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THESIS

AN ANALYSIS OF DEPARTMENT OF DEFENSE
FINANCIAL AND ACQUISITION POLICIES
IN SUPPORT OF
MILITARY CONTINGENCY REQUIREMENTS

by

John Stephen Proctor
Robert Edinburgh Sanders

March 1984

Thesis Advisor

D. C. Boger

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in Support of
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by

John Stephen Proctor
Lieutenant, Supply Corps, United States Navy
B.A., The George Washington University, 1974

Robert Edinburgh Sanders
Lieutenant Commander, Supply Corps, United States Navy
B.S., Tuskegee Institute, 1972

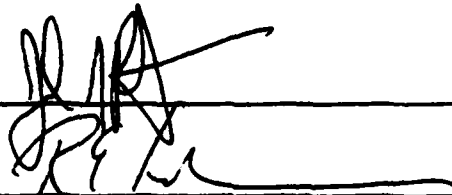
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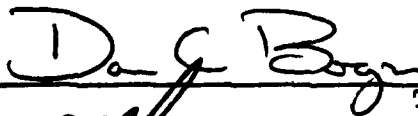
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Authors:



Approved by:



Thesis Advisor



Second Reader



Chairman, Department of Administrative Sciences



Dean of Information and Policy Sciences

ABSTRACT

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I. INTRODUCTION

A. GENERAL

For several years, there has been growing concern within the U.S. Congress and the Department of Defense (DOD) over the abilities of the military and its attendant defense industrial base to respond effectively in the event of a national emergency [1:11-18]. A 1983 study by the Industrial College of the Armed Forces (ICAF) recommended in part that [2:97]:

A goal of the nation should be to make the industrial capability of the United States a realistic deterrent to Soviet aggression and a powerful addition to our war-fighting ability if deterrence should fail....History suggests that significant improvements in industrial mobilization readiness will be achieved only when there is national agreement....One must accept the probability of failure unless such a national commitment is made.

However, these and numerous other studies seem predisposed to accept as fact that this commitment is in concert with either a declaration of war or national emergency. As will be discussed, this may not be the case. Therefore, the scenario that will be evaluated here is one which falls short of these formal declarations, yet bears the same necessity for national response. Since there is no generally accepted term which describes this circumstance, the phrase "Military Contingency Requirement" will be utilized.

On July 22, 1982, President Reagan issued National Security Decision Directive Number 47. In this document, the

United States Emergency Mobilization Preparedness Policy is stated:

It is the policy of the United States to have an emergency mobilization preparedness capability that will ensure that government at all levels, in partnership with the private sector and the American people, can respond decisively and effectively to any major national emergency with defense of the United States as the first priority.

In spite of the fact that there has not been a declaration of war, national emergency, or a mobilization in over thirty years, thousands of Americans have lost their lives in defense of this nation. These Military Contingency Requirements also have cost the American people billions of dollars in military expenditures, and they continue to severely impact on the national economy. Therefore, it seems only logical that the government should plan for these frequent, undeclared commitments to national security policy with the same conscious determination it currently applies to mobilization.

General Brehon Sommerville, Commanding General of Army Service Forces in World War II, stated that [3:1]:

Preparation for the preservation of our freedom must come in peacetime, and we must pay for it in money and inconvenience. The alternative--is payment in blood and extinction.

It is interesting to note, however, that as early as 431 B.C. Pericles spoke of Sparta's defense preparedness by saying that [4:93]:

They will be handicapped by lack of money and delayed by the time they will have to take in procuring it. But, in war, opportunity waits for no man.

B. OBJECTIVES OF THE RESEARCH

The basic objective of this study is to evaluate the viability of the financial and acquisition policies of the Department of Defense as they pertain to Military Contingency Requirements. This study will evaluate the scope and limitations of these policies in an effort to determine the extent of their support for these requirements.

In order to accomplish this, the researchers will explore not only the historical perspectives of this issue, but also current contingency authorities, policies, and legislation. This same sense of perspective will also be applied to evaluating the salient features of industrial preparedness, economic and social impacts of government defense spending, war reserves, and strategic stockpiles, as well as the complexities of the budgetary process in support of these policies.

C. RESEARCH QUESTIONS

Considering the above general objectives, the following research question was addressed:

Does the Department of Defense (DOD) have viable financial and acquisition management policies to support Military Contingency Requirements?

In answering this research question, the following subsidiary research questions were addressed:

1. What are DOD's financial and acquisition policies regarding Military Contingency Requirements?

2. What impact has the history of previous Military Contingency Requirements had on DOD's present financial and acquisition policies?
3. What authorities are pertinent to the financial and acquisition aspects of Military Contingency Requirements?
4. What impacts do DOD industrial preparedness and war reserve stockpile policies have on Military Contingency Requirements?
5. What are the economic and social impacts of increased government defense spending?
6. What recent examples of military contingencies, exercises or studies illustrate the viability of DOD's financial and acquisition policies?

D. RESEARCH METHODOLOGY

The information presented in this study was obtained from (1) currently available literature and (2) telephonic and personal discussions held with various U.S. Government personnel involved in mobilization, financial, acquisition, and contingency planning.

The literature base utilized in this study was compiled from current DOD directives, instructions, studies, and memoranda; Federal Emergency Management Agency (FEMA) studies; The Congressional Record; the Defense Logistics Studies Information Exchange (DLSIE); the Naval Postgraduate School Library; the Mobilization Concepts Development Center Library of the Industrial College of the Armed Forces; previous theses; and a review of current publications and periodicals.

E. SCOPE OF THE STUDY

The scope of this study is limited to the financial and acquisition policies of the Department of Defense. Specifically, this study will focus on the viability of the policies in support of unprogrammed Military Contingency Requirements.

F. LIMITATIONS

This study is limited in that the current DOD financial and acquisition issues explored in this thesis are subject to the political influences of the incumbent Congress or Administration. In view of this rather capricious environment, it seems worthwhile to explore the historical generation of these policies in an effort to better comprehend those developed in the future.

G. ASSUMPTIONS

Throughout this thesis, it is assumed that the reader has a basic knowledge of DOD fiscal and contractual language, as well as some familiarity with the weapons system acquisition and PPBS processes. It is further assumed that the reader is familiar with the tenets of military and industrial mobilization.

H. ORGANIZATION OF THE STUDY

This study is organized in such a manner that the reader can assess the financial and acquisition policies of DOD with regard to the requirements posed by a military contingency.

Chapter II presents the historical development of the policies. Chapter III discusses some of the economic and social impacts of government defense spending. Chapter IV addresses contingency thresholds and current contingency authorities and legislation which direct DOD financial and acquisition policies. Chapter V presents the salient features of industrial preparedness, war reserves, and the critical materials stockpile. Chapter VI addresses the funding of Military Contingency Requirements. Finally, Chapter VII presents the conclusions drawn from this research and provides recommendations for improving current policies.

II. HISTORICAL PERSPECTIVES

A. HISTORY'S ROLE

Armed conflict, unchronicled except for the ancient fragments of bloodied stone that remain, has always been a part of our existence. Yet, the underlying reasons for this perpetual struggle have not changed substantially, lending credence to the historian's arguments for reexamination. Indeed, in writing his history of the Peloponnesian War in 431 B.C., Thucydides stated [4:24]:

My work is not a piece of writing to meet the taste of an immediate public, but was done to last forever.

Throughout history, man's failure to learn from the devastating mistakes of his ancestors has resulted in countless wars being fought in very nearly the same places, for very nearly the same reasons. Therefore, it is incumbent upon those leaders entrusted with the security of this nation to ensure that they are aware of this history and to do their utmost to benefit by its lessons.

Thucydides' recounting of Pericles' funeral speech comparing Athens to Sparta might well have been written today, comparing the U.S. and the Soviet Union [4:117-118]:

Let me say that our system of government does not copy the institutions of our neighbors. It is more the case of our being a model to others, than of our imitating anyone else. Our constitution is called a democracy because power is in the hands not of a minority but of the whole people....

Then there is a great difference between us and our opponents, in our attitude towards military security. Here are some examples: Our city is open to the world, and we have no periodical deportations in order to prevent people observing or finding out secrets which might be of military advantage to the enemy. This is because we rely, not on secret weapons, but on our own real courage and loyalty. There is a difference, too, in our educational systems. The Spartans, from their earliest boyhood, are submitted to the most laborious training in courage; we pass our lives without all of these restrictions, and yet are just as ready to face the same dangers as they are....

History's teaching role is therefore well established. Yet to complete this sense of perspective, one must fully understand the gravity of the present concerns that inspired this need for historical reflection.

B. THE POIGNANT PRESENT

The United States presents two primary deterrents to war to their potential adversaries. The most visible of these is the strength of the standing military forces and weapons which they have at their command. Less visible in a military sense, yet equally as important to our deterrent posture, is the viability and responsiveness of our defense industrial base and the policies and procedures for its management.

The dismal conclusions of mobilization exercises Nifty Nugget (1978), Proud Spirit (1980) and Proud Saber (1982), as well as the recent House Armed Services Committee Report are what causes one to now reflect on the past in a desperate attempt to preclude its recurrence. These conclusions imply that the U.S. is inadequately prepared at this point in time

to successfully execute a conventional war reliant upon the support of the U.S. defense industry [1:18]. To view this problem in proper perspective, one must step back to the very beginnings of our government.

C. CONSTITUTIONAL BEGINNINGS

As early as 1775, the Second Continental Congress, recognizing its importance, established the position of Commissary General to oversee procurement [5:133]. It was in the course of this struggle for independence that the U.S. defense industry was born [6:285]:

During the Revolution, ship construction and artillery piece manufacturing were performed in the private sector, while guns and munitions came mostly from government arsenals....

1. The Constitution

The President of the United States, as both the nation's Chief Executive and military Commander-in-Chief, is responsible for the national defense and directs the associated government financial and acquisition policies.

Article 1, Section 8 of the Constitution authorizes the Congress to enact legislation governing defense acquisition. The authorization itself is contained in one of the six war power grants of Section 8. The power to raise and support armies is also contained in that section, but stipulates that no appropriation for this purpose shall extend beyond two years. From this legislation has evolved the annual Defense Authorization and Appropriation process [7:A-1-1].

2. Establishment of Policy 1789-1808

The Departments of the Treasury and the Department of War were established in 1789. In 1792 the Department of the Treasury was made responsible for the purchases and contracts in support of the Army. The Office of the Purveyor of Public Supplies was established within the Department of the Treasury to serve as the Government's purchasing agent. In 1798 the Department of the Navy was created and the Congress declared that "All purchases and contracts for supplies of services for the military and naval service of the United States shall be made by or under the direction of the Chief officers of the Department of War and Navy respectfully" [7:A-1-2]. The military departments forwarded their requirements to the office of the Purveyor of Public Supplies, which retained responsibility for their actual procurement.

Some of the earliest documented abuses of the procurement system occurred when Congressmen secured contracts for public supplies and services on behalf of friends and businesses in which they had an interest. This practice resulted in a law being passed in 1808 which required a clause to be placed in all Government contracts ensuring that no member of Congress benefit therefrom. This prohibition evolved into the present "Officials Not To Benefit" clause [7:A-1-2].

3. Evolution of Competitive Bidding 1809-1860

An environment of graft and nepotism pervaded the early years of this nation. Public officials and businesses

were routinely accused of unethical practices by their political opponents. The Congress, in an attempt to stem this tide of corruption, enacted legislation requiring that Government purchases be made by open bid. This soon extended to all Government purchases, with only limited exceptions [7:A-1-2].

The requirement for formal advertising in procurements of supplies and services was introduced by the Act of March 3, 1809. It stipulated that all purchases and contracts by the Secretaries of the Treasury, War, and Navy be made "either by open purchase or by previously advertising for proposals respecting the same" [7:A-1-2].

This landmark legislation in 1809 was followed in 1842 and 1843 by additional laws which required the use of sealed bids, public bid openings, and the earliest performance bonds, which required forfeiture not to exceed twice the contract amount. In addition, the Act of March 3, 1845 extended the application of advertising to public buildings [7:A-1-2].

In the period just prior to the outbreak of hostilities which sparked the Civil War, Senator Jefferson Davis introduced legislation which became the Act of June 28, 1860 [7:A-1-2]:

That all purchases and contracts for supplies and services in any of the departments of the Government except for personal services when the public exigencies do not require the immediate delivery of the article or articles of performance of the service shall be made

by advertising a sufficient time previously for proposals respecting the same. When immediate delivery or performance is required by the public exigency, the articles or services required may be procured by open purchase or contract at the places and in the manner in which such articles are usually bought and sold or such services engaged in between individuals. No contract or purchase shall hereafter be made unless the same is authorized by law or under an appropriation adequate to its fulfillment except in the War and Navy Department for clothing, subsistence, flour, fuel, quarters or transportation, which, however, shall not exceed the necessities for the current year. No arms or military supplies whatever which are of a patented invention unless the same shall be authorized by law and the appropriation therefore explicitly set forth that it is for such patented invention.

4. Civil War 1861-1865

Civil War procurements were governed by the Civil Sundry Appropriations Act of March 2, 1861. It was during this conflict that the importance of the industrial base was first evidenced in America. The North possessed a wide range of industrial capabilities that were absent in the South's primarily agrarian society. This industrial-agricultural gap widened throughout the war as the North greatly expanded its plant capacity and eventually overpowered the South.

The use of exceptions to the requirements for formal advertising during this period created political hostilities and recriminations of war profiteering and excessive profits. These charges eventually led to further revision of existing statutes [7:A-1-3].

5. Revised Policy 1866-1913

As a result of revisions in 1874, the Civil Sundry Appropriations Act was amended in 1878 and became known as

Revised Statute (R.S.) 3709. The 1910 modification to R.S. 3709 revised the requirements for formal advertising by inserting nine exceptions allowing negotiation, including emergency purchase in the event of a public emergency, purchases less than \$500 (Approval of the Secretary of War was required for negotiated items costing more than \$100) and the procurement of medical and classified material.

R.S. 3709, as amended, remained in effect, governing all defense procurement until it was replaced by the Armed Services Procurement Act of 1947 [7:A-1-3].

It is interesting to note that in the course of this research, it was pointed out by the Office of the Secretary of Defense that fully one-half of the casualties experienced as a result of the 1898 Spanish American War were a direct result of the procurement of tainted foodstuffs.

6. World War I 1914-1919

In spite of the establishment of the War Industries Board, which attempted to control wartime resources, products, labor, prices, and relaxed or eliminated many procurement procedures [5:133]; the restrictions of R.S. 3709 in place at the beginning of the war frustrated attempts to procure specialized military material. The necessity to procure material in a timely manner soon forced a shift to the use of negotiation for contracting for goods and services. The lack of preparedness created significant conflicts as well [7:A-1-3]:

The shortage of available facilities and lack of centralized control of the purchasing activities of the War and Navy Departments led to intense competition between the two Departments and between the military needs and the civilian economy which was, to a large extent, responsible for a substantial inflation in the price of raw materials, wages and finished goods.

In addition to this internal conflict, the cost plus a percentage of cost contract used during World War I resulted in widespread abuse "since it provided industry with an incentive for waste and inefficiency" [7:A-1-3].

The ICAF study referred to in the introduction also points out that [2:5]:

World War I taught us that it was not enough to have an innate capability to produce large amounts of war material; some effective planning had to accompany that capability. Notwithstanding tremendous outlays of funds, we fought World War I, in essence, with guns, munitions, airplanes, and other material we borrowed or bought from the French and the English. A few examples of failed production are illustrative. Between April 1917 and June 1918, we spent \$4 billion for 50,000 pieces of artillery and the ammunition for those guns. Only 143 pieces of artillery actually reached American forces in time to be used. Although 23,405 tanks were ordered...none of these tanks was received... Why? There was a complete absence of plans prior to our entry into World War I....

7. Decayed Posture 1920-1936

The failures of World War I brought to light the fact that future wars might severely impact the national economy. As a result of this, Congress passed the National Defense Act of 1920. This legislation tasked the Assistant Secretary of War with "the assurance of adequate provision of mobilization of material and industrial organizations essential to wartime needs" [8:493]. The Army Industrial

College was established in 1924 to train Army (later Navy and Marine Corps) officers in the areas of procurement and industrial mobilization [2:6].

Indeed, the procurement practices and profiteering concerns expressed by Congress during this interval dominated much of the legislative process [7:A-1-4]:

Unfortunately, rather than using these lessons to develop procurement practices and procedures, the period was one of recrimination. Disillusioned by the war, many persons in the United States looked for a scapegoat. The "Merchants of Death" were blamed for our involvement in the war and eventually came to be blamed on an international level for the war itself based on the assumption that the war was engineered by munitions makers as a profit-making enterprise.

The War Policies Commission was established by Congress in 1930 "to study and consider amending the Constitution of the United States to provide that private property may be taken by Congress for public use during war and methods of equalizing the burdens and to remove the profits of war together with a study of policies to be pursued in the event of war." A Senate Committee was established in 1934, the "Nye Committee". The avowed purposes of this Committee was to investigate the possibility of the Government monopolizing the manufacture of all munitions. Here again, however, the Committee spent a great deal of time attempting to fix blame rather than in developing procedures to prevent the recurrence of the problem. Considerable attention was given by the Committee to the possibilities of limiting profits by price control and taxation.

The Committee also spent considerable time reviewing the industrial mobilization plan of the War Department. This plan proposed the use of a decentralized procurement system protected against the problems of competitive bidding for facilities by the Services by plans which called for the allocation by a central organization of certain facilities to each Service. The plan provided for educational orders which could be placed for specialized equipment without advertising and for negotiation of prices in war time. The War Department proposed the use of two types of contracts. A standard fixed price contract for the purchase of commercial supplies and

simple construction. For non-commercial items and for major construction projects, the Departments proposed the use of a redeterminable form of contract....The similarity of this proposal and the present Form E redetermination type of contract under which the Contractor's allowed cost plus a profit based on the efficiency and economy of his performance, is striking. Congress' interest in war profiteering is evidenced by the fact that during the 20-year period between World War I and World War II, 200 bills and resolutions designed to limit war profits were considered by Congress. However, very few, if any, changes were made in procurement practices. As a result of the emphasis by Congress on profit control, the industrial mobilization planning of the War and Navy Departments was gradually whittled down until it became useless for effective planning purposes. The basic conflict between the natural interest of the Congress in preventing procurement abuses and in restricting war profits and the interest of the War and Navy Departments in the winning of a war, to which they felt that all other aims were subsidiary, was not resolved. The United States went into the test of World War II with a procurement system governed by an astonishing mass of undigested and uncoordinated legislation. Statutes had accumulated on the books over a period of more than 100 years. Many were completely archaic. Many were conflicting and not a few had been born to serve special and forgotten interests. In the aggregate, they presented a serious obstacle to efficient and speedy purchasing that would be absolutely necessary if the nation were to survive a major war. Their presence was further complicated by the fact that the War and Navy Departments, harassed through the entire Thirties by Congress on the basis of their World War I practices and profit control, were extremely reluctant to give up the protection afforded by the strict provisions of formal advertising....The only constructive piece of legislation developed during the period between the wars was the authorization by Congress in 1926 that contracts for experimental aircraft could be made on the basis of design competition rather than price competition.

It is interesting to note that the Government itself considers the Air Corps Act of 1926 "...perhaps the first formal recognition that sealed bid procurement cannot always generate effective competition or ensure that the Government gets the best product at the lowest price" [5:133].

Completing this period of Congressionally imposed atrophy for the Services, was the Vinson-Trammell Act of 1934. This legislation imposed further profit limitations on the contractors of military aircraft and naval vessels.

8. World War II 1937-1945

In recovering from the economic disasters of the 1920's and 1930's, the United States adopted a policy of isolationism. This doctrine was designed to ensure the social welfare of the country by not diverting tax revenues towards military expansion in either the U.S. or abroad.

This philosophy is evidenced in the 1937 Neutrality Act. "Some people think that this ill-advised piece of legislation did as much as anything else in encouraging the dictator countries to take the series of actions which were to lead to World War II and our eventual involvement" [7: A-1-5].

In the 1983 ICAF study, the author points out that production lead times were "...shortened somewhat by our accelerating material support to the Allies in 1939 and 1940" [2:7]. This was as a result of the passage of the Lend Lease Act of 1939 which was intended to reduce the effect of the Neutrality Act by enabling the U.S. to provide material assistance to our future allies [7:A-1-5].

The advertised procurement requirements of R.S. 3709 and Congressional reluctance concerning excessive profits continued to govern the first months of this period. However,

as increased emphasis was placed on national defense, a number of laws were introduced to ensure the expeditious procurement of defense related articles. These laws gradually eroded the requirement for formal advertising, and, in fact [5:133]:

The War Production Board, with its extraordinary authority over the Nation's wartime production effort, eliminated the statutory requirement for formal advertising. In fact, the Board went so far as to prohibit its use without specific authorization.

A key factor in understanding the rationale behind the procurement and mobilization legislation which prevailed in World War II is the impact that the manufacturing effort had on the national economy. The economic and social impacts of Government defense spending will be explored later in this thesis. However, it is significant to note here that in 1945, 45 percent of the Gross National Product (GNP) was devoted to defense [2:7]. Therefore, the regulations governing defense procurement were, for the most part, governing the national economy.

A listing of the salient procurement legislation during World War II is provided for reference [7:A-1-6-10]:

- a. The Public Works Act of April 25, 1939--
Public construction projects.
- b. The Act of July 13, 1939--negotiation of spare
parts procurements.
- c. Multiple Awards Act of March, 1940--expansion
of aircraft production base.
- d. Act of June 26, 1940--eliminated bidding in
purchase of strategic materials.

- e. Act of June 28, 1940--"Speed-up Act"--authorized advance payments up to thirty percent.
- f. Act of July 2, 1940--waived advertising for construction of government owned facilities.
- g. Eight Hour Law of September 9, 1940--upheld Walsh Healy, Davis-Bacon, and Copeland Acts.
- h. Act of September 16, 1940--Selective Training and Service Act--mandatory production orders.
- i. Second Revenue Act of October 8, 1940--accelerated amortization of emergency facilities.
- j. Assignment of Claims Act of 1940--claims settlement.
- k. Act of October 16, 1941--power to requisition personal property.
- l. First War Powers Act of December 18, 1941--removed most of the historic procurement restrictions.
- m. Executive Order 9001 of December 27, 1941--broad wartime defense contracting authority.
- n. War Production Board Directive No. 2 of March 3, 1942--required negotiated procurements.
- o. Second War Powers Act of March 27, 1942--established priorities system and inspection and audit rights.
- p. The Revenue Act of 1943--fair price establishment if not negotiated.
- q. Contract Settlement Act of 1944--uniform and rapid settlement of terminated contracts.

Although expedient production and procurement practices seem to be the thrust of this legislation, profit and price controls were still a significant concern. These concerns and the rudiments of current defense procurement policies are visible in the following account of the Tryon Conference [7:A-1-8]:

In October, 1942, the War Department held a conference at Tryon, North Carolina, to formulate new policies based on the experience since the beginning of the war. The announced objective of the conference was to promote more efficient use of labor, material and plant facilities and to limit profits to reasonable levels to assist the price and wage control programs and to prevent inflation. During the conference, the War Department reasserted its determination to secure war equipment at the best price and the lowest possible cost. The O.P.A. agreed to refrain from extending price regulations in the military field. It was agreed that controls were necessary to keep prices close enough to costs to exert continued pressure on them and that purchase control through close pricing and the selection of the best type of contract suited for the procurement was the best method of price control rather than the use of formulas and regulations. The conference recommended the continued use of fixed price contracts based on accurate cost experience and close estimates with the Government assuming unpredictable risks. The First War Powers Act was used to grant relief to a Contractor who suffered an actual loss as a result of factors over which he had no control. Short term forward pricing and both upward and downward redetermination of prices were recommended by the conference, who also went on record as discouraging the use of CPFF contracts. Rather than price control, continued downward pressure on cost by better purchasing methods and by closer pricing based on historical prices and costs was recommended. The growing importance of subcontracts was recognized and the conference recommended that the War Department institute better method for their control. The use of renegotiation as a tool to secure reasonable prices rather than as a method to recapture past profits was emphasized. The conference also discussed the necessity for the recruiting and training of personnel in the new purchasing policies and techniques required by the use of negotiated contracts. The conference re-emphasized the function of the price mechanism to insure efficient and economic production and to restrict excessive profits even in times of emergency....

9. Post War Reformation 1946-1949

At the close of World War II in 1945, the United States was the most powerful industrialized nation that had ever existed. The period that immediately followed the war

is one of the most significant ones to this examination of policy perspectives. For it was during this time that many of the elements of our current acquisition and industrial mobilization policies were formulated.

The country was in somewhat of an awkward position [2:8]:

On the one hand there was a clear recognition of the need to develop mobilization capability and procedures.... On the other as a result of a affirmative policy to make available to the civilian economy everything that might be useful in stimulating a renewed flow of goods, there was a wholesale disposal of Government-owned industrial facilities....

Congress then failed to appropriate adequate funds for the maintenance of other facilities and caused them to be closed or sold. Referred to as the "Dismantling of the Arsenal of Democracy" [2:8], the most vital elements of industrial mobilization, were often sold at fifteen percent of their worth for the sake of political and supposed economic stability. However beneficial this restoration of the societal norm might have seemed, the damage it did to our defense industrial base has yet to be corrected.

The lessons of Pearl Harbor and the other disgraces that this nation endured in the early months of World War II served one very important purpose. The Government and the people of this nation were united in their determination never to allow themselves to be caught unprepared and defenseless again.

In response to this resolve, there were several significant pieces of legislation adopted following the war. The Strategic and Critical Materials Stockpiling Act of 1946 "provided for the acquisition and maintenance of the strategic stockpile" [2:8]. The National Security Act of 1947 created the Department of Defense, Air Force and the National Security Resources Board and Munitions Board to coordinate industrial and civilian mobilization. The National Industrial Reserve Act of 1948 "authorized the Secretary of Defense to retain surplus machine tools, manufacturing equipment, and industrial plants required to supply the needs of the armed forces for emergency production" [2:9].

The most significant law passed was the Armed Services Procurement Act of 1947. It came into being because the procurement laws and regulations passed during World War II were temporary. Therefore, the competitive bidding requirements of R.S. 3709 would have returned to force as soon as the wartime legislation expired. However, because of the dangerous inefficiencies caused by these restrictions, it was determined that [7:A-1-10]:

Return to the inflexible procedures of formal advertising would mean that supplying the needs of the military would soon revert to a relatively small group of professional Government suppliers with the consequent loss of invaluable defense know-how....The importance of the industrial production capacity...was also recognized along with the importance of effective purchasing practices and procedures that would enable the military services to mobilize this industrial might as soon as possible. The Armed Services Procurement Act became effective on May 19, 1948, as the procurement authority of the First War Powers Act expired.

This unification of the procurement authority for all of the armed forces did much more than just consolidate regulations. It served to issue to industry the procurement philosophy of the military as agreed upon by all of the branches of Government. It reinforced the preference of the Government for formal advertising, but it was rationally tempered with a flexibility allowing for negotiation if justified by one or more of its seventeen exceptions authorized in the law.

These seventeen exceptions date back to those evolved from R.S. 3709 and were added as a result of wartime procurement experience. It is through the skilled use of these exceptions that much of the acquisition support was provided for subsequent Military Contingency Requirements [7:A-1-11].

10. Korean War 1950-1953

These post-war policies and the national preparedness were soon tested. The 1983 Industrial College of the Armed Forces study referred to earlier presents some excellent insights into this era [2:13-44].

A key to understanding United States industrial mobilization policies as they evolved over time is NSC-68, "A Report to the National Security Council," dated 14 April 1950....Tension and confrontation with the USSR had been growing since the end of World War II. China had become Communist; the economies of Europe and Japan had not yet recovered....A basic premise of NSC-68 was that the Soviet Union had achieved a fission bomb capability....Furthermore, the atomic capabilities of the USSR could be expected to grow to the point that, by 1954, a decisive initial attack could be delivered upon the United States....

only by our having an overwhelming atomic superiority might the USSR be deterred....Essential to the policy of constraint was....a superior aggregate military strength, in being and readily mobilizable....The invasion of the Republic of South Korea on 25 June 1950...by a North Korean force trained, equipped and inspired by the Soviet Union was perceived to be a part of the overall Soviet design of world domination... the invasion...gave urgency and unanimity of purpose to the Nation....In response to a Presidential request for legislation to aid in meeting defense needs while considering inflation, the Defense Production Act of 1950 became law on 8 September 1950. The stated purpose of the Act was to oppose aggression and promote peace, and to develop and maintain whatever military and economic strength necessary to carry out this purpose. The Act also provided for the diversion of materials and facilities from civilian use...and for the expansion of productive facilities....Contained in the Act were vast powers required to carry out the declaration of policy....President Truman created the Office of Defense Mobilization...to direct, control and coordinate all mobilization activities...including... production, procurement, manpower stabilization and transport activities....The Government set out to stimulate expansion of capacity by a broad variety of incentives and assistance....Accelerated Tax Amortization Program....Guaranteed markets at guaranteed prices....Direct loans and guarantees of commercial loans by the Government....Financing of plant construction and equipment through military contract.... Installation of Government-owned equipment and construction of Government-owned facilities....Grants for research, exploration, and development....The more important, long term goal was to build adequate war reserves and production base to fight a full-scale war with the USSR....Funds were no problem, as Congress voted supplemental appropriations for fiscal year 1951 that made \$52 billion available for military and related purposes....The second year, 1952...\$94 billion available for military procurement....Progress was so remarkable that...by January 1953....The issue was whether to have greater immediate strength...or to keep a greater number of production lines....It was explicitly recognized that, as the new weapons were developed, a balance must be maintained between qualitative superiority and volume production, because falling far behind in either could spell disaster....Another major goal of mobilization in the Korean War era was to expand the basic economy and industrial capacity to permit defense expenditures and the gross national product to grow concurrently....The mobilization base concept was the approach by which the

United States addressed a new situation in the world, a national security need for military readiness to offset the constant threat from the USSR....The Vance Committee....interim report of 12 September 1952... stated, "if an adequate defense position has to be maintained over an extended period of time...without prohibitive cost, a larger productive capacity to produce military end items must be created and thereafter... maintained in such a condition that it can be quickly expanded in the event of an emergency....The time it takes the Nation to get to mobilization production rates must be offset by war reserve stockpiles.... Acquisition of production facilities and production equipment...will take time, perhaps years....The original cost of facilities is small compared with the cost of producing....The creation and maintenance of ample production capacity is not only less costly...than depending chiefly on reserves...it also represents a greater contribution to national security...." Once the procurements fell to the point that private production lines had to go cold, there was no identified mechanism to assure that the producer would be available at a later date....The Korean War era, then was unique in several respects....We established the policy and the fact of readiness for war...operational...and... industrial...during a period when no war had been declared....We expanded the economy...for basic industry and...military items....We recognized that the job was going to take a long time and we set up the process to preserve the state of readiness through the mobilization base concept....

The policies and concepts developed during the Korean War served to strengthen the defense posture of this nation. However, this era of definitive direction dissipated rapidly with the cessation of armed conflict.

11. Decade of Deterioration 1954-1964

The years following the Korean War were ones of political confusion and international tension. The "Cold War" of words and threats that the U.S. and the USSR waged also served to chill the mobilization initiatives and defense procurement programs that had been developed in response to

the threat of Soviet nuclear attack. The Soviet threat was in no way diminished by the end of the conflict in Korea. What was diminished was the realization of a need for the industrial production capacities and the financial and acquisition policies to manage it that had been reached by 1953. This, in turn, deviated the mobilization base policy previously established that relied on this capacity instead of war reserve stockpiles. "The effectiveness of a policy of using procurements to retain producers in the mobilization base who might otherwise have switched to peacetime products was ultimately limited by the adequacy of the procurements available" [2:45].

Therefore, with stockpiles on hand considered adequate at the end of the Korean War, it was determined that those resources would satisfy future military needs for all except a full mobilization. The mobilization base was then relegated to competing for current procurement programs if it was to survive.

There was, however, a wide range of mobilization, financial and acquisition planning carried out during this period. A large proportion of it concerned requirements determinations for key defense end items and strategic materials. These were planned utilizing tax amortization certificates or Government funded expansion to ensure adequate national production capacities existed [2:46].

Programs developed in this period included the Preferential Planning List (PPL), the Production Allocation Program, the Armed Services Procurement Planning Offices (ASPPO), and the Key Facilities List (KFL). These were all established in an attempt to integrate the needs of the military services with defense industry by joint planning and the establishment of lines of communication [2:47].

The Army and the Navy applied the DOD mobilization guidance provided during this period in very similar, classic manners. However, the Air Force introduced a new concept called the Production Readiness Policy [2:48-49].

At the center of the new Air Force approach were the Production Acceleration and Production Compression Concepts....Advance procurement of long-lead-time material and semifinished components....The Production Compression Concept was essentially to plan "surge production"....A basic premise of these concepts was that the United States would have been under nuclear attack.

The Air Force also significantly modified the background for planning future requirements when, in 1955, it "adopted the Force-in-Being concept, which was predicated on the assumption that the next year would be a total nuclear war fought with the weapons on hand at the start" [2:49]. At the same time the Army was still planning for a classic long war of attrition. "Air Force stock requirements were measured in days....So, from 1958 until 1967, the Air Force conducted no industrial readiness planning with industry except the planning inherent in the procurement cycle" [2:49].

This significant disparity in mobilization planning between the Services "put forth very mixed signals to industry" [2:49]. The introduction of a nuclear exchange and short duration war into the planning scenario caused DOD, in 1962, to issue a [2:50]:

Policy of "flexible response," which basically established that the United States would be prepared for any degree of conflict, nuclear or conventional, on any scale and duration. This policy caused the Air Force to examine its stockpile policies and... to return to mobilization planning in 1967....

This environment of vacillating plans will be further examined later in this chapter. It suffices to say that this period was characterized by a lack of DOD direction, that forced each of the Services to pursue their own mobilization and acquisition policies in an attempt to maintain a level of combat effectiveness. It was with this background of inadequate Defense coordination that the United States committed combat troops to Vietnam.

12. Vietnam Era 1965-1972

The most salient financial and acquisition issue at the beginning of the Vietnam War was the inability of DOD and industry to respond to the material needs necessitated by this Military Contingency Requirement. The very essence of mobilization planning and material support is based on the declaration of a national emergency and the invoking of legislation and procedures to trigger an industrial response [2:52].

For purely political reasons, the Vietnam War was fought without any formal declaration of national emergency or war. It should be noted, however, that the national emergency declared in 1950 was still in effect. The 1950 emergency notwithstanding, the lack of declaration and national resolve for the Vietnam War was directly reflected in the financial and acquisition policies required to support it. There were no extraordinary policies created for the war's support, except the creation of a financial vehicle, which will be addressed in a later chapter. However, as will be illustrated in the authorities chapter, the lack of a declaration of national emergency may well have been an issue of its actual need.

In view of the fragmented Service policies generated during the 1950's and early '60's, the industrial base failed to receive specific direction from DOD upon which to plan and determine requirements. In 1970, the Joint Logistics Review Board stated that "Without valid, stable requirements it is virtually impossible to plan with industry or maintain the production base in an acceptable state of readiness" [2:51].

The 1983 ICAF study directed much of this failure towards the PPBS process [2:51-52]:

The problem stemmed largely from the use of DOD's Annual Logistics Guidance to develop mobilization requirements. The annual guidance was used for programming current and out-years of the 5-year program and, over time, became constrained by the available

funding. Affordability dictated the current guidance, and became current guidance...dictated force structures... rates of usage...bases for mobilization requirements, rates of usage became constrained by affordability as well. These rates in turn, created havoc with the mobilization base because facilities required for the limited war in Vietnam were lost, either through being declared excess or from poor maintenance.

Also pointed out, and of significance here, is the fact that [2:52-53]:

A decision was made to use competitive procurement to the maximum extent to reduce the costs of the war. This policy, in effect, invalidated all the planning agreements made with industry. Although ODM had declared a policy of using current procurements to maintain the mobilization base in the 1950's, the practice in the Vietnam War years was exactly the opposite. The effect was to place the war on equal footing with commercial work. If there was no urgency to industrial mobilization agreements, then military requirements must not be urgent. There was no incentive...to shorten lead times....Industry was unwilling to give up firm commercial business...reluctant to bid...unless they had idle capacity....Producers...previously designated...who chose to bid...were often not...the lowest bidders... Government equipment in the hands of planned producers had to be removed and shipped to the low bidder, thereby destroying the validity of the mobilization base....

The financial and acquisition policies of the Department of Defense lost their sense of perspective during this period by failing to effectively support the requirements of national security through maintaining the integrity of the industrial base.

13. Economic Weakening 1973-1980

Following the Vietnam War was a period of significant impact on the financial and acquisition policies of DOD. The primary reason for this impact was the weakened state of the national economy. This weakening gradually resulted

in an economic recession with annual inflation and interest rates hovering at twenty percent.

The Commission on Government Procurement (COGP) reported to Congress in 1973 with a wide range of programs not only to improve the procurement process as practiced by the Federal Government, but also to improve its vital relationship with industry. However, the financial constraints imposed by the weakened economy committed most of the recommendations to an early grave.

Jacques Gansler describes the Post-Vietnam Period in his book The Defense Industry [6:21-22]:

National attitudes shaped by the Vietnam War led to significant changes....Most obvious was the sharp drop in defense procurements to a level not seen since immediately after World War II....The reasons were many. The military...did not need...older generation equipment...it needed new families of weapons....Military pay and allowances increased dramatically....To live within the shrinking total defense budget, research and development remained almost constant while procurement was rapidly reduced. In real dollars, procurement outlays for 1976 were the lowest since 1951....Weapons system continued to increase in cost...buying power...reduced significantly....Congress...questioned the affordability...of defense expenditures, and cut more deeply into the procurement account....These cuts worked to erode defense buying power. The Congressional cuts were....The will of the people...to devote all available resources toward improving the peacetime life of the nation....The result was that, in relation to the gross national product, defense was the only major sector that was shrinking. In the typical post war pattern, defense was not a good area for an industrial firm looking for growth.

The defense industry, severely affected by the recession and lacking the cash flow required to continue growth and expansion, stagnated and began to disintegrate near the end of the decade.

Gansler presents his 1980 opinion of the Government's treatment of the defense industry as follows [6:27]:

For 200 years the United States has not treated its defense industrial base as the vital national resource it is. Clearly this base has been a significant part of the nation's historical defense posture, and yet the defense industry is not considered when the Department of Defense sits down to plan its overall deterrent and war posture. Similarly, from an economic perspective, considerable care is given to the planning and management of each individual weapons system, yet the economic efficiency of the overall defense industry is rarely if ever considered.

The futility of this period and the impotency of its defense policies are best characterized by the feelings of utter helplessness this nation was forced to endure as a result of the Iranian Hostage Crisis from November 1979 to January 1981.

14. Rearming Phase 1981--

Seizing the national unification created by this disgrace, President Reagan's Administration quickly attempted to fulfill the campaign promises of a bolstered defense, which had swept them into office.

Defense acquisition budgets for all areas of military support were increased in an effort to deter the expansion of Soviet influence. The urgency of the situation is characterized by the reactivation of several World War II Battleships. This historic military might was called upon not only to display our national resolve, but to provide a timely response to what has become a very lengthy weapons acquisition process.

In conjunction with these efforts, the President also issued Executive Order 12352 on March 17, 1982 "...in order to ensure effective and efficient spending of public funds through fundamental reforms in Government procurement...." [5:147].

This reform of Government business policy will result in the issuance of the Federal Acquisition Regulation (FAR) on April 1, 1984, in an effort to consolidate the fragmented procurement regulations of the Federal Government. This and other current financial and acquisition programs will be addressed in subsequent chapters.

This period has thus far been characterized by a resurgence of national pride and an increased awareness of the need for a responsive defense industrial base. This nation is indeed rearming, in an effort to deter, or if need be, defend itself against, the incursions of Soviet expansionism.

D. DEFENSE GUIDANCE TRENDS 1977-88

The Defense Guidance provided by the Office of the Secretary of Defense to the military departments over the last few years has changed dramatically (see Figure 1).

The reasons for these shifts, in what would appear to be schizophrenic behavior, are driven by a wide range of factors. The most obvious is the need to react to actual or perceived threats to national security. The other omnipresent requirement, serving as justification for a variance

BACKGROUND

OSD GUIDANCE

SCENARIO

FY 77-81 DEFENSE PLANNING AND PROGRAMMING GUIDANCE

WAR OF INDEFINITE DURATION: D TO P

FY 78-82 DEFENSE PLANNING AND PROGRAMMING GUIDANCE

SHORT WARNING, SHORT WAR

FY 79-83
FY 80-84
FY 81-85
FY 82-86

CONSOLIDATED GUIDANCE

SHORT WARNING, SHORT WAR

FY 83-87 DEFENSE GUIDANCE

GLOBAL CONFLICT OF INDEFINITE DURATION

FY 84-88 DEFENSE GUIDANCE

GLOBAL CONFLICT OF INDEFINITE DURATION. D TO P PLANNING

Figure 1.

in this fundamental planning direction, is the availability of programmed funding.

Therefore, the Short Warning, Short War scenario that required extensive initial support to sustain operations has now been changed completely. The status of War Reserve stocks, which may well have contributed to this shift, will be addressed in a later chapter.

