

Subsec. (d)(5). Pub. L. 110-181, §2824(b), added par. (5). 1997—Subsec. (b). Pub. L. 105-85 struck out “, United States Code,” after “title 31”.

§ 2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations

(a) AGREEMENTS AUTHORIZED.—The Secretary of Defense or the Secretary of a military department may enter into an agreement with an eligible entity or entities described in subsection (b) to address the use or development of real property in the vicinity of, or ecologically related to, a military installation, as well as a State-owned National Guard installation, or military airspace for purposes of—

(1) limiting any development or use of the property that would be incompatible with the mission of the installation;

(2) preserving habitat on the property in a manner that—

(A) is compatible with environmental requirements; and

(B) may eliminate or relieve current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the installation;

(3) maintaining or improving military installation resilience; or

(4) protecting Clear Zone Areas from use or encroachment that is incompatible with the mission of the installation.

(b) ELIGIBLE ENTITIES.—For purposes of this section, an eligible entity is any of the following:

(1) A State or political subdivision of a State.

(2) A private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary concerned.

(c) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Notwithstanding chapter 63 of title 31, an agreement under this section that is a cooperative agreement or a grant may be used to acquire property or services for the direct benefit or use of the United States Government.

(d) ACQUISITION AND ACCEPTANCE OF PROPERTY AND INTERESTS.—(1) An agreement with an eligible entity or entities under this section shall provide for—

(A) the acquisition by an eligible entity or entities of all right, title, and interest in and to any real property, or any lesser interest in the property, as may be appropriate for purposes of this section; and

(B) the sharing by the United States and an eligible entity or entities of the acquisition costs in accordance with paragraph (3).

(2) Property or interests may not be acquired pursuant to the agreement unless the owner of the property or interests consents to the acquisition.

(3) An agreement with an eligible entity under this section may provide for the management of

natural resources on, and the monitoring and enforcement of any right, title, real property in which the Secretary concerned acquires any right, title, or interest in accordance with this subsection and for the payment by the United States of all or a portion of the costs of such natural resource management and monitoring and enforcement if the Secretary concerned determines that there is a demonstrated need to preserve or restore habitat for the purpose described in subsection (a)(2). Any such payment by the United States—

(A) may be paid in a lump sum and include an amount intended to cover the future costs of natural resource management and monitoring and enforcement; and

(B) may be placed by the eligible entity in an interest-bearing account, and any interest shall be applied for the same purposes as the principal.

(4)(A) The Secretary concerned shall determine the appropriate portion of the acquisition costs to be borne by the United States in the sharing of acquisition costs of real property, or an interest in real property, under paragraph (1)(B).

(B) In lieu of or in addition to making a monetary contribution toward the cost of acquiring a parcel of real property, or an interest therein, pursuant to an agreement under this section, the Secretary concerned may convey, using the authority provided by section 2869 of this title, real property described in paragraph (2) of subsection (a) of such section, subject to the limitation in paragraph (3) of such subsection.

(C) The portion of acquisition costs borne by the United States under subparagraph (A), either through the contribution of funds or excess real property, or both, may not exceed an amount equal to, at the discretion of the Secretary concerned—

(i) the fair market value of any property or interest in property to be transferred to the United States upon the request of the Secretary concerned under paragraph (5); or

(ii) the cumulative fair market value of all properties or interests to be transferred to the United States under paragraph (5) pursuant to an agreement under subsection (a).

(D) The portion of acquisition costs borne by the United States under subparagraph (A) may exceed the amount determined under subparagraph (C), but only if—

(i) the Secretary concerned submits, in an electronic medium pursuant to section 480 of this title, a notice to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives containing—

(I) a certification by the Secretary that the military value to the United States of the property or interest to be acquired justifies a payment in excess of the fair market value of the property or interest; and

(II) a description of the military value to be obtained; and

(ii) the contribution toward the acquisition costs of the property or interest is not made until at least 10 days after the date on which the notice is submitted under clause (i).

(E) The contribution of an entity or entities to the acquisition costs of real property, or an interest in real property, under paragraph (1)(B) may include, with the approval of the Secretary concerned, the following or any combination of the following:

(i) The provision of funds, including funds received by such entity or entities from a Federal agency outside the Department of Defense or a State or local government in connection with a Federal, State, or local program.

