governments in preventing the encroachment of civilian communities from impairing the operational utility of military installations.

SEC. 3. *Functions of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall:

(a) Identify problems of States, regions, metropolitan areas, or communities that result from major Defense base closures, realignments, and Defense contract-related adjustments, and the encroachment of the civilian community on the mission of military installations and that require Federal assistance;

(b) Use and maintain a uniform socioeconomic impact analysis to justify the use of Federal economic adjustment resources, prior to particular realignments;

(c) Apply consistent policies, practices, and procedures in the administration of Federal programs that are used to assist Defense-affected States, regions, metropolitan areas, communities, and businesses;

(d) Identify and strengthen existing agency mechanisms to coordinate employment opportunities for displaced agency personnel;

(e) Identify and strengthen existing agency mechanisms to improve reemployment opportunities for displaced Defense industry personnel;

(f) Assure timely consultation and cooperation with Federal, State, regional, metropolitan, and community officials concerning Defense-related impacts on Defense-affected communities' problems;

(g) Assure coordinated interagency and intergovernmental adjustment assistance concerning Defense impact problems;

(h) Prepare, facilitate, and implement cost-effective strategies and action plans to coordinate interagency and intergovernmental economic adjustment efforts;

(i) Encourage effective Federal, State, regional, metropolitan, and community cooperation and concerted involvement of public interest groups and private sector organizations in Defense economic adjustment activities;

(j) Serve as a clearinghouse to exchange information among Federal, State, regional, metropolitan, and community officials involved in the resolution of community economic adjustment problems. Such information may include, for example, previous studies, technical information, and sources of public and private financing;

(k) Assist in the diversification of local economies to lessen dependence on Defense activities;

(l) Encourage and facilitate private sector interim use of lands and buildings to generate jobs as military activities diminish; [sic]

(m) Develop ways to streamline property disposal procedures to enable Defense-impacted communities to

acquire base property to generate jobs as military activities diminish; and

(n) Encourage resolution of regulatory issues that impede encroachment prevention and local economic adjustment efforts.

SEC. 4. *Economic Adjustment Committee.*

(a) *Membership.* The Economic Adjustment Committee ("Committee") shall be composed of the following individuals, or a designated principal deputy of these individuals, and such other individuals from the executive branch as the President may designate. Such individuals shall include the:

- (1) Secretary of Agriculture;
- (2) Attorney General;
- (3) Secretary of Commerce;
- (4) Secretary of Defense;
- (5) Secretary of Education;
- (6) Secretary of Energy;
- (7) Secretary of Health and Human Services;
- (8) Secretary of Housing and Urban Development;
- (9) Secretary of the Interior;
- (10) Secretary of Labor;
- (11) Secretary of State;
- (12) Secretary of Transportation;
- (13) Secretary of the Treasury;
- (14) Secretary of Veterans Affairs;
- (15) Secretary of Homeland Security;
- (16) Chairman, Council of Economic Advisers;
- (17) Director of the Office of Management and Budget;
- (18) Director of the Office of Personnel Management;
- (19) Administrator of the Environmental Protection Agency;

(20) Administrator of General Services;

(21) Administrator of the Small Business Administration; and,

(22) Postmaster General.

(b) *Chairman.* The Secretary of Defense, or the Secretary's designee, shall chair the Committee.

(c) *Vice Chairman.* The Secretaries of Labor and Commerce shall serve as Vice Chairmen of the Committee. The Vice Chairmen shall co-chair the Committee in the absence of both the Chairman and the Chairman's designee and may also preside over meetings of designated representatives of the concerned executive agencies.

(d) *Executive Director.* The head of the Department of Defense's Office of Economic Adjustment shall provide all necessary policy and administrative support for the Committee and shall be responsible for coordinating the application of the Defense Economic Adjustment Program to Department of Defense activities.

(e) *Duties.* The Committee shall:

(1) Advise, assist, and support the Defense Economic Adjustment Program;

(2) Develop procedures for ensuring that State, regional, and community officials and representatives of organized labor in those States, municipalities, localities, or labor organizations that are substantially and seriously affected by changes in Defense expenditures, realignments or closures, or cancellation or curtailment of major Defense contracts, are notified of available Federal economic adjustment programs; and,

(3) Report annually to the President and then to the Congress on the work of the Economic Adjustment Committee during the preceding fiscal year.

SEC. 5. *Responsibilities of Executive Agencies.*

(a) The head of each agency represented on the Committee shall designate an agency representative to:

(1) Serve as a liaison with the Secretary of Defense's economic adjustment staff;

(2) Coordinate agency support and participation in economic adjustment assistance projects; and,

(3) Assist in resolving Defense-related impacts on Defense-affected communities.

(b) All executive agencies shall:

(1) Support, to the extent permitted by law, the economic adjustment assistance activities of the Secretary of Defense. Such support may include the use and application of personnel, technical expertise, legal authorities, and available financial resources. This support may be used, to the extent permitted by law, to

provide a coordinated Federal response to the needs of individual States, regions, municipalities, and communities adversely affected by necessary Defense changes;

(2) Afford priority consideration to requests from Defense-affected communities for Federal technical assistance, financial resources, excess or surplus property, or other requirements, that are part of a comprehensive plan used by the Committee.