The current Defense Guidance calls for planning to sustain a Global Conflict of Indefinite Duration. This return to the "classic scenario" has resulted in increased funding for several industrial preparedness programs to be discussed in a separate chapter.

E. CURRENT GLOBAL PERSPECTIVES

The volatile, changing nature of the political unrest in many areas of the world today renders any detailed discussion senseless. However, one must recall that this need for historical reflection was predicated by upon the gravity of the present situation: Iran, Iraq, Lebanon, Kuwait, Afghanistan, Poland, Grenada, Honduras, El Salvador, Korea, Northern Ireland, Falklands, Morocco, Egypt, Israel,....But, the urgency of the present must not be allowed to completely overshadow one's commitment to understanding the perspectives of the past.

III. ECONOMIC AND SOCIAL IMPACT OF GOVERNMENT DEFENSE SPENDING

A. PURPOSE

The objective of this chapter is to examine from a broad perspective social and economic implications of defense expenditures. Defense interest will be contrasted with social considerations for and against military spending. It is designed to stimulate the thought process and create awareness of the far reaching role of defense expenditures. Additionally, it highlights problems associated with increases and decreases in defense spending.

B. OVERVIEW

The vigor with which a nation's military establishment can respond to a threat to its national interests is dependent upon prevailing social, political and economic factors. These parameters will differ over time. During World War II the United States was able to mount a massive effort because the threat was so serious that the public gave the war effort its full and united support. In addition, the economy had not fully recovered from the Great Depression and there was still considerable unemployment and unused manufacturing capacity [9:264]. Today these underlying social, political, and economic factors are much less favorable to a military response [9:263]. This is true even if we compare the present

situation to that during the Vietnam campaign. Although the Vietnam conflict caused great social and political turmoil in the United States, the economy was in a favorable position to respond to increased military demands [10:45].

This economic readiness was unlike both present economic conditions and those likely to exist in the near future. The current period, marked by great uncertainty and rapid global change, is difficult for the government to deal with [9:265]. Inflation, for example, has been of such unprecedented severity that few have a clear understanding of its long run implications.

During times of turmoil the interrelated elements of social, political, economic, and military concerns become even more cumbersome. This means that the problem of balancing options between military and civilian needs becomes one of the major factors determining the military and industrial response to a threat. With so many competing needs in such an uncertain environment, making choices--pitting civilian against military needs--becomes a particularly difficult problem.

C. ECONOMIC ROLE OF DOD EXPENDITURES

In theory, defense spending can be viewed as a source of fiscal stimulus which can aid recovery from an economic downturn [11:14]. Peacetime defense expenditures are responsible for more than 10 million jobs and an annual budget of

far more than \$190 billion [12:400]. It is natural that many look to defense policy as a possible source of stimulation for the overall economy as well as for employment in defense-related areas. However, comparing the effects of such peacetime stimulation with those of other government fiscal or monetary alternatives may be highly ambiguous.

The question of large defense expenditures during peacetime raises the question of whether the effect on the United States is positive or negative. There are experts and data to support both positions, and the answer seems highly dependent upon such factors as the overall economic conditions, the type of alternative expenditures or fiscal policies with which military spending is compared, the economic and social objectives of the policies, and the structure of and condition within the defense industry [6:13]. For example, defense expenditures may be a more effective stimulant than expenditures in other areas of government, because defense is more capital-intensive and thus creates a greater economic multiplier for the dollars invested [6:13]. However, a tax cut might be an even more effective stimulant (dependent upon the type of cut and state of the economy at time of cut). Similarly, the public policy objective of the economic stimulant is very important. For example, while the creation of jobs may be an objective, the defense sector has little effect on hard core unemployment because of its high skill requirements and high salaries as illustrated by Table 1 [6:53].

TABLE 1

WAGE-RATE RANKING AND PERCENTAGE OF PRODUCTION
EMPLOYEES IN SELECTED DEFENSE INDUSTRIES

	Rank in Hourly Wage Rate	Ratio of Production to Total Employees
Aircrafts & parts	4	53.8%
Complete guided missiles	5	27.8
Shipbuilding & repair	9	79.1
Communication equipment	11	50.0
Ordnance & accessories	10	47.3
Motor vehicles	1	73.5
Electronic computing equip.	12	34.2
Average for U.S. Industry	14	89.9

Source: 1972 National Commission on Materials Policy.

The ranking in Table 1 means that motor vehicles have the greatest average hourly wage rate and that the average for each of the industries shown is greater than the rank of what would be the average industry [14].

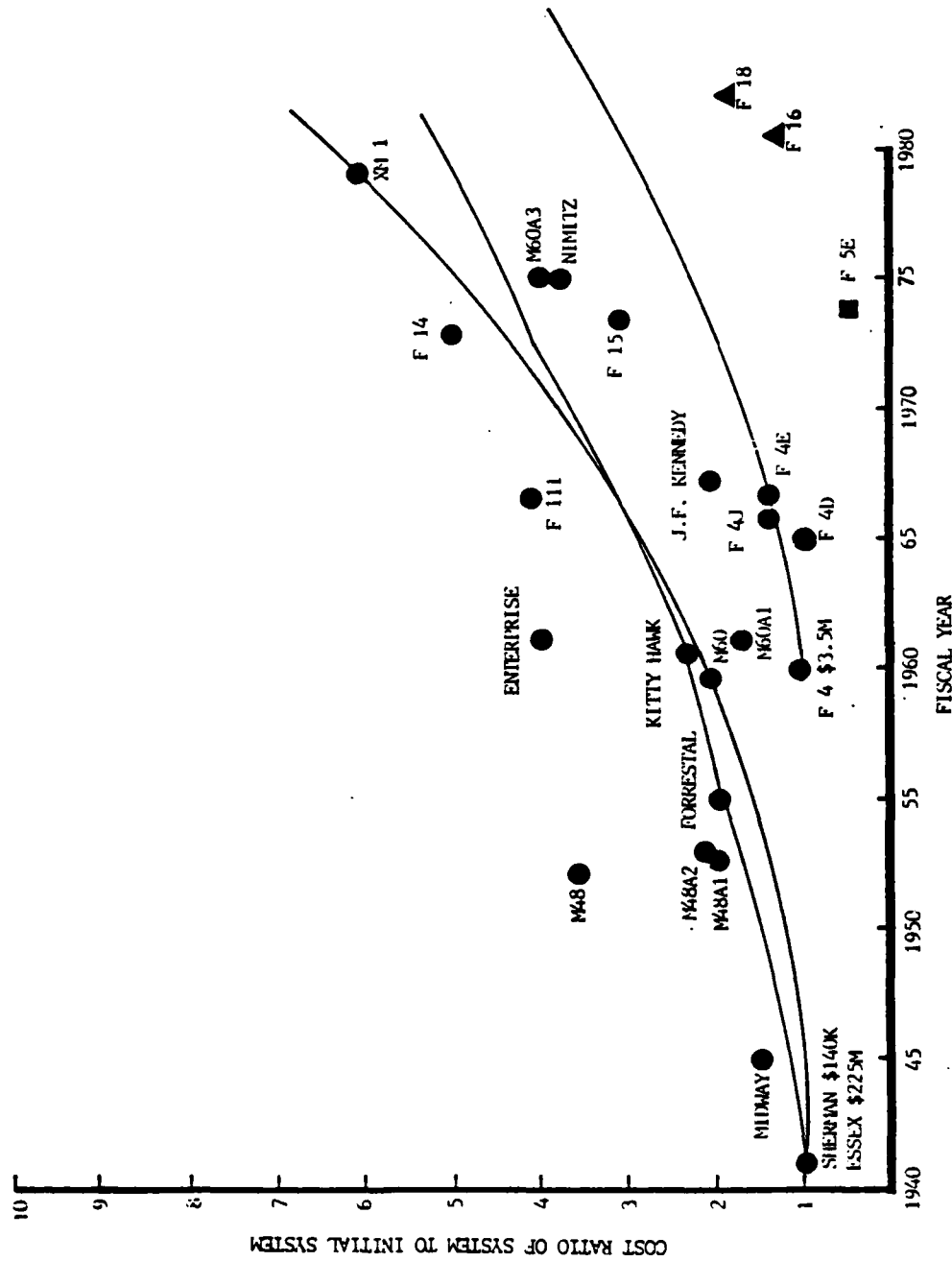
Based on this type of wage disparity in relation to other employment sectors, Employment Research Associates, a Lansing, Michigan consulting firm, concluded that \$1 billion invested in missiles creates 14,000 jobs. The same amount would mean 48,000 positions in a labor-intensive area such as hospitals.

1. Inflationary Impact at the Microeconomic Level

Beyond the macroeconomic issues lies another important economic consideration--the inflationary impact of military

spending at the microeconomic level--not just in terms of program inefficiencies, but also in terms of the high cost of the equipment. The latter as viewed by a large segment of the public results from the continuous demand by the Department of Defense for increased performance at almost any cost [6:47]. The Department of Defense contention is that such performance is warranted to counter an increasingly dangerous world threat or to gain advantage over potential adversaries [12:590]. Each new generation of weapons must be driven to the "state-of-the-art" in performance. The result has been rising unit production costs for almost all classes of weapons.

The magnitude of increased costs are clearly illustrated by Figure 2. To understand Figure 2, consider the case of the tanks. The data show that an XM-1 tank costs about three times as much as the M60 it is replacing (excluding inflation and assuming a one-for-one replacement). The XM-1 performs much better than the M60--perhaps even three times as well--so on a one-for-one basis it is worth the money [6:17]. But it still costs three times as much; so if the United States wants to keep the same number of tanks, it has to triple its procurement expenditures. The effect of the increasing unit cost of defense equipment is not only felt in the defense sector of the economy but also is reflected in some civilian sectors as well [9:268].



The trend in procurement costs of weapons systems. Examples used are aircraft carriers (indicated by names), tanks (Sherman and M numbers), and fighter aircraft (F numbers). Tank data are for 1,000th unit, aircraft data for 100th unit. All data are normalized to remove the costs of inflation and quantity changes.

Source: Gansler, *The Defense Industry*

Figure 2

2. Local Expenditures

Military programs account for the bulk of the goods and services purchased by the Federal government from producers in the private sector of the economy [13:27]. In creating this vast market for private industry these programs have also served as a means of expanding the direct role of the government in the American economy as a purchaser and as a consumer. In terms of economic activity these military programs account for almost three-fifths of all federal government purchases of goods and services [13:27].

Although most regions, states, and major metropolitan areas are minimally affected by defense spending, a few geographical regions still depend on defense programs for a dominant share of total income and employment [9:28]. During periods of reductions in defense demands these regions face significant adjustments, notably declining sales and high unemployment. Reduction in military procurement from \$24 billion in fiscal year 1969 to \$16 billion in fiscal year 1973 coincided with massive layoffs by the key defense contractors, particularly on the West Coast [13:28].

Recognizing that Department of Defense expenditures have concentrated industrial and regional impacts, it is understandable that increases and decreases in expenditures are far more traumatic for these economic segments. If defense-generated income and employment was distributed throughout the country in proportion to population or to the

location of industry, we would experience less intense and less localized pressures for or against changes in the size and composition of military spending [13:27].

Regions highly dependent upon military spending tend to feel that thousands of highly productive tax paying citizens are being abandoned in a period beset with high unemployment and inflation in the process of moving toward leaner defense budgets. The contrasting view is that more Americans could be employed in other, more labor-intensive areas of the economy with funds made available through defense reductions as alluded to earlier in this chapter. These two opposing views have contributed to the increased level of Congressional lobbying taking place today and over the past two decades on military spending.

Congressional actions are currently reflecting the attitudes of the American people [11:153]. Mounting opposition to high levels of military spending is hardly a passing phenomenon. A recent indication of the continuing dissatisfaction with the way the business of the military establishment has been conducted is contained in a report of the House Appropriation Committee. The Committee stated that, "the numerous disappointments in the development and procurement of weapon systems by the Department of Defense indicate that better management and better procurement policies are mandatory."

3. Research and Development

Research and development is crucial to the sustenance and growth of any industrial society. The government's tax dollar substantially aids the cause of research and development in the private sector of our nation [6:96]. Over half of all R&D and scientific and engineering talent in the nation is financed by the Department of Defense, the National Aeronautic and Space Administration, and the Energy Research and Development Administration (formerly the Atomic Energy Commission) [14:7]. In addition to work done in government labs, the defense agencies pay for more than half of the research undertaken in industrial labs and about three-fifths of the work performed by universities and other non-profit institutions [14:8]. Defense technology has brought about the creation of new civilian industries such as computers, jet engines, nuclear power, and space communications. In each case, development began with a perceived military need and Department of Defense R&D money brought these industries along until civilian markets were created [15:21]. Undoubtedly, without defense expenditures these industries would have developed at some future date, but the earlier availability of these totally new and significant civilian industries must be considered as a major contribution of the defense R&D dollar.

D. BOTTLENECKS

Manufacturing bottlenecks occur as a result of one or more crucial industries operating at or near capacity being suddenly confronted with unanticipated increased demand for its output. The subsequent sudden demand for raw materials drives up the prices of input resources (material and labor). The producer industry output prices are similarly driven up sending a rippling effect throughout industries who are dependent upon his output as their inputs. Manufacturing backlogs throughout the defense industry are created by longer leadtimes for input resources. The interrelationship between defense end-product manufacturers and input producers compounds the problem and inevitably leads to higher prices to the government.

There are several reasons the bottleneck problem is important. One of the primary concerns is a possible spillover effect from defense industries to non-defense industries and to the general economy. Spillover effects can occur with respect to shortages of materials, components, production equipment, and skilled manpower. These effects can influence price levels and the availability of supplies in the civilian sector as well as competitiveness of civilian industries in the world markets [11:25].

As a defense buildup proceeds (provided that there is a shortage of excess capacity, skilled labor and materials) it is likely that equipment, material, components and skilled

workers in short supply will have to be transferred to defense industries. This can cause civilian production to fall and lead to civilian price increases because of the smaller available supplies among civilian users [11:25]. If this occurs, higher premiums will have to be paid by defense firms to attract the physical resources and workers needed out of civilian firms. This will raise wages, material costs, and the price of intermediate products used both in defense and civilian markets.

The sequence of events stated above will create obstacles for American high technology firms not faced by their foreign competitors whose governments are not engaged in major defense buildups. American firms producing civilian goods will be weakened by the shift of resources to defense production [11:26]. Foreign firms will not be hampered in the same way and, therefore, will enjoy a relative advantage.

1. Skilled Labor Shortages

The Department of Defense has only recently given serious attention to the prospect that shortages of skilled labor could choke efforts to rebuild our vital defense sector [16:23]. Problems associated with shortages of skilled labor are particularly complex and very little is known about what to do about these problems [11:87]. Well over \$30 billion a year is spent on higher education and occupational training in the United States [11:82], yet we find it extremely difficult to train even enough computer specialists or

machinists to meet defense needs. More than half of the skilled tool makers in this country will retire within this decade. A 1976 study of the average age of production workers in the aircraft industry found the following: Lockheed (Marietta, Georgia division)-age 62, Lockheed (California division)-age 55, Fairchild (Long Island, New York division)-age 56 [6:54]. In 1976, the average age of aerospace engineers was 43 [6:54], which is extremely old considering the rapid changes in engineering over the 20 years since the majority of these engineers had graduated. A House Armed Services Committee Report of December 1980 estimated that the nation would be short 250,000 skilled machinists by 1985. The Department of Labor projections from 1979 emphasized the need for 23,000 additional skilled machinists each year through 1989.

The skilled labor shortage became much more real for the researchers after considering the high rate of unemployment that exists today and existed over the past three years. During this period newspaper classified ads were filled with job advertisements side-by-side with headlines regarding the millions of unemployed Americans. A closer look at these ads will reveal that the majority of these listings required very specific technical skills which the average unemployed worker in all probability did not possess.

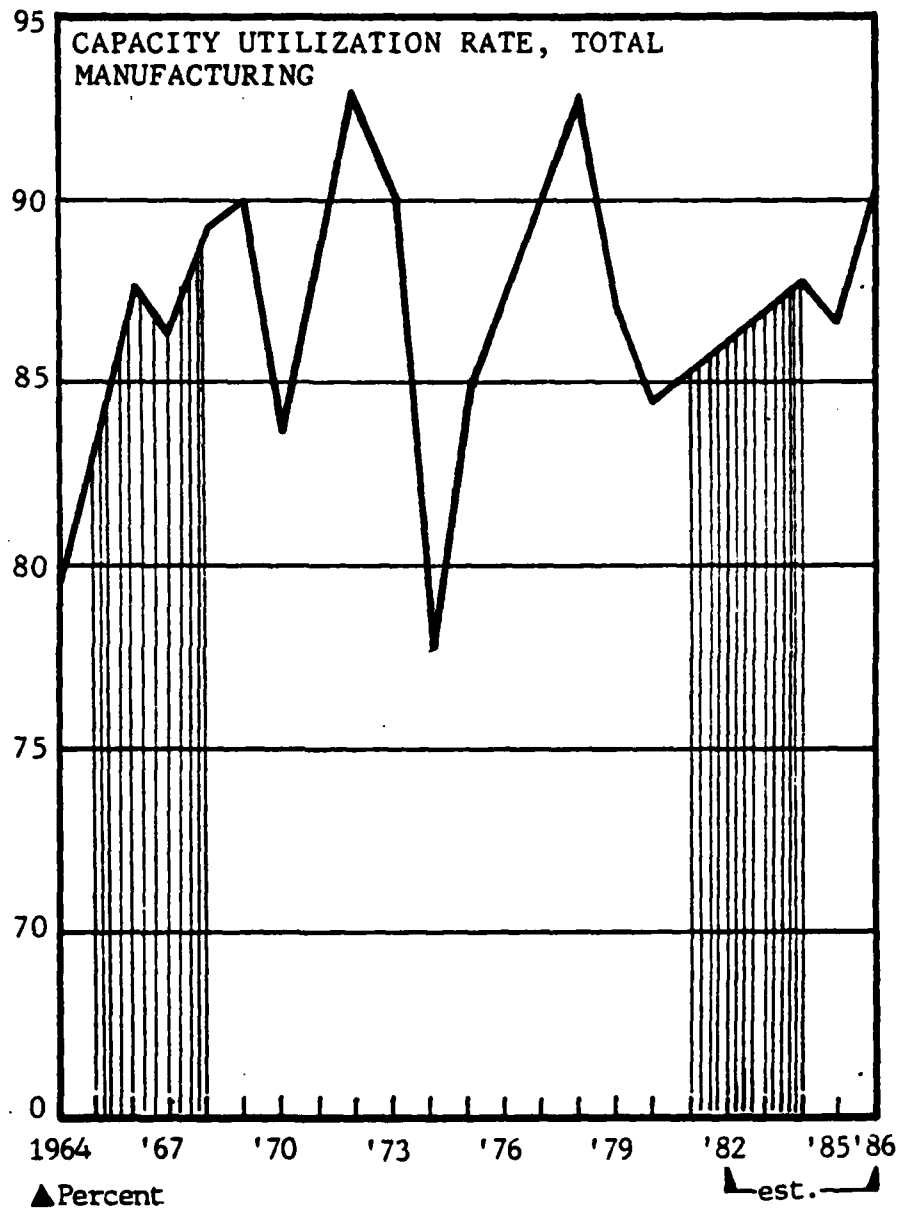
The Reagan administration projects real GNP growth of 15 percent over the next three years. If this projection

is met, the associated heavy growth could conceivably generate a major wave of inflation as hard-pressed firms frantically outbid one another for scarce computer operators and other skilled personnel already in short supply [16:86].

In a period of economic slowdown or stagnation, as some segments of industry are experiencing right now, it is easy to ignore or minimize future needs. But considering it takes three to four years for an individual to acquire the types of skills needed, the existing shortages, and the reduction of technical and apprenticeship programs in private industry (precipitated by the economic downturn), this ignorance is a luxury we cannot afford [16:87].

2. Regional and Sectorial Effects

There is an air of uncertainty surrounding the bottleneck issue. Congressional testimony indicates that the government's understanding of capacity is incomplete [11:19]. Statistics may be misleading with respect to the defense sector. Capacity utilization data is collected on an aggregated basis. It is possible for statistics to show low utilization for industry as a whole, while critical sectors of industry are operating near or at full capacity [15:15]. First quarter fiscal year 1982 government figures showed capacity utilization running at 80 percent. The Wharton Economic Forecasting Association put capacity utilization at 85.3 percent (Figure 3) for the same period. As discussed



Data: Wharton Economic
Forecasting Associates, Inc.

Figure 3

earlier, the same problem exists with respect to the labor market. Overall unemployment may be high while there are shortages of critical skills.

Stagnation experienced in the American economy over the past three years has been a mixture of boom and depression. States such as Texas, California, Florida, and Massachusetts and industries such as semi-conductors and computers have been booming, while the industrial Midwest and the steel and automobile industries have been in the midst of a depression [11:20]. The idle capacity of both workers and equipment is concentrated in a few regions and industries [14:6]. The regions and industries where idle capacity exist are not those where most military equipment is purchased [11:20]. The defense buildup is likely to exacerbate both the shortages of resources in the defense industrial sector and the regional imbalance in the national economy unless there are offsetting budget cuts or tax increases.

E. DRAMATIC SHIFTS OF EXPENDITURES TO AND FROM THE DOD SECTOR

Pressures by the American public to reduce military spending coupled with the desires of the military to get new strategic programs off the ground often creates inadequate timetables for increases and decreases in defense spending [17:4]. The local and regional impact of these decisions have a tendency to send resounding shock waves throughout communities heavily dependent upon defense industry. Military

and defense-related plants represent an enormous community resource. Vast sectors and important interest in our society are virtually dependent upon military spending for their economic survival [17:82].

Increased procurement programs by the Department of Defense is generally viewed as contributing to the health of the economy. New or expanding defense missions suddenly thrust on a local community can impose local burdens for municipal facilities, public services, and housing in instances where DOD is establishing a new major mission or personnel buildup [17:102].

The problem of increased spending in an area is by far the lesser problem. Often completely ignored are the adverse economic impacts resulting from base closures and defense contract terminations. In fiscal year 1977, 1318 defense contracts were terminated having a total value of \$410 million [17:84].

Subtracting line items from the DOD budget usually results in adding long lines of defense workers at unemployment offices. A look at unemployment immediately following Vietnam provides a stark example. Beyond the impact of the individual worker, ripple or multiplier effects penetrate the entire community. Merchants lose sales and municipalities lose tax revenues at just the time when the need for social services and economic development may be greatest.

Environments must be established which are conducive to attracting new economic activity. Communities affected by defense spending reductions must develop broad programs for upgrading housing, retail areas, educational programs, transportation facilities, and medical care in efforts to entice new businesses to locate in their areas. This must be accomplished at a period in which its largest tax base has seriously eroded.

A look at the cancellation of the B-1 bomber program by the Carter administration will further accent the gravity of sudden spending reductions. Upon initial cancellation of the B-1 program, 6,000 Rockwell employees were laid off in the Los Angeles area alone. Another 7,400 were released around the state of California at other Rockwell locations within six months [17:66]. Additionally, 5,100 were laid off by subcontractors in the state [17:66]. The total number of released personnel directly associated with the project were 18,500. A conservative employment multiplier of 3.0 would make that total 55,500 persons (higher multipliers can be found in Reference 13).

The average age of the laid off worker was 48 [17:66]. For a number of these individuals this was their third or fourth time being victimized by the cyclic employment of the defense industry [6:51]. These individuals must again search for new employment which may require relocation and selling of their homes at prices substantially below market [17:66].

The problem does not stop here. Most of these individuals have none of the protection or benefits that would come from continuous employment or seniority. At retirement they will be forced to live on the inadequate benefits of social security [17:67].

There are some governmental programs designed to aid communities faced with defense spending reductions. The agencies responsible for these programs are often understaffed and underfunded and, therefore, incapable of providing the type of assistance needed at the community level [17:84].

The Office of Economic Assistance (OEA) provides most of the assistance in this area. OEA has made tremendous progress; however, communities hurt by defense cuts often cannot economically survive the time lag between a base closing or major contract cancellation and the time when the OEA program reaches fruition [17:35].

The economic impact on communities can be significantly lessened. Efforts must be expended to obtain a better mix of defense related industries and other business activities in a community. Additionally, communities must be given more advance notice of intended base closures or major contract cancellations, so that programs can be initiated to counteract potential negative effects.

F. CONCLUSIONS

The United States' ability to meet contingency requirements is a function of the overall economic condition, the status of the industrial base, resource availability, and the receptiveness of the American public. Contingency funding has become more than a militarily-assessed need for national security. The day-to-day livelihood of the average American citizen is also at issue. Tax resources are limited. The more dollars spent on defense, the less there is available for other social priorities which have become so important to the American public such as: improved health plans, welfare reform, environmental protection, and education.

Domestic social needs are not easily reconciled with those of defense. The high unemployment situation over the past three years has made increased military spending a bitter pill to swallow for many Americans. Defense spending is capable of reducing unemployment figures, but not at the same level that identical funds would generate if applied to more labor intensive sectors.

Department of Defense expenditures have highly concentrated industrial and regional impacts. The majority of Americans does not feel the positive impacts of defense spending on his or her community. Instead, increased defense spending is perceived as an unnecessary tax burden.

Defense spending has been associated with the current high deficits that confront the American taxpayer. Due to

this association, increased military spending is viewed by many as a means of exerting additional inflationary pressure on the economy. In this respect, increased military spending, is perceived to take food off the American table [14:8].

Defense spending is responsible for numerous R&D developments that have civilian applications. These inventions perhaps would have occurred without the Department of Defense, but their earlier availability must be attributed to research conducted in the interest of military needs.

A contingency, which by nature is short lived, contributes to the sectorial impact of sudden shifts in spending on local communities. If not properly managed, the transition from high to low spending levels may be devastating to the stability of local economies.

Increased spending must consider the ability of the defense industry to meet new demand. Bottlenecks may be created due to labor shortages, capacity utilization levels, raw material, and component availability. Problems in the defense industry could spill over into the civilian market creating direct competition for items in short supply. This will cause civilian production to fall and lead to price increases for private goods because of the smaller availability.

Numerous studies have identified skilled labor shortages that will hamper the defense industry's ability to respond to contingency requirements. The shortage will drive up the price for skilled labor and all the products associated with that labor.

The probability of increased military spending to meet contingency requirements must be incorporated into annual fiscal policy by a means other than holding back a percentage of the annual appropriation. This procedure serves to delay other fiscal requirements and contributes to inefficiencies created by year end buys. Fiscal policy must be flexible enough to make allowances for prevailing economic conditions. Problem areas must be capable of being addressed as opposed to escalated. Department of Defense fiscal policies can and should be designed to lessen the negative impact of transition back to a normalized economy.

Procurement policies must be designed that enhance the defense industry's ability to respond to increased requirements without exerting undue pressure on the non-defense segment of the economy.

IV. CONTINGENCY AUTHORITIES AND LEGISLATION

A. PURPOSE

The purpose of this chapter is to address the seemingly myriad authorities and legislation that regulate the DOD financial and acquisition policies in support of Military Contingency Requirements. This chapter will survey those laws, regulations, and executive orders that are salient to DOD's policies. Also, it will provide a basis for understanding the associated authorities contained in the appendices.

The normal inadequacies of the law as a guide to human and organizational behavior are significantly intensified in military contingency situations. People lack military contingency experience, and patterns of contingency behavior are not well established. Because contingency situations are times of extraordinary turbulence and stress, they are also times when laws and regulations are least likely to be consulted. Therefore, it is imperative that all levels of the DOD financial and acquisition communities understand the impact of these authorities on their ability to function in a contingency environment.

B. CONTINGENCY THRESHOLDS

The term "Military Contingency Requirement" was coined earlier in this study to differentiate those politico-military

necessities of the last thirty-three years that were not "codified" by Executive or Legislative declaration.

Mobilization Exercise Proud Saber '82 and personal communications with the researchers evidenced a great deal of confusion concerning exactly what authorities pertain to the various "degrees" of contingencies or thresholds that might occur. To clarify this matter, the four basic national contingency possibilities are discussed below [18].

1. Military Contingency Requirement

No specific legislation or executive order is issued to support an extraordinary military operation in support of national security policy. This is basically "business as usual" from a legal standpoint. Yet, there are several key policies that influence the financial and acquisition support of these requirements.

- a. Defense Production Act of 1950 as Amended, 50 USC 2061-2166. Titles I, III and VII. Priorities and Allocations, Loans and Purchase, and Expansion of Productive Capacity and Supply.
- b. Public Law 85-804, 50 USC 1431-1435, Chapter 29, National Defense Contracts. Although the National Emergencies Act of 1976 terminated the 1950 Declaration of National Emergency, certain "emergency" powers remain in effect without the requirements of a declaration. This Law allows for the modification of contracts in the national interest, with authority delegated for this purpose, to DOD and the Service Secretaries by Executive Order 10789.
- c. 10 USC 2304/DAR. DAR 3-202, Public Exigency. DAR 3-216, Purchase in the interest of National Defense or Industrial Mobilization.

- d. Public Law 96-323, Chapter 138, NATO Acquisition and Cross-Servicing Agreement. Authority to acquire logistic support, supplies, and services for United States armed forces deployed in Europe and adjacent waters.
- e. 41 USC 11, Contracts or Purchases Without Appropriation (Food and Forage Act). "No contract or purchase should be made unless authorized by law and under an appropriation, except in the Departments of the Army, Navy and Air Force, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year. The Secretary of Defense shall immediately advise Congress of the exercise of the authority and the estimated obligation incurred". Originated as Civil War era legislation, and not generally considered valid. Although, still in effect.
- f. Selective Service Act, 50 USC App. 468, "Utilization of Industry". "Presidential authority in the interest of the national security for the Government to obtain prompt delivery of any articles...authorized by the Congress for the use of the armed forces or the Department of Energy...he is authorized, through the head of any Government agency, to place with any person operating a plant, mine or any facility capable of producing such articles or materials as the President deems appropriate....The President is also authorized to take possession of these facilities and operate them if orders are not filled in the direct manner."

2. Presidential Declaration of National Emergency

Unilateral declaration of emergency or executive order by the President as allowed by the National Emergencies Act of 1976, 50 USC 1631.

3. Congressional Declaration of National Emergency

This action is invoked by a Joint Resolution of Congress. However, neither the Presidential nor the Congressional Declarations provide any mechanisms to enhance the financial or acquisition abilities of DOD.

4. State of War

Joint Resolution of Congress to declare a State of War in accordance with Art. I, Sect. 8, Cl. 11 of the U.S. Constitution. Powers of the Congress and President are greatly expanded during a war. World War II era legislation added significant detail to sections of USC 10 and 50, which now serve as historical templates in the event they should need to be reactivated. The War and Defense Contract Acts contained in the War and National Defense Appendix of Title 50 USC provide substantial legislative detail in the areas of contract pricing and renegotiation. However, there is no automatic provision for the reactivation of these laws in the event of a war.

C. COMPLEMENTARY STATUTES

The following two authorities significantly enhance the overall effectiveness of the defense industrial base, and they are "normal course" legislation [18].

1. The Strategic and Critical Materials Stockpiling Act, 50 USC App. 98 of 1939

This law provides for the acquisition, retention and disposal/use of strategic and critical materials for national defense purposes. The authority to release materials from stockpile is vested in the President for national defense purposes or in the time of war or a declared national emergency.

2. Defense Industrial Reserves, 50 USC 451

This legislation is intended to maintain an essential nucleus of Government-owned industrial plants and a national reserve of machine tools and industrial manufacturing equipment for immediate use to supply the armed forces in time of national emergency or in anticipation thereof, not to exceed the minimum requirements for immediate use in time of national emergency.

D. STANDBY AND PROPOSED LEGISLATION

1. The Defense Resources Act

The Defense Resources Act was drafted in March of 1972 and revised in 1977. This "standby" legislation is an attempt to augment/replace the existing authorities of the Defense Production Act, as well as many of the other statutes referred to above. It consists of twelve broad-based Titles covering the range of anticipated mobilization requirements. In the Declaration of Policy, the Act states: "The emergency confronting the United States requires that the President be authorized to act immediately to mobilize fully the nation's resources...."

The Act spans 72 pages and directly cites many of the current statutes. However, the Act has not been kept up to date, appears too broad-based, and fails to define its relationship to existing legislation intended to serve the same purpose.

2. The Department of the Army Proposed Legislation

"To amend Chapter 137 of Title 10, United States Code, relating to the procurement of supplies and services for the Armed Forces, by adding an authority for the expedited procurement of surge-related necessities during a national emergency."

The necessity for legislation of this type is currently under consideration. This proposal is included in the appendices.

E. ADDITIONAL STATUTES AFFECTING DOD FINANCIAL AND ACQUISITION POLICY

The following is a list of some of the current statutes that significantly affect DOD fiscal and procurement practices. Many of these are of a socio-economic nature and will be discussed in the section immediately following. However well intended many of these peacetime statutes may be, they must all be carefully considered as expendable impediments in satisfying the time-critical requirements of a military contingency.

1. Buy American Act, 41 USC 10.
2. Convict Labor Act, 18 USC 436.
3. Recycled Material, 42 USC 6962.
4. Noise Control Act, 42 USC 4914
5. Humane Slaughter of Livestock, 7 USC 1901.
6. Conservation of Energy, 42 USC 6361.
7. Preference for U.S. Flag Vessels, 10 USC 2631.
8. Preference for U.S. Flag Air Carriers, 49 USC 1517.

9. Covenant Against Contingent Fees, 41 USC 254, 10 USC 2306.
10. Small Business Subcontracting, 15 USC 631-647.
11. Walsh Healy Act 41 USC 35-45.
12. Copeland "Anti-Kickback" Act, 18 USC 874.
13. Examination of Records, 10 USC 2306.
14. Preference for Domestic Specialty Metal, Annual DOD Appropriations Act.
15. Preference for Domestic Food, Clothing and Textiles, Annual DOD Appropriations Act.
16. Preference for Domestic Hand Tools, Annual GSA Appropriations Act.
17. Required Source for Jewel Bearings, DAR 7-104.37.
18. Occupational Safety and Health Act, 29 USC 651.
19. Rehabilitation Act, 29 USC 701, 706.
20. Anti-Deficiency Act, 31 USC 665.
21. Vietnam Era Veterans Readjustment Act, 38 USC 2012.
22. Solid Waste Disposal Act, 42 USC 3251.
23. Age Discrimination Act, 42 USC 6101.
24. Cargo Preference Act, 41 USC 1241.
25. Equal Opportunity Clause, DAR 7-103.18.
26. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era, DAR 7-103.27.
27. Affirmative Action for Handicapped Workers, DAR 7-103.28.
28. Clean Air and Water, DAR 7-103.29.
29. Rights in Data and Computer Software, DAR 7-104.9.
30. Utilization of Labor Surplus Area Concerns, DAR 7-104.20.

31. Equal Opportunity Pre-Award Clearance of Subcontracts, DAR 7-104.22.
32. Required Sources for Miniature and Industrial Ball Bearings, DAR 7-104.38.
33. Competition in Subcontracting, DAR 7-104.40.
34. Required Sources for Precision Components for Mechanical Time Devices, DAR 7-104.46.
35. Utilization of Women-Owned Business Concerns, DAR 7-104.52.
36. Distribution of Defense Sub-Contractors Placed Overseas, DAR 7-104.78.
37. Cost Accounting Standards, DAR 7-104.83.
38. Utilization of Small Business and Small Disadvantaged Business Concerns, DAR 7-104.14.
39. Determinations, DAR 12-807.22.
40. Competition, DAR 1-300.1.
41. Cost/Schedule Control System, DAR 7-104.87.
42. Freedom of Information Act, 5 USC 552.
43. Assignment of Claims Act, 41 USC 15.
44. Tucker Act, 28 USC 1491.
45. Wunderlich Act, 41 USC 321-322.
46. Miller Act, 40 USC 270.
47. Davis-Bacon Act, 40 USC 276.
48. Hours Work Act, 40 USC 327-332.
49. Service Contract Act, P.L. 89-286.
50. Foreign Assistance Act, 22 USC 2354.
51. Blind Made Supplies, 41 USC 48.
52. Prison Made Supplies, 18 USC 4124.
53. OMB Circular Series (A-109, A-76, etc.).

F. SOCIO-ECONOMIC POLICIES

The Federal Government's procurement process has been a vehicle to further its socio-economic reform policies for over fifty years. The range and purpose of this effort is cited from a recent Office of Federal Procurement Policy Publication [5:134]:

The depression saw the first concerted Federal attempts to promote socio-economic goals through the procurement process....Since World War II, efforts to use the Federal procurement process... have continued in a wide range of areas. Small business and labor surplus area assistance and preference programs have been intensified, and the Small Business Administration was established as a permanent Federal agency in 1955. The labor standards laws of the 1930's have been extended to employees of service contractors with regard to wages, fringe benefits, hours, and health and safety conditions. Equal employment opportunity programs have been intensified, and enforcement techniques have become more stringent. The Federal procurement system has been used to further programs relating to: (1) discrimination against women and the aged; (2) health and safety regulations; (3) hard core unemployment; (4) minority enterprises; (5) wage and price controls; (6) distribution of Federal work; and (7) environmental pollution.

The need for selective modification/elimination of these statutes in the event of a national emergency or war was a common concern among those DOD officials contacted in the course of this research.

To that purpose, the Chief of Naval Material issued NAVMAT NOTE 5200, dated 31 March 1983. Entitled "NAVMAT Crisis Management Check List", this document contains six major categories of concern: Funding, Contracts, Maintenance, Manpower, Manufacturing and Supply.

In the breakdown of each of these categories, a forecasted crisis issue is cited as an action item with an assigned responsible NAVMAT activity and internal code. Unfortunately, this list does not inform the responsible activity how or exactly when to go about performing the rather monumental assigned tasks, such as:

"Review budget and identify to CNO Programs which should be out....Determine funding rules that must be modified/eliminated....Initiate message to CNO requesting relief from...budgetary constraints....Confirm any restrictions imposed for procurement of materials from foreign sources....Review Title III, Defense Production Act.... Review needed to modify DAR....Request easing of Walsh Healy...Davis-Bacon...Contract Service...Vietnam Veterans...Handicapped...National Labor Relations Act...."

The NOTE is obviously unrealistic, and the researchers were informed that it was an initial attempt to correct the inadequacies exposed as a result of Mobilization Exercise Proud Saber '82. However, the significance of the document lies in its attempt to identify those issues which must be immediately addressed in the event of a crisis. Many of those which surfaced first were of a socio-economic nature.

G. SUMMARY

In summation, there are four categories of national contingency. Each carries with it an increasing level of authority pertaining to various issues. However, the most important fact discovered in this stratification is that the authorities contained in the statutes supporting normal DOD financial and acquisition policies also provide substantial

fiscal, contractual, and industrial expansion flexibility in support of Military Contingency Requirements without the need for a Declaration of National Emergency or War. This Executive authority alone may well explain the last thirty-three years of military contingencies fought without formal declaration.

V. INDUSTRIAL PREPAREDNESS, WAR RESERVES
AND CRITICAL MATERIALS STOCKPILES

A. PURPOSE

The purpose of this chapter is to address the relevant issues of Industrial Preparedness, War Reserves and Critical Materials Stockpiles, and their intrinsic relationship to the financial and acquisition policies of DOD.

As opposed to discussing each of these issues in great detail, they will be presented from a perspective of their importance to the national economy and defense. This format will serve to highlight the salient features of each topic without belaboring its relevance.

Indeed, the relevance of these issues is borne out by the title alone of the recent Congressional report, "The Ailing Defense Industrial Base: Unready for Crisis" [1]. The findings of this 1980 Defense Industrial Base Panel provided much of the impetus for the recent Defense studies and initiatives and they will be drawn upon in this discussion as well.

B. INDUSTRIAL PREPAREDNESS

The issues of industrial preparedness are very complex ones. However, it suffices to say that the integrity of the deterrent defense posture of this nation depends to a great extent upon the viability of the defense industrial base.

1. Productivity Decline

Productivity is defined as the relationship between the output of goods and services (O) and the inputs (I) of resources, human and nonhuman, used in the production process: O/I [19:236-9]. The higher the ratio, the greater the productivity. However, "the average annual rate of growth of manufacturing productivity in the United States since 1973 has been less than half that from 1960 to 1973. Not only has our growth slowed down, but it is also the lowest among free world industrialized nations" [20:31].

One author's analysis of this dramatic decline in productivity is illustrated by the following issues:

- (a). A younger and less productive work force. Total civilian employment in the U.S. rose approximately 20 million in the 1970's, absorbing a large influx of untrained teenagers, and women returning to the workforce.
- (b). Higher energy costs. Spiraling costs of OPEC oil and gas, as well as "shortages", have led to increased production costs and forced conservation.
- (c). Outdated facilities and inadequate investment in new equipment and plants. Other nations, starting from a nonindustrial base, or rebuilding after wartime destruction, have modern, efficient production facilities. The U.S. has continued, with some "high tech" exceptions, to work with established, decaying plants and equipment. Capital investment lagged during the 1970's because of its required diversion to antipollution and conservation programs.
- (d). Reduced R&D spending. Since the 1970's, both Government and industry have reduced investment in R&D. Focus shifted from labor and industry to energy and pollution. This short term savings

retarded productivity. R&D spending in real terms has reduced from 3% of GNP in 1964 to 1.1% of GNP in 1978. The corresponding decline in output/labor hr. ratio was 2.1% (1966-73) to 1.2% (1973-77).