(ii) The provision of in-kind services, including services related to the acquisition or maintenance of such real property or interest in real property.

(iii) The exchange or donation of real property or any interest in real property.

(5)(A) The agreement shall require the entity or entities to transfer to the United States, upon the request of the Secretary concerned, all or a portion of the property or interest acquired under the agreement or a lesser interest therein. No such requirement need be included in the agreement if the property or interest is being transferred to a State or another Federal agency, or the agreement requires it to be subsequently transferred to a State or another Federal agency, and the Secretary concerned determines that the laws and regulations applicable to the future use of such property or interest provide adequate assurance that the property concerned will be developed and used in a manner appropriate for purposes of this section. The Secretary shall limit such transfer request to the minimum property or interests necessary to ensure that the property concerned is developed and used in a manner appropriate for purposes of this section.

(B) Notwithstanding subparagraph (A), if all or a portion of the property or interest acquired under the agreement is initially or subsequently transferred to a State or another Federal agency, before that State or other Federal agency may declare the property or interest in excess to its needs or propose to exchange the property or interest, the State or other Federal agency shall give the Secretary concerned reasonable advance notice of its intent. If the Secretary concerned determines it necessary to preserve the purposes of this section, the Secretary concerned may request that administrative jurisdiction over the property be transferred to the Secretary concerned at no cost, and, upon such a request being made, the administrative jurisdiction over the property shall be transferred accordingly. If the Secretary concerned does not make such a request within a reasonable time period, all such rights of the Secretary concerned to request transfer of the property or interest shall remain available to the Secretary concerned with respect to future transfers or exchanges of the property or interest and shall bind all subsequent transferees.

(6) The Secretary concerned may accept on behalf of the United States any property or interest to be transferred to the United States under the agreement.

(7) For purposes of the acceptance of property or interests under the agreement, the Secretary concerned may accept an appraisal or title documents prepared or adopted by a non-Federal en-

tity as satisfying the applicable requirements of section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651) or section 3111 of title 40, if the Secretary concerned finds that the appraisal or title documents substantially comply with the requirements.

(e) ACQUISITION OF WATER RIGHTS.—The authority of the Secretary concerned to enter into an agreement under this section for the acquisition of real property (or an interest therein) includes the authority to support the purchase of water rights from any available source when necessary to support or protect the mission of a military installation.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such additional terms and conditions in an agreement under this section as the Secretary considers appropriate to protect the interests of the United States.

(g) ANNUAL REPORTS.—(1) Not later than March 1 each year, the Secretary of Defense shall, in coordination with the Secretaries of the military departments and the Director of the Department of Defense Test Resource Management Center, submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the projects undertaken under agreements under this section.

(2) Each report under paragraph (1) shall include the following:

(A) A description of the status of the projects undertaken under agreements under this section.

(B) An assessment of the effectiveness of such projects, and other actions taken pursuant to this section, as part of a long-term strategy to ensure the sustainability of military test and training ranges, military installations, and associated airspace.

(C) An evaluation of the methodology and criteria used to select, and to establish priorities, for projects undertaken under agreements under this section.

(D) A description of any sharing of costs by the United States and eligible entities under subsection (d) during the preceding year, including a description of each agreement under this section providing for the sharing of such costs and a statement of the eligible entity or entities with which the United States is sharing such costs.

(E) Information concerning the activities undertaken pursuant to the Sentinel Landscapes Partnership established under section 317 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 10 U.S.C. 2684a note).

(F) Such recommendations as the Secretary of Defense considers appropriate for legislative or administrative action in order to improve the efficiency and effectiveness of actions taken pursuant to agreements under this section.

(h) INTERAGENCY COOPERATION IN CONSERVATION AND RESILIENCE PROGRAMS TO AVOID OR REDUCE ADVERSE IMPACTS ON MILITARY INSTALLATION RESILIENCE AND MILITARY READINESS ACTIVITIES.—In order to facilitate interagency cooperation and enhance the effectiveness of ac-

tions that will protect the environment, military installation resilience, and military readiness, the recipient of funds provided pursuant to an agreement under this section or under the Sikes Act (16 U.S.C. 670 et seq.) may, with regard to the lands and waters within the scope of the agreement, use such funds to satisfy any matching funds or cost-sharing requirement of any conservation or resilience program of any Federal agency notwithstanding any limitation of such program on the source of matching or cost-sharing funds.