SEC. 6. *Judicial Review.* This order shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, its agents, or any person.

SEC. 7. *Construction.* (a) Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

(b) This order shall be effective immediately and shall supersede Executive Order No. 12049.

[Amendment by Ex. Ord. 13378 directing insertion of “and” after “diminish;” in section 3(m) of Ex. Ord. 12788, was executed by substituting “; and” for the comma after “diminish”.]

§ 2392. Prohibition on use of funds to relieve economic dislocations

(a) In order to help avoid the uneconomic use of Department of Defense funds in the procurement of goods and services, the Congress finds that it is necessary to prohibit the use of such funds for certain purposes.

(b) No funds appropriated to or for the use of the Department of Defense may be used to pay, in connection with any contract awarded by the Department of Defense, a price differential for the purpose of relieving economic dislocations.

(Added Pub. L. 97-86, title IX, §913(a)(1), Dec. 1, 1981, 95 Stat. 1123.)

CONTRACTS MADE BY DEFENSE LOGISTICS AGENCY;
PAYMENTS OF PRICE DIFFERENTIALS TO RELIEVE
ECONOMIC DISLOCATIONS; TEST PROGRAM; INTERIM
REPORTS

Pub. L. 97-252, title XI, §1109, Sept. 8, 1982, 96 Stat. 746, as amended by Pub. L. 98-94, title XII, §1205, Sept. 24, 1983, 97 Stat. 683; Pub. L. 98-525, title XII, §1254, Oct. 19, 1984, 98 Stat. 2611, authorized the Secretary of Defense to conduct a test program during fiscal years 1983, 1984, and 1985 to test the effect of exempting certain contracts of the Department of Defense from the provisions of this section and paying a price differential under such contracts for the purpose of relieving economic dislocations, provided that the Secretary could exempt any contract (other than a contract for the purchase of fuel) made by the Defense Logistics Agency during fiscal years 1983, 1984, and 1985 if the contract was to be awarded to an individual or firm located in a Labor Surplus Area, and directed the President to submit a report to Congress not later than Apr. 15, 1983, Apr. 15, 1984, and Apr. 15, 1985, on the implementation and results to that date of the program. Similar provisions were contained in Pub. L. 97-86, title IX, §913(b), (c), Dec. 1, 1981, 95 Stat. 1124.

§ 2393. Prohibition against doing business with certain offerors or contractors

(a)(1) Except as provided in paragraph (2), the Secretary of a military department may not solicit an offer from, award a contract to, extend an existing contract with, or, when approval by the Secretary of the award of a subcontract is required, approve the award of a subcontract to, an offeror or contractor which to the Sec-

retary's knowledge has been debarred or suspended by another Federal agency unless—

(A) in the case of debarment, the debarment of the offeror or contractor by all other agencies has been terminated or the period of time specified for such debarment has expired; and

(B) in the case of a suspension, the period of time specified by all other agencies for the suspension of the offeror or contractor has expired.

(2) Paragraph (1) does not apply in any case in which the Secretary concerned determines that there is a compelling reason to solicit an offer from, award a contract to, extend a contract with, or approve a subcontract with such offeror or contractor.

(b) Whenever the Secretary concerned makes a determination described in subsection (a)(2), he shall, at the time of the determination, transmit a notice to the Administrator of General Services describing the determination. The Administrator of General Services shall maintain each such notice on a publicly accessible website to the maximum extent practicable.

(c) In this section:

(1) The term “debar” means to exclude, pursuant to established administrative procedures, from Government contracting and subcontracting for a specified period of time commensurate with the seriousness of the failure or offense or the inadequacy of performance.

(2) The term “suspend” means to disqualify, pursuant to established administrative procedures, from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected of engaging in criminal, fraudulent, or seriously improper conduct.

(d) The Secretary of Defense shall prescribe in regulations a requirement that each contractor under contract with the Department of Defense shall require each contractor to whom it awards a contract (in this section referred to as a subcontractor) to disclose to the contractor whether the subcontractor is or is not, as of the time of the award of the subcontract, debarred or suspended by the Federal Government from Government contracting or subcontracting. The requirement shall apply to any subcontractor whose subcontract is in an amount greater than the simplified acquisition threshold (as defined in section 134 of title 41). The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 103 of title 41).

(Added Pub. L. 97-86, title IX, §914(a), Dec. 1, 1981, 95 Stat. 1124; amended Pub. L. 100-180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101-510, div. A, title VIII, §813, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102-190, div. A, title X, §1061(a)(11), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103-355, title IV, §4102(e), title VIII, §8105(c), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111-350, §5(b)(24), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 113-66, div. A, title VIII, §813, Dec. 26, 2013, 127 Stat. 808.)

AMENDMENTS

2013—Subsec. (b). Pub. L. 113-66 substituted “on a publicly accessible website to the maximum extent