- (e). Growth of the less productive service sector. In 1970, 20 million were employed in the service sector. In 1979, this had risen to 27 million. While manufacturing employment only grew from 20.7 million to 22.1 million over the same period.
- (f). Changes in family structure. Greater than 50% of married women are in the workforce; the divorce rate has risen dramatically; and "alternative" lifestyles and single-parent families have added financial and emotional pressures to members of the workforce, producing negative effects on longterm performance.
- (g). Increased use of alcohol and drugs. The estimated loss to productivity is difficult to approximate, but costs are placed in billions of dollars annually.
- (h). Shift in worker attitudes and motivation. Industrial psychologists trace loss of productivity to deterioration of traditional "work ethic".
- (i). Cost to industry of increased Government regulation. Federal, State and Local Government imposed over the past two decades have posed a significant threat to productivity. Required investment in equipment to control pollution, and other measures to "improve" health and safety on the job, as well as to "protect" the environment, has reduced investment capital. Overhead has necessarily increased to ensure and report compliance. Socio-economic restrictions imposed during this period have also stagnated productivity.
- (j). Inflation. Inflation affects productivity ratios by increasing the costs of production, making it difficult to anticipate and control costs, thereby discouraging speculative or research investment.
- (k). Capital/labor ratio decline. Amount of capital employed per labor hour: 1948-66 (4.1%), 1973-79 (1.7%).

- (1). Tax policies discouraged investment. Tax laws penalized new investment by ignoring inflation. Deductions for depreciation were spread over periods exceeding the useful life of equipment, frustrating expanding technologies [19:236-9].

2. Defense Relevance

The previously cited 1983 ICAF study also "leans heavily" on the 1980 Defense Industrial Base Panel report, and it separates the range of issues into the following categories [2:69-78]:

Deterioration of the Defense Industrial Base:

- * The defense industrial base is unbalanced; excess production capacity at the prime contractor level is not matched by capacity at subcontractor levels.
- * The industrial base is not capable of surging production in time to meet a national emergency.
- * Lead times for military equipment have increased significantly in the past 3 years.
- * Skilled manpower shortages exist now and are projected to continue throughout the decade.
- * The United States is becoming increasingly dependent on foreign sources for critical raw materials and for some specialized components for military equipment.
- * Capital investment in new technology, facilities, and machinery has been constrained by inflation, unfavorable tax policies and management priorities.

Dependence on Foreign Sources:

- * The United States does not have an effective national nonfuel minerals policy that promotes our national security interests.
- * The strategic and critical materials stockpile is woefully inadequate for defense needs; much of the existing stockpile requires upgrading.

- * The United States has not made effective use of Title III of the Defense Production Act to expand domestic supply and productive capacity.

Excessively Restrictive Contracting Procedures:

- * Existing restrictions on advance procurement, multiyear contracting (including cancellation ceilings), and funding of defense contracts are unrealistic, given the prevailing economic realities in the defense industrial base.
- * Subject to normal Congressional controls, multi-year contracting will reduce cost, encourage program stability and enhance the defense industrial base.
- * The use of multiyear contracts not exceeding 5 years to procure property and services (other than construction, alterations or major repair of real property) would offer maximum economies to the government at little additional risk.

Need for Review of Tax and Profit Policies:

- * Revision of tax laws to allow more rapid depreciation.
- * Amendment or repeal of CAS 409 "Depreciation of Tangible Capital Assets".
- * Adjustment of progress payments to reduce contractor borrowing at high interest rates and a change in the law to allow inclusion of costs in defense contracts.
- * Amendment to CAS 414, Cost of Money as an element of the Cost of Facilities Capital.
- * Examination of the costs versus the benefits of safety, environmental, health, energy, equal employment, and other regulations.

Need for Leadership in Defense Industrial Planning:

- * Responsibility for the defense industrial base is divided within Congress. Several committees have jurisdiction over matters impacting the defense industrial base, that is, interstate and foreign commerce, public lands, mining, minerals, procurement laws, defense production, procurement, research and development, and taxation.

- * Responsibility within the executive branch divided among the Departments of Defense, Commerce, Interior, Treasury, Energy, State and others.
- * Central leadership and coordination are needed in defense industrial preparedness as much as in the energy and environmental areas. The lack of concentrated leadership within the Congress and in the executive branch has served to mask from the public view the actual problems affecting the defense industrial base.

These findings of the Ichord panel apply not only to the defense industrial base but also, more broadly, to the entire national industrial base and its role in the economy. In fact, the problem goes beyond organizational responsibility, to the question of national goals and underlying philosophy.

3. Surge Capabilities

Standing out from all of these issues is the fact that the surge capabilities of the industrial base are inadequate to support the projected demands of a national emergency; hence, "Unready for Crisis."

Surge was defined to the researchers by the Commission of the Under Secretary of Defense (R&E) as follows:

A rapid increase in production within existing facilities and mortar" during peacetime which will result in a significant increase in sustained production quantities (i.e., approximately doubling):

- * Within the first six months for consumables i.e., selected critical spares, missiles, and ammunition.
- * Within the first six to twelve months for major weapons systems/items.

It is important to note here that a common misconception communicated to the researchers misinterpreted surge to be that industrial capacity in existence only after the initiation of hostilities. On the contrary, industrial base planners assume that the political environment preceding the actual outbreak of hostilities will allow for a substantial surge period. This "warming" period for the industrial base is in concert with the current Defense Guidance discussed earlier. This concept is illustrated by Figures 4, 5, and 6 provided by the Office of the Under Secretary of Defense (R&E).

The concern for the surge capabilities of the defense industrial base is not without merit. However, as discussed earlier, the concern is properly for U.S. industry as a whole and not merely those industries which are defense oriented.

The Department of Defense has acknowledged the leadership role it must take in coordinating a defense industry recovery, and the OUSD (R&E), presented the researchers with the following:

FY 85-89
INDUSTRIAL BASE PREPAREDNESS
GUIDANCE OBJECTIVES

- * Develop an industrial base capability to produce and deliver our five-year peacetime procurement program efficiently, effectively, and as quickly as possible.

SURGE CONCEPT

- SERVICES IN CONJUNCTION WITH OSD/OJCS SELECT THE SURGE ITEMS
- SERVICES DETERMINE THE SURGE LEVEL DESIRED FOR ITEMS WITHIN "BRICK AND MORTAR" CONSTRAINTS
- SERVICES DETERMINE ACTIONS/COSTS REQUIRED TO SIGNIFICANTLY INCREASE PRODUCTION TO THE DESIRED SURGE LEVEL
 - WITHIN 6-12 MONTHS
 - WITHIN 6 MONTHS
- SERVICES ADVANCE PROCURE "ROLLING INVENTORY" ABOVE CURRENT PEACETIME PROCUREMENT PROGRAM AND/OR TOOLING/TEST EQUIPMENT TO MEET THE SELECTED SURGE LEVEL FOR THE TIME FRAME SELECTED
- CONTRACTORS UTILIZE THE "ROLLING INVENTORY" PROCURED THROUGH THE NORMAL PRODUCTION CYCLE
- IF SURGE IS NOT REQUIRED, "ROLLING INVENTORY" USED TO PRODUCE LAST YEAR'S BUY

Figure 4

SURGE PLANNING/ PROGRAMMING/BUDGETING

OBJECTIVE:

DEVELOP SELECTED CRITICAL ITEM SURGE CAPACITY/RESPONSIVENESS TO INITIALLY MEET CONSUMPTION DEMANDS IN THE EVENT OF A CRISIS, REGIONAL CONTINGENCY AND/OR PROLONGED CONFLICT

- BY EACH SERVICE DEVELOPING PROJECTS AND COSTS (WITHIN EXISTING "BRICK AND MORTAR" CAPACITY) FOR 25 SELECTED SYSTEMS/ITEMS TO SURGE TO MAX CAPACITY.
 - MACHINE TOOL/TEST EQUIPMENT PROCUREMENT PERMISSABLE
 - PRIME CONTRACTOR MUST CONSIDER OTHER DOD PROGRAMS PRODUCED IN ITS FACILITY
 - PRIME CONTRACTOR MUST CONSIDER SUB-TIER CONTRACTORS' ABILITY TO MEET PRIME'S MAX SURGE RATE
- BY EACH SERVICE:
 - SELECTING A SURGE LEVEL EQUAL TO OR LESSER THAN THE MAX SURGE CAPACITY FOR AT LEAST TWO CRITICAL WAR RESERVE ATTRITION/CONSUMPTION SYSTEMS/ITEMS AND ONE CRITICAL WEAPON SYSTEM/ITEM FROM THE 25 ANALYZED ABOVE
 - PROGRAMMING FUNDS IN FY 85 TO ESTABLISH A SURGE CAPABILITY FOR THE THREE ITEMS SELECTED ABOVE
 - PLANNING AND PROGRAMMING SURGE IN EACH ADDITIONAL YEAR OF THE FIVE-YEAR PROGRAM - FY 86 THRU FY 89

NORMAL PRODUCTION CYCLE VS. SURGE CONCEPT

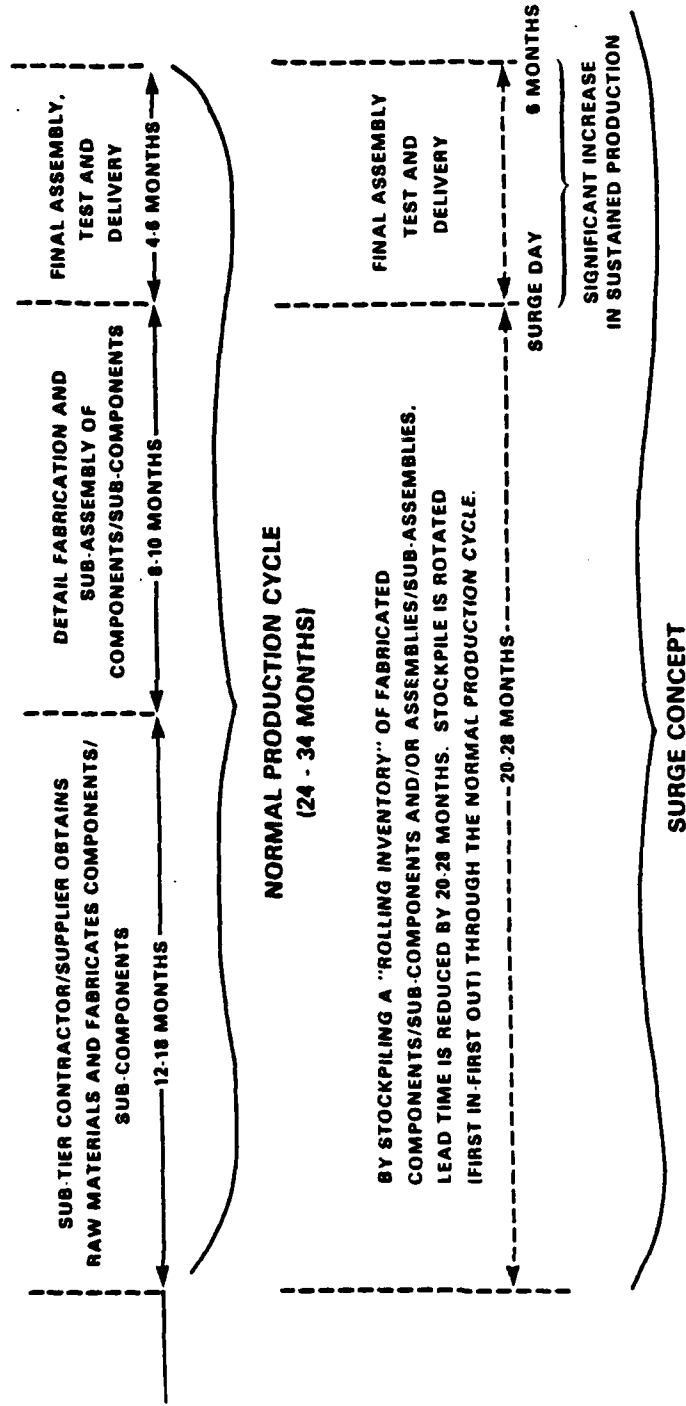


Figure 6

- * Develop selected critical item surge capacity/ responsiveness to initially meet consumption demands in the event of a crisis, regional contingency and/or prolonged conflict.
- * Develop an industrial base capability which will permit accelerating the attainment of our programmed sustainability levels for selected critical systems/items.
- * Maintain real growth in an industrial preparedness planning program. Use this funding to support industrial preparedness planning for mobilization and to accomplish the first three objectives.

C. INDUSTRIAL BASE INITIATIVES

In addition to its Industrial Preparedness Planning (IPP), the DOD has introduced several other programs to enhance industrial base responsiveness and productivity.

The most widely recognized and comprehensive of these is the Acquisition Improvement Program (AIP), more commonly referred to as the "Carlucci Initiatives", after the Deputy Secretary of Defense who signed them on April 30, 1981. On June 8, 1983, a status report and further guidance was issued reviewing the substantial progress that had been made in this area. To enhance the usefulness of these documents as a reference, they are included in the appendices.

The 1975 DOD Manufacturing Technology (MANTECH) Program has also received renewed emphasis of late, and the payback to the Air Force is very encouraging. The program provides "seed" funds to companies to assist in the transition from R&D innovation to full-scale production. The production

application of this technology is contractor funded. This results in reduced production costs, shorter lead times, improved quality and increased industrial responsiveness.

DOD has also developed an Industrial Modernization Incentives Program (IMIP). This provides acquisition incentives to modernize an entire production facility (or a portion) for the benefit of Government and industry. It consists of separate negotiated contracts with provisions for incentives, sharing, and risk protection. It provides agreed amounts of Government funding for certain manufacturing technologies, while industry capital is utilized to modernize and implement the Government funded technologies. The emphasis of this program is on systems instead of processes.

In concert with DOD's efforts, the Congress passed the Economic Recovery Tax Act (ERTA) of 1981. Designed to encourage productivity increases, this legislation was actually part of President Reagan's overall plan to increase economic growth and reduce inflation. This is a program of regulatory relief to assist industry efficiency by eliminating administrative burdens. It includes a business tax program to improve cash flow, providing funds for capital investment. This shifting of the burden away from taxation of capital income releases funds for capital investment in new technology. The act also provides for an accelerated depreciation of plant and equipment, increased investment tax credits for R&D and a reduction of small business tax rates. This

program should encourage modernization and allow American industry to compete with the other industrialized nations by shifting to state-of-the-art technologies and stimulating research [20].

Together, these financial and acquisition related programs have provided the incentives previously noted. This in turn, has improved the responsiveness and productivity of defense related industries, enhancing the overall defense posture of the nation.

D. WAR RESERVE/STRATEGIC AND CRITICAL MATERIALS STOCKPILES

War reserves are assets in addition to normal peacetime requirements to support planned wartime activities until wartime consumption can be satisfied from production. Strategic and critical material stockpiles are materials acquired and stored to prevent a dangerous and costly dependence on foreign sources during a national emergency (strategic refers to relative availability, while critical refers to their essentially). The status of war reserves and strategic/critical materials stockpiles are key determinants in the United States' ability to meet any form of contingency requirement. These assets serve as a resource buffer to enable the military to meet immediate material requirements without exerting unnecessary pressures on other segments of the economy.

Success in each of these critical areas is highly contingent upon prior performance of existing acquisition and fiscal policies. Contractual and fiscal actions taken today will dictate the availability of assets necessary for tomorrow's battle. One of the biggest concerns echoed during interviews with agencies responsible for reserve and stockpiled materials was the lack of sufficient funds to support program objectives.

1. Changing World Attitudes

Today, more than ever, political and economic actions of nations around the world have substantial impact on industry in the United States. Americans can give first-hand accounts of the problems that resource shortfalls can produce after experiencing the OPEC oil embargo of the seventies. The defense stockpile can be a major mitigator in the event of a material shortfall in a national emergency.

Much of the world's production and reserves of a number of America's most critical materials are located in two areas of the world South Africa and Siberia. These areas contain 99 percent of the world's platinum group metals, 80 percent of the manganese ore, 97 percent of the vanadium, 96 percent of the chrome and 52 percent of the cobalt [21:40]. During the oil embargo OPEC controlled only 52 percent of the world's oil supply and their power needs no commentary.

The research will take a more in-depth look at strategic and critical stockpiles because war reserves are

comprised primarily of end use components and equipment, which actual production hinges on the availability of critical and strategic materials.

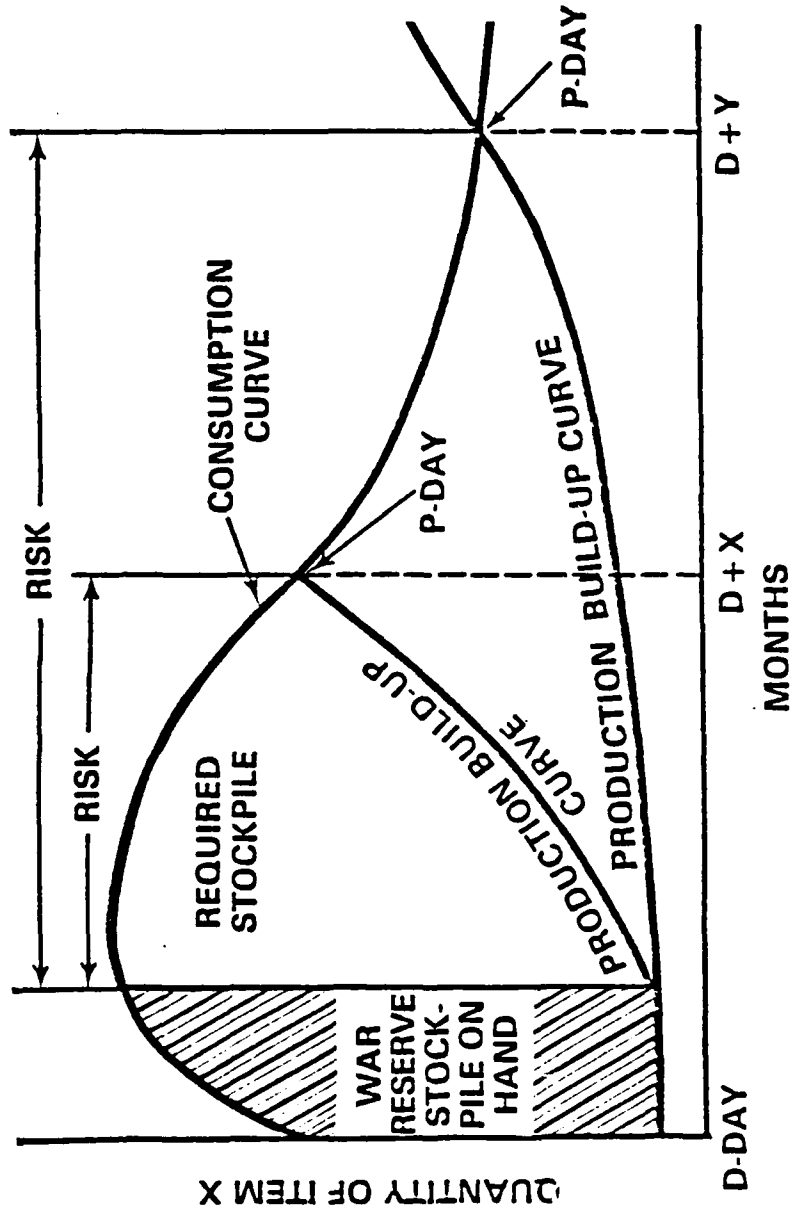
2. War Reserves

The military market is dominated by a single buyer. Orders are made before production begins; therefore, as a rule manufacturers do not carry inventories in an off-the-shelf form [15:65]. Any inventory requirement falls on the respective buyers. These inventories take the form of war reserves.

The Secretary of Defense is ultimately responsible for developing all requirements for military support materials needed for contingencies, including war reserves. The Secretary has delegated this responsibility to each military department, which in turn develops its own war reserve requirement. [22:51]

Figure 7 is an illustration of the importance of the role played by war reserves in a contingency mobilization situation. It also points out that the capability of the defense industrial base to respond to immediate military requirements can significantly increase or reduce levels of materials needed for war reserves. D-Day is the day hostilities began. P-Day is the point where manufacturing rates equal consumption rates. The consumption curve symbolizes possible consumption rates in the earlier phase of hostilities. The production build-up curve is the rate at which production

SUSTAINABILITY TRADEOFFS



Source: The Department of Defense

Figure 7

levels increases after hostilities commence. The amount of risk associated with going from D to P-Day at various levels of production build-up is also shown.

3. DOD Funding Procedures

The Secretary of Defense Annual Policy and Program Guidance Memorandum is the basic policy and guidance document used by the military services to determine their overall logistics requirements. The Department of Defense Planning, Programming, and Budgeting System (PPBS) translates national policy objectives into specific defense programs, including programs for funding war reserves. Billions of dollars are invested annually by the Department of Defense procuring war reserve material for the Armed Forces. Yet, war reserves for all services are far below the levels delineated by current defense guidance [15:114].

The services allocate available funds to war reserves on a priority basis. Peacetime operations are funded at the first cut. War Readiness Spare Kits (WRSK) and base level self sufficiency items usually comprise the second cut. Primary war reserves (which are the sustaining portion) are funded from what remains after the first and second cuts [22:2].

Funding priorities of this nature are not conducive to reaching stock levels set for war reserves. This is evident by the fact that most war reserve funding over the next four years will be used to reduce deficits in war

reserve stocks caused by deferral of such procurement in prior years [22:3].

Service chief's decisions not to fund war reserves at levels specified by defense guidance are tremendously affected by their efforts to achieve maximum benefit from available funding. Rationalizing this position, it does appear ludicrous to some degree to tie up vast resources stockpiling war reserves that perhaps will never be needed. Following is a number of salient points that lend further support to this position which was found in personal interviews with DOD officials:

If stocked at defense guidance objective levels; significant quantities of these inventories will become obsolete prior to use, preservation and storage costs alone will exceed the cost of the item in 10-20 years, large quantities of items would not be used before expiration of their shelf-life, and quantities needed are too high to establish a system that lend itself to necessary stock rotation through use of these materials in peacetime operations and training.

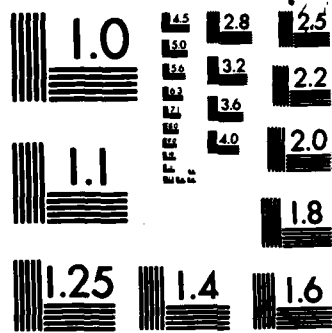
In the production of today's sophisticated military equipment three to four years elapse between receipt of production material by the manufacturer and the time the piece of hardware rolls off the assembly line [15:112]. In addition, attrition rates are usually considerably higher than the initial production rate [15:116], suggesting that a sizable amount of war reserve material must be maintained during initial hostilities if objectives are to be met. Attrition rates for American equipment used by the Israelis during the initial days of the 1973 Mideast War further

supports this position. Actual rates far exceeded estimates previously determined by DOD officials for this same equipment [22:33].

Accurate determination of attrition rates is difficult, to say the least. Numerous variables must be considered, all of which carry with them vast degrees of uncertainty. Inaccurate attrition rates could mean that estimates for repair part reserves are too high or too low. If assumed attrition rates are too high the probability of having excess quantities of repair parts is great (assuming there is not a one-for-one replacement for the lost piece of equipment). If assumed attrition rates are too low then the opposite is true.

For war reserve objectives to be achievable, better coordination is needed throughout the services. Internally in the Air Force as recent as 1978, the Military Airlift Command and the Logistics Command both used different attrition rates in planning wartime support for the same aircraft [22:7]. Interviews with OJCS personnel indicate that there is no focal point to coordinate war reserve planning between the services. Hence, no mechanism exists for comparison of wartime assumptions made by each of the services and other related factors which impact on war reserve planning and the necessary funding levels.

To resolve the funding deficiencies and the associated equipment shortages in the war reserve program, better coordinated inter-service planning is needed. Without sufficient



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

planning, even unlimited funding will not enable the United States to meet its war reserves objectives. However, funding is a key factor, and realistic objectives must be established in concert throughout the services.

4. Strategic and Critical Material Stockpile

The economies of developed nations are heavily dependent upon minerals and materials. The United States, European, and Japanese economies together are reputed to have consumed more materials since 1950 than were produced in the entire world previous to that year [23:3]. Both totally and per capita, the United States consumes about 30 percent of the world's mineral production [23:4]. America's immense appetite for mineral consumption, coupled with the fact that her own resources are not inexhaustible, and economic considerations have led to increasing dependence on foreign resources [23:3].

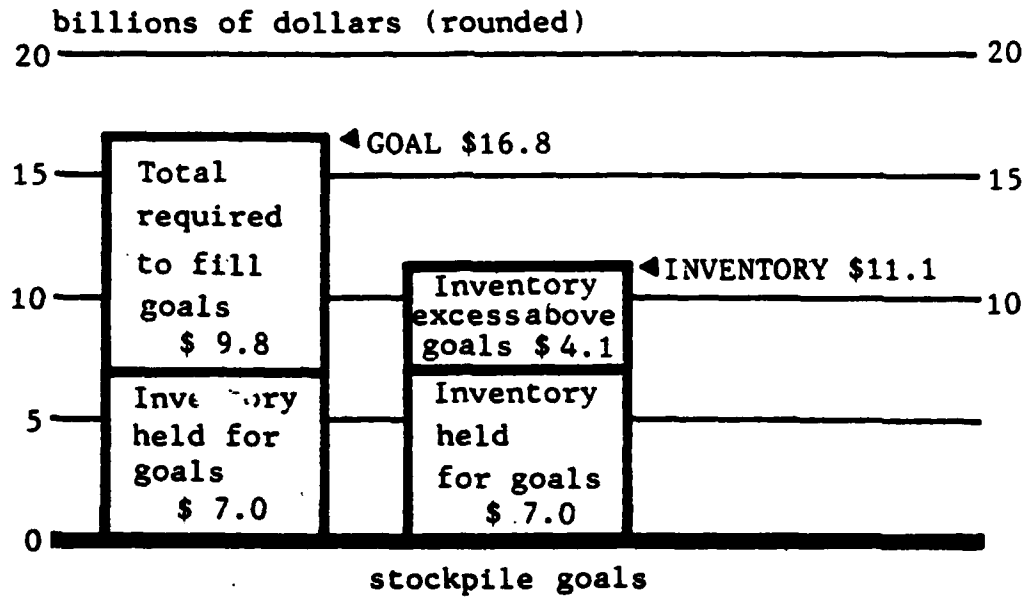
The United States imports "vulnerability"; that is, the extent to which its economic, political, and strategic decisions might be unduly influenced by arbitrary actions of foreign suppliers led to the Strategic and Critical Material Stockpile Act [24:23]. This Act provides that a stock of strategic and critical materials be held to decrease dependence upon foreign sources of supply in times of emergency. Executive order 12155 vests the primary responsibility for planning the stockpile program with the Director of the Federal Emergency Management Agency (FEMA). The Stockpile Act requires that inventories be sufficient to cover estimated needs for not less than three years of a national emergency.

Since the enactment of the Stockpile Act the dependency issue continues to be one of the primary concerns of government. To date there have been several Congressional studies. The 1980 Defense Industrial Base Panel of the House Armed Services Committee found the shortage of critical material and the resulting dependence on uncertain foreign sources, to be eroding the foundation of the U.S. defense capabilities. Additionally, the committee reported that:

- The U.S. is heavily dependent on other nations for its supply of critical materials.
- The U.S. does not have an effective national no-fail mineral policy that promotes national security interest.
- Trends toward unreasonable and excessive government regulations are crippling the basic mineral industries of the U.S. and restrictive laws and regulations are prohibiting or making it economically infeasible to exploit minerals on U.S. public land.
- Strategic and material stockpile is woefully inadequate for defense needs and much of the existing stockpile requires upgrading [2:73].

a. Funding

Strategic and critical material receive funding through direct appropriation and sale of excess materials. Once funds are appropriated, they remain available for five years to fund reserves [25:3]. Figure 8 provides dollar estimates of the status of stockpile material versus goals. Funds appropriated for fiscal years 83 and 84 were \$120 million each year. Sales for FY 83 total \$24 million. Although \$4.1 billion of material is held in excess, numerous legal restrictions seriously complicates sales.



Source: The Federal Emergency Management Agency

Figure 8

Annual quantities sold are established in the annual material plans [24:5]. The Annual Material Plans (AMP) is developed by the AMP steering committee chaired by FEMA. The designated members are: the Treasurer, DOD, Department of Agriculture, Department of Interior, Central Intelligence Agency, Office of Management and Budget, National Security Council, and Department of Commerce. Sales authorizations and acquisition are determined based on possible impacts on domestic and international commodity markets. Stringent safeguards are taken not to cause market disruptions [24:5]. All sales of stockpile materials must be made by formal advertising or competitive bidding. No sale can be made unless disposal, including exact quantity to be disposed of, is specifically authorized by law [24:25].

Restrictions placed on sales reduce its dependability as a significant funding source. Additionally, these policies are prohibitive to timely disposal of excess material and contribute to increased storage costs. If funds available during fiscal year 1983 are indicative of the annual resources available, in current dollars (exclusive of inflation), it would take sixty-nine years to fund shortages reflected in fiscal year 1983. This estimate does not account for the fact that these funds must also cover costs of material rotation, preservation, removal, and wear and deterioration losses [24:12].

TABLE 2

MATERIAL PRICE INCREASES BETWEEN
 JANUARY 1, 1974 AND JANUARY 1, 1975

Sheet and Plate

Aluminum	25%
Steel and Stainless Steel	30%
Titanium	30%

Extrusions

Aluminum	25%
Steel and Stainless Steel	30%
Titanium	30%

Billets/Forgoings

Aluminum	15%
Steel	20%
Titanium	30%
Plastics	35-50%
Fiberglass	25%
Paint	30%
Bearings	26%

Source: Gansler, The Defense Industry

Table 2 suggests that it will be far more costly to fund shortages in the future. Based on this indicator and current policies, the future condition of the material stockpile can be expected to get worse. It should be noted that these figures were taken during a period of large price instability. Figures for these same commodities over the 1980 to 1982 time period would have shown very small price increases, if any.

b. Selective Defense Related Items

There are ninety-two minerals and materials critical to the United States [25:1]. Some of these resources are more critical to national defense because their use is more intensive in defense industries. For research purposes, an in-depth review was conducted of the minerals and material believed to be more essential to industrial health and defense of the U.S. and most vulnerable to potential supply disruption. Experts in this area have collaborated and determined the following eight minerals to be most crucial to national defense: bauxite/aluminum, chromium, cobalt, columbium, manganese, the platinum group metals, tantalum and titanium [23:31]. Five of the group selected (titanium, manganese, cobalt, chromium and the platinum group) have been referred to as the metallurgical "achilles heel" of our civilization [23:129]. Cases perhaps could be made for the deletion or addition of items to this category. However, for purposes of research, discussion will be limited to these eight.

Figure 9 provides an additional list of materials that have high defense applications.

(1) Cobalt. Cobalt alloys are used in jet engines to withstand high temperatures, as a binder in cemented carbides for metal cutting, for hard facing in mining tools and as a desulfurizing catalyst in refining petroleum. Cobalt produced as a by-product of copper and nickel mining which effectively ties its production to those primary metals. The U.S. is completely dependent on foreign sources for cobalt. Principal exporting countries are: Zaire 42 percent, Belgium/Luxemburg 16 percent, Zambia 13 percent, and Finland 6 percent [23:134].

Stockpile goal: 85,400,000 LB CO (pounds of contained cobalt).

Shortage: 39,404,000 LB CO [24:18].

(2) Aluminum. This metal's high strength-to-weight ratio makes it particularly important to the transportation and aircraft production industries. Consumption is expected to increase by 5 percent per annum through 1990. Principal exporting countries are: Jamaica 42 percent, Guinea 32 percent, Surinam 11 percent, and others 15 percent [23:135].

Stockpile goal: 7,150,000 ST (short ton).

Shortage: 3,336,321 ST [24:17].

(3) Chromium. It is used as an alloy to increase hardness and impact strength in steel and to provide resistance

**MATERIALS AND
SYSTEM APPLICATIONS**

	SYSTEM APPLICATION									
	Aircraft	Electronic/Opt Equipment	Helicopters	Missiles	Weapons	Simulators	Ships	Submarines	Test Equipment	Armored Vehicles
Aluminum	●	●	●	●	●	●	●	●	●	●
Asbestos	●	●	●	●			●	●		●
Beryllium	●			●						
Cadmium	●			●						
Chromium	●		●	●	●		●	●		●
Cobalt	●		●	●	●		●	●		●
Columbium	●		●	●			●	●		
Copper	●	●	●	●	●	●	●	●		●
Magnesium	●		●	●			●	●		●
Manganese	●		●	●						
Mica	●	●	●	●	●	●	●	●	●	●
Molybdenum	●		●	●			●	●		
Nickel	●	●	●	●	●	●	●	●	●	●
Platinum	●	●		●	●		●	●		
Tantalum	●	●	●	●			●	●		
Titanium	●		●	●			●	●		
Tungsten	●		●	●			●	●		

MATERIAL

Figure 9

Source: Gansler, The Defense Industry

to oxidation, corrosion wear and galling. There is no known substitute for chromium in stainless steel production. Other materials can be substituted for stainless steel but at a sacrifice in price and performance. A 1978 study by the national materials advisory board concluded that the U.S. is strategically more vulnerable to a long-term chromium embargo than to an embargo of any other resource, including petroleum. The principal exporting countries are: The Republic of South Africa 49 percent, Zimbabwe 13 percent, USSR 12 percent, and the Phillipines 9 percent [23:136].

Stockpile goal: 1,353,000 ST.

Shortage: 28,077 ST [24:17].

(4) Columbium. It is an essential element in super-alloys used in jet and turbine engines and is an alloying element in specialty steel that's used in girders, ship-plate and railroad equipment. The U.S. is totally dependent on foreign exports. Principal exporting countries are: Brazil 66 percent, Canada 9 percent, and Thailand 7 percent [23:136].

Stockpile goal: 4,850,000 LB CD (pounds contained columbium).

Shortage: 2,317,581 LB CD [24:19].

(5) Manganese. It is critical raw material for the steel industry. The metal imports strength, toughness, hardness and hardenability to steel and alloys with aluminum, magnesium, and copper for various special purposes

such as ship's propellers. There is no practical substitute for manganese in steel making. The Republic of South Africa and the USSR together have more than 80 percent of the world's manganese resources. The primary exporting countries are: the Republic of South Africa 25 percent, Gabon 19 percent, Brazil 13 percent, and France 12 percent [23:138].

Stockpile goal: 1,500,000 ST.

Excess: 470,000 ST [24:19].

(6) Platinum Group Metals. This group is composed of platinum and five other closely related metals (palladium, rhodium, iridium, ruthenium and osmium). These metals are among the scarcest metallic elements yet they are nearly indispensable to modern industry because of their unusual physical and chemical properties. The platinum group is used primarily as a catalyst in the automobile, chemical, and petroleum industries, and second as corrosion resistant material in the medical, electronic, and glass making industries. There are domestic sources of production; however, these sources could not be increased quickly if foreign supplies were cut off. Principle exporting countries are: the Republic of South Africa 53 percent, the USSR 22 percent, and the United Kingdom 12 percent [23:139].

Stockpile goal: 4,310,000 TR OZ (Troy ounce).

Shortage: 2,602,335 TR OZ [24:18].

(7) Tantalum. It is used in electronic components, metal-working, and nuclear reactor components. The

world supply is large relative to current consumption. Principle exporting countries are: Thailand 36 percent, Canada 13 percent, Malaysia 10 percent, and Brazil 4 percent [23:141].

Stockage goal: 7,160,000 LB (pound).

Shortage: 4,733,613 LB [24:19].

(8) Titanium. Its most critical use is in military and commercial aircraft structure and engines. The most widespread use is as titanium dioxide pigment in paint, casting inks, tires, and many other products. In aircraft and space production, there is essentially no substitute for titanium. A single example of its military criticality is the Pratt and Whitney F-100 turbofan engine used in the F-15 and F-16 aircraft. Manufacture of one engine requires 5,366 pounds of titanium. Principle exporting countries are: Australia 56 percent, Canada 32 percent, and the Republic of South Africa 6 percent [23:142]. Titanium is stockpiled in the form of Titanium Sponge and Rutile.

Stockpile goal: Titanium Sponge 195,000 ST;
Rutile 106,000 SDT (standard ton).

Shortage: Titanium Sponge 162,669 ST; Rutile
66,814 SDT [24:20].

Of the eight items discussed only one is reported excess of inventory objectives. Excess conditions, however, can be misleading. Very little testing is conducted of materials after acquisition. Testing that is done is primarily physical and concerns itself with obvious signs

of physical deterioration, such as mold, mildew, and discoloration or oxidation [25:12].

The Food and Drug Administration in conjunction with a GAO study conducted tests of guinidine sulfates which resulted in 42 out of 105 lots failing specific test requirements. Ten lots were found to be totally degraded and recommended for destruction. Nonetheless, the ten lots remained in the stockpile held against goals and were reported worth the same as usable materials [25:13].

A large percentage of these metals (cobalt, titanium sponge, platinum group and chromium) are produced in regions of questionable stability. Unrest in these regions have led to sharp price increases in recent years [23:134]. The United States is essentially dependent upon foreign sources for tantalum, cobalt, columbium, and manganese [23:132-148]. Complete dependency regardless of the socio/economic stability of the exporting nation involved is a precarious position to be in.

Some resources in the group examined are available in the United States. Production, however, is severely hampered by legal restrictions regarding environmental protection, occupational safety, and public health [2:73]. The cost associated with compliance with legal restrictions is considered prohibitive due to its impact on production costs. Barring some change in U.S. policy, the

processing of minerals as well as mining of raw material will move overseas for reasons of costs [2:74].

Using the average cost of existing inventories for metals examined, the value of shortages minus the excess is \$3.9 billion. Taking the fund availability issue discussed earlier in this chapter, funding at the fiscal year 1983 level would require twenty-seven years alone to fund these eight items at levels set by stockpile objectives.

5. Conclusions

Funding policies associated with war reserve and strategic stockpile materials are in need of revision. Given the priority of last funding of war reserves, they will never reach desired levels. Some mechanism must be introduced which will assure reasonable fund availability for war reserves, without serious degradation of other areas. Better sharing of information between the services on war reserve stock considerations is necessary to ensure maximum use is made of available funds.

Funding policies for strategic material stockpiles at first glance appear adequate. However, to achieve its objectives at recent funding levels, restrictions imposed on the sale of excess materials must be revised. With current procedures excess materials cannot be relied upon as a consistent source of funds at a time when they are perhaps most needed. Acknowledging the possibility of market

disruptions and the associated economic impact of flooding the market with excess materials, funding must be increased if stocking objectives remain the same and those levels are to be reached within a reasonable time period. Funding policies must be changed or stockpile objectives significantly lowered. The status of war reserves and critical material stockpile suggest that the cost to support any contingency action would be far in excess of reasonable estimates predicted upon the objectives of either program.

VI. FUNDING AUTHORITIES

A. PURPOSE

Recognizing that, with few exceptions, funds must exist prior to engagement of procurement actions, the objective of this chapter is to review existing financial authorities that potentially would support contingency actions. Within this context, an examination will be conducted of some implications of funding contingencies from existing appropriations, DOD and Presidential fund transfer authority, and selected existing funding authorities (short of national emergency).

B. EXISTING FUNDING AUTHORITIES

At first glance, measures to acquire funding for support of contingencies short of declared national emergencies, appear non-existent or grossly encumbered by legal stipulations. Most of this apparent lack of authority can be attributed to the wide fragmentation of authorities and limited knowledge of their existence on the part of a large percentage of DOD personnel. In fact, emergency legislation exists that can and has been used in the normal course of business.

1. Transfer Between Appropriations

Based on interviews with DOD fiscal officers, transfer of funds between and within appropriations is the most widely

used and most preferred method to resolve immediate funding requirements. The Department of Defense Appropriation and Authorization Acts afford greater funding flexibility than in prior years. Recent Annual Appropriation Acts have permitted transfers of \$1.5 billion between authorizations when deemed necessary in the national interest. Public Law 97-377 of the fiscal year 1983 Appropriation Act permits reallocation of \$1.2 billion within appropriations. These measures will allow quick fixes as necessary for immediate funding requirements. Congress must be notified of all transfers that exceed \$25 million prior to transfer action.

The disadvantage associated with fund transfers is that it is merely a method of deferring supplemental appropriation requests or forcing delay in execution of previously funded programs (a de-facto supplemental).

The problem that most budgeteers have with this solution is that there is no way of determining what period during the fiscal year an emergency will occur. Of particular concern is the possibility of the requirement existing very early or very late in the fiscal year. All funds are largely expended by the last quarter in the fiscal year, and early in the fiscal year (evidenced by actual performance over the past two decades), the government has more often than not found itself operating with a continuing resolution. There are no assurances that funds would be available for reprogramming.

2. Defense Production Act Authorities

Title III of The Defense Production Act (currently under revision) authorizes loan guarantees to expedite production and deliveries or services under government contracts for national defense and federal loans for the expansion of capacity for defense production or mining of strategic materials and purchase of metals, minerals, and other materials whose purchase may be transferred to strategic material stockpiles. Ceilings for loan guarantees are set at \$38 million and \$48 million for direct loans prior to notification of Congress. Loans and guarantees above these ceilings require sixty days of prior notice to the Armed Service Committees and is subject to disapproval by either house. Funds authorized under Title III must be available from existing annual appropriations.