(i) FUNDING.—(1) Except as provided in paragraph (2), funds authorized to be appropriated for operation and maintenance of the Army, Navy, Marine Corps, Air Force, Space Force, or Defense-wide activities may be used to enter into agreements under this section.

(2) In the case of a military installation operated primarily with funds authorized to be appropriated for research, development, test, and evaluation, funds authorized to be appropriated for the Army, Navy, Marine Corps, Air Force, Space Force, or Defense-wide activities for research, development, test, and evaluation may be used to enter into agreements under this section with respect to the installation.

(3) Funds obligated to carry out an agreement under this section shall be available for use with regard to any property in the geographic scope specified in the agreement—

(A) at the time the funds are obligated; and

(B) in any subsequent modification to the agreement.

(j) DEFINITIONS.—In this section:

(1) The term “Secretary concerned” means the Secretary of Defense or the Secretary of a military department.

(2) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

(3) The term “Clear Zone Area” means an area immediately beyond the end of the runway of an airfield that is needed to ensure the safe and unrestricted passage of aircraft in and over the area.

(Added Pub. L. 107–314, div. B, title XXVIII, §2811(a), Dec. 2, 2002, 116 Stat. 2705; amended Pub. L. 109–163, div. B, title XXVIII, §2822, Jan. 6, 2006, 119 Stat. 3513; Pub. L. 109–364, div. B, title XXVIII, §2811(g), Oct. 17, 2006, 120 Stat. 2473; Pub. L. 110–181, div. B, title XXVIII, §2825, Jan. 28, 2008, 122 Stat. 545; Pub. L. 111–84, div. A, title X, §1073(a)(27), Oct. 28, 2009, 123 Stat. 2474; Pub. L. 111–383, div. A, title X, §1075(b)(43), Jan. 7, 2011, 124 Stat. 4371; Pub. L. 112–81, div. B, title XXVIII, §2813, Dec. 31, 2011, 125 Stat. 1687; Pub. L. 113–66, div. A, title III, §312(a), Dec. 26, 2013, 127 Stat. 729; Pub. L. 113–291, div. A, title X, §1071(f)(23), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115–91, div. B, title XXVIII, §2811(g), Dec. 12, 2017, 131 Stat. 1848; Pub. L. 115–232, div. A, title III, §312(i), div. B, title XXVIII, §2827(b)(1), Aug. 13, 2018, 132 Stat. 1711, 2270; Pub. L. 116–283, div. A, title III, §§312(a)–(b)(2), (c), 315(b), title IX, §924(b)(33), title X, §1081(d)(12), Jan. 1, 2021, 134 Stat. 3513–3515, 3826, 3874; Pub. L. 117–81, div. A, title III, §317(b), Dec. 27, 2021, 135 Stat. 1631.)

Editorial Notes

REFERENCES IN TEXT

The Sikes Act, referred to in subsec. (h), is Pub. L. 86–797, Sept. 15, 1960, 74 Stat. 1052, which is classified generally to chapter 5C (§670 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 670 of Title 16 and Tables.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1081(d)(12), made technical amendment to directory language of Pub. L. 115–232, §2827(b)(1). See 2018 Amendment note below.

Subsec. (a)(2)(B). Pub. L. 116–283, §315(b)(1)(A), struck out cl. (i) designation after “(B)” and “or” after “the installation;” and struck out cl. (ii) which read as follows: “maintains or improves military installation resilience; or”.

Subsec. (a)(3), (4). Pub. L. 116–283, §315(b)(1)(B), (C), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b). Pub. L. 116–283, §312(b)(1), substituted “For purposes of this section, an eligible entity is” for “An agreement under this section may be entered into with” in introductory provisions.

Subsec. (d)(1). Pub. L. 116–283, §312(b)(2), substituted “an eligible entity or entities” for “the entity or entities” in two places.

Subsec. (d)(5)(A). Pub. L. 116–283, §312(c)(1), inserted “or another Federal agency” after “to a State” in two places.

Subsec. (d)(5)(B). Pub. L. 116–283, §312(c)(2), added subpar. (B) and struck out former subpar. (B) which related to property or interest acquired under an agreement transferred to the United States where administrative jurisdiction over the property was under a Federal official other than a Secretary concerned.