3. Selective Service Act Provisions

The Selective Service Act, 50 USC APP 468, industry provision, provides ordinary course Presidential authority to force U.S. industry's production of defense goods and to requisition non-complying facilities. These powers are at the complete discretion of the President and need no Congressional enactment or declaration of national emergency. Funding under this provision is limited to \$25 million without Congressional approval. Requirements that exceed \$25 million must be authorized through Congressional action and require sixty days of prior notification.

4. The Food and Forage Act

The Food and Forage Act, 41 USC 11, provides emergency authority to exceed existing appropriated funding levels. Subsection (a) of that act provides that:

No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law under an appropriation adequate to its fulfillment, except in the Department of the Army, Navy and Air Force for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies which, however, shall not exceed the necessities of the current year.

This exception does not cover military pay or procurement of munitions and weapons. However, the language of the provision is broad and can be interpreted to cover a wide array of unappropriated expenditures. For example, the transportation provision may be used to a large extent to cover repair, maintenance and overhaul of vehicles (including aircraft and ships, naval air rework expenditures, etc.) and the operation of ports and terminals. Fuel supplies may encompass both heating and transportation fuels (including those required for aircraft and ships). Quarters expenditures may include the construction and operation of BEQ's. Funding under this provision was used during the Vietnam campaign [10:8].

5. Historical Trends

The supplemental appropriation is the primary vehicle used to acquire additional funding that may be necessitated after passage of a fiscal year's appropriation bill.

Supplemental appropriations were widely used during the Vietnam campaign [10:20] and continue in use today. The biggest problem with supplementals is they cannot be automatically relied upon as a funding source. They are subject to the close scrutiny of the legislative process which often causes considerable program delays [10:7].

Congress has over the last decade and throughout the Vietnam era demonstrated that the normal appropriation process can be effective and timely [10:29]. However, reliance on the normal appropriation process presupposes a Congressional inclination to support the requirement that precipitated the need for additional funds.

All authorities discussed with the exception of the Food and Forage Act must be funded from existing appropriation. However, if existing authorities are used in concert, they appear more than adequate to meet immediate contingency funding requirements.

B. FUNDING FROM WITHIN EXISTING APPROPRIATIONS

Over the last five years the United States has been involved in several increased tempo operations in support of world peace. Some of these actions include the Mid East Peace Keeping Forces in the Sinai, the Peace Keeping Force in Lebanon, and the Grenada operation. With the exception of the Sinai Peace Keeping Force, there has not been a budget line item or supplemental appropriation dedicated to support

these operations. Funding has been provided from existing appropriations of the corresponding fiscal year.

The primary argument presented in defense of this practice is that funds expended in support of these forces would have been expended regardless of the force's location. There is a degree of validity to this argument; however, interviews with personnel in the Department of Defense Comptroller's organization suggest that funding requirements for the U.S. Navy Sixth Fleet since its involvement in support of Lebanon Forces has nearly tripled. Based on this position, there are apparently significant costs involved in support of contingency operations in excess of those experienced during normal operations.

1. Readiness Implications

The ability for commanders to take on new commitments of the Lebanon magnitude without jeopardizing other programs is an admission of not achieving maximum results from funding levels held prior to taking on the new responsibility [10:99]. With this point in mind, funding to support recent Sixth Fleet operations has been achieved through reprogramming.

Reprogramming can and does impact heavily upon readiness. Some of the first areas examined for potential cuts such as standard equipment for ground forces, ammunition, fuel for flight training, and weaponry for combat training, directly affect readiness. Across-the-board shortages in spare parts, ammunition, and war reserves threaten the combat

readiness of all services [12:8]. These shortages are occurring at a time when American industry is hard pressed to accomplish rapid expansion of defense production [12:144].

Interviews conducted with Marine Corps personnel indicated that reductions were made in training flights of Conus squadrons to provide fuel for helicopters operating in Lebanon. Though not quantified, the affect of training flight reduction on readiness is obvious.

Forced reprogramming of funds to support contingency operations appears counterproductive to current ongoing efforts to improve across-the-board readiness of the armed forces. These actions serve to further delay attainment of readiness goals outlined by the Secretary of Defense [12:143].

Achievement of required readiness levels necessitates that some mechanism be designed to protect funds appropriated for those purposes. A percentage of the funds used in support of contingencies would be used in the normal course of operation. Nonetheless, the levels would not be the same, and consideration should be given to funding those costs above normal operation which are dictated by contingencies from supplemental appropriations or a special set-aside.

The U.S. Army has proposed legislation (currently still within the Army) which amends 10 USC 137 to provide funding authority for procurement of surge-related materials and supplies in times of national emergency. Under the provisions of this bill, upon Presidential or Congressional

declaration of emergency, a supplemental appropriation would automatically be invoked equal to 15 percent of the preceding year's appropriation. This is believed to be a step in the right direction to fund contingencies; however, the researchers feel that sufficient authorities exist to fulfill this 15 percent requirement if a national emergency is declared.

D. CONCLUSIONS

Contingency requirements can be funded from existing authorities. Readiness exercises such as Proud Spirit 80 and Proud Saber 82 played with and without invoking emergency authorities support these findings. In the case where emergency authority was not invoked, no noted degradation of exercise play was encountered.

Pertinent authorities, in their current fragmented state, are not part of the general knowledge of most fiscal officers questioned. This difficulty could be eliminated by collective inclusion of these authorities in a single directive for Department of Defense use.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

As a result of this study, the following conclusions are presented:

1. The existing acquisition authorities and resultant policies of the Department of Defense appear to viably support the projected requirements of any military contingency short of a State of War. This situation exists because very little statutory advantage is gained by the declaration of a Presidential or Congressional National Emergency. Therefore, the political disadvantages of crossing these emergency thresholds seem to have been eliminated by the current direction of national policy, which ensures that adequate Executive authority exists to surge or initialize the mobilization of the defense industrial base without formal declaration.

However, in view of the fact that these authorities evolved from legislation extending as far back as the Revolutionary War, the relevance of many of them is seriously questioned.

In addition, these authorities and policies are scattered throughout the various statutes of the United States Code, and their usefulness in support of a time-critical military contingency is highly questionable.

Finally, despite the disheartening conclusions of the Congress in 1980 [1] and recent mobilization exercises, there are now several programs within DOD attempting to provide the necessary contractual vehicles to stimulate a recovery of the defense industrial base. Therefore, it is the viability of this industrial base that will ultimately measure the effectiveness of DOD's acquisition policies.

2. It is clear that existing DOD financial policies that support contingency requirements short of a national emergency are viable. Past performances of these policies in contingency situations more than substantiate that fact.

The fiscal method employed to meet contingency requirements could have far ranging negative implications on other essential defense programs such as war reserves and force readiness. Policies that divert funds from other essential programs without replacement seriously undermine the long range objectives of these programs.

Contingency situations may dictate that there are no appropriate funding methods short of a supplemental appropriation. Yet, funds crucial to the existence of other essential programs must be spent up front without any assurance of supplemental funds being appropriated.

Fiscal solutions selected for contingency funding should reflect prevailing socio-economic conditions. Passage of a supplemental appropriation is highly unlikely if there are

more pressing socio-economic problems in the minds of the general public.

B. RECOMMENDATIONS

As a result of this research, the following recommendations are offered:

1. Consolidate all contingency, national emergency, and war legislation pertaining to acquisition and defense industrial base policies. This consolidation would provide a current, readily accessible, and well defined national policy for defense and industry planners.
2. Realign the Federal Acquisition Regulation (FAR) with specific sections coinciding with the contingency, national emergency, and war thresholds. This realignment would provide more definitive acquisition guidelines and help to eliminate the "acquisition by exception" management of contingency procurements.
3. Evaluate the relevance of the Defense Resources Act as useful "standby" legislation. This aging proposal does not appear to provide the consolidation of authority it originally envisioned, and it should either be rewritten or eliminated to avoid any further obfuscation of this issue.
4. Conduct annual instead of bi-annual mobilization exercises until a satisfactory level of refinement in the communications and coordination of actions exists among all

branches of Government and industry. This proactive approach would significantly enhance national defense and industrial preparedness by more frequently examining potential conflicts.

5. Evaluate the benefits of restructuring the Office of the Secretary of Defense by consolidating all current responsibilities for Emergency Planning Policy and Acquisition Management, including Production and Industrial Support into a newly created Under Secretary for Acquisition and Industrial Policy. This consolidation would provide a unified defense industrial base coordination structure, which would be more sensitive to and responsible for emergency planning and industrial productivity through its acquisition policies.

6. Fence funds for selected war reserve items. At current funding levels and discretionary funding policies, it is doubtful that current stockage goals are achievable in realistic timeframes. Funds should be separately identified and earmarked for war reserve material deemed most crucial to primary mission areas.

7. Delegate to DOD the responsibility for management of stockpile items with high defense application. The agency with the greatest vested interest in a stockpiled item should share responsibility for management of those items. On a selective basis, stockpiled items determined most crucial to defense should be delegated to DOD. The future status

of those materials will become a direct product of DOD's initiatives and policies.

8. Remove legal barriers that restrict sale of excess stockpiled material. Legal restrictions to sales of excess stockpiled material that were not created to prevent market disruptions should be removed through the legislative process. This action would serve to stimulate the sale of excess materials and provide a steady source of funds for shortages outside of the appropriation process.

9. Consolidate all funding authorities into a single DOD directive. A single reference source of all funding authorities should be available to DOD. Today's fragmented existence of funding authorities does not promote wide scale familiarity with those authorities on the part of DOD personnel. The directive should group authorities according to related areas of support such as contingency funding, continuing resolution funding, construction funding, etc.

As evidenced by this research, there are adequate statutory and procedural measures in existence to support a wide range of military requirements. However, the creation of laws and governmental policies is merely the first step towards ensuring the defense of this nation. This hollow codification of the legislative thought process should never be interpreted as an enhancement of defense posture. For

it is only when this verbiage has been sufficiently funded that it even begins to have substance.

The primary purpose of the Government of the United States is to ensure the security of the nation. Without this security, the democratic process and the Free World economies would cease to exist. Therefore, it is paramount to ensure at all costs that the defenders of this democracy are never forced to suffer the indignities of defeat as a result of an inadequately supported industrial base.

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APPENDIX A

MCDC MOBILIZATION BIBLIOGRAPHY
(PERIODICAL ARTICLES 1915-1982)

By

Barbara Henseler

Mobilization Concepts Development Center

National Defense University

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INTRODUCTION

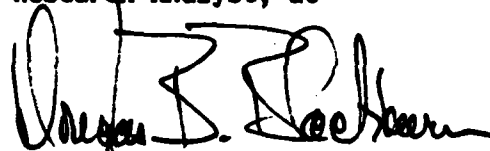
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Within recent years, the study of mobilization and industrial preparedness has intensified within the defense community. With the founding of the Mobilization Concepts Development Center (MCDC) at the National Defense University (NDU) in April 1982, a new focal point for research was established. The charter of MCDC provides in part that it will "Establish a national repository of historical documents, analytical studies and contemporary policy papers and research reports..." As one of its projects, MCDC is embarked on the establishment of such a repository and the attached bibliography is the result of extensive research into the mobilization-related data sources.

This bibliography is meant to assist the faculty, staff and students of all the National Defense University components as well as other researchers. In order to facilitate the use of this document during the current academic year (AY 1983-84), we are forwarding this pre-publication edition. This document is the first of five publications that together will attempt to be the definitive bibliography of mobilization-related literature. When completed the series will have the following five volumes:

- I - PERIODICAL ARTICLES
- II - BOOKS AND MONOGRAPHS
- III - CONGRESSIONAL DOCUMENTS
- IV - TECHNICAL REPORTS
- V - INDUSTRIAL COLLEGE OF THE ARMED FORCES PUBLICATIONS

Any questions concerning this publication should be forwarded to Barbara Henseler, Research Analyst, at (202) 693-8257.



DOUGLAS B. BLACKBURN
Director, Mobilization Concepts
Development Center

1 October 1983

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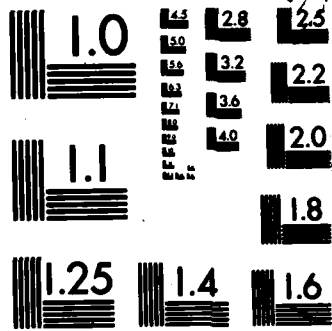
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APPENDIX B

NATIONAL DEFENSE UNIVERSITY
MOBILIZATION BIBLIOGRAPHY

MOBILIZATION: A BIBLIOGRAPHY

Compiled by
Julia Mayo
Revised and Updated by
Marcia Whipple, Rosemary Marlowe, and David Monroe

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EXPLANATION OF SYMBOLS USED

2

CIS	Congressional Information Service. Microfiche collection of Congressional papers, hearings, bills. Located in Eisenhower Hall, 3d floor.
Documents Section	Collection of classified and unclassified documents. Located in Roosevelt Hall, Room 30.
DTIC	Defense Technical Information Center. Call number starting with AD means the library can obtain the report from DTIC quickly.
DLSIE	Defense Logistics Studies Information Exchange. Microfiche editions of reports may be obtained quickly from DLSIE.
DMIA	Defense Management Issue Analysis. Located in Eisenhower Hall, 3d floor.
Govt. Doc.	Government Documents are located in Eisenhower Hall, 3d floor.
REF	Reference book located in Roosevelt Hall, 1st floor.
REF ICAF	Reference book located in Eisenhower Hall, 3d floor.
Vertical File	Collection of uncataloged pamphlets, brochures, journal articles, etc. arranged by subject. Located in Roosevelt Hall, 1st floor.

IR
L
M
R
S
SP

Any of these letters followed by a set of numbers such as 27, 65-1 or 63-101 are call numbers for ICAF students papers, research papers, or lectures. Located in Roosevelt Hall, 3d floor, Special Collections.

DOD DIRECTIVES AND INSTRUCTIONS

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DOD 1100.6 National Defense Executive Reserve

DOD 1100.18 Wartime Manpower Planning.

DOD 1100.19 Wartime Manpower Program Policies and Procedures.

DOD 1145.1 Qualitative Distribution of Military Manpower.

DOD 1200.7 Screening the Ready Reserve.

DOD 1235.9 Management and Mobilization of the Stand-by Reserve.

DOD 1235.10 Mobilization of the Ready Reserve.

DOD 2035.1 Defense Economic Cooperation with Canada.

DOD 3005.2 Non-Industrial Facilities for Mobilization.

DOD 3005.5 Criteria for Selection of Items for War Reserve.

DOD 3005.6 Civilian Personnel Procurement and Manpower Control During a Mobilization.

DOD 3005.7 Emergency Requirements, Allocations, Priorities, and Permits for DOD Use of Domestic Civil Transportation.

DOD 4000.24 Procedures for Meeting Logistics Impact Resulting from Work Stoppages Caused by Labor Disputes.

DOD 4005.1 DOD Industrial Preparedness Production Planning.

DOD 4005.3 Industrial Preparedness Production Planning Procedures.

DOD 4005.16 Diminishing Manufacturing Sources and Material Shortages.

DOD 4140.1 Inventory Management Policies.

DOD 4140.2 Management of Mobilization Reserve Stocks.

DOD 4140.21 Management of War Reserves for Integrated Items Assigned to the Military Departments, the Defense Supply Agency and the General Services Administration.

DOD 4151.15 Depot Maintenance Programming Policies. 4

DOD 4155.4 Inspection and Reporting of Departmental Industrial Reserve Plants/Maintenance Facilities.

DOD 4165.6 Real Property Acquisition, Management and Disposal.

DOD 4165.20 Utilization and Retention of Real Property.

DOD 4170.9 Defense Contractor Energy Shortages and Conservation.

DOD 4200.15 Manufacturing Technology Program.

DOD 4210.1 Department of Defense Coded List of Materials.

DOD 4210.4 Studies on the Availability of Materials.

DOD 4210.7 Controlled Materials Requirements.

DOD 4210.8 Department of Defense Bills of Materials.

DOD 4215.18 Management of Defense-Owned Industrial Plant Equipment (IPE).

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DOD 4405.6 Delegation of Authority to Assistant Secretary of Defense (Installations and Logistics).

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DOD 4410.4 Military Production Urgencies System.

DOD 4410.6 Uniform Materiel Movement and Issue Priority System.

DOD 5030.3 Memorandum of Agreement Between the Department of Defense and Department of Commerce, Dealing with the Utilization, Transfer and Allocation of Merchant Ships.

DOD 5100.1 Functions of the Department of Defense and its
Major Components.⁵

DOD 5105.22 Defense Logistics Agency (DLA).

DOD 5111.2 Department of Defense Mobilization and
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DOD 5124.1 Assistant Secretary of Defense (Manpower
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DOD 7700.2 Material for Annual Reports on Reserve Forces.

DOD 7720.19 Data Relating to Cost of Maintenance of the
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Establishes policy guidance with regard to the use of priorities and
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Establishes guidance on priority use of resources in immediate postattack
period.

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continuation of the Industry Evaluation Board.

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Program.

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Prescribes responsibilities of the Office of Emergency Preparedness in
the Executive Office of the President.

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Defense Executive Reserve.

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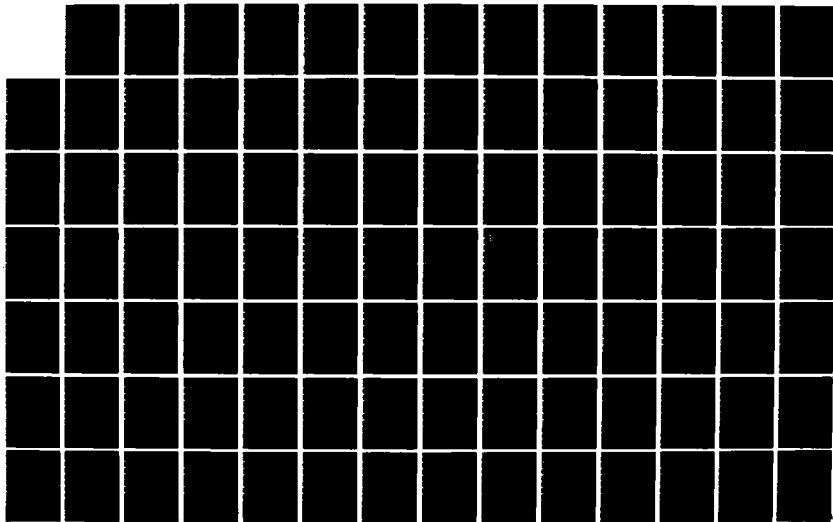
AN ANALYSIS OF DEPARTMENT OF DEFENSE FINANCIAL AND
ACQUISITION POLICIES I. (U) NAVAL POSTGRADUATE SCHOOL
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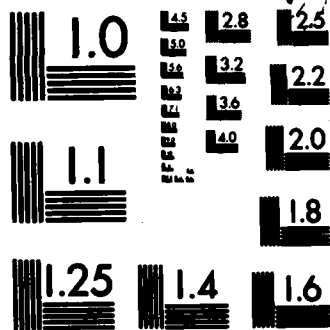
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APPENDIX C

USAF DIGEST OF WAR AND EMERGENCY
LEGISLATION AFFECTING DOD
DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, D.C. 20330




DIGEST OF WAR AND EMERGENCY LEGISLATION
AFFECTING
THE DEPARTMENT OF DEFENSE

On 7 December 1955 the Assistant Secretary of Defense for Legislative and Public Affairs requested that the Department of the Air Force, with the assistance of the Departments of Army and Navy, prepare a Digest of War and Emergency Legislation Affecting the Department of Defense and thereafter "maintain it in a state of readiness." The Digest's existence is a recognition that in a time of crisis the Government must be prepared to respond as swiftly as possible. It is essential that planners and decision makers have ready reference to those legal authorities which define and expand the operation of the Department of Defense.

In 1962 the Digest was published in looseleaf format and since then revision pages have been prepared following the adjournment of each Congress. At the end of the 97th Congress, it was decided that a complete revision and republishing was necessary because of the large number of changes that had occurred since 1962. This was accomplished by the Legislative Division of the Air Force Directorate of Civil Law, again with the assistance of the Departments of the Army and Navy.

We plan to issue supplements to this Digest at the end of each Congress. It is intended that the assembled pages be retained in a looseleaf binder so that substitute or additional pages may be inserted when they are published following the adjournment of the 98th Congress and each succeeding Congress. Users should note that the Digest is not, by itself, an authoritative statement of the law and must be used in conjunction with the statutes it cites.

The Digest is intended to be a useful research tool for those throughout the Federal government who must concern themselves with matters involving war and emergency situations. Accordingly, corrections or suggestions to improve this Digest will be welcome. They should be provided to HQ USAF/JACO, Room 5E 417 (Pentagon), Washington, D.C. 20330 (phone 694-8226).


THOMAS B. BRUTON
Major General, USAF
The Judge Advocate General

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DIGEST OF WAR AND EMERGENCY LEGISLATION
AFFECTING
THE DEPARTMENT OF DEFENSE
1983

PREFACE

This digest summarizes those Federal laws relating to the Department of Defense which by their terms are affected by the existence of a war, an emergency, or a circumstance related to a war or an emergency, or which have a specific termination date. It does not, in most cases, reflect all of the provisions of a law. Therefore, the digest should not be relied upon as a statement of law or as the basis for legal action.

The digest has three parts:

(1) Part I consists of numbered items, each of which contains a summary of the pertinent provisions of a law which is effective in time of war, emergency, or a circumstance related to a war or an emergency, or which has a specific termination date. Each item has a citation to the United States Code or, if the law has not been codified, a citation to the Statutes at Large. Each item is cross-referenced to the particular table (Tables A-G) in Part II to which it has been allocated. Laws that are permanent are indicated by the abbreviation "Perm. Law", while those that are temporary are indicated by the abbreviation "Temp. Law". Items based on uncodified laws are listed first and are arranged chronologically. Those based on sections of the United States Code follow and are arranged by title and section of that code:

(2) Part II consists of seven separate tables (Tables A-G). Each table lists a group of laws that are effective under stated circumstances. The same item number has been given to a table item as that given to the parent item in Part I. Each table item contains a brief summary of a particular provision of law.

PREFACE

TABLE A is a list of laws effective by their terms in time of "war".

TABLE B is a list of laws effective by their terms in time of "national emergency declared by the President".

TABLE C is a list of laws effective by their terms in time of "national emergency declared by Congress".

TABLE D is a list of laws effective by their terms in time of "national emergency". None of these laws requires by its terms a specific declaration of national emergency by either the President or Congress.

TABLE E is a list of laws effective by their terms in time of "emergency". Some of these laws require by their terms a specific declaration of emergency by either the President or Congress.

TABLE F is a list of laws effective during a definite period fixed by the particular statute. Most of these laws are temporary in nature and will expire by their terms on a fixed date or upon the happening of a stated event.

TABLE G is a list of laws effective in miscellaneous circumstances related to a war or an emergency.

(3) PART III is a table of laws digested.

A particular law may be listed in more than one table if it is effective in more than one circumstance, such as "in time of war, or of national emergency declared by Congress or the President". All circumstances in which a law is effective are noted in the summary of that law in Part I. A detailed explanation of each table is set out at the head of that table.

PREFACE

While not specifically terminating declarations of national emergencies, the National Emergencies Act, P.L. 94-412, Act of September 14, 1976, 90 Stat. 1255, precludes the use by the Executive Branch after 13 September 1978 of any of the powers or authorities vested by such declarations. Section 502(a) of the Act, however, expressly excludes certain laws giving to the Executive Branch unusual powers in time of war or national emergency. Of these the following are objects of this digest.

(1) The power to lease buildings without regard to the statutory limitation that the lease may not exceed 15% of the fair market value of the leased premises (Act of April 28, 1942 (40 U.S.C. 278b), (Digest Number 302)).

(2) The war or national emergency exception to the Anti-assignment of Contract and Claims statutes R.S. 3477 (31 U.S.C. 3727) and R.S. 3737 (41 U.S.C. 15). The exception permits the secretaries during war or national emergency to enter into contracts that may be assigned by the contractor and may contain an assurance to the assignee that the United States will not exercise its priority based on debts not arising under the agreement. (Digest Number 268).

(3) The power of the Secretaries to enter into or modify contracts without consideration and without regard to other provisions of law (P.L. 85-804) (Act of August 28, 1958, 72 Stat. 972, 50 U.S.C. 1431-1435) (Digest Number 350).

(4) The power of the Secretaries to enter contracts without formal advertising during time of war or national emergency (10 U.S.C. 2304(a)(1) (Digest Number 124) and Act of June 30, 1949 (41 U.S.C. 252) (Not digested).

In addition, the power of the President to suspend certain laws regarding the promotion or mandatory retirement of officers (Sections 3313, 6386(c) and 8313 of title 10, United States Code) was not terminated by the National Emergencies Act, but was repealed by the Defense Officer Personnel Management Act ("DOPMA"), P.L. 96-513, Act of December 12, 1980, 94 Stat. 2835 (Sections 204, 335; 94 Stat. 2880, 2898). DOPMA, however, granted the President similar authority to suspend laws relating to promotion, involuntary retirement and separation of commissioned officers of the Army, Navy, Air Force and Marine Corps in time of war or national emergency declared by Congress or the President (Section 644 of title 10, United States Code). (Digest Number 104B).

PREFACE

Finally, Congress allowed the emergency seizure provisions of the Trading with the Enemy Act to remain effective (Section 5b of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5b)) (Not digested).

Any inquiry concerning this digest should be referred to the Legislative Division, Office of The Judge Advocate General, USAF, Washington, D.C. 20330, phone (703) 694-8226, Autovon 224-8228.

PART ICOMPILATION OF WAR AND EMERGENCY LEGISLATION

This part is a compilation of numbered items, each of which contains a summary of the pertinent provisions of a law which is effective in time of war, emergency, or a circumstance related to a war or an emergency, or which has a specific termination date. Each item has a citation to the United States Code or, if the law has not been codified, a citation to the Statutes at Large. Each item is cross-referenced to the particular table (Tables A-G) in Part II to which it has been allocated. Laws that are permanent are indicated by the abbreviation "Perm. Law", while those that are temporary are indicated by the abbreviation "Temp. Law". Items based on uncodified laws are listed first and are arranged chronologically. Those based on sections of the United States Code follow and are arranged by title and section of the United States Code. A subject index of the items in Part I is set out at the end of this digest.

1. Real property: recapture of certain part of the military reservation on Anastasia Island, Florida

Act Feb. 21, 1925, ch. 282, Perm. Law
43 Stat. 959

In an emergency, the United States may assume control of a certain part of the military reservation on Anastasia Island, Florida, for military, naval, or lighthouse purposes, free from any existing conveyances, charges, encumbrances, or liens. (See also Table E.)

2. Real property: recapture of Hoboken Manufacturers' Railroad Company

Act Feb. 26, 1925, ch. 340, Perm. Law
43 Stat. 984

In time of war, or of national emergency, the United States may assume control of the property of the Hoboken Manufacturers' Railroad Company under the contract between the Secretary of the Army and the Port of New York Authority transferring the property concerned to the Port of New York Authority. (See also Tables A and D.) 61 Stat. 451 states that in the interpretation of this provision, the date when this joint resolution (terminating certain emergency and war powers [begins at 61 Stat. 449])

becomes effective shall be the date of the termination of any state of war declared by Congress and of the national emergencies declared by the President on 8 September 1939 and 27 May 1941.

3. Real property: recapture of land formerly part of the Presidio of San Francisco, California

Act Mar. 3, 1925, ch. 450, Perm. Law
43 Stat. 1129

In time of war, or of national emergency, the United States may, without payment, enter the property concerned, formerly part of the Presidio of San Francisco, California, and use it and all improvements thereon for the duration of that war or emergency. (See also Tables A and D.)

4. Real property: recapture of municipal aviation field at Tucson, Arizona

Act Apr. 12, 1926, ch. 116, Perm. Law
44 Stat. II 241

In an emergency, or when considered advisable, the United States may assume control of the management and operation of the municipal aviation field at Tucson, Arizona, for military purposes. (See also Tables E and G.) 61 Stat. 451 states that in the interpretation of this provision, the date when this joint resolution (terminating certain emergency and war powers [begins at 61 Stat. 449]) becomes effective shall be the date of the termination of any state of war declared by Congress and of the national emergencies declared by the President on 8 September 1939 and 27 May 1941.

5. Real property: recapture of aviation field at Yuma, Arizona

Act May 29, 1926, ch. 424, Perm. Law
44 Stat. 677

In an emergency, or when considered advisable by the Secretary of the Air Force, the Air Force may assume control of the management and operation of the aviation field at Yuma, Arizona. (See also Tables E and G.) 61 Stat. 451 states that in the interpretation of this provision, the date when this joint resolution (terminating certain emergency and war

powers [begins at 61 Stat. 449]) becomes effective shall be the date of the termination of any state of war declared by Congress and of the national emergencies declared by the President on 8 September 1939 and 27 May 1941.

6. Recapture of floating dry dock and waterfront accessories at New Orleans (Algiers), Louisiana, naval station: revocation of leases

Act May 14, 1930, ch. 278, Perm. Law
 §10, 46 Stat. 332

In time of national emergency declared by the President, the Secretary of the Navy may revoke any lease concerning the floating dry dock and waterfront accessories at the naval station, New Orleans (Algiers), Louisiana. (See also Table B.)

7. Real property: recapture of United States naval destroyer and submarine base, Squantum, Massachusetts; revocation of leases

Act May 29, 1930, ch. 350, Perm. Law
 46 Stat. 479

In time of national emergency declared by the President, the Secretary of the Navy may revoke any lease concerning all, or any part, of the United States destroyer and submarine base, Squantum, Massachusetts, without payment to the lessee of any damages resulting from such revocation. (See also Table B.) 61 Stat. 451 states that in the interpretation of this provision, the date when this joint resolution (terminating certain emergency and war powers [begins at 61 Stat. 449]) becomes effective shall be the date of the termination of any state of war declared by Congress and of the national emergencies declared by the President on 8 September 1939 and 27 May 1941.

8. Real property: recapture of certain rights-of-way in Arlington, Virginia.

Act Feb. 28, 1933, ch. 135, Perm. Law
 47 Stat. 1367

When in the judgment of the President an emergency exists that requires the use of the property for the public defense, the United States may occupy and use

the rights-of-way granted to Arlington County, Virginia, to connect Lee Boulevard with Arlington Memorial Bridge. (See also Table G.) 61 Stat. 451 states that in the interpretation of this provision, the date when this joint resolution (terminating certain emergency and war powers [begins at 61 Stat. 449]) becomes effective shall be the date of the termination of any state of war declared by Congress and of the national emergencies declared by the President on 8 September 1939 and 27 May 1941.

9. [Vacant]

10. Real property: recapture of certain land in Hawaii

Act June 19, 1936, ch. 604, Perm. Law
 49 Stat. 1535; as amended
 June 18, 1954, ch. 317,
 68 Stat. 262

When in the judgment of the President an emergency exists that requires the use of the property for the public defense, the United States may occupy and use the property concerned in the Territory of Hawaii. (See also Table G.) 61 Stat. 451 states that in the interpretation of this provision, the date when this joint resolution (terminating certain emergency and war powers [begins at 61 Stat. 449]) becomes effective shall be the date of the termination of any state of war declared by Congress and of the national emergencies declared by the President on 8 September 1939 and 27 May 1941.

11. Real property: recapture of Port Newark Army Base, New Jersey

Act June 20, 1936, ch. 636, Perm. Law
 49 Stat. 1557; as amended
 Feb. 18, 1956, ch. 60
 70 Stat. 20

In time of war, or of national emergency declared by Congress, the United States may take possession of the Port Newark Army Base, New Jersey, for the duration of the war or emergency. For each year or part of a year that the United States is in possession, the United States must pay the city of Newark a certain amount as liquidated damages. Upon termination of the war or emergency, the property

reverts to the city of Newark. (See also Tables A and C.)

12. Real property: recapture of Fort Schuyler, New York

Act Aug. 19, 1937, ch. 697, Perm. Law
50 Stat. 696

When in the judgment of the Secretary of the Army an emergency exists that requires the use of the property for the public defense, the United States may resume possession of Fort Schuyler Military Reservation, New York, notwithstanding the lease to the State of New York. (See also Table G.)

13. Real property: recapture of Hoboken Pier Terminals

Act June 21, 1938, ch. 557, Perm. Law
52 Stat. 833

In time of national emergency, and upon order of the President, the Hoboken Pier Terminals may be taken for the use of the Army during the emergency. (See also Table D.)

14. Real property: recapture of Fort Morgan, Alabama

Act June 28, 1946, ch. 513, Perm. Law
60 Stat. 332

In time of national emergency, the Department of the Army or the Department of the Navy may reoccupy Fort Morgan, Alabama, without cost to the United States. (See also Table D.)

15. [Vacant]

16. [Vacant]

17. [Vacant]

18. Real property: recapture of certain lands formerly part of Camp Robinson, Arkansas

Act June 30, 1950, ch. 429 Perm. Law
64 Stat. 310

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense

that certain land, formerly part of Camp Robinson, Arkansas, is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of the war or emergency, the property concerned, including any improvements made by the grantee, reverts to the grantee. (See also Tables A, C, and E.)

[Land subject to this Act amounts to about 34,000 acres. Public Law 88-145 provides for the release of restrictions and reservations on 9.8 acres of this land.]

19. Real property: recapture of certain land formerly part of Fort Schuyler, New York

Act Sept. 5, 1950, ch. 850, Perm. Law
 64 Stat. 591; as amended
 July 16, 1952, ch. 884,
 66 Stat. 727; Pub. L. 85-260,
 71 Stat. 584

In time of war, or of national emergency declared by Congress or the President, and upon a determination by the Secretary of a military department that certain land, formerly part of Fort Schuyler, New York, is useful for military, air, naval, or defense purposes, the United States may assume, without payment, control and use the property concerned, including any improvements made by the grantee. (See also Tables A-C.)

20. [Vacant]

21. Real property: recapture of former Naval Air Station, Kahului, Wailuku, Maui, Hawaii

Act June 5, 1952, ch. 371, Perm. Law
 66 Stat. 128; as amended,
 Pub. L. 87-654, 76 Stat. 530

In time of war or national emergency, the United States shall have the right to receive from the State of Hawaii rights and interest substantially equal to those held by the United States in the lands (comprising the former Naval Air Station, Kahului, Wailuku, Maui, Hawaii) originally conveyed by it to

the Territory of Hawaii, and such other rights and interests as the Secretary of the Navy may consider necessary in the public interest. (See also Tables A and D.)

- 22. Real property: recapture of certain land formerly part of Fort Schuyler, New York

Act July 16, 1952, ch. 884, Perm. Law
66 Stat. 727

(See item No. 19.)

- 23. Commissioned and warrant officers: appointments continued while in a missing status

Act May 27, 1953, ch. 73, Temp. Law
67 Stat. 38

The President may continue in effect, until released, the appointments of commissioned or warrant officers who are in a missing status under 37 U.S.C. 551-558 at any time after June 25, 1950 and before the termination of the national emergency proclaimed by the President on December 16, 1950, whose appointments would normally terminate before release from active duty. (See also Tables B and F.)

- 24. Real property: recapture of certain property of the Veterans' Administration in Johnson City, Tennessee

Act June 6, 1953, ch. 107, Perm. Law
67 Stat. 54

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the "Secretary of National Defense" (sic) that certain property of the Veterans' Administration in Johnson City, Tennessee, that the property is useful or necessary for military, air, or naval purposes, or in the interest of national defense, the United States may, without payment, enter the property concerned and use it for the duration of the war or emergency. Six months after the termination of the war or emergency, the property concerned, including any improvements made by the grantee, reverts to the grantee. (See also Tables A, C, and E.)

- 25. Real property: recapture of certain land in Windsor Locks, Connecticut

Act Mar. 26, 1954, ch. 105, Perm. Law
68 Stat. 31

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that certain land in Windsor Locks, Connecticut, is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of the war or emergency, the property concerned, including any improvements made by the grantee, reverts to the grantee. (See also Tables A, C, and E.)

- 26. Real property: recapture of certain land in the former Camp Butner Military Reservation, North Carolina

Act Apr. 12, 1954, ch. 133, Perm. Law
68 Stat. 50

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon determination by the Secretary of Defense that certain land in the former Camp Butner Military Reservation, North Carolina, is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of the war or emergency, the property concerned, including any improvements made by the grantee, reverts to the grantee. (See also Tables A, C, and E.)

- 27. Real property: recapture of certain land in Marion County, Indiana

Act June 4, 1954, ch. 262, Perm. Law
68 Stat. 171

In time of war, or of national emergency declared by the President or Congress, and upon request of the Secretary of Defense, the United States may, without

payment, use certain Federal and State land in Marion County, Indiana, including all improvements thereon, for the duration of the war or national emergency. Upon termination of the war or national emergency, the property reverts to the State of Indiana. (See also Tables A-C.)

28. Real property: recapture of certain land formerly part of Camp Blanding Military Reservation, Florida

Act July 14, 1954, ch. 482, Perm. Law
68 Stat. 474

In time of national emergency declared by Congress or the President, and upon request of the Secretary of the Army to the grantee, certain land, formerly part of Camp Blanding Military Reservation, Florida, reverts to the United States for the duration of the national emergency. (See also Tables B and C.)

29. Real property: recapture of Boston Army Base pier

Act July 27, 1954, ch. 579, Perm. law
§103, 68 Stat. 537

In time of war declared by Congress, or of national emergency declared by the President, and upon a determination by the Secretary of the Army that the Boston Army Base pier is useful or necessary for military purposes, the United States may enter the property concerned and use it for such period as the Secretary determines to be necessary in the interests of national security. At the option of the lessee, upon such entry, the lease may be terminated or extended for a period equal to the period of possession by the United States. (See also Tables A and B.)

30. Real property: recapture of certain land formerly part of Fort Bliss, Texas

Act Aug 30, 1954, ch. 1081, Perm. Law
68 Stat. 974;
Pub. L. 92-145, § 708, 85 Stat. 412

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that certain land, formerly part of Fort Bliss, Texas, is useful or necessary for defense purposes,

the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of that war or emergency, the property concerned, together with all appurtenances and utilities belonging or appertaining thereto, reverts to the State of Texas. (See also Tables A, C, and E.)

31. Real property: recapture of Martindale Auxiliary Field, San Antonio, Texas

Act Aug. 30, 1954, ch. 1082, Perm. Law
68 Stat. 975

In time of war, or of national emergency declared by Congress or the President, and upon a determination by the Secretary of Defense that the property is useful or necessary for defense purposes, the United States may, without payment, enter Martindale Auxiliary Field, San Antonio, Texas, and use it or any part thereof, including any improvements made by the State of Texas, for the duration of that war or emergency. Six months after the termination of that war or emergency, the property concerned, together with all appurtenances and utilities belonging or appertaining thereto, reverts to the State of Texas. (See also Tables A-C.)

32. Real property: recapture of former Hughes Stout Plant occupied by the Texas National Guard, Houston, Texas

Act Aug. 30, 1954, ch. 1083, Perm. law
68 Stat. 977

In time of war or national emergency and for six months thereafter, and upon a determination by the Secretary of Defense that the former Hughes Stout Plant occupied by the Texas National Guard, Houston, Texas, is useful or necessary for national defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the State of Texas. Upon termination of such use, the property reverts to the State of Texas. (See also Tables A and D.)

33. Real property: recapture of certain land in Klamath County, Oregon

Act Aug. 30, 1954, ch. 1087,
68 Stat. 980

Perm. Law

In time of war, or of national emergency declared by Congress, or of emergency declared by the President, and upon a determination by the appropriate Secretary that certain land in Klamath County, Oregon, is useful or necessary for military, air, or naval purposes, or in the interest of national defense, the United States has the right, without payment of any kind, to reenter and use the property, including improvements thereon, for the duration of the war or national emergency. Six months after the termination of the war or emergency, the property concerned, together with all facilities, improvements, appurtenances, and utilities thereon or appertaining thereto, other than those specifically reserved to the United States, reverts to the State of Oregon. (See also Tables A, C, and E.)

34. [Vacant]

35. Real property: recapture of certain land in Austin, Texas

Act June 1, 1955, ch. 111,
69 Stat. 68

Perm. Law

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that certain land in Austin, Texas, is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of the war or emergency, the property concerned, including any improvements made by the grantee, reverts to the grantee. (See also Tables A, C, and E.)

36. Real property: recapture of Camp Dodge Military Reservation, Iowa; Polk County Target Range, Iowa; and other Iowa-owned lands used for National Guard purposes

Act June 1, 1955, ch. 112
69 Stat. 70

Perm. Law

In time of war, or national emergency, declared by Congress, or of national emergency declared by the President, and upon a determination by the Secretary of Defense that the property is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of the war or emergency, the property concerned, including any improvements made by the grantee, reverts to the grantee. (See also Tables A-C.)

37. Real property: recapture of Jackson Barracks, Louisiana

Act June 1, 1955, ch. 114, Perm. Law
69 Stat. 79

In time of national emergency when there is a need therefor, the United States may reenter and use Jackson Barracks, Louisiana (See also Table D.)