Subsec. (g)(2)(E), (F). Pub. L. 117–81 added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (h). Pub. L. 116–283, §315(b)(2), amended subsec. (h) generally. Prior to amendment, subsec. (h) related to interagency cooperation in conservation programs to avoid or reduce adverse impacts on military readiness activities.

Subsec. (i)(1), (2). Pub. L. 116–283, §924(b)(33), inserted “Space Force,” before “or Defense-wide activities”.

Subsec. (i)(3). Pub. L. 116–283, §312(a), added par. (3).

2018—Subsec. (a). Pub. L. 115–232, §2827(b)(1), as amended by Pub. L. 116–283, §1081(d)(12), inserted “, as well as a State-owned National Guard installation,” after “military installation” in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 115–232, §312(i), designated existing provisions as cl. (i) and added cl. (ii).

2017—Subsec. (d)(4)(D)(i). Pub. L. 115–91, §2811(g)(1), substituted “submits, in an electronic medium pursuant to section 480 of this title, a notice” for “provides written notice” in introductory provisions.

Subsec. (d)(4)(D)(ii). Pub. L. 115–91, §2811(g)(2), substituted “10 days after the date on which the notice is submitted under clause (i).” for “14 days after the date on which the notice is submitted under clause (i) or, if earlier, at least 10 days after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.”

2014—Subsec. (h). Pub. L. 113–291 inserted “670” after “U.S.C.”

2013—Subsecs. (h) to (j). Pub. L. 113–66 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

2011—Subsec. (a)(3). Pub. L. 112–81, §2813(1), added par. (3).

Subsec. (c). Pub. L. 112–81, §2813(2), amended subsec. (c) generally. Prior to amendment, text read as follows: “Chapter 63 of title 31 shall not apply to any agreement entered into under this section.”

Subsec. (d)(3). Pub. L. 112–81, §2813(3)(A), inserted “, and the monitoring and enforcement of any right, title, or interest in,” after “resources on” and “and

monitoring and enforcement” after “natural resource management”, and inserted at end “Any such payment by the United States—

“(A) may be paid in a lump sum and include an amount intended to cover the future costs of natural resource management and monitoring and enforcement; and

“(B) may be placed by the eligible entity in an interest-bearing account, and any interest shall be applied for the same purposes as the principal.”

Subsec. (d)(5). Pub. L. 112–81, § 2813(3)(B), designated existing provisions as subpar. (A), inserted after first sentence “No such requirement need be included in the agreement if the property or interest is being transferred to a State, or the agreement requires it to be subsequently transferred to a State, and the Secretary concerned determines that the laws and regulations applicable to the future use of such property or interest provide adequate assurance that the property concerned will be developed and used in a manner appropriate for purposes of this section.”, and added subpar. (B).

Subsec. (g)(1). Pub. L. 111–383 substituted “March 1 each year” for “March 1, 2007, and annually thereafter”.

Subsec. (i)(3). Pub. L. 112–81, § 2813(4), added par. (3).

2009—Subsec. (g)(2). Pub. L. 111–84 substituted “the following” for “the following the following” in introductory provisions.

2008—Subsec. (d)(3), (4). Pub. L. 110–181, § 2825(a), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (d)(4)(C). Pub. L. 110–181, § 2825(b)(2), substituted “equal to, at the discretion of the Secretary concerned—” and cls. (i) and (ii) for “equal to the fair market value of any property or interest to be transferred to the United States upon the request of the Secretary concerned under paragraph (4).”

Subsec. (d)(4)(D), (E). Pub. L. 110–181, § 2825(b)(1), (3), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (d)(5) to (7). Pub. L. 110–181, § 2825(a)(1), redesignated pars. (4) to (6) as (5) to (7), respectively.

2006—Subsec. (a). Pub. L. 109–163, § 2822(a)(1), in introductory provisions, inserted “or entities” after “entity” and substituted “in the vicinity of, or ecologically related to, a military installation or military airspace” for “in the vicinity of a military installation”.

Subsec. (d)(1). Pub. L. 109–163, § 2822(a)(2)(A)(i), (b)(1)(A), inserted “or entities” after “eligible entity” and substituted “shall provide” for “may provide” in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 109–163, § 2822(a)(2)(A)(ii), inserted “or entities” after “the entity”.

Subsec. (d)(1)(B). Pub. L. 109–163, § 2822(b)(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: “the sharing by the United States and the entity of the acquisition costs.”