38. Real property: recapture of certain land near Lake Guernsey, Wyoming

Act June 16, 1955, ch. 146, Perm. Law
69 Stat. 138

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the appropriate Secretary that the property is useful or necessary for military, air, or naval purposes, or in the interest of national defense, the United States may, without payment, enter the property concerned and use it for the duration of the war or emergency. Six months after the termination of the war or emergency, the property concerned, including any improvements made by the grantee, reverts to the grantee. (See also Tables A, C, and E.)

39. Real property: recapture of certain land formerly part of Fort Devens, Massachusetts

Act July 11, 1955, ch. 305, Perm. Law
69 Stat. 293

In time of war, or national emergency, declared by Congress, or of emergency declared by the President,

and upon a determination by the Secretary of Defense that the property is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of the war or emergency, the property concerned, including any improvements made by the grantee, reverts to the grantee. (See also Tables A, C, and E.)

40. Real property: recapture of certain part of the former O'Reilly General Hospital, Springfield, Green County, Missouri

Act Aug. 9, 1955, ch. 661, Perm. Law
69 Stat. 592

In time of national emergency, the United States may, without payment, reenter and use a certain part of the former O'Reilly General Hospital, Springfield, Green County, Missouri (See also Table D.)

41. Real property: recapture of certain land near Houston, Texas

Act Feb. 15, 1956, ch. 38, Perm. Law
70 Stat. 17

In time of war, or of national emergency declared by Congress or the President, and upon a determination by the Secretary of Defense that certain property near Houston, Texas is useful or necessary for defense purposes, the United States may, without payment, enter the property and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of the war or emergency, the property concerned, including any improvements made by the grantee, reverts to the grantee. (See also Tables A-C.)

42. Real property: recapture of Port Newark Army Base, New Jersey

Act Feb. 18, 1956, ch. 60, Perm. Law
70 Stat. 20

(See item No. 11.)

43. [Vacant]
44. Real property: recapture of land comprising Camp Livingston and Camp Beauregard, Louisiana

Act May 14, 1956, ch. 269, Perm. Law
 70 Stat. 156; as amended
 Pub. L. 85-204, § 4,
 71 Stat. 479
 Pub. L. 96-474, § 2,
 94 Stat. 2269

When needed during a national emergency, the United States may reenter and use the land comprising Camp Livingston and Camp Beauregard, Louisiana. (See also Table D.)

45. Real property: recapture of land formerly the Bruns General Hospital area, Santa Fe, New Mexico

Act June 19, 1956, ch. 408, Perm. Law
 70 Stat. 296

When needed during a national emergency declared by the President or Congress, the United States may reenter and use the land formerly the Bruns General Hospital area, Santa Fe, New Mexico. (See also Tables B and C.)

46. Real property: recapture of certain land on Anastasia Island, Florida

Act June 25, 1956, ch. 440, Perm. Law
 70 Stat. 334

In time of national emergency, the United States may use certain land on Anastasia Island, Florida. (See also Table D.)

47. [Vacant]

48. Real property: recapture of certain part of Ethan Allan Air Force Base, Colchester, Vermont

Act July 14, 1956, ch. 592, Perm. Law
 70 Stat. 536

In time of national emergency declared by Congress or the President and when there is a need therefor, the United States may reenter and use that part of Ethan

Allen Air Force Base, Colchester, Vermont, conveyed to the State of Vermont. (See also Tables B and C.)

49. Real property: recapture of certain land in the vicinity of Williamsburg, Virginia

Act July 14, 1956, ch. 605, Perm. Law
70 Stat. 550

Whenever Congress declares a state of war or other national emergency, or the President declares a state of emergency, and upon determination by the Secretary of Defense that certain property in the vicinity of Williamsburg, Virginia, is useful or necessary for military, air, or naval purposes, or in the interest of national defense, the United States may, without obligation to make payment of any kind, reenter and use the property, including improvements made thereon, for the duration of the war or emergency. (See also Tables A, C, and E.)

50. [Vacant]

51. Real property: recapture of certain land in Montgomery, West Virginia

Act July 20, 1956, ch. 649, Perm. Law
70 Stat. 590

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that certain land in the City of Montgomery, West Virginia, is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of that war or emergency, the property concerned, together with all appurtenances and utilities belonging or appertaining thereto, reverts to the State of West Virginia. (See also Tables A, C, and E.)

52. Real property: recapture of certain land in Bexar County, Texas

Act July 27, 1956, ch. 753, Perm. Law
70 Stat. 697

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that certain land in Bexar County, Texas, is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of that war or emergency, the property concerned, together with all appurtenances and utilities belonging or appertaining thereto, reverts to the State of Texas. (See also Tables A, C, and E.)

53. Real property: recapture of land known as the Clackamas National Guard target range, Clackamas, Oregon

Act August 1, 1956, ch. 823, Perm. Law
70 Stat. 793

Whenever Congress declares a state of war or other national emergency, or the President declares a state of emergency to exist, and upon determination by the Secretary of Defense that certain land known as the Clackamas National Guard target range, Clackamas, Oregon, is useful or necessary for military air, or naval purposes, or in the interest of national defense, the United States has the right, without payment of any kind, to reenter and use the property, including improvements made thereon, for a period not to exceed the duration of the state of war or national emergency plus six months. [Property grant to State of Oregon is subject to county right-of-way (Pub. L. 92-459, 86 Stat. 764).] (See also Tables A, C, and E.)

54. Real property: recapture of Fort Preble Military Reservation, South Portland, Maine

Pub. L. 85-185, 71 Stat. 467 Perm. Law

In time of war, or of national emergency, and upon a determination by the Secretary of Defense that certain lands comprising the Fort Preble Military reservation, South Portland, Maine (except that part over which the Department of the Air Force exercises jurisdiction), are useful or necessary for national defense purposes, the United States may, without

payment, enter the property concerned and use it or any part thereof, including improvements. Six months after the termination of that war or emergency, the property concerned reverts to the State of Maine. (See also Tables A and D.)

55. [Vacant]

56. Real property: recapture of Esler Field, Louisiana

Pub. L. 85-204, §3, Perm. Law
71 Stat. 479

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that certain property comprising Esler Field, Louisiana, is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of that war or emergency, the property concerned, together with all appurtenances and utilities belonging or appertaining thereto, reverts to the Parish of Rapides, Louisiana. (See also Tables A, C, and E.)

57. Real property: recapture of land comprising Camp Livingston and Camp Beauregard, Louisiana

Pub. L. 85-204, §4, Perm. Law
71 Stat. 479

(See item No. 44.)

58. Real property: recapture of certain part of Veterans' Administration Center Reservation, Los Angeles, California

Pub. L. 85-236, 71 Stat. 516 Perm. Law

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that a certain part of the Veterans' Administration Center Reservation, Los Angeles, California, is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the

duration of the war or emergency. Six months after the termination of that war or emergency, the property concerned, together with all appurtenances and utilities belonging or appertaining thereto, reverts to the State of California. (See also Tables A, C, and E.)

59. Real property: recapture of certain land formerly the United States Marine Corps Air Station, Eagle Mountain Lake, Texas

Pub. L. 85-258, §6,
71 Stat. 583

Perm. Law

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that certain land, formerly the United States Marine Corps Air Station, Eagle Mountain Lake, Texas, is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of that war or emergency, the property concerned, together with all appurtenances and utilities belonging or appertaining thereto, reverts to the State of Texas. (See also Tables A, C, and E.)

60. Real property: recapture of certain land formerly part of Fort Schuyler, New York

Pub. L. 85-260, 71 Stat. 584

Perm. Law

(See item No. 19.)

61. Real property: recapture of certain land in York County, Virginia

Pub. L. 85-545, 72 Stat. 401

Perm. Law

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that certain land in York County, Virginia, is useful or necessary for defense purposes, the United States may enter the property concerned and use it or any part thereof, including any improvements made thereon, for the war or national emergency. Six

months after the termination of that war or national emergency, the property concerned, together with all appurtenances and utilities belonging or appertaining thereto, reverts to the Board of Supervisors of York County, Virginia. (See also Tables A, C, and E.)

62. Real property: recapture of certain land in Boston Neck, Narragansett, Washington County, Rhode Island

Pub. L. 85-548, § 4, 72 Stat. 404 Perm. Law

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that certain land in Boston Neck, Narragansett, Washington County, Rhode Island is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made thereon, for the war or national emergency. Six months after the termination of that war or national emergency, the property concerned, together with all appurtenances and utilities belonging or appertaining thereto, reverts to the State of Rhode Island. (See also Tables A, C, and E.)

63. Real property: recapture of certain land formerly part of Army and Navy General Hospital reservation, Hot Springs National Park, Arkansas

Pub. L. 86-323, §4, 73 Stat. 595 Perm. Law

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that certain land, formerly part of the Army and Navy General Hospital reservation, Hot Springs National Park, Arkansas, is useful or necessary for defense purposes, the United States may, without payment, enter the property concerned and use it or any part thereof, including any improvements made by the grantee, for the duration of the war or emergency. Six months after the termination of that war or emergency, the property concerned, together with all appurtenances and utilities belonging or appertaining thereto, reverts to the State of Arkansas. (See also Tables A, C, and E.)

64. Vessels: sale to Republic of China: return to United States ownership

Pub. L. 86-473, 74 Stat. 143

Temp. Law

During any war in which the United States is participating and any national emergency declared by the President, the United States may, upon request, have certain CI-SAY-1 type vessels, sold to the Government of China by the Secretary of Commerce under the authority of this Act, returned to United States ownership. (See also Tables A and B.)

65. [Vacant]

66. Real property: recapture of a certain part of Des Plaines Public Hunting and Refuge Area and Joliet Arsenal Military Reservation, Will County, Illinois

Pub. L. 86-611, § 2(b), 74 Stat. 370 Perm. Law
Whenever Congress declares a state of war or other national emergency, or the President declares a state of emergency to exist, and upon determination by the Secretary of Defense that a certain part of the Des Plaines Public Hunting and Refuge Area and Joliet Arsenal Military Reservation, Will County, Illinois, is useful or necessary for military, air, or naval purposes, or in the interest of national defense, the United States has the right, without payment of any kind, to reenter and use the property, including improvements made thereon, for a period not to exceed the duration of the state of war or national emergency plus six months, and upon termination of such use, the property reverts to the State of Illinois. (See also Tables A, C, and E.)

67. Real property: recapture of former Naval Air Station, Kahului, Wailuku, Maui, Hawaii

Pub. L. 87-654, 76 Stat. 530

Perm. Law

(See item No. 21.)

68. Cuba: expression of the United States determination to prevent extension of Communist influence

Pub. L. 87-733, 76 Stat. 697

Perm. Law

The United States is determined --

(1) to prevent by whatever means may be necessary, including the use of arms, the Marxist-Leninist regime in Cuba from extending, by force or the threat of force, its aggressive or subversive activities to any part of the Western Hemisphere;

(2) to prevent in Cuba the creation or use of an externally supported military capability endangering the security of the United States; and

(3) to work with the Organization of American States and with freedom-loving Cubans to support the aspirations of the Cuban people for self-determination. (See also Table G.)

69. Real property: recapture of certain land formerly part of the Fort Miles Military Reservation, Delaware

Pub. L. 88-228, § 3,
77 Stat. 470

Perm. Law

In time of national emergency declared by the President or Congress, the Secretary of Defense may, without cost to the United States, enter upon and use certain lands conveyed to the State of Delaware that were formerly part of the Fort Miles Military Reservation if he considers such lands necessary for national defense purposes. (See also Tables B and C)

70. Real property: use of Bolling - Anacostia complex

Pub. L. 89-188, §607(b),
79 Stat. 818, as amended
Pub. L. 93-166, §610(b),
87 Stat. 661

Temp. Law

Until January 1, 1980, no part of the Bolling Air Force Base and the Anacostia Naval Air Station shall be disposed of by the Department of Defense except that certain facilities not required for military activities may be leased to the Federal Aviation Agency until that date. (See also Table F.)

71. Acceptance of foreign decorations

Pub. L. 89-257,
79 Stat. 982

Perm. Law

Whenever members of the armed forces of the United States are serving with friendly foreign forces engaged in an armed conflict in Vietnam against an opposing armed force in which the United States is not a belligerent, or during hostilities in Vietnam in which the United States may be engaged, and for one year thereafter, members and former members of the armed forces of the United States who served in Vietnam after February 28, 1961, may accept certain foreign decorations, orders, and emblems in connection with such service. (See also Tables F and G.)

72. Real property: recapture of National Guard Facility, Pier 91, Seattle, Washington

Pub. L. 91-142, §805,
83 Stat. 319

Perm. Law

In time of war, or national emergency, declared by Congress, or of emergency declared by the President, and upon a determination by the Secretary of Defense that the National Guard facility, pier 91, Seattle, Washington, or any part thereof, is useful or necessary for national defense and security, the United States may enter the property concerned and use it, including all improvements made to it, for the duration of the war or emergency. Six months after the termination of that war or emergency, the property and all improvements made by the United States reverts to the State of Washington. (See also Tables A, B, and C.)

73. Real property: recapture of certain land formerly part of Fort Bliss, Texas

Pub. L. 91-145, § 708, 85 Stat. 412

Perm. Law

(See item No. 30.)

74. Real property: use of Bolling - Anacostia complex

Pub. L. 93-166, §610(b),
87 Stat. 661

Temp. Law

(See item No. 70.)

75. Real property: recapture of certain land formerly part of the Kisatchie National Forest, Louisiana

Pub. L. 96-474, 94 Stat. 2267

Perm. Law

If the President declares a state of national emergency or the Secretary of Defense determines the property is needed in the interest of national defense, the United States may reenter and use certain lands comprising part of the Kisatchie National Forest, Louisiana. (See also Tables B and G)

76. Civilian employees: initial appointments on other than a permanent basis

5 U.S.C. 3101 note Temp. Law

Until the termination of the national emergency declared by the President on December 16, 1950, the Office of Personnel Management and the heads of the executive departments, agencies, and corporations shall require initial appointments in and outside the competitive civil service to be made on other than a permanent basis. (See also Tables B and F.)

77. Appointment: retired members to civilian office

5 U.S.C. 3326 Perm. Law

A retired member of the armed forces may be appointed to a civilian office in the Department of Defense within 180 days after his retirement only if --

(1) the appointment is authorized by the Secretary concerned (or his designee) and the position is in the competitive civil service after approval by the Office of Personnel Management; or

(2) the minimum rates of basic compensation for such position has been increased under 5 U.S.C. 5303; or

(3) a state of national emergency exists. (See also Table D.)

78. Pay: recommended adjustment for comparability with private enterprise: alternative plan

5 U.S.C. 5305(c) Perm. Law

If, because of national emergency or economic conditions affecting the general welfare, the President should consider it inappropriate to make the adjustment in civilian employee pay recommended by his agent to effect comparability with private

enterprise, the President shall prepare and transmit to Congress such alternative plan with respect to a pay adjustment as he considers appropriate. (See also Table D.)

79. Pay: advances to civilian employees incident to departures from posts abroad

5 U.S.C. 5522(a)

Perm. Law

Provides that the head of each Government agency may authorize advance payment, of not more than 30 days, to an employee whose departure from a place within or outside the United States is officially authorized or ordered - (1) from a place outside the United States from which the Secretary of State determines it is in the national interest to require the departure of some or all employees, their dependents, or both; or (2) from any place where there is imminent danger to the life of the employee or the lives of the dependents or immediate family of the employee. (See also Table G).

80. Civilian Employees: Periodic Step Increases

5 U.S.C. 5335

Perm. Law

Under regulations prescribed by the Office of Personnel Management, the benefit of successive step-increases shall be preserved for employees whose continuous service is interrupted in the public interest by service with the armed forces during a period of war or national emergency. (See also Tables A and E).

81. Missing, interned or captive persons: income tax deferment

5 U.S.C. 5561-5568

Perm. Law

An employee of the United States who is (1) missing, (2) missing in action, (3) interned in a foreign country, (4) captured, beleaguered, or besieged by a hostile force, or (5) detained in a foreign country against his will, is entitled, while in such status, to continuation of pay and allowances and allotments, travel and transportation for dependents and household and personal effects, deferment of Federal income tax, and the payment for or crediting of all annual leave which was accrued on or after January 1, 1965. (See also Table G).

82. Civilian employees: entry on military service

5 U.S.C. 8332(g)

Perm. Law

In time of war, or of national emergency declared by Congress or the President, a civilian officer or employee of the United States who leaves his position to enter the military service is not considered as separated from his civilian position because of such military service, unless he applies for and receives a lump-sum benefit. However, such an employee is not considered as retaining his civilian position after December 31, 1956, or the expiration of five years of such military service, whichever is later. (See also Tables A-C.)

83. Dairy products: special milk program for armed forces ration

7 U.S.C. 1446a

Temp. Law

Until December 31, 1981, the Commodity Credit Corporation shall make available to the Secretary of the Army dairy products acquired under price support programs as a part of the ration (1) of the Army, Navy, Air Force and Coast Guard; (2) in hospitals under the Department of Defense; and (3) of cadets and midshipmen at the U.S. Merchant Marine Academy. (See also Table F.)

84. Excludable Aliens: Those avoiding military service.

8 U.S.C. 1182

Perm. Law

Persons who have departed from or remained outside the U.S. to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency shall be ineligible to receive visas and shall be excluded admission to the U.S. (See also Tables A and B).

85. Citizens and Aliens: Travel control during war or national emergency

8 U.S.C. 1185

Perm. Law

When the U.S. is at war or during the existence of any national emergency proclaimed by the President, it shall, unless otherwise ordered by the President or the Congress, be unlawful:

- (1) for any alien to depart or enter or attempt to depart or enter the U.S. except under rules proclaimed by the Congress or President.
- (2) for any person to transport or attempt to transport an alien in violation of this section.
- (3) for any person to make a false statement on an application to depart or enter the U.S.
- (4) for any person to furnish another person a permit not issued for their use.
- (5) for any person to use or attempt to use a permit not issued for their use.
- (6) for any person to forge, counterfeit, mutilate or alter a permit, or cause to procure the same.
- (7) for any person to use or attempt to use a forged, counterfeited, mutilated or altered certificate. (See also Tables A and B).

86. Desertion: bar to naturalization

8 U.S.C. 1425

Perm. Law

A person who, in time of war, deserts an armed force, departs from the jurisdiction in which enrolled or goes beyond the limits of the United States, to avoid draft into the armed forces, is, upon conviction of such offenses by a court-martial or a court of proper jurisdiction, permanently ineligible to become a citizen of the United States. Such a deserter or evader may not hold any office of trust or profit under the United States or exercise any rights of citizenship. (See also Table A.)

87. Naturalization: service during Vietnam or other armed hostilities; lesser requirements

8 U.S.C. §§1440, 1440e,

Perm. law

Any alien or noncitizen in the U.S. who has served honorably on active duty in the military, air, or naval forces of the U.S. in the period from 28 February 1961 to a date designated by Executive Order for the termination of Vietnam hostilities and any period which the President by Executive Order designates as a period involving armed conflict with

a hostile foreign force and who, if separated, was separated honorably may be naturalized under specified conditions, without complying with all the usual requirements for naturalization. (Table F)

88. Compulsory service: loss of nationality for evasion or avoidance

8 U.S.C. 1481(a)(10)

Perm. Law

In time of war, or of national emergency declared by the President, a national of the United States loses his nationality by departing from, or remaining outside of, the jurisdiction of the United States to evade or avoid training and service in the armed forces. Failure to comply with any compulsory service law raises the presumption that the departure, or absence, from the United States was for the purpose of evading or avoiding training and service. (See also Tables A and B.)

89. Reserves: suspension of certain provisions of law relating to reserve commissioned officers

10 U.S.C. 123

Perm. Law

In time of war, or of national emergency declared by Congress, the President may suspend the operation of any provision of law listed in 10 U.S.C. 123 relating to reserve commissioned officers of any armed force. (See also Tables A and C.)

90. Department of Defense: transfer, reassignment, or consolidation of functions assigned to military departments

10 U.S.C. 125(b)

Perm. Law

If the President determines that it is necessary because of hostilities or imminent threat of hostilities, any function, power, or duty, including one assigned to the military services by 10 U.S.C. 3062(b), 5012, 5013, and 8062(c), may be transferred, reassigned, or consolidated and so remain until the termination of such hostilities or threat of hostilities. (See also Table G.)

91. Joint Chiefs of Staff: suspension of limitation on reappointment of Chairman

10 U.S.C. 142(a)

Perm. Law

In time of war declared by Congress, there is no limitation on the number of times the Chairman of the Joint Chiefs of Staff may be reappointed. (See also Table A.)

92. Joint Staff: limitation on tour of duty of members

10 U.S.C. 143(a), (b) Perm. Law

Except in time of war, (1) the tour of duty of a member, or of the Director, of the Joint Staff may not exceed three years; (2) a member may not be reassigned to the Joint Staff within three years after completing a previous tour unless the Secretary of Defense approves; and (3) the Director may not be reassigned to the Joint Staff. (See also Table G.)

93. Reserve components: purpose

10 U.S.C. 262 Perm. Law

The purpose of the reserve components is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or of national emergency and at such other time as the national security requires, to fill the needs of the armed forces whenever, during, and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components. (See also Tables A, D, and G.)

94. Army [Air] National Guard of United States: basic policy for order into Federal service

10 U.S.C. 263 Perm. Law
32 U.S.C. 102

Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with such units of other reserve components as are needed for a balanced force, shall be ordered to active duty and retained as long as so needed. (See also Table G.)

95. Ready Reserve: composition; authorized strength
 10 U.S.C. 268 Perm. Law
 The Ready Reserve consists of those units or Reserves, or both, who are liable for active duty under 10 U.S.C. 672 and 673 (i.e. in time of war, national emergency declared by Congress, or by the President after January 1, 1953, or when otherwise authorized by law.) The authorized strength of the Ready Reserve is 2,900,000. (See also Tables A-C.)
96. Insurrections: President's powers to put down insurrections within the U.S.
 10 U.S.C. 331, 332, 333, 334
 50 U.S.C. 205-8, 212, 223 Perm. Law
 These Code provisions detail the President's power to deal with insurrections within the United States. (See also Tables B, E, and G).
97. Arming of American vessels or aircraft
 10 U.S.C. 351 Perm. Law
During a war and at any other time when the President determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests, the President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft that is capable of being used as a means of transportation on, over, or under water, and is documented, registered, or licensed under the laws of the United States. Section 16 of the Act of March 4, 1909 (22 U.S.C. 463) does not apply to vessels armed under this section. (See also Tables A and G.)
98. Enlistments: extension during war
 10 U.S.C. 506 Perm. Law
 An enlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in effect at the beginning of or during, a war, unless sooner terminated by the President,

continues in effect until six months after the termination of that war. (See also Table A.)

99. Enlistments: reserve components: terms

10 U.S.C. 511(a) Perm. Law

Except as otherwise prescribed by law, enlistments as Reserves are for terms prescribed by the Secretary concerned. However, an enlistment that is in effect at the beginning of a war or of a national emergency declared by Congress, or entered into during such a war or emergency, and that would otherwise expire, continues in effect until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned. (See also Tables A and C.)

100. Enlistments; reserve components: terms: extended for transferees

10 U.S.C. 511(c) Perm. Law

In time of war or of national emergency declared by Congress, the term of service of an enlisted member transferred to a reserve component according to law, that would otherwise expire, continues until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned. (See also Tables A and C.)

101. Enlistments: temporary enlistments in an armed force

10 U.S.C. 519 Perm. Law

Except as provided in 10 U.S.C. 505 and except for enlistment as Reserves of an armed force, temporary enlistments in an armed force entered into in time of war or of emergency declared by Congress shall be for the duration of the war or emergency plus six months. (See also Tables A and E.)

102. Authorized strength of active duty officers

10 U.S.C. 526 Perm. Law

In time of war or of national emergency declared by Congress or the President, the President may suspend the authorized strength levels for active duty

officers above the grade of major/lieutenant commander. (See also Tables A-C).

103. Regular warrant officers: suspension of laws for promotion, or mandatory retirement or separation

10 U.S.C 565

Perm. Law

In time of war, or of emergency declared after May 29, 1954, by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of permanent regular warrant officers of any armed force. (See also Tables A-C.)

104. Reserve warrant officers: suspension of laws for promotion or mandatory retirement or separation

10 U.S.C. 599

Perm. Law

In time of war, or of emergency declared after May 29, 1954, by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of permanent reserve warrant officers of any armed force. (See also Tables A-C.)

- 104A Temporary commissions

10 U.S.C. 603

Perm. Law

In time of war or national emergency declared by Congress or the President, the President may temporarily appoint persons to any commissioned officer grade. (See also Tables A-C.)

- 104B Commissioned officers: suspension of laws for promotion, involuntary retirement and separation

10 U.S.C. 644

Perm. Law

In time of war or of national emergency, declared by Congress or the President, the President may suspend the laws relating to the promotion, involuntary retirement and separation of commissioned officers. (See also Tables A-C.)

105. Active duty: members of an armed force; service extension

10 U.S.C. 671a

Perm. Law

Unless terminated at an earlier date by the Secretary concerned, the period of active service of any member of an armed force is extended for the duration of any war in which the United States may be engaged and for six months thereafter. (See also Table A.)

106. Reserve components: active duty; members or units

10 U.S.C. 672(a)

Perm. Law

In time of war or national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned, may order any member or unit of a reserve component under the jurisdiction of that Secretary to active duty (other than for training) for the duration of the war or emergency and for six months thereafter. However, a member in an inactive status list or in a retired status may not be ordered to active duty unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a military department, determines that there are not enough qualified Reserves in an active status, or in the inactive National Guard, who are readily available. (See also Tables A and C.)

107. Ready reserve: active duty; limitation on involuntary recall

10 U.S.C. 673

Perm. Law

In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may order any member or unit in the Ready Reserve to active duty (other than for training) for not more than 24 consecutive months. (See also Table B).

108. Selected Reserve: Active duty other than during war or emergency.

10 U.S.C. 673b

Perm Law

When the President determines it necessary to augment the active forces for any operational mission, he may order any unit or individual of the selected reserve to active duty for not more than 90 days. Not more

than 100,000 may be on active duty at any one time. Within 24 hours, the President shall report to the Congress explaining the necessity for this action. Either the President or the Congress by concurrent resolution may terminate the active duty order. This authority is not to be used for disasters and similar emergencies. (See Table G).

109. Standby Reserve: active duty

10 U.S.C. 674

Perm. Law

(a) Units and members in the Standby Reserve may be ordered to active duty (other than for training) only as provided in 10 U.S.C. 672 (i.e., in time of war, of national emergency declared by Congress, or when otherwise authorized by law). (See also Tables A and C.)

(b) In time of national emergency declared by Congress -- no unit or individual in the Standby Reserve, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough of the required kinds of units in the Ready Reserve that are readily available or qualified members.

110. Retired Reserve: active duty

10 U.S.C. 675

Perm. Law

A qualified member of the Retired Reserve may be ordered to active duty, without his consent only in time of war, in time of national emergency declared by Congress, or when otherwise authorized by law. (See also Tables A, C, and G.)

111. Reserves: active duty agreements; five-year term

10 U.S.C. 679(a)

Perm. Law

To provide definite terms of active duty (other than for training) for Reserves with their consent, the Secretary concerned may make a standard written agreement with any member of a reserve component under his jurisdiction requiring the member to serve for a period of active duty (other than for training) of not more than five years. When such an agreement expires, a new one may be made. This provision does

not apply in time of war declared by Congress. (See also Table G.)

112. Reserves: active duty agreement; extension

10 U.S.C. 679(d) Perm. Law

If an agreement made under 10 U.S.C. 679(a) expires during a war, or during a national emergency declared by Congress or the President after January 1, 1953, the Reserve concerned may be kept on active duty, without his consent, as otherwise prescribed by law. (See also Tables A-C.)

113. Reserves: release from active duty

10 U.S.C. 681(b) Perm. Law

In time of war, or of national emergency declared by Congress or the President after January 1, 1953, a member of a reserve component may be released from active duty (other than for training) only if --

(1) a board of officers convened at his request by an authority designated by the Secretary concerned recommends the release and the recommendation is approved;

(2) the member does not request that the board be convened; or

(3) his release is otherwise authorized by law.

This provision does not apply to an armed force during a period of demobilization or reduction in strength of that armed force. (See also tables A-C, and G.)

114. Reserves: pay and allowances; suspension of disability compensation

10 U.S.C. 684(b) Perm. Law

In the time of war, or of national emergency, the disability pay or other compensation of a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard ordered to extended active duty for more than 30 days is suspended for the period of that duty unless his disability compensation exceeds his active duty compensation. (See also Tables A and D.)

115. Authorized strength: retired general and flag officers on active duty; temporary increase

10 U.S.C. 688(c)

Perm. Law

In time of war or of national emergency declared by Congress or the President, the President may temporarily increase the authorized strength of retired general and flag officers serving on active duty. (See also Tables A-C.)

116. Accrual of leave by member of armed forces in missing status.

10 U.S.C. 701(g)

Perm. Law

A member who is in missing status (as defined in 37 U.S.C. 551(2)) accumulates leave without regard to 60 and 90 day limitations. (See also Table G.)

[See item No. 81 with respect to civilian employees, item No. 261 with respect to certain taxes, and second sentence of item No. 295 with respect to payment of \$30 monthly allowance to certain members in a missing status, item No. 296 with respect to other benefits, and item No. 365 with respect to a power of attorney.]

117. Foreign governments: detail of members to assist

10 U.S.C. 712

Perm. Law

Upon the application of the country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters
--

(1) any republic in North America, Central America, or South America;

(2) the Republic of Cuba, Haiti, or Santo Domingo; and

(3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.

Subject to the prior approval of the Secretary of the military department concerned, a member detailed

under this section may accept any office from the country to which he is detailed. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States. (See also Tables A, D, and G.)

[See also 22 U.S.C. 2151 et seq. (International Development Program), which authorizes details and aid to certain nations.]

118. Uniform Code of Military Justice

10 U.S.C. 802(1), 835,	Perm. Law
843(a), (e), (f), 871(b),	
882, 885, 886, 887	
890, 901, 905, 906, 913,	
915, 1161(a)(3), 6408	
(Arts. 2(1)), 35, 43(a),	
(e), and (f), 71(b), 82,	
85, 86, 87, 90, 101, 105,	
106, 113, 115)	

Relate in part to: applicability of the Uniform Code of Military Justice to persons serving with or accompanying an armed force in the field in time of war (Art. 2); minimum time after service of charges before trial in time of peace (Art. 35); statute of limitations in time of war for certain offenses (Art. 43); commutation of sentence of dismissal in time of war or national emergency (Art. 71); various punishments in time of war for desertion, assaulting or willfully disobeying superior officer, improper disclosure or use of countersign, misconduct as a prisoner, spying, misbehavior as a sentinel (Arts. 85, 90, 101, 105, 106, 113); and dismissal of officers by order of the President in time of war (10 U.S.C. 1161(a)(3) and 6408). (Whenever a war or national emergency exists for the purposes of the listed provisions must be determined by the particular circumstances of each case and the pertinent decisions of the Court of Military Appeals.) (See also Tables A, D, and G.)

[E.O. No. 11476 of June 17, 1969 (prescribing MCM, 1969 (Rev.)), provides (in para. 127c(5)) that immediately upon a declaration of war, the prescribed limitations on punishment for violations of sections 882, 885, 886(3), 887, 890, 891(1) and (2), 913, and 915 (relating to: solicitation (Art. 82); desertion (Art. 85); absence without leave (Art. 86(3)); missing

movement of ship, aircraft, or unit (Art. 87); assaulting or willfully disobeying superior officer (Art. 90); striking, assaulting or disobeying a warrant officer, noncommissioned officer, or petty officer (Art. 91(1) and (2)); misbehavior as a sentinel (Art. 113); and malingering (Art. 115) of title 10, United States Code, will be suspended automatically and will not apply until the formal termination of such war or until restored by Executive Order before formal termination. (See also Table A.)]

119. Deposits of savings: missing members

10 U.S.C. 1035(b) Perm. Law

The \$10,000 maximum on foreign duty savings deposited with the United States and drawing not more than 10% annual interest shall not apply to deposits made on or after September 1, 1966, in the case of those members in a missing status, as defined in 37 U.S.C. 551(2), during the Vietnam conflict. The Vietnam conflict begins on February 28, 1961 and ends on the date designated by the President by Executive Order as the date of the termination of combatant activities in Vietnam. (See also Table F)

120. Gold star lapel button

10 U.S.C. 1126 Perm. Law

A gold star lapel button, which design approved by the Secretary of Defense, shall identify the widow, parent, and next of kin of a member of the armed forces who died --

(1) during World War I, World War II, or subsequent period of armed hostilities in which the United States was engaged after July 1, 1958; or

(2) after June 30, 1958 --

(A) while engaged in an action against an enemy of the United States;

(B) while engaged in military operations involving conflict with an opposing foreign force;
or

(C) while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party.

(See also Table G.)

121. Regulars and members on active duty for more than 30 days: retirement for physical disability

10 U.S.C. 1201

Perm. Law

Upon determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under 10 U.S.C. 1401, if the Secretary also determines that the disability, in addition to other conditions, was incurred in line of duty in time of war or national emergency. (See also Tables A and D.)

122. Regulars and members on active duty for more than 30 days: separation for physical disability

10 U.S.C. 1203

Perm. Law

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under 10 U.S.C. 1212, if the Secretary also determines that the disability, in addition to other conditions, is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the disability was the proximate result of performing active duty, incurred in line of duty in time of war or national emergency, or

incurred in line of duty during the period September 15, 1978 - September 30, 1982; or the disability is at least 30 percent and was neither the proximate result of performing active duty, incurred in line of duty in time of war or national emergency, nor incurred in line of duty during the period September 15, 1978 - September 30, 1982. However, if the member is eligible for transfer to the inactive status list under 10 U.S.C. 1209, and so elects, he shall be transferred to that list instead of being separated. (See also Tables A and D.)

122A. Military aircraft: cooperative military airlift agreements

10 U.S.C. 2213 Perm. Law

In the absence of peace, all military airlift capacity may be used to transport personnel and cargo of any allied country pursuant to a cooperative military airlift agreement. (See also Table A.)

123. Facilities for reserve components: purpose; use by armed forces

10 U.S.C. 2231, Perm. Law
2235(b)(2),
2236(d)(2)

In time of war or national emergency, facilities for reserve components may be used by other units of the armed forces. The Secretary of Defense may not permit any use or disposition to be made of a facility that would interfere with its use, in time of war or national emergency, by other units of the armed forces or by the United States for any other purposes. Except as otherwise agreed when a contribution is made, and except as the agreement is later changed, a State may not permit any use or disposition of a facility contributed to it that would interfere with its use, in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose. (See also Tables A and D.)

124. Procurement: exemption of certain purchases and contracts from formal advertising requirements

10 U.S.C. 2304(a)(1), Perm. Law
(2), (16)

Purchases of, and contracts for, property or services covered by chapter 137 of title 10, United States Code, shall be made by formal advertising where feasible and practicable under the circumstances. If the use of such method is not feasible and practicable, the head of an agency may negotiate such a purchase or contract, if --

(1) it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President;

(2) the public exigency will not permit the delay incident to advertising; or

(3) he determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subverted. (See also Tables B, C, D, and G.)

125. American Red Cross: Equipment

10 U.S.C. 2542

Perm. Law

The Secretary of a military department may lend equipment under the jurisdiction of that department that is on hand, and can be temporarily spared, to any organization formed by The American National Red Cross that needs it for instruction and practice for the purposes of aiding the Services in time of war. (See also Table G.)

126. Acceptance of services: American National Red Cross: cooperation and assistance

10 U.S.C. 2602(a)

Perm. Law

Whenever the President finds it necessary, he may accept the cooperation and assistance of the American National Red Cross, and employ it under the armed forces under regulations to be prescribed by the Secretary of Defense. (See also Table G.)

127. Acceptance of services: United Seaman's Service: cooperation and assistance

10 U.S.C. 2604(a) Perm. Law

Whenever the President finds it necessary in the interest of United States commitments abroad to provide facilities and services for United States merchant seamen in foreign areas, he may authorize the Secretary of Defense, under such regulations as the Secretary may prescribe, to cooperate with and assist the United Seamen's Service in establishing and providing those facilities and services. (See also Table G.)

128. Transportation: private-plant personnel engaged in defense production

10 U.S.C. 2632(a) Perm. Law

Whenever the Secretary concerned determines that it is necessary for the effective conduct of the affairs of that department, he may, at reasonable rates of fare fixed under regulations to be prescribed by the Secretary of Defense, provide assured and adequate transportation by motor vehicle or water carrier to and from their places of employment for persons attached to, or employed in, that department, and during a war, or during a national emergency declared by Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for that department. (See also Tables A-C, and G.)

129. Real property: acquisition by condemnation for defense purposes

10 U.S.C. 2663(a),(b) Perm. Law

The Secretary of a military department may have proceedings brought in the name of the United States, in a court of proper jurisdiction, to acquire by condemnation any interest in land, including temporary use, needed for --

(1) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(2) the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives or other munitions of war; or

(3) the development and transmission of power for the operation of plants under clause (2).

In time of war or when war is imminent, the United States may, immediately upon the filing of a petition of condemnation, take and use the property to the extent of the interest sought to be argued. (See also Tables A and G.)

130. Real property: acquisition by condemnation of property for lumber production

10 U.S.C. 2664(a), (b), (d), Perm. Law

The Secretary of a military department, the Secretary of Transportation, or any one or more of them, may have proceedings brought in the name of the United States to acquire by condemnation any interest, including temporary use, in standing or fallen timber, sawmills; camps; machinery; logging roads; rights-of-way; supplies; and works, property, or appliances suitable for the production of lumber and timber products; and needed for --

(1) the production of aircraft, vessels, dry docks, or equipment for them;

(2) the procurement of supplies for aircraft, vessels, and dry docks; or

(3) housing for persons employed by the United States in connection with the functions of the Army, Navy, Air Force, or Marine Corps, or the functions transferred to the Secretary of Transportation under section 3 of the Maritime Act of 1981.

In time of war or when war is imminent, the United States may, immediately upon the filing of a petition of condemnation, take and use the property to the extent of the interest sought to be acquired. (See also Tables A and G.)

131. Real property: lease: non-excess property; revocation

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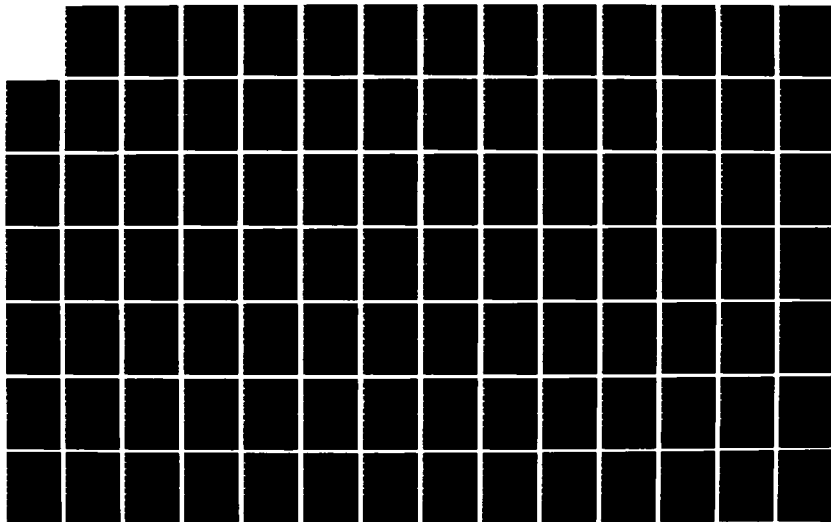
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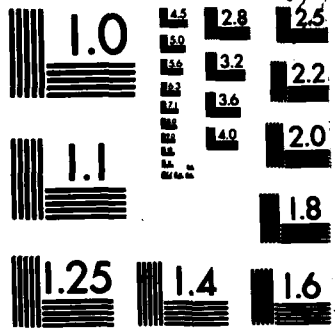
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MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

10 U.S.C. 2667

Perm. Law

Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee, and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is --

- (1) under the control of that department;
- (2) not for the time needed for public use; and
- (3) not excess property, as defined by 40 U.S.C. 472.

In time of national emergency declared by the President, such a lease must be revocable by the Secretary concerned. This provision does not apply to oil, mineral, or phosphate lands. (See also Tables B and G.)

132.

Real property: acquisition authorized when considerations of urgency do not allow delay necessary for enactment of Authorization Act.

10 U.S.C. 2672a

Perm. Law

When the Secretary of a military department, or his designee, determines that the acquisition of an interest in land is needed in the interest of national defense, is required to maintain the operational integrity of a military installation, and considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act, the interest in land required may be secured when it does not cost more than \$100,000. The Secretary contemplating such action must provide written notice thereof to the Armed Services Committees of the Senate and the House of Representatives at least 30 days in advance of any action being taken. (See also Table G.)

133.

Real Property: Closure or realignment of military installations

10 U.S.C. 2687

Perm. Law

President may suspend the normal procedures for closing a military installation if he certifies to Congress that the closure is necessary for reasons of national security or military emergency. (See also Table B).