Subsec. (d)(3). Pub. L. 109–364 added subpar. (B), redesignated former subpars. (B) and (C) as (C) and (D), respectively, and in subpar. (C) substituted “under subparagraph (A), either through the contribution of funds or excess real property, or both,” for “in the sharing of acquisition costs of real property, or an interest in real property, under paragraph (1)(B)”.

Pub. L. 109–163, § 2822(b)(3), added par. (3). Former par. (3) redesignated (4).

Pub. L. 109–163, § 2822(a)(2)(B), inserted “or entities” after “the entity”.

Subsec. (d)(4) to (6). Pub. L. 109–163, § 2822(b)(2), redesignated pars. (3) to (5) as (4) to (6), respectively.

Subsecs. (g) to (i). Pub. L. 109–163, § 2822(c), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–283, div. A, title III, § 312(b)(3), Jan. 1, 2021, 134 Stat. 3513, provided that: “The amendments made

by paragraphs (1) and (2) [amending this section] shall apply to any agreement entered into under section 2684a of title 10, United States Code, on or after December 2, 2002.”

Pub. L. 116–283, div. A, title X, § 1081(d), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(d)(12) of Pub. L. 116–283 to section 2827(b)(1) of Pub. L. 115–232, which amended this section, is effective as of Aug. 13, 2018, and as if included in Pub. L. 115–232.

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. B, title XXVIII, § 2827(b)(2), Aug. 13, 2018, 132 Stat. 2270, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as of December 2, 2002.”

TERMINATION OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title III, § 312(b), Dec. 26, 2013, 127 Stat. 729, which provided that section 312 of Pub. L. 113–66, which amended this section, and subsec. (h) of this section would expire on Oct. 1, 2019, subject to a provision continuing any agreements existing before that date, was repealed by Pub. L. 115–91, div. A, title III, § 317(f), Dec. 12, 2017, 131 Stat. 1352. Another section 317(f) of Pub. L. 115–91 is set out in a note below.

TERMINATION OF REPORTING REQUIREMENTS

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

SENTINEL LANDSCAPES PARTNERSHIP

Pub. L. 115–91, div. A, title III, § 317(a)–(f), Dec. 12, 2017, 131 Stat. 1351, 1352, as amended by Pub. L. 117–81, div. A, title III, § 317(a), Dec. 27, 2021, 135 Stat. 1631, provided that:

“(a) ESTABLISHMENT.—The Secretary of Defense, in coordination with the Secretary of Agriculture and the Secretary of the Interior, may establish and carry out a program to preserve and restore sentinel landscapes. The program shall be known as the ‘Sentinel Landscapes Partnership’.

“(b) DESIGNATION OF SENTINEL LANDSCAPES.—The Secretary of Defense, the Secretary of Agriculture, and the Secretary of the Interior, may, as the Secretaries determine appropriate, collectively designate one or more sentinel landscapes.

“(c) COORDINATION OF ACTIVITIES.—The Secretaries may coordinate actions between their departments and with other agencies and private organizations to more efficiently work together for the mutual benefit of conservation, resilience, working lands, and national defense, and to encourage private landowners to engage in voluntary land management, resilience, and conservation activities that contribute to the sustainment of military installations, ranges, and airspace.

“(d) PRIORITY CONSIDERATION.—The Secretary of Agriculture and the Secretary of the Interior may give to any eligible landowner or agricultural producer within a designated sentinel landscape priority consideration for participation in any easement, grant, or assistance programs administered by that Secretary’s department. Participation by an eligible landowner or agricultural producer in any such program pursuant to this section shall be voluntary.

“(e) PARTICIPATION BY OTHER AGENCIES.—Other Federal agencies with programs addressing conservation or resilience may, and are encouraged to—

“(1) participate in the activities of the Sentinel Landscapes Partnership; and

“(2) become full partners in the Sentinel Landscapes Partnership.

“(f) DEFINITIONS.—In this section:

“(1) MILITARY INSTALLATION.—The term ‘military installation’ has the same meaning as provided in section 670(1) of title 16, United States Code.

“(2) STATE-OWNED NATIONAL GUARD INSTALLATION.—The term ‘State-owned National Guard installation’

has the same meaning as provided in section 670(3) of title 16, United States Code.

“(3) SENTINEL LANDSCAPE.—The term ‘sentinel landscape’ means a landscape-scale area encompassing—

“(A) one or more military installations or state-owned National Guard installations and associated airspace; and

“(B) the working or natural lands that serve to protect and support the rural economy, the natural environment, outdoor recreation, and the national defense test and training missions of the military- or State-owned National Guard installation or installations.

“(4) RESILIENCE.—The term ‘resilience’ means the capability to avoid, prepare for, minimize the effect of, adapt to, and recover from extreme weather events, flooding, wildfire, or other anticipated or unanticipated changes in environmental conditions.”

[Another section 317(f) of Pub. L. 115-91 repealed section 312(b) of Pub. L. 113-66, see Termination of 2013 Amendment note above.]

§ 2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities

(a) ADJUSTMENT OR SURCHARGE AUTHORIZED.—Notwithstanding any other provision of law, the Secretary of Defense may, for the purposes of this section, provide for an adjustment of, or surcharge on, sales prices of goods and services sold in commissary store facilities.

(b) USE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1) The Secretary of Defense may use the proceeds from the adjustments or surcharges authorized by subsection (a) only—

(A) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(B) to cover environmental evaluation and construction costs related to activities described in paragraph (1), including costs for surveys, administration, overhead, planning, and design.

(2) In paragraph (1), the term “physical infrastructure” includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(c) ADVANCE OBLIGATION.—The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the adjustments or surcharges authorized by subsection (a) for any use specified in subsection (b) or (d), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in subsection (b) or (d).

(d) COOPERATION WITH NONAPPROPRIATED FUND INSTRUMENTALITIES.—(1) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of adjustments or surcharges authorized

by subsection (a) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(2) In paragraph (1), the term “construction”, with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(e) OTHER SOURCES OF FUNDS FOR CONSTRUCTION AND IMPROVEMENTS.—Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in subsections (b), (c), and (d):

(1) Sale of recyclable materials.

(2) Sale of excess and surplus property.

(3) License fees.

(4) Royalties.

(5) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

(Added Pub. L. 93-552, title VI, § 611, Dec. 27, 1974, 88 Stat. 1765; amended Pub. L. 95-82, title VI, § 614, Aug. 1, 1977, 91 Stat. 380; Pub. L. 97-321, title VIII, § 804, Oct. 15, 1982, 96 Stat. 1572; Pub. L. 103-337, div. B, title XXVIII, § 2851, Oct. 5, 1994, 108 Stat. 3072; Pub. L. 105-85, div. A, title III, § 374, Nov. 18, 1997, 111 Stat. 1707; Pub. L. 106-398, § 1 [[div. A], title III, § 333(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-60.)

Editorial Notes

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-398, § 1 [[div. A], title III, § 333(b)(1)], substituted “Secretary of Defense” for “Secretary of a military department, under regulations established by him and approved by the Secretary of Defense.”

Subsec. (b). Pub. L. 106-398, § 1 [[div. A], title III, § 333(a)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “The Secretary of a military department, under regulations established by him and approved by the Secretary of Defense, may use the proceeds from the adjustments or surcharges authorized by subsection (a) to acquire, construct, convert, expand, install, or otherwise improve commissary store facilities at defense installations and for related environmental evaluation and construction costs, including surveys, administration, overhead, planning, and design.”

Subsec. (c). Pub. L. 106-398, § 1 [[div. A], title III, § 333(b)(2)], substituted “Secretary of Defense, with the approval of” for “Secretary of a military department, with the approval of the Secretary of Defense and” and “Secretary determines” for “Secretary of the military department determines”.

Subsec. (d)(1). Pub. L. 106-398, § 1 [[div. A], title III, § 333(b)(3)], substituted “Secretary of Defense” for “Secretary of a military department”.

1997—Subsecs. (a) to (d). Pub. L. 105-85, § 374(b), inserted subsec. headings.

Subsec. (e). Pub. L. 105-85, § 374(a), added subsec. (e). 1994—Subsec. (c). Pub. L. 103-337, § 2851(b), inserted “or (d)” after “subsection (b)” in two places.

Subsec. (d). Pub. L. 103-337, § 2851(a), added subsec. (d).

1982—Subsec. (c). Pub. L. 97-321 added subsec. (c).

1977—Subsec. (b). Pub. L. 95-82 struck out “within the United States” after “defense installations”.