134. Military claims: property loss: Personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force

10 U.S.C. 2733

Perm. Law

The Secretary concerned, or the Judge Advocate General of an armed force under his command, or the chief legal officer of the Coast Guard, as appropriate, if designated by him, may settle and pay a claim against the United States for not more than \$25,000 (or pay \$25,000 of a greater claim and report excess to Congress) for damage to, or loss of, real or personal property or for personal injury or death, either caused by a civilian officer or employee of that department, or a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department, or the Coast Guard if, among other conditions, it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict, or a war of armed conflict intervenes within two years after it accrues, and if good cause is shown; the claim may be presented within two years after the war of armed conflict is terminated. The dates of the beginning and end of an armed conflict are the dates prescribed by current resolution of Congress or by the President. (See also Tables A and G.)

- 134A. Military Construction: authority in the Secretary of Defense

10 U.S.C. §2808

Perm. Law

In time of war or national emergency, the Secretary of Defense may undertake military construction projects (or so authorize the Secretaries concerned) not otherwise authorized by law that are necessary to support the use of the armed forces. (See also Tables A and B.)

135. Army Staff: Air Staff: limitation on number of officers assigned or detailed for permanent duty in the executive part of the Department of the Army or Air Force.

10 U.S.C. 3031(c), 8031(c) Perm. Law

Not more than 3,000 officers of the Army may be assigned or detailed to permanent duty in the executive part of the Department of the Army. Of this number not more than 1,000 may be detailed or assigned to duty on or with the Army General Staff.

However, these limitations do not apply in time of war, or of national emergency declared by Congress, or whenever the President finds that it is in the national interest to increase the number of officers in the executive part of the department or on or with the Army General Staff.

Not more than 2,800 officers of the Air Force may be assigned or detailed to permanent duty in the executive part of the Department of the Air Force. However, this limitation does not apply in time of war, or of national emergency declared by Congress, or whenever the President finds that it is in the national interest to increase the number of officers in the executive part of the department. (See also Table A, C, and G.)

136. Army Staff: Air Staff: limitation on tour of duty of commissioned officers in the executive part of the Department of Army or Air Force.

10 U.S.C. 3031(d) Perm. Law
8031(d)

No commissioned officer who is assigned or detailed to duty in the executive part of the Department of the Army or Air Force may serve for a tour of duty of more than four years. However, the Secretary concerned may extend such a tour of duty if he makes a special finding that the extension is necessary in the public interest. No officer may be assigned or detailed to duty in the executive part of the Department of the Army or Air Force within two years after relief from that duty, except upon a special finding by the Secretary concerned that the assignment or detail is necessary in the public interest. This provision does not apply in time of

war, or of national emergency declared by Congress.
(See also Table G.)

137. Appointments: Army Chief of Staff, Chief of Naval Operations; Air Force Chief of Staff; Commandant, Marine Corps

10 U.S.C. 3034(a), 5081(a), Perm. Law
5201(a), 8034(a)

In time of war or national emergency declared by Congress after December 31, 1968, the Army Chief of Staff, Chief of Naval Operations, Air Force Chief of Staff, and Commandant of the Marine Corps, who are appointed by the President with the advice and consent of the Senate for four years from officers on the active list of their respective armed forces, may be reappointed for not more than four years. (See also Tables A and C.)

138. Army: basic branches: discontinuance or consolidation

10 U.S.C. 3063(b) Perm. Law

The Secretary of the Army may discontinue or consolidate basic branches of the Army for the duration of any national emergency declared by Congress. (See also Tables A and C.)

139. [Vacant]

140. Authorized strength: Army general officers on active duty: temporary increase

10 U.S.C. 3202(c) Perm. Law

In time of war or of national emergency declared by Congress or the President, the President may temporarily increase the authorized strength of Army general officers. (See also Tables A-C.)

141. Enlistments: Army or Air Force; persons not qualified

10 U.S.C. 3253, 8253 Perm. Law

In time of peace, no person may be accepted for original enlistment in the Army or Air Force unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent

residence under 8 U.S.C., ch. 12. (See also Table G.)

142. [Vacant]
143. Appointments: reserve officers of Army or Air Force
10 U.S.C. 3395, 8395 Perm. Law

In addition to appointments in time of war under chapter 339 or 839 of title 10, United States Code, appointments of reserve officers of the Army or Air Force may be made in time of war. (See also Table A.)

144. [Vacant]
145. [Vacant]
146. Active duty: Army National Guard or Air National Guard in Federal service; call
10 U.S.C. 3500, 8500 Perm. Law

Whenever the United States is invaded or is in danger of invasion by a foreign nation, there is a rebellion or danger of rebellion against the authority of the Government of the United States, or the President is unable with the regular forces to execute the laws of the United States, the President may call into active Federal service members and units of the Army National Guard or Air National Guard or any state, any territory, the District of Columbia, Puerto Rico, or the Canal Zone, in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States, the territories, Puerto Rico, or the Canal Zone, and, in the District of Columbia, through the Commanding General of the National Guard of the District of Columbia. (See also Table G.)

147. Officers of Army or Air Force; flying officer rating; qualifications
10 U.S.C. 3691(5), Perm. Law
8691(5)

In time of war, officers of the Army or Air Force who have aeronautical ratings as observers may be rated as flying officers. (See also Table A.)

148. Decorations and awards: armed forces

10 U.S.C., chs. 357, 367 Perm. Law
857; 14 U.S.C. 491

A member of the armed forces may be eligible for certain decorations and awards for valorous service

--

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

The decorations and awards include the medal of honor (10 U.S.C. 3741, 6241, 8741; 14 U.S.C. 491); distinguished service cross (10 U.S.C. 3742); Navy cross (10 U.S.C. 6242); Air Force cross (10 U.S.C. 8742); silver star (10 U.S.C. 3746, 6244, 8746); bronze star (E.O. 11046); and purple heart (E.O. No. 11016). [Public Law 93-469 (10 U.S.C. prec. 3741 note) extended for two years the awarding of military decorations for service performed in Southeast Asia between July 1, 1958, and March 28, 1973.] (See also Tables A and G.)

149. Civilian employees: employment of contract surgeons

10 U.S.C. 4022(a), Perm. Law
9022(a)

In an emergency, the Surgeon General of the Army with the approval of the Secretary of the Army, or the Secretary of the Air Force, may employ as many contract surgeons as may be necessary. (See also Table E.)

150. Civilian employees: production of supplies and munitions: hours and pay of laborers and mechanics

10 U.S.C. 4025, 9025 Perm. Law

During a national emergency declared by the President, the regular working hours of laborers and

mechanics of the Department of the Army or the Department of the Air Force producing military supplies or munitions are eight hours a day or 40 hours a week. However, under regulations prescribed by the Secretary concerned, these hours may be exceeded. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40. (See also Table B.)

151. Industrial mobilization: mandatory orders

10 U.S.C. 4501(a), (b) Perm. Law
9501(a), (b)

In time of war or when war is imminent, the President, through the head of any department, may order from any person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry. A person or industry with whom an order is placed, or the responsible head thereof, shall comply with that order and give precedence over all orders not placed under this section. (See also Tables A and G.)

152. Industrial mobilization: seizure of plants; manufacture in seized plants

10 U.S.C. 4501(c),(d), Perm. Law
9501(c),(d)

In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the Secretary of the Army or the Secretary of the Air Force is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the Army or Air Force, if the person or industry owning or operating the plant, or the responsible head thereof, refuses--

(1) to give precedence to the order as prescribed;

(2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies, as ordered by the Secretary concerned, or

(3) to furnish them at a reasonable price as determined by the Secretary concerned. (See also Tables A and G.)

The President, through the Ordnance Corps for the Army, or through the Secretary of the Air Force, may manufacture products that are needed, in time of war or when war is imminent, in any plant that is seized. (See also Tables A and G.)

153. Public utilities: use of proceeds from overseas operation

10 U.S.C. 4591, 9591 Perm. Law

During actual or threatened hostilities, proceeds from operating a public utility in connection with operations of the Corps of Engineers of the Army, or of the Air Force, in the field overseas are available for that utility until the close of the fiscal year following that in which they are received. (See also Table G.)

154. Transportation: control of transportation systems

10 U.S.C. 4742, 9742 Perm. Law

In time of war, the President, through the Secretary of the Army or the Secretary of the Air Force, may take possession and assume control of all or part of any system of transportation to transport troops, war material, and equipment, or for other purposes related to the emergency. So far as necessary, he may use the system to the exclusion of other traffic. (See also Table A.)

155. Real property: emergency construction: temporary forts, air bases, or fortifications

10 U.S.C. 4776, 9776 Perm. Law

If in an emergency the President considers it urgent, a temporary fort, air base, or fortification may be built on private land if the owner consents in writing. (See also Table E.)

156. Real property: lease of buildings in District of Columbia for military purposes

10 U.S.C. 4780(a), 9780(a) Perm. Law

In time of war or when war is imminent, the Secretary of the Army or the Secretary of the Air Force may acquire by lease any building, or part of a building, in the District of Columbia that may be needed for military purposes. (See also Tables A and G.)

157. Appointments: Army Chief of Staff; Chief of Naval Operations; Air Force Chief of Staff; Commandant, Marine Corps
- 10 U.S.C. 5081(a) Perm. Law
- (See item No. 137.)
158. Bureau chiefs: exemption from sea duty
- 10 U.S.C. 5133(c) Perm. law
- Except in time of war, any officer of a staff corps who has served as chief of a bureau for a full term is exempt from sea duty. (See also Table G.)
159. Appointments: Army Chief of Staff; Chief of Naval Operations; Air Force Chief of Staff; Commandant Marine Corps
- 10 U.S.C. 5201(a) Perm. Law
- (See item No. 137).
160. Commissioned Officers: Grade Ceilings
- 10 U.S.C. 5231 Perm. Law
- The President may designate officers on the active list of the Navy above the grade of captain and, in time of war or national emergency, above the grade of commander for --
- (1) command of fleets or subdivision of fleets;
 - (2) command of naval units afloat to perform special or unusual missions, or
 - (3) performance of duty of great importance and responsibility. (See also Tables A and D.)
161. Marine Corps positions: higher command and other high positions; generals and lieutenant generals
- 10 U.S.C. 5232(a) Perm. Law

The President may designate officers on the active list of the Marine Corps above the grade of colonel and, in time of war or national emergency, above the grade of lieutenant colonel for --

(1) appropriate higher commands; or

(2) performance of duty of great importance and responsibility. (See also Tables A and D.)

162. Navy admirals and vice admirals: Marine Corps generals and lieutenant generals: suspension of grade limitations

10 U.S.C. 5234

Perm. Law

During a war or national emergency, the President may suspend any provision of 10 U.S.C. 5231 or 5232 relating to distribution in grade of admirals and vice admirals of the Navy, and generals and lieutenant generals of the Marine Corps. Such a suspension may not continue beyond September 30 of the fiscal year following that in which the war or national emergency ends. (See also Tables A and D.) [See E.O. 11270, February 22, 1966, suspending 10 U.S.C. 5232(b)]

163. [Vacant]

164. [Vacant]

165. [Vacant]

166. [Vacant]

167. [Vacant]

168. [Vacant]

169. [Vacant]

170. Regular Navy: retired flag officers on active duty: authorized number

10 U.S.C. 5450

Perm. Law

Except in time of war or national emergency, not more than 10 retired officers of the Regular Navy in the grade of rear admiral and above may be on active duty. This provision does not apply to fleet admirals or to retired officers ordered to temporary active duty to serve on boards convened under chapter 543 of title 10, United States Code. (See also Table G.)

171. Authorized strength: retired Navy flag officers on active duty; temporary increase

10 U.S.C. 5450-51 Perm. Law

In time of war or of national emergency declared by Congress or the President, the President may temporarily increase the authorized strength of Navy flag officers. (See also tables A-C.)

172. Enlistments: expiration: rights of members of naval service

10 U.S.C. 5540(b)(2) Perm. law

Except in time of war, an enlisted member of the naval service whose term of enlistment has expired and who is retained aboard a vessel in foreign waters under a determination of the senior officer present afloat that it is essential to the public interest that he be retained aboard his vessel until the vessel returns to the United States, is entitled to an increase in basic pay of 25 percent. (See also Table G.)

173. [Vacant]

174. [Vacant]

175. [Vacant]

176. Running mates: suspension of provisions

10 U.S.C. 5662(b) Perm. Law

During a war or national emergency, the President may suspend any provision of 10 U.S.C. 5651-5661 relating to running mates of officers in the Navy and Naval Reserve. Such a suspension may not continue beyond June 30 of the fiscal year following that in which

the war or national emergency ends. (See also Tables A and D.)

177. Selection boards: Navy or Marine Corps: suspension of provisions

10 U.S.C. 5711(b) Perm. Law

During a war or national emergency, the President may suspend any provision of 10 U.S.C. 5701-5710 relating to selection boards for officers of the Navy and Marine Corps. Such a suspension may not continue beyond June 30 of the fiscal year following that in which the war or national emergency ends. (See also Tables A and D.)

178. Promotions: Navy or Marine Corps: suspension of provisions

10 U.S.C. 5785(b) Perm. Law

During a war or national emergency, the President may suspend any provision of 10 U.S.C. 5751-5784 relating to promotion of officers of the Navy and Marine Corps, other than women officers of the Navy and Marine Corps under 10 U.S.C. 5590. Such a suspension may not continue beyond June 30 of the fiscal year following that in which the war or national emergency ends. (See also Tables A and D.)

179. Temporary promotions: warrant and commissioned officers of Navy or Marine Corps

10 U.S.C. 5787 Perm. Law

Temporary promotions of Navy and Marine Corps warrant and commissioned officers may be made under 10 U.S.C. 5787 only in time of war, or of national emergency declared by the President. Temporary appointments under this section are effective for such periods as the President determines, but not later than six months after the end of the war or national emergency, or the date the appointee is released from active duty, whichever is earlier. (See also Tables A and B.)

180. [Vacant]

181. Disability benefits: members of Naval Reserve or Marine Corps Reserve; hospitalization, medical treatment, transportation, and subsistence

10 U.S.C. 6148(d)

Perm. Law

In time of peace, a member of the Naval Reserve or the Marine Corps Reserve who becomes ill or contracts disease in line of duty while he is on active duty, or performing inactive duty training, is entitled to hospitalization and treatment at Government expense, and necessary transportation and subsistence incident to treatment and return home upon discharge from treatment. (See also Table G.)

182. Decorations and awards: armed forces

10 U.S.C., ch. 567

Perm. Law

(See item No. 148.)

183. [Vacant]

184. [Vacant]

185. Uniform Code of Military Justice

10 U.S.C. 6408

Perm. Law

(See item No. 118.)

186. [Vacant]

187. Active duty: retired enlisted members of Regular Navy or Regular Marine Corps: authority to recall

10 U.S.C. 6482

Perm. Law

In time of war or national emergency, the Secretary of the Navy may order to active duty any retired enlisted member of the Regular Navy or the Regular Marine Corps. (See also Tables A and D.)

188. Active duty: members of Fleet Reserve or Fleet Marine Corps Reserve: authority to recall in time of war or national emergency

10 U.S.C. 6485(a)

Perm. Law

A member of the Fleet Reserve or the Fleet Marine Corps Reserve may be ordered by competent authority to active duty without his consent --

(1) in time of war, or of national emergency declared by Congress, for the duration of the war or national emergency and for six months thereafter;

(2) in time of national emergency declared by the President; or

(3) when otherwise authorized by law. (See also Tables A-C.)

189. Active duty: members of Fleet Reserve or Fleet Marine Corps Reserve: authority to recall in time of peace

10 U.S.C. 6485(b) Perm. Law

In time of peace, any member of the Fleet Reserve or the Fleet Marine Corps Reserve may be required to perform not more than two months' active duty for training in each four-year period. (See also Table G.)

190. Active duty: members of the Fleet Reserve and Fleet Marine Corps Reserve; release from active duty

10 U.S.C. 6486(b) Perm. Law

In time of war, or of national emergency declared by Congress or the President after January 1, 1953, a member of the Fleet Reserve or the Fleet Marine Corps Reserve may be released from active duty other than from active duty for training, without his consent, only if --

(1) a board convened at his request recommends his release and the recommendation is approved,

(2) the member does not request that a board be convened, or

(3) his release is otherwise authorized by law.

This provision does not apply during a period of demobilization or reduction in strength of the Navy or the Marine Corps. (See also Tables A-C, and G.)

191. [Vacant]

192. Naval service: aviation cadets; procurement

10 U.S.C. 6911(b) Perm. Law

The grade of aviation cadet is a special enlisted grade in the naval service. Except in time of war, or of emergency declared by Congress, at least 20 percent of the aviation cadets procured each fiscal year shall be procured from qualified enlisted members of the Regular Navy and the Regular Marine Corps who, with their consent, may be designated as aviation cadets. (See also Tables A and C.)

193. Naval Reserve and Marine Corps Reserve: aviation pilots: obligated tour of active duty; extension

10 U.S.C. 6915(g) Perm. Law

In time of peace, an aviation pilot who is obligated under 10 U.S.C. 6915(b) to serve on active duty for two years may serve, with his consent, for an additional period of not more than two years. (See also Table G.)

194. Transportation on naval vessels during wartime

10 U.S.C. 7224 Perm. Law

In time of war, or of national emergency declared by the President, such persons as the Secretary of the Navy authorizes by regulations may be transported and subsisted on naval vessels at Government expense. (See also Tables A and B.)

195. Naval vessels: contracts for construction, alteration, furnishing, or equipping

10 U.S.C. 7299 Perm. Law

Each contract for the construction, alteration, furnishing, or equipping of a naval vessel is subject to 41 U.S.C. 35-45, unless the President determines that this requirement is not in the interest of national defense. (See also Table G.)

- 195A. Naval vessels: restriction on construction of naval vessels in foreign shipyards

10 U.S.C. 7309 Perm. Law

No naval vessel and no major component of the hull or superstructure of a naval vessel may be constructed in a foreign shipyard unless the President determines

it necessary in the national interest. (See also Table G.)

196. Admiralty claims: stay of suit
 10 U.S.C. 7722 Perm. Law
In time of war, whenever the Secretary of the Navy certifies to a court, or to a judge of a court, in which a suit described in 10 U.S.C. 7721 is pending (for damages caused by a vessel in the naval service, or for compensation for towage or salvage services, including contact salvage, for a vessel in the naval service), that the prosecution of the suit would tend to endanger the security of naval operations, or interfere with those operations, all further proceedings in the suit shall be stayed. (See also Table A.)
197. Army Staff: Air Staff: limitation on number of officers assigned or detailed for permanent duty in the executives part of the Department of the Army or Air Force.
 10 U.S.C. 8031(c) Perm. Law
 (See item No. 119.)
198. Army Staff: Air Staff: limitation on tour of duty of commissioned officers in the executive part of the Department of the Army or Air Force
 10 U.S.C. 8031(d) Perm. Law
 (See item No. 136.)
199. Appointments: Army Chief of Staff; Chief of Naval Operations; Air Force Chief of Staff; Commandant, Marine Corps
 10 U.S.C. 8034(a) Perm. Law
 (See item No. 137.)
200. [unclear]
201. [unclear]
202. Authorized strength: Air Force general officers on active duty; temporary increase

10 U.S.C. 8202(c)

Perm. Law

In time of war or of national emergency declared by Congress or the President, the President may temporarily increase the authorized strength of Air Force general officers. (See also Tables A-C.)

203. Enlistments: Army or Air Force; persons not qualified

10 U.S.C. 8253

Perm. Law

(See item No. 141.)

204. Regular Air Force: aviation cadets: procurement; grade; enlistment

10 U.S.C. 8257(d)

Perm. Law

The grade of aviation cadet is a special enlisted grade in the Regular Air Force. Except in time of war, or of emergency declared by Congress, at least 20 percent of the aviation cadets designated in each fiscal year shall be selected from members of the Regular Army or the Regular Air Force who are eligible and qualified. No person may be enlisted or designated as an aviation cadet without his consent. (See also Table A and C.)

205. [Vacant]

206. Appointments: commissioned officers of Air Force Reserve; aviation cadets with wartime service as commissioned or flight officers in Army or Air Force

10 U.S.C. 8356(b)

Perm. Law

A person who completes the course of training as an aviation cadet or aviation student, and who has served in the Army or the Air Force in time of war as a commissioned or flight officer, may be originally appointed in any commissioned grade as a Reserve for service in the Air Force Reserve. (Currently effective with respect to wartime service.) (See also Table G.)

207. Appointments: reserve officers of Army or Air Force

10 U.S.C. 8395

Perm. Law

- (See item No. 143.)
208. [Vacant]
209. [Vacant]
210. Active duty: Army National Guard or Air National Guard in Federal service; call
10 U.S.C. 8500 Perm. Law
(See item No. 146.)
211. Officers of Army or Air Force; flying officer rating; qualifications
10 U.S.C. 8691(5) Perm. Law
(See item No. 147.)
212. Decorations and awards: armed forces
10 U.S.C., ch. 857 Perm. Law
(See item NO. 148.)
213. Civilian employees: employment of contract surgeons
10 U.S.C. 9022(a)
(See item No. 149.)
214. Civilian employees: production of supplies and munitions: hours and pay of laborers and mechanics
10 U.S.C. 9025 Perm. Law
(See item No. 150.)
215. Civil Air Patrol: travel expenses and allowances for members
10 U.S.C. 9441(b)(7) Perm. Law

In time of war, or of national emergency declared by Congress or the President after May 27, 1954, the Secretary of the Air Force may, under regulations prescribed by him with the approval of the Secretary of Defense, authorize the payment of travel expenses and allowances, in accordance with 5 U.S.C. 5701 et.

seq. (The Travel Expense Act of 1949), to members of the Civil Air Patrol while carrying out any mission specifically assigned by the Air Force. (See also Tables A-C.)

216. Industrial mobilization: mandatory orders
 10 U.S.C. 9501(a), (b) Perm. Law
 (See item No. 151.)
217. Industrial mobilization: seizure of plants;
 manufacture in seized plants
 10 U.S.C. 9501(c), (d) Perm. Law
 (See item No. 152.)
218. Public utilities: use of proceeds from overseas
 operations
 10 U.S.C. 9591 Perm. Law
 (See item No. 153.)
219. Transportation: control of transportation systems
 10 U.S.C. 9742 Perm. Law
 (See item No. 154.)
220. Real property: emergency construction: temporary
 forts, air bases, or fortifications
 10 U.S.C. 9776 Perm. Law
 (See item No. 155.)
221. Real property: lease of buildings in District of
 Columbia for military purposes
 10 U.S.C. 9780(a) Perm. Law
 (See item No. 156.)
222. Mortgage insurance: servicemen's
 12 U.S.C. 1715h Temp. Law

Authorizes until the close of May 20, 1983, mortgage insurance by the Federal Housing Commissioner to assist certain servicemen in the armed forces and the National Oceanographic and Atmospheric Administration and their families to construct or purchase a home. (See also table F.)

223. Mortgage insurance: civilian employees of armed forces

12 U.S.C. 1748h-1(f) Temp. Law

Until the close of May 20, 1983, the Federal Housing Commissioner may insure certain mortgages on housing required by civilians employed by the armed forces, the National Aeronautics and Space Administration, and the Atomic Energy Commission, at a research and development installation. (See also Table F.)

224. Mortgage insurance: defense housing for impacted areas

12 U.S.C. 1748h-2(k) Temp. Law

Until the close of May 20, 1983, the Federal Housing Commissioner may insure certain off-base rental housing which is necessary in the interest of national defense in order to provide adequate housing for military and essential civilian personnel serving, or employed, at an armed services installation, or at a research and development installation of the National Aeronautics and Space Administration or the Atomic Energy Commission. (See also Table F.)

225. Coast Guard: as a service in the Navy in time of war

14 U.S.C. 3 Perm. Law

Upon the declaration of war or when the President directs, the Coast Guard shall operate as a service in the Navy, subject to the orders of the Secretary of the Navy, and shall continue as such until transferred back to the Department of Transportation by Executive Order. (See also Tables A and G.)

[Section 6(b) of Public Law 89-670 (49 U.S.C. 1655) transferred the Coast Guard to the Department of Transportation but reaffirmed the requirement of 14 U.S.C. 3 that the Coast Guard shall operate as a

service of the Navy in time of war or when the President directs.]

226. Coast Guard: temporary service promotions

14 U.S.C. 275(a), (c) Perm. Law

In time of war, or of national emergency declared by the President or Congress, the President may (1) suspend laws relating to the selection, promotion, or involuntary separation of officers of the Coast Guard; and (2) promote to the next higher warrant officer grade any warrant officer serving on active duty in the grade below chief warrant officer, W-4. (See also Tables A-C.)

227. Coast Guard: recall of retired officers

14 U.S.C. 331 Perm. Law

In time of war or national emergency, the Secretary of the department in which the Coast Guard is operating may order any regular officer on the retired list to active duty. (See also Tables A and D.)

228. Coast Guard: recall of retired enlisted members

14 U.S.C. 359 Perm. Law

In time of war or national emergency, the Commandant of the Coast Guard may order any enlisted man on the retired list to active duty. (See also Tables A and D.)

229. Coast Guard: detention of members beyond term of enlistment

14 U.S.C 367(a)(3) Perm. Law

In time of war, or of national emergency proclaimed by the President, and in the interest of national defense, an enlisted man may be detailed in the Coast Guard beyond the term of his enlistment for not more than six months after the end of the war or the termination of the emergency. (See also Tables A, B, and G.)

230. Coast Guard: procurement of aviation cadets

14 U.S.C. 371 Perm. Law

The grade of aviation cadet is a special enlisted grade in the Coast Guard. Except in time of war or national emergency declared by Congress, at least 20 percent of the aviation cadets procured each fiscal year shall be procured from qualified enlisted members of the Coast Guard. (See also Table G.)

231. Decorations and awards: armed forces

14 U.S.C. 491 Perm. Law

(See item No. 148).

232. Desertion: bar to enlistment or appointment

14 U.S.C. 508(b) Perm. Law

No person who is convicted by a court-martial of desertion from the Coast Guard in time of war, and as a result is dishonorably discharged or dismissed, may thereafter be enlisted, appointed, or commissioned in any military or naval service, unless (1) this disability is removed by a board of commissioned Coast Guard officers convened for consideration of the case, and the action of the board is approved by the Secretary of the department in which the Coast Guard is operating, or (2) he is restored to duty in time of war. (Currently effective with respect to wartime deserters.) (See also Table A.)

232A. Transportation: private-plant personnel engaged in defense production

14 U.S.C. 660 Perm. Law

Whenever the Secretary of Transportation determines that it is necessary for the effective conduct of the affairs of the Coast Guard, he may, at reasonable rates of fare fixed under regulations to be prescribed by him, provide assured and adequate transportation by motor vehicle or water carrier to and from their places of employment for persons attached to, or employed by, the Coast Guard; and during a war, or during a national emergency declared by Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for the Coast Guard. (See also Tables A-C, and G.)

233. Coast Guard: suspension of certain provisions of law relating to reserve commissioned officers
- 14 U.S.C. 722 Perm. Law
- In time of war or national emergency declared by Congress, the President may suspend the operation of sections 720-746 of title 14, United States Code. (See also Tables A and C.)
234. Neutrality of United States: discrimination against Americans; retaliation against import restrictions; seizure of vessels
- 15 U.S.C. 76, 77 Perm. Law
- During the existence of a war in which the United States is not engaged, the President may (1) prohibit the importation into the United States of articles from a country which he finds has prohibited the importation of similar or other American articles, and (2) order the seizure of any American or foreign vessel which, because of the laws or regulations of a belligerent nation, unduly discriminate against American interests. The President may use such part of the land and naval forces as is necessary to carry out the purposes of these sections. (See also Table G.)
235. Real property: recapture of Fort McHenry
- 16 U.S.C. 440 Perm. Law
- In a national emergency, the Secretary of the Interior may close Fort McHenry and it may be used for military purposes during the emergency and for such period thereafter as the public need may require. (See also Table D.)
236. Real property: requisition of power projects for manufacture of munitions
- 16 U.S.C. 809 Perm. Law
- When the President considers, as evidenced by a written order to the licensee, that the safety of the United States demands it, the United States may take possession of any project licensed by the Federal Power Commission to manufacture nitrates, explosives, or munitions of war, and may retain possession,

management, and control thereof for as long as the President considers necessary. The United States shall compensate the proper persons for the use of such property on the basis of a reasonable profit in time of peace and cost of restoration of property, less the reasonable value of improvements made by the United States. (See also Table G.)

237. Electric power: temporary connection or construction of facilities for transmission

16 U.S.C. 824a(c), (d) Perm. Law

In time of war, or of emergency requiring immediate action, the Federal Power Commission may require certain temporary connection, or construction, of facilities for the transmission of electric energy to prevent shortages. (See also Tables A and G.)

238. Tennessee Valley Authority: transmission of power

16 U.S.C. 831n-4 Perm. Law

Notwithstanding statutory restrictions on the transmission area, TVA power may be transmitted to the Atomic Energy Commission or the Department of Defense or any agency thereof, on certification by the President that an emergency need for such power exists. (See also Table G.)

239. Real property: recapture of Tennessee Valley Authority: manufacture of munitions

16 U.S.C. 831s Perm. Law

In time of war or of national emergency declared by Congress, the United States may take possession or any property described or referred to in the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) for the purpose of manufacturing explosives or for other war purposes. (See also Tables A and C.)

240. Espionage: protection of defense information

18 U.S.C. 793 Perm. Law

Provide penalties for collecting, transmitting, or losing information, etc., concerning national defense and defense installations. Included are penalties

for the collection of information concerning any prohibited place, so designated by proclamation of the President in time of war or of national emergency, in which anything for the use of a military department is being prepared, constructed, or stored. (See also Tables A and D.)

241. Espionage: collecting or delivering defense information to aid the enemy

18 U.S.C. 794, 798 Perm. Law

Provide penalty in time of war for collecting or communicating defense information with intent to aid the enemy. (See also Table A.)

["Wartime" penalties continued by the Act of June 30, 1953, ch. 175 (67 Stat. 133), until six months after the termination of the emergency proclaimed by the President on December 16, 1950, or such earlier date as Congress may prescribe by concurrent resolution. See E.O. 10104, February 1, 1950, defining vital military and naval installations and equipment requiring protection against dissemination of information.]

242. Armed vessels: detention during a war in which the United States is a neutral nation

18 U.S.C. 963-967 Perm. Law

During any war in which the United States is neutral, the President, or any person authorized by him, may detain, prevent delivery, withhold clearance, or prevent departure of any vessel (other than one which has entered the ports of the United States as a public vessel) which has been built or converted for a warlike purposes or which is carrying war materials, men, or information in violation of the laws or treaties of the United States. (See also Table G.)

243. Espionage: protection of defense material

18 U.S.C. 2153, 2154, 2157 Perm. Law

Provide penalties for destruction of war material or for production of defective war material or national defense material in time of war, or of national

emergency declared by Congress or the President.
(See also Tables A-C).

["Wartime" penalties continued by the Act of June 30, 1953, ch. 175 (67 Stat. 133), until six months after the termination of the emergency proclaimed by the President on December 16, 1950, or such earlier date as Congress may prescribe by concurrent resolution.]

244. Seditious activities affecting armed forces

18 U.S.C. 2388, 2391 Perm. Law

Provide penalties for persons who, in time of war (1) circulate false reports with intent to interfere with operations of the military or naval forces or to promote the success of its enemies, or (2) incite insubordination or mutiny in the military or naval forces. (See also Table A.)

["Wartime" penalties continued by the Act of June 30, 1953, ch. 175 (67 Stat. 133), until six months after the termination of the emergency proclaimed by the President on December 16, 1950, or such earlier date as Congress may prescribe by concurrent resolution.]

245. Prisoners of war: arrest

18 U.S.C. 3058 Perm. Law

[In time of war] it is a crime for a prisoner of war to escape and he may be arrested by a United States marshal or military authorities (words in brackets supplied). (See also Table A.)

246. Statute of limitations: wartime suspension

18 U.S.C. 3287 Perm. Law

In time of war, the running of any statute of limitations applicable to any offense involving (1) fraud against the United States, (2) property of the United States, or (3) a war contract, is suspended until three years after the termination of hostilities as proclaimed by the President or by concurrent resolution of Congress. (See also Table A.)

247. Taxation: free importation of food, clothing and medical supplies

19 U.S.C. 1318

Perm. Law

Whenever the President by proclamation, declares an emergency to exist by reason of a state of war or otherwise, he may extend the time for performance of certain acts under the Tariff Act of 1930, and permit free importation of food, clothing, and medical supplies for use in emergency relief work. (See also Table E.)

248. Schools: financial assistance for maintenance and operation in areas affected by Federal activities

20 U.S.C. 236-244

Temp. law

Certain provisions of the Act of September 30, 1950, as amended (Pub. L. 874, 81st Congress), provide financial assistance for school maintenance and operation in areas affected by Federal activities, until September 30, 1983. (See also Table F.)

249. Schools: financial assistance for construction in areas affected by Federal activities

20 U.S.C. 631-647

Temp. Law

Certain provisions of the Act of September 23, 1950, as amended (Pub. L. 815, 81st Congress), provide financial assistance for school construction in areas affected by Federal activities, until 30 September 1983. (See also Table F.)

250. Neutrality of United States: activities prohibited

22 U.S.C. 441-451

Perm. Law

Whenever the President, or Congress by concurrent resolution, finds that a state of war exists between foreign states, and that it is necessary to promote the security or preserve the peace of the United States, or to protect the lives of its citizens, the President shall issue a proclamation to that effect. Thereafter, it is unlawful for any person within the United States to (1) travel on vessels of belligerents; (2) engage in financial transactions in securities of the belligerents; (3) solicit and collect funds and contributions for the belligerents; and (4) use American ports for supply of belligerents. (See also Table G.)

251. Middle East nations: military assistance programs;
use of armed forces for protection

22 U.S.C. 1961-1965

Temp. Law

Until the President determines that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions created by action of the United Nations, or otherwise, against armed aggression from any country controlled by international communism (unless the authority is terminated earlier by concurrent resolution of Congress), he may undertake military assistance programs with any such nation or group of nations requesting assistance. However, use of the armed forces must be consistent with treaty obligation, and the Constitution of the United States. (See also Table G.)

252. Decorations: foreign, disposition

22 U.S.C. 2624

Perm. Law

A person may accept, retain, and wear a decoration tendered by a foreign government in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the department, agency, office, or other entity in which the person is employed and the concurrence of the Secretary of the State. (See also Table G.)

253. Defense of Panama Canal

22 U.S.C. 3618

Perm. Law

In the event of an armed attack against the Panama Canal, or when, in the opinion of the President, conditions exist which threaten the security of the Canal, the administrator of the Commission shall, upon the order of the President, comply with such directives as the U.S. military officer charged with the protection and defense of the Panama Canal may consider necessary in the exercise of his duties. (See also Table G.)

254. Prisoners of war; insane

24 U.S.C. 192

Perm. Law

[In time of war] interned persons or prisoners of war, under the jurisdiction of the Army or Navy, who are or may become insane, may be admitted to St. Elizabeth's Hospital (words in brackets supplied). (See also Table A.)

255. Taxation: members of armed forces; service in combat zone; income and estate tax exemption

26 U.S.C. 112, 692, 2201, Perm. Law
3401, 7508(a)

Excludes from gross income, for tax purposes, active duty compensation of members of the armed forces below the grade of commissioned officer, for any month during any part of which the member served in a combat zone, or was hospitalized for wounds or injuries incurred in a combat zone. Exempts, under the same conditions, compensation of commissioned officers in an amount not to exceed \$500 per month. Exempts from gross income compensation for active service of a member of the armed services in missing status (as defined in 37 U.S.C. 551(2)) during the Vietnam conflict other than during an AWOL period and provides some Vietnam exemption for missing civilian employees. (For these purposes: (1) Vietnam conflict began after February 28, 1961 and (2) under the provisions of sections 2(a), 692(b) and 7508(d) of the Internal Revenue Code of 1954, the Vietnam conflict ends on December 31, 1982. That era stops "after January 1978" for the purposes of Section 112(b) of that Code (Public law 94-569, October 20, 1976), and (3) time is extended for refund and overpayment claims.) Provides that income and estate tax provisions shall not apply to a member of the armed forces who dies during an induction period while serving in a combat zone or as the result of wounds, injuries, or disease received while so serving. Provides exemption from filing any return of, or paying any, income, estate, or gift tax for period of service and hospitalization and 180 days thereafter. [E.O. 11216, April 24, 1965, designated Vietnam as a combat zone.] (See also Table G.)

256. Taxation: members of armed forces, service in combat zone; income and estate tax exemption

26 U.S.C. 692 Perm. Law

(See item No. 255.)

257. Taxation: members of armed forces; service on extended active duty; suspension of certain periods of limitation on gain from sale or exchange of residence
- 26 U.S.C. 1034(h) Perm. Law
- Suspends, for not more than four years, certain periods of limitations on gain from sale or exchange of old residence by members of the armed forces serving on extended active duty after the date of the sale of the old residence. (See also Table G.)
258. Taxation: members of armed forces; service in combat zone; income and estate tax exemption
- 26 U.S.C. 2201 Perm. Law
- (See item No. 255.)
259. Taxation: members of armed forces; service in combat zone; toll telephone service tax exemption
- 26 U.S.C. 4253 Perm. Law
- Excludes imposition of excise tax on toll telephone service originating within a combat zone from a member of the armed forces performing service in such zone. (See also Table G.)
260. Taxation: members of armed forces; service in combat zone; income and estate tax exemption
- 26 U.S.C. 7508(a) Perm. Law
- (See item No. 255.)
261. Claims: Combatant activities of armed forces; excluded for jurisdiction of United States district courts; excluded from tort claim procedure
- 28 U.S.C. 2680(j) Perm. Law
- Excludes from (1) the jurisdiction of the United States district courts acting under 38 U.S.C. 1346(b), and (2) administrative adjustment of tort claims under 28 U.S.C. 2671 et seq., claims arising out of combatant activities of the armed forces in time of war. (See also Table A.)

262. Accounts: administrative examination of monthly accounts of armed forces disbursing officers

31 U.S.C. 3522(b)(3)

Perm. Law

In time of war, or during any emergency declared by Congress or the President, and for 18 months after that war or emergency, the time for examination of monthly accounts covering expenditures by armed forces disbursing officers, after receipt by the office designated to make the examination and before transmittal to the General Accounting Office, is extended from 60 to 90 days. (See also Tables A and E.)

263. Claims: time limitation on claims or demands by members of military or naval forces against the United States

31 U.S.C. 3702(b)(2)

Perm. Law

Certain claims or demands against the United States cognizable by the General Accounting Office under this section must be made within 6 years after the claim accrues. When the claim of a member of the military or naval forces accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established. (See also Tables A and G.)

264. [Vacant]

265. [Vacant]

266. Military and civilian claims: property loss; incident to service: members of uniformed services civilian officers and employees of the United States

31 U.S.C. 3721(c) and (g)

Perm. Law

The Secretary of a military department or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or his designee, may settle and pay a claim against the United States for not more than \$40,000 made by a member of a uniformed service under the jurisdiction of that department or the Coast Guard, or a civilian officer or employee of the Department or the Coast Guard, for damage to, or loss of,

personal property incident to his service, if among other conditions it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict in which any armed force is engaged or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated, whichever is earlier. The dates of the beginning and end of an armed conflict are the dates established by concurrent resolution of Congress or by the President. The Secretary of Defense has the same authority as the Secretary of a military department with respect to a claim by a civilian employee of his department. (See also Tables A and G.)

267. [Vacant]

268. Public contracts: claims due by, or to, the United States; reduction or set-off against assignees

31 U.S.C. 3727(d)
41 U.S.C. 15

Perm. Law

In time of war or of national emergency proclaimed by the President or by Act or joint resolution of Congress, and until that war or national emergency is terminated, a contract of the Department of Defense, except one under which payment has been made, may provide, or be amended without consideration to provide that payments to be made to the assignee if any monies due or to become due under that contract shall not be subject to reduction or set-off. (See also Tables A-C.)

269. National Guard of United States: basic policy for order into Federal service

32 U.S.C. 102

Perm. Law

(See item No. 94.)

270. Army National Guard; Air National Guard; organization; composition of units

32 U.S.C. 104(b)

Perm. Law

The organization of the Army [Air] National Guard and the composition of its units shall be the same as

those prescribed in the Army [Air Force], subject, in time of peace, to such general exceptions as the Secretary of the Army [Air Force] may authorize. (See also Table G.)

271. Army National Guard; Air National Guard: detail of commissioned officers of Regular Army or Regular Air Force to perform duties of chief of staff or each fully organized division or wing of Army National Guard or Air National Guard

32 U.S.C. 104(e)

Perm. Law

To insure prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail a commissioned officer of the Regular Army to perform the duties of chief of staff for each fully organized division of the Army National Guard, and a commissioned officer of the Regular Air Force to perform for each fully organized wing of the Air National Guard. (See also Table G.)

272. States and territories: maintenance of troops other than National Guard or state defense forces

32 U.S.C. 109(a)

Perm. Law

In time of peace, a State or territory, Puerto Rico, the Virgin Islands, the Canal Zone, or the District of Columbia may maintain no troops other than those of its National Guard and State defense forces. (See also Table G.)

273. States and territories: use of National Guard or State defense forces

32 U.S.C. 109(b)

Perm. Law

Nothing in title 32, United States Code, limits the right of a State or territory, Puerto Rico, the Virgin Islands, the Canal Zone, or the District of Columbia to use its National Guard or its defense forces within its borders in time of peace, or prevents it from organizing and maintaining police or constabulary. (See also Table G.)

274. National Guard: suspension of certain provisions of law relating to Federal recognition of commissioned officers

32 U.S.C. 111

Perm. Law

In time of war, or of national emergency declared by Congress, the President may suspend the operation of any provision of 32 U.S.C. 307(e), 309, 310, and 323(d) and (e) relating to Federal recognition of commissioned officers of the National Guard. (See also Tables A and C.)

275. Enlistments: National Guard; extension

32 U.S.C. 302

Perm. Law

Original enlistments in the National Guard may be accepted for not less than (1) three years for persons who have not served in an armed force or (2) one year for persons who have served in any armed force. Reenlistments may be accepted for any specified period or, if the person last served in one of the highest five enlisted grades, for an unspecified period. Enlistments or reenlistments may be extended (1) at the request of the member for not less than six months, or (2) by proclamation of the President, if Congress declares an emergency, until six months after the termination of that emergency. (See also Table E.)

276. Enlistments: National Guard, term

32 U.S.C. 303(d)

Perm. Law

In time of peace, no enlisted member may be required to serve for a period longer than that for which he enlisted in the active or inactive National Guard. (See also Table G.)

277. Enlistments: National Guard: discharge before expiration of enlistment

32 U.S.C. 322(c)

Perm. Law

In time of peace, an enlisted member of the National Guard may be discharged before his enlistment expires, under such regulations as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be. (See also Table G.)

278. Procurement: supplies or military publications: requisition by United States from States or territories

32 U.S.C. 703(b)

Perm. Law

In time of actual or threatened war, the United States may requisition for military use any supplies or military publications bought from the Department of the Army or the Department of the Air Force by any State or territory, Puerto Rico, the Canal Zone, or the District of Columbia, for its National Guard or the officers thereof. (See also Tables A and G.)

279. Military claims: property loss; personal injury or death; incident to National Guard activities

32 U.S.C. 715

Perm. Law

The Secretary of the Army or Secretary of the Air Force, or the Judge Advocate General of the Armed Force under his jurisdiction, if designated by him, may settle and pay a claim against the United States for not more than \$25,000 (or pay \$25,000 and report excess to Congress) for damage to, or loss of, real or personal property or for personal injury or death, either caused by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in certain training or duty, acting within the scope of his employment, or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, if, among other conditions, it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict, or a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented within two years after the war or armed conflict is terminated. The dates of the beginning and end of an armed conflict are the dates prescribed by concurrent resolution of Congress or by the President. (See also Tables A and G.)

280. Temporary promotions: Environmental Science Services Administration officers serving in a military department

33 U.S.C. 854a-1

Perm. Law

In time of war, or of national emergency, temporary promotions are authorized under certain conditions for personnel of the Environmental Science Services Administration serving in a military department under 33 U.S.C. 854-858. (See also Tables A and D.)

[Reorganization Plan No. 4 of 1970 established the National Oceanic and Atmospheric Administration

(NOAA) in the Department of Commerce, replacing the Environmental Science Services Administration (ESSA)]

281. Real property: personal property: personnel; transfer from Environmental Science Services Administration to a military department

33 U.S.C. 855

Perm. Law

The President may, when he finds that a sufficient national emergency exists, transfer to a military department for the duration of that national emergency such vessels, equipment, stations, and commissioned officers of the Environmental Science Services Administration as he considers to be in the best interest of the United States. (See also Table D.)

282. Environmental Science Services Administration duties in time of war

33 U.S.C. 858

Perm. Law

The Secretary of Defense and the Secretary of Commerce shall jointly prescribe regulations governing the duties to be performed by the Environmental Science Services Administration in time of war, and for the cooperation of that Service with the military departments in time of peace in preparation for its duties in war. (See also Table G.)

283. Patents: secrecy of certain inventions: withholding of patents

35 U.S.C. 181-188

Perm. Law

When informed by the Atomic Energy Commission or the Secretary of a Defense department that disclosure of an invention would be detrimental to the national security, the Commissioner of Patents shall withhold the grant of a patent for that invention and order it kept secret for any such period as the national security requires. The Secretary of a Defense department may enter into an agreement with an inventor, whose invention has been kept secret and used by the Government, for full settlement for such use. An order of this type in effect at the beginning of the war, or issued during the war, is effective until one year after those hostilities are

terminated. An order of this type in effect at the beginning of a national emergency declared by the President, or issued during such an emergency, is effective until six months after that emergency is terminated. (See also Tables A and B.)

284. Service flag and lapel buttons: design

36 U.S.C. 179-182 Perm. Law

The Secretary of Defense shall approve designs for service flags and lapel buttons for families of persons serving in, or killed in action with, the armed forces during any period of war or hostilities in which the United States is engaged, (currently effective with respect to wartime service). (See also Tables A and G.)

285. Grade: rear admirals: determination of upper half

37 U.S.C. 202(e) Perm. Law

Each officer holding a permanent appointment in the grade of commodore on the retired list who is entitled to the pay of the lower half of that grade and who, in time of war or national emergency, in that grade or in a higher grade is thereafter entitled when on active duty to the basic pay and allowances of a rear admiral of the upper half. (See also Tables A and D.)

286. Pay and allowances: suspension of hazardous and diving-duty pay for members of uniformed services

37 U.S.C. 301(d), 304(b) Perm. Law

In time of war, the President may suspend the payment of hazardous duty or diving-duty incentive pay. (See also Table A.)

287. Pay and allowances: Aviation career incentive pay

37 U.S.C. 301a Perm. Law

Provides incentive pay for operational or proficiency flying and to regular and reserve officers who hold, or are in training leading to an aeronautical rating or designation and who engage and remain in aviation service on a career basis. In time of war, the President may suspend the payment of aviation career incentive pay. (See also Table A.)

288. Pay and allowances: special pay for physicians, dentists, optometrists, and veterinarians.
- 37 U.S.C. 302, 302a, 302b, 303 Perm. Law
- Provides special monthly pay for certain physicians and dentists, who serve on active duty and special monthly pay for optometrists and veterinarians. (See also Table F.)
289. Pay and allowances: bonus for reenlistment or enlistment in a skill designated as critical
- 37 U.S.C. 308, 308a Temp. Law
- Until March 31, 1983, under regulations prescribed by the Secretary of Defense, a person who reenlists in an armed force for a period of at least three years in a military skill designated as critical, may be paid a bonus, not to exceed six months of basic pay, multiplied by the number of years of additional obligated service, not to exceed six years, or \$20,000, whichever is the lesser amount.
- Until March 31, 1983, under regulations prescribed by the Secretary of Defense, a person who enlists in an armed force for a period of at least four years in a skill designated as critical, or who extends his initial period of active duty in that armed force to a total of at least four years in a skill designated as critical, may be paid a bonus not to exceed \$5,000.
- (See also Table F.)
290. Pay and allowances: special pay for duty subject to hostile fire
- 37 U.S.C. 310 Perm. Law
- Except in time of war declared by Congress, and under regulations prescribed by the Secretary of Defense, a member of a uniformed service may be paid special pay for any month in which he was subject to hostile fire or explosion of hostile mines. (See also Table G.)
291. Pay and allowances: special pay for nuclear-qualified officers extending period of active service
- 37 U.S.C. 312 Temp. Law

Until September 30, 1987, a nuclear-qualified naval service officer who agrees to remain on active duty in connection with supervision, operation, and maintenance of naval nuclear propulsion plants for one period of four years in addition to any other period of obligated service may be paid not to exceed \$7,000 for each year of the active-service agreement in addition to all other compensation to which he is entitled. (See also Table F.)

292. Pay and allowances: special pay for nuclear-trained and qualified enlisted members

37 U.S.C. 312a

Temp. Law

An enlisted member of the naval service who is currently qualified for duty in connection with supervision, operation and maintenance of naval nuclear propulsion plants, and who executed an agreement prior to June 30, 1975, may under certain conditions, be paid an additional reenlistment bonus in accordance with a specified formula. (See also Table F.)

293. [Vacant]

294. Pay and allowances: limitation on pay of dislocation allowance for members of uniformed services

37 U.S.C. 407

Perm. Law

Under regulations prescribed by the Secretary concerned, a member of the uniformed services whose dependents are authorized to move and actually move in connection with his change of permanent station is entitled to a dislocation allowance equal to his basic allowance for quarters for one month. Such a member is not entitled to payment of a dislocation allowance for more than one change of permanent station during a fiscal year unless the Secretary concerned finds that exigencies of the service require more than one such change of station during that year or the member is ordered to a service school as a change of permanent station. This limitation does not apply in time of national emergency declared after April 1, 1955, or in time of war. (See also Table G.)

295. Pay and allowances: family separation allowance

37 U.S.C. 427(b), 427 note

Perm. Law

Except in time of war or of national emergency declared by Congress after October 1, 1963, a member of a uniformed service with dependents may, in certain specified situations of separation from his dependents, be entitled to an additional monthly allowance of \$30. Under regulations to be prescribed by the Secretary of Defense, a member of the uniformed services with dependents who is in a missing status (as defined in 37 U.S.C. 551(2)) during the Vietnam conflict and is not entitled to an allowance under 37 U.S.C. 427(b), may be paid a monthly allowance equal to \$30. (See also Tables F and G.)

296. Missing, interned, captive persons injured or ill: benefits provided

37 U.S.C. 551-558

Perm. Law

A member of a uniformed service who is (1) missing, (2) missing in action, (3) interned in a foreign country, (4) captured, beleaguered, or besieged by a hostile force, (5) detained in a foreign country against his will, (6) injured, or (7) ill is entitled while in such status, to continuation of pay and allowances and allotments, travel and transportation for dependents, household and personal effects, and a trailer, to additional movement of those types after one year in such a status, to nontemporary storage of household effects, and to deferment of Federal income tax. Promotion of a member of the uniformed services while in a missing status is fully effective for all purposes, even though the Secretary concerned determines (under §556b) that the member died before the promotion was made. (See also Table G.)

[See item No. 81 with respect to civilian employees, item No. 116 with respect to accumulation of leave, item No. 255 with respect to certain taxes, the second sentence of item No. 295 with respect to payment of \$30 monthly allowance to certain members in a missing status, and item No. 365 with respect to a power of attorney.]

297. Commissioned officers: pay and allowance when exercising command higher than grade

37 U.S.C. 901

Perm. Law

In time of war, an officer of an armed force serving with troops operating against an enemy who, under orders issued by competent authority, exercises a command above that pertaining to his grade, is entitled to the pay and allowances of the grade appropriate to the command so exercised, but not above that of pay grade O-7 (brigadier general). (See also Table A.)

298. Pay: advances to dependents

37 U.S.C. 1006

Perm. Law

An advance of not more than two months' basic pay to a member of an armed force or the Public Health Service may be made directly to his previously designated dependents in cases of emergency evacuation of such military dependents from overseas areas. (See also Table G.)

298A. Health Care: services authorized by the Veterans Administration

38 U.S.C. 5011A

Perm. Law

During and immediately following a war or national emergency declared by Congress or the President that involves the use of the Armed Forces in armed conflict, the VA may furnish hospital care, nursing home care, and medical services to members of the Armed Forces on active duty. (See also Tables A-C.)

299. Mailing privilege: members of armed forces of the United States and of friendly foreign nations

39 U.S.C. 3401

Perm. Law

First class letter mail and sound-recorded communications sent by a member of the armed forces on active duty shall be carried free as airmail if (1) it is mailed at an armed forces post office in an overseas area designated by the President where the armed forces of the United States are engaged in action against an enemy of the United States, engaged in military operations involving armed conflict with a hostile foreign force, or serving with a friendly foreign force in an armed conflict in which the United States is not a belligerent; or (2) the sender is hospitalized in an armed forces facility as a result of disease or injury incurred as a result of

service in an overseas area designated by the President. Mailing privileges may also be afforded to a member of an armed force of a friendly foreign nation under certain similar conditions. Certain parcels and second-class publication to or from overseas combat areas shall be transported by air on a space available basis on U.S. flag carriers, if available. (See also Table G.)

[E.O. 11255, November 1, 1965, designated Vietnam and the waters adjacent thereto as an overseas combat area for purposes of armed forces mailing privileges.]

300. Military construction: military, naval, or Air Force reservations within the National capital and its environs

40 U.S.C. 71d(b)

Perm. Law

In time of war or national emergency, the procedures designed to insure the comprehensive planning and orderly development of the national Capital do not apply to structures erected by the Department of Defense within existing military, naval, or Air Force reservations. However, the appropriate defense agency must consult with the National Capital Park and Planning Commission with respect to any developments which materially affect traffic or require coordinated planning of the surrounding area. (See also Tables A and D.)

301. Civilian employees: pay of laborers and mechanics; suspension of laws

40 U.S.C. 276a-5

Perm. Law

In time of a national emergency, the President may suspend certain provisions of law relating to wages of laborers and mechanics under certain contracts to which the United States is a party. (See also Table D.)

302. Real property: lease of buildings to military departments for defense purposes; laws relating to maximum rental not applicable

40 U.S.C. 278a, 278b

Perm. Law

No appropriation may be obligated or expended for the rent of any building or part of a building to be occupied for Government purposes at a rental in excess of the annual rate of 15 percent of the fair market value of the rented premises at date of lease, nor for alterations, etc., of the rented premises in excess of 25 percent of the rental for the first year of the rental term. In time of war, or of national emergency declared by Congress or the President, the foregoing does not apply to leases or renewals of leases certified by the Secretary of the military department concerned to be necessary for the prosecution of the war or vital in the national emergency. (See also Tables A-C).

303. Supplies: sale of war material, supplies, or equipment

40 U.S.C. 314

Perm. Law

The President may, through the head of any executive department, sell to, among others, any foreign state or government, engaged in war with any government with which the United States is at war, any war material, supplies, and equipment. (See also Table A.)

304. Contract Work Hours Standards Act: limitations and exemptions

40 U.S.C. 331

Perm. Law

The Secretary of Labor may provide limitations or allow exceptions from the requirements of the Contract Work Hours Standards Act for a standard eight-hour workday and forty-hour workweek on certain public contracts as he may find necessary to avoid serious impairment of the conduct of Government business. (See also Table G.)

305. Disposal of surplus property

40 U.S.C. 484(e)(3)

Perm. Law

Disposals and contracts for disposal of surplus property under the Federal Property and Administrative Services Act of 1949, as amended, may be negotiated without public advertising for bids when (1) necessary in the public interest during a national emergency declared by the President or Congress; or (2) the public health, safety, or

national security will be promoted. (See also Tables B, C, and G.)

305A. Disposal of Urban Lands

40 U.S.C. 532, 533, 534 Perm. Law

Section 532 and 533 detail procedures for the disposal of urban lands and the acquisition or change of use of real property. Section 534 states that procedures described in those sections may be waived during any period of national emergency proclaimed by the President. (See also Tables E and G.)

306. Public contracts: claims due by, or to, the United States; reduction or set-off against assignee

41 U.S.C. 15 Perm. Law

(See item No. 268.)

307. Natural Resources

41 U.S.C. 1314 Perm. Law

In time of war or when necessary for national defense, and the Congress or President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefore. (See Tables A and G.)

308. Public Health Service: commissioned corps as a branch of the land or naval forces

42 U.S.C. 217 Perm. Law

In time of war, or of emergency proclaimed by the President, he may use the Public Health Service in such manner as he considers will promote the public interest. In time of war, or of emergency involving the national defense proclaimed by the President, he may by Executive Order declare the commissioned corps of the Service to be a military service. After such a declaration and during that war or emergency or part thereof as the President prescribes, the commissioned corps shall (1) be a branch of the land and naval forces; (2) be subject to the Uniform Code

of Military Justice and (3) continue to operate as part of the Service, except as the President as Commander-in-Chief may direct. (See also Tables A and E.)

309. Quarantine: infected persons: protection of members of armed forces and war workers

42 U.S.C. 266

Perm. Law

In time of war, the Surgeon General of the United States may by regulation provide for the apprehension, examination, and detention of any person reasonably believed to be infected with a communicable disease who is a probable source of infection to members of armed forces, or to individuals engaged in the production or transportation of arms or other supplies for the armed forces. (See also Table A.)

310. Social Security: wage credits

42 U.S.C. 417(e)

Temp. Law

Provides wage credits under title II of the Social Security Act for military service before January 1, 1957. (See also Table F.)

311. Atomic energy: authority to transfer certain categories of materials for military application to another nation

42 U.S.C. 2121(c)

Perm. Law

Whenever the President determines that it will promote and will not constitute an unreasonable risk to the common defense and security, he may authorize the Department of Energy or the Department of Defense, with the assistance of the other, to cooperate with another nation and to transfer by sale, lease, or loan to that nation certain categories of materials for military applications, subject to certain conditions, determinations, and procedures. (See also Table G.)

312. Atomic energy: authority to communicate or exchange Restricted Data with another nation

42 U.S.C. 2164(b), (c)

Perm. Law

Whenever the President determines that it will promote and will not constitute an unreasonable risk to the common defense and security, he may authorize the Department of Defense, with the assistance of the Department of Energy, to cooperate with another nation or a regional defense organization to which the United States is a party, and to communicate to, or exchange with, that nation or organization Restricted Data necessary for certain specified purposes, under certain conditions. (See also Table G.)

313. Public lands: withdrawals, reservations, or restrictions of more than 5,000 acres by the Department of Defense

43 U.S.C. 155

Perm. Law

Prohibits, except in time of war or national emergency declared by Congress or the President after February 28, 1958, withdrawals, reservations, or restrictions of more than 5,000 acres (in the aggregate for any one defense project or facility) of public land of the United States, by the Department of Defense for defense purposes, except by Act of Congress. (See also Table G.)

314. Public lands: withdrawal of grazing lands

43 U.S.C. 315q

Perm. Law

Whenever public lands used for grazing purposes are withdrawn from such use for war or national defense purposes, payments to grazing permit-holders for losses shall be made by the head of the department or agency concerned in such amounts as he considers fair and reasonable under the circumstances, out of funds appropriated for the particular project for which the lands were withdrawn. (See also Table G.)

315. Outer Continental Shelf lands: suspension of leases

43 U.S.C. 1341(c)

Perm. Law

All leases of Outer Continental Shelf lands shall contain a clause vesting authority in the Secretary of Interior, upon a recommendation of the Secretary of Defense, during a state of war or national emergency declared by Congress or the President after August 7, 1953, to suspend operations thereunder with

just compensation to the lessee. (See also Tables A-C.)

316. Public printing: Federal Register; suspension of requirements for filing of documents; preservation of documents

44 U.S.C. 1505(c)

Perm. Law

In the event of an attack or threatened attack upon the continental United States, and a determination by the President that because of such attack or threatened attack (1) publication of the Federal Register of filing of documents with the Division is impracticable, or (2) under existing conditions publication in the Federal Register would not give appropriate notice to the public, the President may, without regard to any other provision of law, suspend all or any part of the requirements of law or regulation for filing with the office or publication in the Federal Register of documents or classes of documents. The suspensions shall remain in effect until revoked by the President, or by concurrent resolution of Congress. The President shall establish alternate systems for promulgating, filing, or publishing documents affected by a suspension. With respect to documents promulgated under alternate systems, each agency shall preserve the original and two duplicate originals or two certified copies for filing with the office when the President determines that it is practicable. (See also Table G.)

317. Documents: destruction of military or naval records
44 U.S.C. 3311

Perm. Law

During a state of war between the United States and another nation, or when hostile action by a foreign power appears imminent, the head of any agency, under specified conditions, may authorize the destruction of records in his legal custody situated in military or naval establishment, ship or other depository, outside the territorial limits of the continental United States. (See also Tables A and G.)

318. Shipping: waiver of compliance with navigation and vessel inspection laws

46 U.S.C. prec. §1 note

Perm. Law

Upon request of the Secretary of Defense to the extent deemed necessary in the interest of national defense by the Secretary of Defense, the head of each department or agency responsible for the administration of the navigation and vessel-inspection laws is directed to waive compliance with such laws. (See also Table G.)

319. Shipping: exemption of hospital ships from dues, taxes, or pilotage charges

46 U.S.C. 133, 134 Perm. Law

In time of war, certain hospital ships are exempt from all dues and taxes imposed on vessels by the laws of the United States, and from all pilotage charges. The President may determine the end of exemptions. (See also Table A.)

320. Shipping: Maritime Administration; restriction on transfer of shipping facilities

46 U.S.C. 835 Perm. Law

In time of war, or of national emergency declared by the President, it is unlawful, without the consent of the Secretary of Commerce, to transfer American ships to foreign registry, or to sell or construct vessels for noncitizens. (See also Tables A and B.)

321. Passenger vessels: foreign sale; exceptions and conditions

46 U.S.C. 865a Perm. Law

Except for the steamships "United States" and "Independence," inactive vessels previously operated as passenger vessels under an operating-differential subsidy contract with the United States may be sold and transferred to foreign ownership, registry, and flag, subject to approval by the Secretary of Commerce which must require, inter alia, an agreement that the vessel will be made available to the United States in time of emergency. (See also Table E.)

322. Shipping: merchant vessels; suspension of requirement relating to citizenship of officers and crews of vessels documented under laws of the United States

46 U.S.C. 1132(h) Perm. Law

During a national emergency proclaimed by the President, the President may suspend the provisions of 46 U.S.C. 1132, including the requirement that only citizens may be employed on vessels documented under the laws of the United States. (See also Table B.)

323. Shipping: Maritime Administration: termination of charters of merchant vessels

46 U.S.C. 1202(d) Perm. Law

Whenever the President proclaims that the security of the national defense makes it advisable, or during a national emergency proclaimed by the President, the Secretary of Commerce may terminate the charter of any Maritime Administration vessel without cost to the United States. (See also Tables B and G.)

324. Shipping: transportation of cargo on United States-flag commercial vessels

46 U.S.C. 1241(b)(1) Perm. Law

Whenever the Congress, by concurrent resolution or otherwise, or the President or the Secretary of Defense, declares that an emergency exists, the requirement that at least 50 percent of the gross tonnage of certain equipment, materials, or commodities be transported on privately owned United States-flag commercial ocean vessels may be waived. (See also Table E.)

325. Shipping: Maritime Administration: requisition or purchase of vessels in time or emergency

46 U.S.C. 1242(a) Perm. Law

Whenever the President proclaims that the security of the national defense makes it advisable, or during a national emergency proclaimed by the President, the Secretary of Commerce may purchase or requisition any vessel owned by citizens of the United States, or may charter or requisition the use of such property. (See also Tables B and G.)

326. War-risk insurance; vessels, cargoes, and crews

46 U.S.C. 1281-1294 Temp. Law

Until September 30, 1984, the Secretary of Commerce may, with the approval of the President, and after consultation with interested agencies as the President may require, provide insurance and reinsurance against loss or damage by war risks, and certain marine and liability insurance, for the protection of certain vessels, cargoes, and crews, whenever adequate insurance cannot be obtained on reasonable terms and conditions. He may also provide such insurance at the request of the Secretary of Defense or such other agencies as the President may prescribe, without premium, if the Secretary of Defense or such other agency agrees to indemnify the Secretary of Commerce against all losses covered by such insurance. (See also Table F.)

327. Communications: waiver of formal application requirement for station construction or license permits

47 U.S.C. 308

Perm. Law

In time of war, or of national emergency declared by the President or Congress, and when necessary for the national defense, the requirement that the Federal Communications Commission receive formal application before granting a radio station construction permit or station license may be waived. (See also Tables A-C, G.)

328. Communications: war powers of President

47 U.S.C. 606

Perm. Law

In time of war, the President may, if he considers it necessary for the national defense and security, direct that communications which are essential to the national defense and security have preference and priority with any carrier subject to the Federal Communications Commission.

In time of war, it is unlawful for any person to knowingly or willfully, by physical force or threat of force, to obstruct or retard interstate or foreign communications by radio or wire.

Upon a proclamation by the President that there exists a state of war, threat or war, state of public peril or disaster, or other national emergency, or in order to preserve the neutrality of the United

States, the President may suspend or amend, for as long as he considers necessary, the rules and regulations applicable to stations or devices which emit electromagnetic radiation and which are subject to the control of the Federal Communications Commission, for such time and to such extent as he considers necessary.

Upon a proclamation by the President that there exists a state of war or a threat of war involving the United States, the President may, if he considers it necessary in the interest of national security and defense--

(1) suspend or amend the rules and regulations applicable to any or all facilities or stations for wire communication within the jurisdiction of the United States;

(2) close any facility or station for wire communication and remove its apparatus and equipment; or

(3) authorize the use and control of any such facility or station by any department of the Government.

This authority may be exercised until six months after the state of threat or war is terminated or such earlier date as Congress may designate by concurrent resolution. (See also Tables A, B, and G.)

329. Territories: Virgin Islands: authority of Governor

48 U.S.C. 1405s, 1591

Perm. Law

Whenever it becomes necessary, the Governor of the Virgin Islands may call upon the commanders of the military and naval forces of the United States in the islands, or summon the posse comitatus, or call out the militia, to prevent or suppress violence, invasion, insurrection, or rebellion; and he may, in the case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus or place the Islands, or any part thereof, under martial law until the decision of the President on the matter is made known. (See also Table G.)

[Effective January 4, 1971, this provision is amended to reflect certain changes in the governor's powers and duties provided by the Virgin Islands Elective Governor Act (Pub. L. 90-496).]

330. Territories: Guam: authority of Governor

48 U.S.C. 1422(b) Perm. Law

The governor of Guam may call upon the commanders of the armed forces of the United States in Guam, or summon the posse comitatus, or call out the militia, to prevent or suppress violence, insurrection, or rebellion; and he may, in case of rebellion, invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus or place Guam, or any part thereof, under martial law until the decision of the President on the matter is communicated to the Governor. (See also Table G.)

[Effective January 4, 1971, this provision is amended to reflect certain changes in the governor's powers and duties provided by the Guam Elective Governor Act (Pub. L. 90-497).]

331. Territories: Virgin Islands: authority of Governor

48 U.S.C. 1591 Perm. Law

(See item No. 329.)

332. Territories: Guam, Virgin Islands, American Samoa: naval defensive sea areas and naval air space reservations

48 U.S.C. 1703 Perm. Law

Notwithstanding authorization to the Secretary of the Interior to convey certain submerged lands to the governments of Guam, the Virgin Islands, the American Samoa, the President may establish naval defensive sea areas and naval air space reservations which he deems necessary for national defense around and over the islands of Guam, American Samoa, and the Virgin Islands. (See also Table G.)

333. Territories: Guam: exception to concurrent jurisdiction over persons and offenses

The President may from time to time exclude from the concurrent jurisdiction of the government of Guam persons found, acts performed, and offenses committed on property of the United States which is under the control of the Secretary of Defense to such extent and in such circumstances as he finds required in the interest of the national defense. (See also Table G.)

334. [Vacant]

335. Federal Aviation Agency: Administrator required to consider need of national defense

49 U.S.C. 1347

Perm. Law

The Administrator of the Federal Aviation Agency, in exercising his authority and discharging his duties under the Federal Aviation Act of 1958, must consider the requirements of national defense. (See also Table G.)

[Section 6(c)(1) of Public Law 89-670 (49 U.S.C. 1655) transferred the functions, powers, and duties of the Federal Aviation Agency to the Federal Aviation Administration, Department of Transportation.]

336. Federal Aviation Agency: military aircraft authorized to deviate from air traffic rules

49 U.S.C. 1348(f)

Perm. Law

When essential because of military emergency or urgent military necessity determined by appropriate military authority, and after notifying the Administrator of the Federal Aviation Agency, such military authority may authorize deviation of military aircraft from air traffic rules issued by that Agency. (See also Table G.)

[Section 6(c)(1) of Public Law 89-670 (49 U.S.C. 1655) transferred the functions, powers, and duties of the Federal Aviation Agency to the Federal Aviation Administration, Department of Transportation.]

337. Federal Aviation Agency: duties of Administrator with respect to navigable airspace and needs of national defense

49 U.S.C. 1353(a), (b)

Perm. Law

The Administrator of the Federal Aviation Agency is required to (1) make long range plans for, and formulate policy with respect to, navigable airspace that will best meet the needs of civil aeronautics and national defense; and (2) develop, modify, test, evaluate, and select systems, procedures, facilities, and devices to meet the needs for safe and efficient navigation and traffic control of all civil and military aircraft; except for those needs of military agencies which are peculiar to air warfare and primarily of military concern. (See also Table G.)

[Section 6(c)(1) of Public Law 89-670 (49 U.S.C. 1655) transferred the functions, powers, and duties of the Federal Aviation Agency to the Federal Aviation Administration, Department of Transportation.]

338. Federal Aviation Agency: extension of jurisdiction

49 U.S.C. 1510

Perm. Law

Whenever the President determines that such action would be in the national interest, he may extend the application of the Federal Aviation Act of 1958 to any areas of land or water outside the United States and the overlying airspace thereof in which the United States has the legal authority to take such action. (See also Table G.)

[Section 6(c)(1) of Public Law 89-670 (49 U.S.C. 1655) transferred the functions, powers, and duties of the Federal Aviation Agency to the Federal Aviation Administration, Department of Transportation.]

339. Federal Aviation Agency: security control of air traffic

49 U.S.C. 1522

Perm. Law

Whenever he finds it necessary in the interests of national defense, the Administrator, in consultation with the Department of Defense, shall establish zones or areas in the airspace of the United States, and may prohibit or restrict the flight of civil aircraft under certain conditions. (See also Table G.)

[Section 6(c)(1) of Public Law 89-670 (49 U.S.C. 1655) transferred the functions, powers, and duties of the Federal Aviation Agency to the Federal Aviation Administration, Department of Transportation.]

340. Federal Aviation Agency: insurance

49 U.S.C. 1531-1542

Temp. Law

Through September 30, 1987, the Secretary of Transportation may, with the approval of the President, and after consultation with interested agencies as the President may require, provide insurance and reinsurance under this title against loss or damage under certain conditions. He may also provide such insurance at the request of the Secretary of Defense, and such other agencies as the President may prescribe, without premium, if the Secretary of Defense and such other agency agree to indemnify the Secretary of Transportation against all losses covered by such insurance. (See also Table F.)

[Section 6(c)(1) of Public Law 89-670 (49 U.S.C. 1655) transferred the functions, powers, and duties of the Federal Aviation Agency to the Federal Aviation Administration, Department of Transportation.]

341. Alien enemies: restraint, regulation, and removal

50 U.S.C. 21

Perm. Law

Whenever there is a declared war, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the United States by any foreign nation or government, the President may, by proclamation, or other act, direct the conduct to be followed by the United States toward the citizens, natives, or subjects of the hostile nation with respect to their apprehension, restraint, security, or removal as alien enemies. (See also Tables A and G.)

342. Procurement of Ships and Material During War

50 U.S.C. 82

Perm. Law

In time of war, the President is authorized and empowered:

(1) Within the amounts appropriated therefore, to place an order with any person for such ships or war material as necessary. Compliance with all such orders shall be obligatory and shall take precedence over other orders. If an individual refuses to comply with such orders, the President is empowered to take over the factory or any parts thereof for the production of the necessary items.

(2) Within the limit of amounts appropriated, modify or cancel any existing contract for the building, production or purchase of ships or war material.

(See also Table A.)

343. Procurement: mandatory orders for ships or war material; modification or cancellation of contracts; seizure of plants, shops, or war material

50 U.S.C. 82(b)

Perm. Law

In time of war, the President, in addition to any other provision of law, may place mandatory orders for ships or war material, modify or cancel any contract, make use of, assume, occupy, requisition, or take over, any factory or part thereof, or any ships or war materials. Whenever action is taken under this provision, the United States must make just compensation therefor. (See also Table A.)

344. Materials: strategic and critical materials: stockpiling; disposal; release

50 U.S.C. 98-98h, 98h-4

Perm. Law

Provides for the stockpiling of strategic and critical materials to supply the industrial, military, and naval needs of the United States for common defense, and to prevent the dependence of the United States upon foreign nations for the supply of those materials in time of national emergency. (See also Table D.)

50 U.S.C. 98d provides that, in general, stockpiled material may be released for use, sale, or other disposition, only--

(1) on order of the President when he believes such release is required for the common defense; or

(2) in time of war, or of national emergency declared by the President, on order of any agency designated by the President. (See also Tables A, B, and G.)

50 U.S.C. 98f provides that, in time of war declared by the Congress or during a national emergency, the President may authorize a government employee to issue stockpile disposal orders. (See also Tables A and D).

50 U.S.C. 98h-4 provides that the President may not prohibit or regulate the importation of the product of a country not listed as Communist-dominated so long as the importation of that kind of product of a country so listed is not prohibited by law.

345. Helium: suspension of licenses for sale and transportation; recapture of supplies

50 U.S.C. 167c(d) Perm. Law

Whenever Congress or the President declares that a war or national emergency exists, the Secretary of the Interior may, if he determines such action to be necessary to the defense and security of the United States, suspend licenses granted for the sale and transportation of helium in interstate commerce. He may also take such steps as may be necessary to recapture or reacquire supplies of helium. (See also Tables A-C.)

346. Territorial waters: regulation of anchorage and movement of vessels

50 U.S.C. 191-195 Perm. Law

50 U.S.C. 191 provides that:

(1) In time of national emergency declared by the President because of actual or threatened war, insurrection, invasion, disturbance or threatened disturbance of the international relations of the United States, the Secretary of the Treasury may make, subject to approval of the President, rules and regulations governing the anchorage and movement of any vessel in the territorial waters of the United States. The Secretary of the Navy may exercise those powers of the Secretary of the Treasury when the

Coast Guard is operating as part of the Navy. (See also Table B.)

(2) Whenever the President finds that the security of the United States is endangered by actual or threatened war, invasion, insurrection, subversive activity, or disturbances or threatened disturbances of the international relations of the United States, he may institute such measures and issue rules and regulations to--

(A) govern the anchorage and movement of foreign-flag vessels in the territorial waters of the United States; and

(B) safeguard vessels, harbors, ports, and facilities from acts of sabotage. (See also Tables A and G.)

50 U.S.C. 194 provides that the President may employ those departments, agencies, officers, or instrumentalities of the United States that he considers necessary to carry out the purpose of 50 U.S.C. 191-195. (See also Tables A, B, and G.)

347. Territorial waters: emergency foreign vessel acquisition; purchase or requisition of vessels lying idle

50 U.S.C. 196-198

Perm. Law

Whenever the President proclaims that the security of the national defense makes it advisable, or during a national emergency proclaimed by the President, the President may, through the Secretary of Commerce, purchase or requisition, or charter or requisition the use of, or take over title or possession of, for such use as he may direct, any merchant vessel not owned by citizens of the United States which is lying idle in waters under the jurisdiction of the United States, including the Canal Zone, and which he finds to be necessary to the national defense. (See also Tables B and G).

348. Defense Industrial Reserves: powers and duties of the Secretary of Defense

50 U.S.C. 451-462

The Secretary of Defense, in the interest of national security, is authorized and directed to: (1) determine which industrial plants and installations should become a part of the defense industrial reserve; (2) designate what excess industrial property shall be disposed of; (3) establish general policies; (4) direct the transfer without reimbursement of such property to other Government agencies with the consent of such agencies; (5) direct the leasing of any such property; (6) authorize the disposition in accordance with existing law of any of such property when in the opinion of the Secretary such property is no longer needed by the Department of Defense; (7) authorize and regulate the lending of any such property to any nonprofit educational institution or training school; and (8) report to Congress by April 1 each year on action taken under this statute in the interest of national defense. (See also Table G.)

- 349 National Security Agency: conditional employment, detail, or assignment of personnel

50 U.S.C. 832

Perm. Law

During any war declared by Congress, or when the Secretary of Defense determines that a national disaster exists, or in exceptional cases in which the Secretary (or his designee) determines in writing that his action is necessary or advisable in the national interest, he may authorize the employment of any person in, or the detail or assignment of any person to, the National Security Agency, and may grant to any such person access to classified information, on a temporary basis, pending the completion of the required full field investigation and clearance for access to classified information if the Secretary determines that such action is clearly consistent with the national security. (See also Tables A and G.)

350. Public contracts: national defense contracts exempt from certain statutory limitations

50 U.S.C. 1431-1435

Perm. Law

During a national emergency declared by the President or Congress and for six months thereafter, or until such earlier time as Congress by concurrent resolution may designate, the President may authorize any department or agency exercising functions in connec-

tion with national defense to enter into, modify, or make advance payments on, contracts affecting the national defense without regard to certain statutory limitations; provided, however, expenditures of \$25,000,000 or more shall be reported to Congress prior to obligating the United States. (See also Tables B and C.)

351. Chemical and biological warfare agents: suspension of restrictions

50 U.S.C. 1511-1516

Perm. Law

Restrictions placed on the research, development, test and evaluation, procurement, storage, deployment, disposal, or transportation of chemical and biological warfare agents may be suspended by the President during any war declared by Congress and during any national emergency declared by Congress or the President. (See also Tables A-C.)

- 351A. War Powers Resolution: Use of Armed Forces in Hostilities, limitation on Presidential Power as Commander-in-Chief, Consultation, Reporting Requirements

50 U.S.C. 1541-1544

Perm. Law

Provides President may exercise constitutional powers to introduce armed forces into hostilities only pursuant to (1) declaration of war (2) specific statutory authority, or (3) national emergency created by attack.

Requires President to consult with Congress before introducing armed forces into hostilities or situations likely to result in hostilities, if possible, and to regularly consult with Congress after an introduction of armed forces in these situations.

In the absence of a declaration of war, in any case where Armed forces are introduced into hostilities, or if equipped for combat into a foreign nation or its airspace or waters, or armed forces already equipped for combat and in a foreign nation are substantially increased in number, the President must submit a written report to Congress within 48 hours. (See also Tables A, D, and G.)

351B. Declaration of State of Emergency: Reporting requirements

50 U.S.C. 1641

Perm. Law

When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of significant orders of the President. Each Executive agency shall maintain its own file. (See also Tables A and B.)

352. Foreign Exchange: Power to regulate

50 U.S.C. 1701

Perm. Law

Grants to the President, in case of a specific threat, which results in a declaration of national emergency, the authority to regulate transactions in foreign exchange, transfers of credit or payments involving foreign countries or nationals, and the importing and exporting of securities or currency. (See also Table B.)

353. [Vacant]

354. Enemy patents, copyrights, or trademarks: use

50 U.S.C. App. 10(c)

Perm. Law

During the existence of a state of war, the President may grant a license to manufacture goods, or to use any trademark, or process which is copyrighted, owned, or controlled by an enemy or ally of an enemy. The President may prescribe conditions of the license, including the fixing of prices of articles and products necessary to the health of the armed forces or the successful prosecution of the war. (See also Table A.)

355. Military Selective Service Act: modification of physical and mental qualifications for induction in National Security Training Corps

50 U.S.C. App. 454(a)(3d par.)

Perm. Law

Except in time of war or national emergency, declared by Congress, the President may, under such rules and regulations as he may prescribe, raise the mental and physical qualifications for induction into the

National Security Training Corps. (See also Tables A and C.)

356. Military Selective Service Act: persons liable to induction permitted to enlist in Regular Army for a period equal to the induction period

50 U.S.C. App. 454(c)(1) Perm. Law

Any persons between the ages of eighteen years and six months and twenty-six years may enlist in the Regular Army for a period of service equal to that which he may be required to serve on active training and service if inducted under the Military Selective Service Act. Except after a declaration of war or national emergency by Congress after June 19, 1951, a person so enlisting may not have his enlistment extended without his consent. (See also Tables A and C.)

357. Military Selective Service Act: induction; exemption of certain persons

50 U.S.C. App. 456(b)(3) Perm. Law

Except after a declaration of war or national emergency by Congress after June 24, 1948, under some circumstances, persons are not liable for induction for training and service under the Military Selective Service Act, except as prescribed in section 5(a) of that Act (50 U.S.C. App. 455(a)). (See also Tables A and C.)

358. Military Selective Service Act: induction; exemption of certain persons

50 U.S.C. App. 456(c)(2)(A) Perm. Law

Except after a declaration of war or national emergency by Congress after August 9, 1955, a person enlisted or appointed under section 6(c)(2)(A) of the Military Selective Service Act, as amended, who has completed six years of satisfactory service as a member of the Ready Reserve or National Guard, and who during such service has performed active duty for training with an armed force for not less than twelve consecutive weeks, is not liable for induction for training and service under this Act. (See also Tables A and C.)

359. Military Selective Service Act: exemption in the event of service-connected death or missing status of certain members of the family

50 U.S.C. App. 456(o), note Perm. Law

Except during war or a national emergency declared by Congress--

(a) No person may be inducted under the Military Selective Service Act unless he volunteers for induction--

(1) if the father or a brother or a sister of such a person was killed in or died in line of duty while serving in the Armed Forces after December 31, 1959, or died subsequent to that date as a result of injuries received or disease incurred in line of duty during such service, or

(2) during any period of time in which a father or a brother or a sister of such person is in a captured or missing status as a result of such service; and

(b) The sole surviving son of any family in which the father or one or more sons or daughters thereof were killed in action before January 1, 1960, or died in line of duty before January 1, 1960, while serving in the Armed Forces of the United States, or died subsequent to such date as a result of injuries received or disease incurred before such date during such service, shall not be inducted under the Military Selective Service Act unless he volunteers for induction. (See also Tables A and C.)

360. Soldiers' and Sailors' Civil Relief Act of 1940: rights and benefits for members of armed forces

50 U.S.C. App. 464 Perm. Law

(See item No. 364.)

361. Military Selective Service Act: suspension of enlistments

50 U.S.C. App. 465(d) Perm. Law

Whenever the Congress or the President declares that the national interest is imperiled, voluntary enlist-

ment or reenlistment in the armed forces and their reserve components may be suspended by the President to the extent he deems necessary in the interest of national defense. (See also Table G.)

362. Military Selective Service Act: induction: termination date

50 U.S.C. App. 467(c) Perm. Law

Notwithstanding any other provisions of this title (sections 1-22 of the Military Selective Service Act (50 U.S.C. App. 451-454, 455-471(a)), no person may be inducted for training and service in the armed forces after July 1, 1973, except those deferred under section 6 (50 U.S.C. App. 456) of the Military Selective Service Act after the basis for such deferment ceases to exist. (See also Table F.)

363. Industrial mobilization: mandatory orders

50 U.S.C. App. 468 Perm. Law

Whenever the President determines it in the interest of national security to obtain prompt delivery of materials or articles for use of the armed forces or the Department of Energy, he may place mandatory orders for such materials or articles through the head of any department. Such orders are to be given priority and precedence by the manufacturer. However, expenditures in excess of \$25,000,000 shall be reported to Congress prior to ordering the materials for articles. (See also Table G.)

364. Soldiers' and Sailors' Civil Relief Act of 1940: rights and benefits for members of the armed forces

50 U.S.C. App. 501-590 Perm. Law
(as extended by 50 U.S.C. App. 464)

Until such time as the Soldiers' and Sailors' Civil Relief Act of 1940 is repealed or otherwise terminated by subsequent Act of Congress, certain benefits, exemptions from civil liability, and stays of proceedings and executions are provided for all members of the armed forces with respect to: taxation, mortgage payments, insurance premiums, homestead rights, stay of eviction proceedings, deferment of income taxes, and court actions generally (See also Table G.)

365. Soldiers' and Sailors' Civil Relief Act of 1940:
Power of Attorney; extension where member is in a
missing status

50 U.S.C. App. 591

Perm. Law

Power of Attorney, executed during Vietnam era (as defined in 38 U.S.C. 101(29)) by person in military service who is in a missing status, which designates person's spouse or named relative and which expires while person is in missing status shall be automatically extended for period that person is in such status provided that no power executed after January 22, 1973 which clearly indicates an intended expiration shall be so extended. (See also Table G.)

366. Second War Powers Act, 1942, Title XIII: inspection and audit of plants, books, and records or war contractors

50 U.S.C. App. 643-643c,
643c note

Temp. Law

Until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, or until such earlier date as may be designated by Congress by concurrent resolution or the President, the United States may inspect the plants, books, and records of any contractor with whom a defense contract has been placed after September 8, 1939 and before the termination of the present war. (See also Tables B and F)

367. Espionage: protection of military or defense properties

50 U.S.C. App. 781-785

Temp. Law

Until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, the photographing, sketching, or making of other representations of defense installations or material, or of any place used for the manufacture, storage, or repair of defense equipment or materials, is prohibited, except as permitted by regulations of the Secretary of the military department concerned. (See also Tables B and F)

[See 50 U.S.C. 797 for related authority of the Secretary of Defense or his designee concerning

protection of defense installations, materials, equipment, etc. (See also 18 U.S.C. 793-797.)]

368. Renegotiation Act of 1951: contracts; renegotiation of excess profits

50 U.S.C. App. 1211-1224 Temp. Law

50 U.S.C. App. 1212(c)(1) provides that the procedure for eliminating excess profits under contracts (and related subcontracts) with the Department of Defense, the military departments, and certain other departments and agencies or the United States, established by sections 1211-1224, terminates on September 30, 1976. (See also Table F.)

50 U.S.C. App. 1216(e)(1) and (2) provide that sections 1211-1224 do not apply to amounts received or accrued in a fiscal year under any contract or subcontract for an article or service which is a standard commercial article, or a service which is reasonably comparable with a standard commercial service.

369. Airports: disposed of as surplus

50 U.S.C. App. 1622(g)(2)(E) Perm. Law

During any national emergency declared by the President or Congress, the United States has the right to exclusive use, control, and possession, without charge, of airports and airport facilities disposed of under the Surplus Property Act of 1944, as amended (50 U.S.C. App. 1622). (See also Tables R and C.)

370. National defense reserve fleet

50 U.S.C. App. 1744(a) Perm. Law

The Secretary of Commerce shall place in the national defense reserve certain vessels owned by the Secretary of Commerce, including those he considers should be retained for the national defense after consultation with the Secretary of the Army and the Secretary of the Navy. Vessels placed in the reserve may be used only for the benefit of a department or agency whenever the President proclaims that the security of the national defense makes it advisable

or during any national emergency proclaimed by the President. (See also Tables R and G.)

371. Defense Production Act of 1950, Section 101: materials allocation to maximize domestic energy
- 50 U.S.C. App. 2071(c)(1)
 Pub. L. 94-163, §104 Temp. Law
 89 Stat 878
- 50 U.S.C. App. 2071(c)(1) authorizes the President, until the close of December 31, 1984, by rule or order to require allocation of supplies of materials and equipment in order to maximize domestic energy supplies. (See also Table F.)
372. Defense Production Act of 1950, Title I: materials and facilities: priorities and allocations for defense contracts
- 50 U.S.C. App. 2071-2073, Temp. Law
 2166(a), (b)
- 50 U.S.C. App. 2166(a) and (b) provides that the system for determining priorities and allocating materials and facilities for national defense established by sections 2071-2073 terminates on September 30, 1982, unless sooner terminated by concurrent resolution of Congress or proclamation of the President. (See also Table F.)
373. Defense Production Act of 1950, Title III: Procurement; expansion of productive capacity and supply
- 50 U.S.C. App. 2091-2094, Temp. Law
 2166(a), (b)
- 50 U.S.C. App. 2166(a) and (b) provides that the authority of the President, under section 2091-2094
- (1) to authorize the military department and other agencies to guarantee any public or private financing institution against loss on any loan made to finance contractors who are engaged in Government contracts for the national defense, and
- (2) to provide for loans to private business enterprises, purchases of raw materials, subsidy payments, and installation of government-owned equipment in industrial facilities, for the purpose of

expediting national defense production; terminates on September 30, 1982, unless sooner terminated by concurrent resolution of Congress or proclamation of the President, provided, however, loans of \$25,000,000 or more shall be reported to Congress prior to making the loan. (See also Table F.)

374. Defense Production Act of 1950, Title VII: encouragement of small business

50 U.S.C. App. 2151-2157, Temp. Law
2159-2163, 2166(a), (b)

50 U.S.C. App. 2166(a) and (b) provides that the authority of the President under sections 2151-2163 to encourage small business enterprises to make the greatest possible contribution toward achieving the objectives of the Defense Production Act of 1950, as amended, terminates on September 30, 1982, unless sooner terminated by concurrent resolution of Congress or proclamation of the President. (See also Table F.)

375. Defense Production Act of 1950, Title VII: civilian employees; employment of experts and consultants

50 U.S.C. App. 2160 Temp. Law
2166(a), (b)

50 U.S.C. App. 2166(a) and (b) provides that the authority of the President, under section 2160, to employ, to the extent he considers necessary to carry out the provisions of the Defense Production Act of 1950, persons of outstanding experience and ability without compensation, and experts and consultants, at rates not in excess of \$50 a day, terminates on March 31, 1983, unless sooner terminated by concurrent resolution of Congress or proclamation of the President. (See also Table F.)

376. Defense Production Act of 1950, Title I: materials and facilities: priorities and allocations for defense contracts

50 U.S.C. App. 2166(a) Temp. Law
(See item No. 372.)

377. Defense Production Act of 1950, Title III: Procurement; expansion of productive capacity and supply until September 30, 1982

- 50 U.S.C. App. 2166(a), (b) Temp. Law
(See item No. 373.)
378. Defense Production Act of 1950, Title VII: encouragement of small business
- 50 U.S.C. App. 2166(a), (b) Temp. Law
(See item No. 374.)
379. Defense Production Act of 1950, Title VII: civilian employees; employment of experts and consultants
- 50 U.S.C. App. 2166(a), (b) Temp. Law
(See item No. 375.)
380. Federal Civil Defense Act of 1950: payment of travel and per diem expenses of students at civil defense schools; procurement, maintenance, and loan or grant to States of certain equipment; financial contributions to States for certain expenses
- 50 U.S.C. App. 2281(e), (h) Perm. Law
2286(h)
- (1) 50 U.S.C. App. 2281(e) provides the authority to pay travel expenses and per diem allowances for students at civil defense technical training schools. (See also Table F.)
- (2) 50 U.S.C. App. 2281(h) authorizes the Administrator of the Federal Civil Defense Administration (functions since transferred and delegated; see Reorg. Plan No. 1 of 1958, as amended, and E.O. 10952, as amended, 50 U.S.C. App. 2271 note) to procure and maintain, and to grant or loan to the States, radiological instruments and detection devices, protection masks and gas detection devices. (See also Table F.)
- (3) 50 U.S.C. App. 2286(h), provides authority to the Administrator of the Federal Civil Defense Administration (functions since transferred and delegated: see preceding paragraph) to make financial contributions to the States for necessary State and local civil defense personnel and administrative expenses. (See also Table F.)
381. Export Administration Act: protection of domestic economy

50 U.S.C. App. 2401-2418

Perm. Law

50 U.S.C. App. 2419 provides that the system of export controls established by sections 2401-2413 may be used, until September 30, 1983, unless sooner terminated by concurrent resolution of Congress, or proclamation of the President, to protect the domestic economy. (See also Table F.)

382. [Vacant]

383. District of Columbia: blackouts

6 District of Columbia Code 1001 Perm. Law

Whenever a state of war exists between the United States and any foreign country or nation, the Mayor of the District of Columbia may order blackouts in the District of Columbia with approval of the Secretary of the Army. (See also Table A.)

384. District of Columbia: evacuation

6 District of Columbia Code 1008 Perm. Law

During the existence of a state of war between the United States and any foreign nation, the Mayor of the District of Columbia, subject to the approval of the Secretary of the Army, may prepare for the evacuation from the District of Columbia of such persons as they shall determine necessary, may negotiate to provide for the housing, care, etc., of such evacuees, and, when in their judgment public interest requires it, order and compel, subject to the approval of the Secretary of the Army, the evacuation from the District of Columbia of such persons. (See also Table A.)

TABLE A

LAWS EFFECTIVE IN TIME OF WAR

This table shows those laws that are effective by their terms in time of war. The "Item No." refers to a numbered item in Part I.

<u>Item No.</u>	<u>Subject</u>
2	Recapture of Hoboken Manufacturers' Railroad Company (in time of war, or of national emergency)
3	Recapture of land formerly part of the Presidio of San Francisco, California (in time of war, or of national emergency)
11	Recapture of Port Newark Army Base, New Jersey (in time of war, or national emergency declared by Congress)
18	Recapture of certain lands formerly part of Camp Robinson, Arkansas (in time of war, or national emergency declared by Congress, or of emergency declared by the President)
19	Recapture of certain land formerly part of Fort Schuyler, New York (in time of war, or of national emergency declared by Congress or the President)
21	Recapture of formal Naval Air Station, Kahului, Wailuku, Maui, Hawaii, or equivalent (in time of war or national emergency)
24	Recapture of certain land of the Veterans' Administration in Johnson City, Tennessee (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
25	Recapture of certain land in Windsor Locks Connecticut (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
26	Recapture of certain land in the former Camp Butner Military Reservation (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)

- 27 Recapture of certain land in Marion County, Indiana (in time of war, or of national emergency declared by the President or Congress)
- 29 Recapture of Boston Army Base Pier (in time of war declared by Congress or national emergency declared by the President)
- 30 Recapture of certain land formerly part of Fort Bliss, Texas (in time of war, or national emergency declared by Congress, or of emergency declared by Congress or the President)
- 31 Recapture of Martindale Auxiliary Field, San Antonio, Texas (in time of war, or of national emergency declared by Congress or the President)
- 32 Recapture of former Hughes Stout Plant occupied by Texas National Guard, Houston, Texas (in time of war or national emergency)
- 33 Recapture of certain land in Klamath County, Oregon (in time of war, or national emergency declared by Congress, or of emergency declared by the President)
- 35 Recapture of certain land in Austin, Texas (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 36 Recapture of Camp Dodge Military Reservation, Iowa; Polk County Target Range, Iowa; and other Iowa-owned lands used for National Guard purposes (in time of war, or national emergency, declared by Congress, or of national emergency declared by the President)
- 38 Recapture of certain land near Lake Guernsey, Wyoming (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 39 Recapture of certain land formerly part of Fort Devens, Massachusetts (in time of war, or national emergency declared by Congress, or of emergency declared by the President)
- 41 Recapture of certain land near Houston, Texas (in time of war, or of national emergency declared by Congress or the President)
- 49 Recapture of certain land in the vicinity of Williamsburg, Virginia (whenever Congress declares a

state of war or other national emergency, or the President declares a state of emergency)

- 51 Recapture of certain land in Montgomery, West Virginia (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 52 Recapture of certain land in Rexar County, Texas (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 53 Recapture of land known as Clackamas National Guard target range, Clackamas, Oregon (whenever Congress declares a state of war or national emergency, or the President declares a state of emergency)
- 54 Recapture of Fort Preble Military Reservation, South Portland, Maine (in time of war, or of national emergency)
- 56 Recapture of Esler Field, Louisiana (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 58 Recapture of certain part of Veterans' Administration Center Reservation, Los Angeles, California (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 59 Recapture of certain land formerly the United States Marine Corps Air Station, Eagle Mountain Lake, Texas (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 61 Recapture of certain land in York County, Virginia (in time of war, or national emergency declared by Congress, or of emergency declared by the President)
- 62 Recapture of certain land in Boston Neck, Narragansett, Washington County, Rhode Island (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 63 Recapture of certain parts of Army and Navy General Hospital reservation, Hot Springs National Park, Arkansas (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)

- 64 Return to United States ownership of C1-SAY-1 type vessels sold to Republic of China (during any war in which the United States, if participating, and any national emergency declared by the President)
- 66 Recapture of certain parts of the Des Plaines Public Hunting and Refuge Area and Joliet Arsenal Military Reservation, Will County, Illinois (whenever Congress declares a state of war or national emergency, or the President declares a state of emergency)
- 72 Recapture of National Guard facility, Pier 91, Seattle, Washington (in time of war or national emergency declared by Congress or the President)
- 80 Offers preservation of successive step-increase to civilian employees whose continuous service is interrupted by service in the armed forces.
- 82 Entry of civilian employees on military service (in time of war, or of national emergency declared by Congress or the President)
- 84 Aliens who have remained outside the U.S. to avoid training or service in the armed forces may be excluded.
- 85 Imposes rules to be used by the President to control the travel of aliens.
- 86 Wartime desertion as a bar to naturalization
- 88 Evasion or avoidance of training and service in the armed forces as cause for loss of nationality (in time of war, or of national emergency declared by the President)
- 89 Suspension of certain provisions of law relating to reserve commissioned officers (in time of war, or of national emergency declared by Congress)
- 91 Suspension of limitation on reappointment of Chairman of Joint Chiefs of Staff (in time of war declared by Congress)
- 93 Purpose of reserve components (in time of war or of national emergency and at such other time as the national security requires)

- 95 Composition and authorized strength of Ready Reserve (in time of war, or of national emergency declared by Congress or the President)
- 97 Arming of American vessels or aircraft (during a war and at any other time that the President determines that the security of the United States is threatened, etc.)
- 98 Extension of enlistments (in effect at beginning of, or during, a war)
- 99 Term of enlistment in reserve components (at the beginning of a war or of a national emergency declared by Congress, or entered into during such a war or emergency)
- 100 Term of enlistment of enlisted members transferred to reserve components (in time of war or national emergency declared by Congress)
- 101 Duration of temporary enlistments in an armed force (in time of war or emergency declared by Congress)
- 102 Suspension of laws limiting active duty officers (in time of war or national emergency declared by Congress or the President)
- 103 Suspension of laws for promotion, or mandatory retirement or separation, of regular warrant officers (in time of war, or of emergency declared after May 29, 1954 by Congress or the President)
- 104 Suspension of laws for promotion, or mandatory retirement or separation, of reserve warrant officers (in time of war or of emergency declared after May 29, 1954 by Congress or the President)
- 104A Presidential appointment of temporary commissioned officer grades (in time of war or national emergency declared by Congress or the President)
- 104B Presidential suspension of laws relating to promotion, involuntary retirement and separation of commissioned officers (in time of war or national emergency declared by Congress or the President)
- 105 Extension of period of active duty of members of an armed force (for the duration of any war)

- 106 Active duty of members or units of reserve components (in time of war or of national emergency declared by Congress)
- 109 Order to active duty of members or units of Standby Reserve (in time of war, or of national emergency declared by Congress)
- 110 Order of member of Retired Reserve to active duty (in time of war, or of national emergency declared by Congress)
- 112 Extension of active duty agreements of Reserves (during a war, or a national emergency declared by Congress or the President after January 1, 1953)
- 113 Release of Reserves from active duty (in time of war, or of national emergency declared by Congress or the President after January 1, 1953)
- 114 Suspends disability pay or other compensation of a Reserve or the Army, Navy, Air Force, Marine Corps, or Coast Guard ordered to extended active duty for more than 30 days, unless it exceeds his active duty compensation (in time of war, or of national emergency)
- 115 Authorized strength of retired general and flag officers may be exceeded
- 117 Detail of members of armed forces to assist foreign governments (during a war, a declared national emergency, or whenever the President considers it in the public interest)
- 118 Certain articles of the Uniform Code of Military Justice (in time of war; upon a declaration of war; in time of national emergency; or in time of peace)
- 121 Retirement for physical disability of Regulars and members on active duty for more than 30 days (in time of war or national emergency)
- 122 Separation for physical disability of Regulars and members on active duty for more than 30 days (in time of war or national emergency)
- 122A Transportation under a cooperative military airlift agreement (in the absence of peace)

- 123 Purpose of facilities for reserve components and use by armed forces (in time of war or national emergency)
- 128 Transportation of private-plant personnel engaged in defense production (during a war, a national emergency declared by Congress or the President, or whenever the Secretary concerned determines that it is necessary)
- 129 Acquisition of real property by condemnation for defense purposes (in time of war or when war is imminent)
- 130 Acquisition of property by condemnation for lumber production (in time of war or when war is imminent)
- 134 Military claims: property loss: personal injury or death: incident to noncombat activities of the Army, Navy, Air Force, or Coast Guard (in time of war or armed conflict, or if a war or armed conflict intervenes within two years after it accrues)
- 134A Authority of the Secretary of Defense to undertake military construction projects in time of war or national emergency
- 135 Army Staff: Air Staff: limitation on number of officers assigned or detailed for permanent duty in the executive part of the Department of the Army or Air Force (not applicable in time of war, or of national emergency declared by Congress, or whenever the President finds that it is in the national interest to increase the number of officers)
- 137 Reappointment of Army Chief of Staff, Chief of Naval Operations, Air Force Chief of Staff, and Commandant of the Marine Corps for four-year term (in time of war or national emergency declared by Congress after December 31, 1968)
- 138 Discontinuance or consolidation of basic branches of Army (for the duration of any war, or any national emergency declared by Congress)
- 140 Authorized strength of Army general officers may be exceeded
- 143 Appointments of reserve officers of Army or Air Force (in time of war)

- 147 Eligibility of officers of Army or Air Force to be rated as flying officers (in time of war)
- 148 Decorations and awards to members of the armed forces for valor (in action against an enemy of the United States or other armed conflict)
- 151 Priority of mandatory orders for necessary products or materials (in time of war or when war is imminent)
- 152 Seizure of plants and manufacture in seized plants (in time of war or when war is imminent)
- 154 Control of transportation systems (in time of war)
- 156 Lease of buildings in the District of Columbia (in time of war or when war is imminent)
- 160 The President may suspend officer and civilian grade limitation tables.
- 161 Designation of officers of the Marine Corps above the grade of lieutenant colonel to exercise higher commands and occupy other high positions (in time of war or national emergency)
- 162 Suspension of grade limitations relating to Navy admirals and vice admirals and Marine Corps generals and lieutenant generals (during a war or national emergency)
- 171 Authorized strength of retired Navy flag officers on active duty may be exceeded
- 176 Suspension of provisions of 10 U.S.C. 5651-5661 relating to running mates (during a war or national emergency)
- 177 Suspension of provisions of 10 U.S.C. 5701-5710 relating to selection boards for officers of the Navy and Marine Corps (during a war or national emergency)
- 178 Suspension of provisions of 10 U.S.C. 5751-5784 relating to promotion of officers of the Navy and Marine Corps (during a war or national emergency)
- 179 Temporary promotions of Navy and Marine Corps warrant and commissioned officers under 10 U.S.C. 5787 (only

- in time of war or of national emergency declared by the President)
- 187 Authority to order retired enlisted members of Regular Navy or Regular Marine Corps to active duty (in time of war or national emergency)
- 188 Authority to order member of the Fleet Reserve or Fleet Marine Corps Reserve to active duty (in time of war or of national emergency declared by Congress or the President)
- 190 Release of members of the Fleet Reserve or Fleet Marine Corps Reserve from active duty (in time of war, or of national emergency declared by Congress or the President after January 1, 1953)
- 192 Procurement of 20 percent of the aviation cadets each fiscal year from qualified enlisted members of Regular Navy or Regular Marine Corps (except in time of war, or emergency declared by Congress)
- 194 Transportation and subsistence of certain persons on naval vessels at Government expense (in time of war, or of national emergency declared by the President)
- 196 Stay of suit based on admiralty claims (in time of war)
- 202 Authorized strength of Air Force general officers may be exceeded
- 204 Procurement of 20 percent of the aviation cadets each fiscal year from qualified members of the Regular Army or Regular Air Force (except in time of war, or emergency declared by Congress)
- 215 Authority of Secretary of Air Force to authorize payment of travel expenses and allowances for members of Civil Air Patrol carrying out missions assigned by Air Force (in time of war, or of national emergency declared by Congress or the President after May 27, 1954)
- 225 Coast Guard as a service in the Navy (upon the declaration of war or when the President directs)
- 226 Authority to (1) suspend law for selection, promotion, or involuntary separation of Coast Guard officers and (2) promote certain warrant officers (in

- time of war, or of national emergency declared by the President or Congress)
- 227 Authority to order regular officers of Coast Guard on retired list to active duty (in time of war or national emergency)
- 228 Authority to order retired enlisted men of the Coast Guard to active duty (in time of war or national emergency)
- 229 Detention of members of Coast Guard beyond term of enlistment (in time of war, or of national emergency proclaimed by the President, and in the interest of national defense)
- 232 Wartime desertion from Coast Guard as a bar to enlistment or appointment in the armed forces (currently effective with respect to wartime deserters)
- 232A Transportation of private-plant personnel engaged in defense production (during a war, a national emergency declared by Congress or the President, or whenever the Secretary [of Transportation] determines that it is necessary.
- 233 Suspension of certain provisions of law relating to reserve commissioned officers of the Coast Guard (in time of war or national emergency declared by Congress)
- 237 Temporary connection, or construction, of facilities for transmission of electric energy to prevent shortages (in time of war, or of emergency requiring immediate action)
- 239 Possession and control of property of Tennessee Valley Authority for manufacture of explosives or other war purposes (in time of war, or of national emergency declared by Congress)
- 240 Espionage and protection of defense information (in time of war, or of national emergency)
- 241 Collecting or delivering defense information to aid enemy (in time of war)

- 243 Espionage and protection of defense material (in time of war, or of national emergency declared by Congress or the President)
- 244 Seditious activities affecting armed forces (in time of war)
- 245 Arrest of escaped prisoners of war by United States marshals or military authorities (in time of war)
- 246 Wartime suspension of statutes of limitations (in time of war)
- 254 Admission of insane prisoners of war, under the jurisdiction of the Army or Navy, to St. Elizabeth's Hospital (in time of war)
- 261 Exclusion of claims arising from combatant activities of armed forces of jurisdiction of United States district courts and tort claims procedure (in time of war)
- 262 Administrative examination of monthly accounts of armed forces disbursing officers (in time of war, or during any emergency declared by Congress or the President)
- 263 Time limitation on claims or demands by members of the military or naval forces against the United States (in time of war, or when war intervenes within five years after claim accrues)
- 266 Military and civilian claims: property loss: incident to service: members of uniformed services; civilian officers and employees of the United States (in time of war or armed conflict because of political unrest or hostile acts)
- 268 Reduction or set-off against payments due an assignee under a contract of the Department of Defense (in time of war, or of national emergency proclaimed by the President or by act or joint resolution of Congress)
- 274 Suspension of certain provisions of law relating to Federal recognition of commissioned officers of the National Guard (in time of war, or of national emergency declared by Congress)

- 278 Requisition of supplies or military publications by Department of Army or Air Force from National Guard (in time of actual or threatened war)
- 279 Military claims: property loss; personal injury or death: incident to certain National Guard activities (in time of war or armed conflict or, if a war or armed conflict intervenes, within two years after it accrues)
- 280 Temporary promotions of personnel of ESSA serving in a military department (in time of war, or national emergency)
- 283 Orders for withholding of patents and secrecy of certain inventions (in effect at the beginning of, or during, war, or at the beginning of a national emergency declared by the President)
- 284 Service flags and lapel buttons for families of servicemen (during war or hostilities in which the United States is engaged)
- 285 Commodores on the retired list holding a permanent appointment are entitled, when on active duty, to pay of a rear admiral, if they serve satisfactorily on active duty for two years in that grade or in a higher grade (in time of war or national emergency)
- 286 Suspension of hazardous duty and diving duty pay for members of uniformed services (in time of war)
- 287 Suspension of payment of aviation career incentive pay (in time of war)
- 297 Pay and allowances of commissioned officers exercising command higher than grade (in time of war)
- 298A Health care services furnished to members of the Armed Forces by VA
- 300 Exemption for construction of military, naval, and Air Force reservations within the National Capital and its environs (in time of war or national emergency)
- 302 Suspension of maximum rental on leases of buildings to military department for defense purposes (in time of war, or of national emergency declared by Congress or the President)

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- 303 Sale of war material, supplies, and equipment to any foreign government (engaged in war with any government with which the United States is at war)
- 307 Gives the Government the right of first refusal on all natural resources.
- 308 Use of Public Health Service and its commissioned corps (in time of war, or of emergency proclaimed by the President)
- 309 Quarantine of infected persons for protection of members of armed forces and war workers (in time of war)
- 315 Authority to suspend leases of outer Continental Shelf lands (during a state of war, or national emergency declared by Congress or the President after August 7, 1953)
- 317 Destruction of military or naval records (during a state of war between the United States and another nation, or when hostile action by a foreign power appears imminent)
- 319 Exemption of hospital ships from dues, taxes, and pilotage charges (in time of war)
- 320 Restrictions on transfer of shipping facilities (in time of war, or of national emergency declared by the President)
- 327 Authority to waive formal application for radio station construction permit or station license (in time of war, or of national emergency declared by the President or Congress, and when necessary for the national defense)
- 328 War powers of the President with respect to communications (in time of war, threat of war, national emergency proclaimed by the President, public peril or disaster, or in order to preserve the neutrality of the United States)
- 341 Restraint, regulation, and removal of alien enemies (whenever there is a declared war, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the United States by any foreign nation or government)

- 342 Authorizes the President to contract for war material and force compliance. President may seize factories if contract is not met.
- 343 Mandatory orders for ships or war material; modification or cancellation of contracts; and seizure of plants, ships, or war material (in time of war)
- 344 Release, use, sale, or other disposition of stockpiled strategic and critical materials (only in time of war, national emergency declared by the President, or in the event of enemy attack upon the continental United States, exclusive of Alaska)
- 345 Suspension of licenses for sale and transportation, or recapture of supplies, of helium by Secretary of Interior, upon his determination (whenever Congress or the President declares that a war or national emergency exists)
- 346 Regulation of anchorage and movement of vessels in territorial waters of United States (in time of national emergency declared by the President, or whenever the President finds that the security of the United States is endangered by actual or threatened war, invasion, insurrection, subversive activity, or disturbances or threatened disturbances of the international relations of the United States)
- 349 Authorization of employment, detail, or assignment of personnel in the National Security Agency pending completion of full field investigation (during war declared by Congress or when the Secretary of Defense determines it necessary in the national interest)
- 351 Suspension of restrictions concerning chemical and biological warfare agents by the President (during any war declared by Congress and during any national emergency declared by Congress or the President)
- 351A Reporting requirements for introducing troops into hostilities
- 351B Requirement that the President maintain a file and index of significant orders of the President (when Congress declares war or the President a national emergency)

- 354 Authority of the President to license the use of enemy patents, trademarks, or processes (during the existence of a state of war)
- 355 Modification of physical and mental qualifications for induction in National Security Training Corps (except in time of war or national emergency declared by Congress)
- 356 Persons liable to induction by draft are permitted to enlist in Regular Army for a period equal to the induction period (except after a declaration of war or national emergency by Congress)
- 357 Exemption of certain persons from induction who have otherwise served (except in time of war or national emergency declared by Congress)
- 358 Exemption of certain reservists or guardsmen from induction who have otherwise served (except after a declaration of war or national emergency by Congress)
- 359 Exemption of sole surviving son from induction (except during a war or national emergency declared by Congress)
- 383 Blackouts in the District of Columbia (whenever a state of war exists between the United States and any foreign country or nation)
- 384 Evacuation from the District of Columbia (during the existence of a state of war between the United States and any foreign nation)

TABLE BLAWS EFFECTIVE IN TIME OF NATIONAL EMERGENCY
DECLARED BY THE PRESIDENT

This table shows those laws that are effective by their terms in time of national emergency declared by the President. The "Item No." refers to a numbered item in Part I.

<u>Item No.</u>	<u>Subject</u>
6	Recapture of floating dry dock and waterfront accessories at New Orleans (Algiers), Louisiana, Naval Air Station (in time of national emergency declared by the President)
7	Recapture of United States Destroyer and Submarine Base, Squantum, Massachusetts (in time of national emergency declared by the President)
19	Recapture of certain land formerly part of Fort Schuyler, New York (in time of war, or of national emergency declared by Congress or the President)
23	Authority to continue in effect appointments of commissioned and warrant officers who are in a missing status (until the termination of the national emergency proclaimed by the President on December 16, 1950)
27	Recapture of certain land in Marion County, Indiana (in time of war, or of national emergency declared by the President or Congress)
28	Recapture of certain land formerly part of Camp Blanding Military Reservation, Florida (in time of war declared by Congress or the President)
29	Recapture of Boston Army Base pier (in time of war declared by Congress, or of national emergency declared by the President)
31	Recapture of Martindale Auxiliary Field, San Antonio, Texas (in time of war, or of national emergency declared by Congress or the President)
36	Recapture of Camp Dodge Military Reservation, Iowa; Polk County Target Range, Iowa; and other Iowa-owned land used for National Guard purposes (in time of

- war, or national emergency, declared by Congress, or of national emergency declared by the President)
- 41 Recapture of certain land near Houston, Texas (in time of war or of national emergency declared by Congress or the President)
- 45 Recapture of land formerly the Bruns General Hospital Area, Santa Fe, New Mexico (during a national emergency declared by Congress or the President)
- 48 Recapture of certain part of Ethan Allen Air Force Base, Colchester, Vermont (in time of national emergency declared by Congress or the President)
- 64 Return to United States ownership of C1-SLAY-1 type vessels sold to Republic of China (during any war in which the United States is participating and any national emergency declared by the President)
- 69 Recapture of land formerly part of the Fort Miles Military Reservation, Delaware (in time of national emergency declared by the President or Congress)
- 72 Recapture of National Guard facility, Pier 91 Seattle, Washington (in time of war or national emergency declared by Congress or the President)
- 75 Recapture of land in the Kisatchie National Forest, Louisiana (during a national emergency declared by the President or if the Secretary of Defense determines it is in the interest of national defense)
- 76 Initial appointments of civilian employees on other than a permanent basis (until the termination of the national emergency declared by the President on December 16, 1950)
- 82 Entry of civilian employees on military service (in time of war, or of national emergency declared by Congress or the President)
- 84 Aliens who have remained outside the U.S. to avoid training or service in the armed forces may be excluded.
- 85 Imposes rules to be used by the President to control the travel of aliens.

- 88 Evasion or avoidance of training and service in the armed forces as cause for loss of nationality (in time of war, or of national emergency declared by the President)
- 95 Composition and authorized strength of Ready Reserve (in time of war, or of national emergency declared by Congress or the President)
- 96 Details the power of the President to deal with insurrection within his border.
- 102 Suspension of laws limiting active duty officers (in time of war or national emergency declared by Congress or the President)
- 103 Suspension of laws for promotion, or mandatory retirement or separation, of regular warrant officers (in time of war, or of emergency declared after May 29, 1954, by Congress or the President)
- 104 Suspension of laws for promotion, or mandatory retirement or separation, of reserve warrant officers (in time of war or of emergency declared after May 29, 1954 by Congress or the President)
- 104A Presidential appointment of temporary commissioned officer grades (in time of war or national emergency declared by Congress or the President)
- 104B Presidential suspension of laws relating to promotion, involuntary retirement and separation of commissioned officers (in time of war or national emergency declared by Congress or the President)
- 107 Limitation on involuntary recall of members or units of Ready Reserve (in time of national emergency declared by Congress after January 1, 1953.
- 112 Extension of active duty agreements of Reserves (during a war, or a national emergency declared by Congress or the President after January 1, 1953)
- 113 Release of Reserves from active duty (in time of war, or of national emergency declared by Congress or the President after January 1, 1953)
- 115 Authorized strength of retired general and flag officers may be exceeded

- 124 Exemption of certain purchases and contracts from formal advertising requirements (during a national emergency declared by Congress or the President, in a national emergency, or when the public exigency will not permit the delay incident to advertising)
- 128 Transportaton of private-plant personel engaged in defense production (during a war, a national emergency declared by Congress or the President, or whenever the Secretary concerned determines that it is necessary)
- 131 Revocation of leases of non-excess property (in time of national emergency declared by the President)
- 133 Normal rules for base closures may be suspended if the President so certifies to Congress.
- 134A Authority of the Secretary of Defense to undertake military construction projects in time of war or national emergency
- 140 Authorized strength of Army generals may be exceeded
- 150 Hours and pay of laborers and mechanics producing supplies and munitions (during a national emergency declared by the President)
- 171 Authorized strength of retired navy flag officers on active duty may be exceeded
- 179 Temporary promotions of Navy and Marine Corps warrant and commissioned officers under 10 U.S.C. 5787 (only in time of war or of national emergency declared by the President)
- 188 Authority to order members of the Fleet Reserve or Fleet Marine Corps Reserve to active duty (in time of war, or of national emergency declared by Congress or the President)
- 190 Release of members of the Fleet Reserve or Fleet Marine Corps Reserve from active duty (in time of war, or of national emergency declared by Congress or the President after January 1, 1953)
- 194 Transportation and subsistence of certain persons on naval vesseels at Government expense (in time of war, or of national emergency declared by the President)

- 202 Authorized strength of Air Force general officers may be exceeded
- 215 Authority of Secretary of Air Force to authorize payment of travel expenses and allowance for members of Civil Air Patrol carrying out missions assigned by Air Force (in time of war, or of national emergency declared by Congress or the President after May 27, 1954)
- 226 Authority to (1) suspend law for selection, promotion, or involuntary separation of Coast Guard officers and (2) promote certain warrant officers (in time of war, or of national emergency declared by the President or Congress)
- 229 Detention of members of Coast Guard beyond term of enlistment (in time of war, or of national emergency proclaimed by the President, and in the interest of national defense)
- 232A Transportation of private-plant personnel engaged in defense production (during a war, a national emergency declared by Congress or the President, or whenever the Secretary [of Transportation] determines that it is necessary)
- 243 Espionage and protection of defense material (in time of war, or of national emergency declared by Congress or the President)
- 268 Reduction of set-off against payments due an assignee under a contract of the Department of Defense (in time of war, or of national emergency proclaimed by the President or by Act or joint resolution of Congress)
- 283 Orders for withholding of patents and secrecy of certain inventions (in effect at the beginning of, or during, war, or at the beginning of a national emergency declared by the President)
- 298A Health care services furnished to members of the Armed Forces by VA
- 302 Suspension of maximum rental or leases of buildings to military departments for defense purposes (in time of war, or of national emergency declared by Congress or the President)

- 305 Authority to waive requirement for public advertising for bids in disposal of surplus property (during a national emergency declared by the President or Congress, or to promote the public health, safety, or national security)
- 315 Authority to suspend leases of outer Continental Shelf lands (during a state of war, or national emergency declared by Congress or the President after August 7, 1953)
- 320 Restrictions on transfer of shipping facilities (in time of war, or of national emergency declared by the President)
- 322 Suspension of requirement relating to citizenship of officers and crews of vessels documented under laws of the United States (during a national emergency proclaimed by the President)
- 323 Termination of charters of Maritime Administration vessels without cost to the United States (whenever the President proclaims that the security of the national defense makes it advisable, or during a national emergency proclaimed by the President)
- 325 Requisition, purchase, or charter of vessels by the Secretary of Commerce (whenever the President proclaims that the security of the national defense makes it advisable, or during a national emergency proclaimed by the President)
- 327 Authority to waive formal application for radio station construction permit or station license (in time of war, or of national emergency declared by the President or Congress, and when necessary for the national defense)
- 328 War powers of the President with respect to communications (in time of war, threat of war, national emergency proclaimed by the President, public peril or disaster, or in order to preserve the neutrality of the United States)
- 344 Release, use, sale, or other disposition of stock-piled strategic and critical materials (only in time of war, national emergency declared by the President, or in the event of enemy attack upon the continental United States, exclusive of Alaska)

- 345 Suspension of licenses for sale and transportation, or recapture of supplies, of helium by Secretary of the Interior, upon his determination (whenever Congress or the President declares that a war or national emergency exists)
- 346 Regulation of anchorage and movement of vessels in territorial waters of United States (in time of national emergency declared by the President, or whenever the President finds that the security of the United States is endangered by actual or threatened war; invasion, insurrection, subversive activity, or disturbances or threatened disturbances of the international relations of the United States)
- 347 Purchase, requisition, or charter of vessels lying idle in territorial waters of United States (whenever the President proclaims that the security of the national defense makes it advisable, or during a national emergency proclaimed by the President)
- 350 National defense contracts exempt from certain statutory limitations (during a national emergency declared by the President or Congress and for six months thereafter, or until such earlier time as Congress by concurrent resolution may designate)
- 351 Suspension of restrictions concerning chemical and biological warfare agents by the President (during any war declared by Congress and during any national emergency declared by Congress or the President)
- 351B Requirement that the President maintain a file and index of significant orders of the President (when Congress declares war or the President a national emergency)
- 352 Grants the President the power to regulate the foreign exchange.
- 366 Second War Powers Act, 1942, Title XIII: right to inspect and audit plants, books, and records of war contractors (until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, or until such earlier date as may be designated by Congress by concurrent resolution or by the President)
- 367 Photographing, sketching, or making representations of defense properties or materials prohibited (until

six months after the termination of the national emergency proclaimed by the President on December 16, 1950)

- 369 Recapture of airports disposed of as surplus (during any national emergency declared by the President or Congress)
- 370 Placement of vessels in the national defense reserve fleet and use for benefit of a department or agency (whenever the President proclaims that the security of the national defense makes it advisable, or during any national emergency proclaimed by the President)

TABLE CLAWS EFFECTIVE IN TIME OF NATIONAL EMERGENCY
DECLARED BY CONGRESS

This table shows those laws that are effective by their terms in time of national emergency declared by Congress. The "Item No." refers to a numbered item in Part I.

<u>Item No.</u>	<u>Subject</u>
11	Recapture of Port Newark Army Base, New Jersey (in time of war, or of national emergency declared by Congress)
18	Recapture of certain lands formerly part of Camp Robinson, Arkansas (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
19	Recapture of certain land formerly part of Fort Schuyler, New York (in time of war, or of national emergency declared by Congress or the President)
24	Recapture of certain land of the Veterans' Administration in Johnson City, Tennessee (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
25	Recapture of certain land in Windsor Locks, Connecticut (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
26	Recapture of certain land in the former Camp Butner Military Reservation (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
27	Recapture of certain land in Marion County, Indiana (in time of war, or of national emergency declared by the President or Congress)
28	Recapture of certain land formerly part of Camp Blanding Military Reservation, Florida (in time of national emergency declared by Congress or the President)
30	Recapture of certain land formerly part of Fort Bliss, Texas (in time of war or national emergency,

declared by Congress or of emergency declared by the President)

- 31 Recapture of Martindale Auxiliary Field, San Antonio, Texas (in time of war, or of national emergency declared by Congress or the President)
- 33 Recapture of certain land in Klamath County, Oregon (in time of war, or of national emergency declared by Congress, or of emergency declared by the President)
- 35 Recapture of certain land in Austin, Texas (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 36 Recapture of Camp Dodge Military Reservation, Iowa; Polk County Target Range, Iowa; and other Iowa-owned land used for National Guard purposes (in time of war, or national emergency, declared by Congress, or of national emergency declared by the President)
- 38 Recapture of certain land near Lake Guernsey, Wyoming (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 39 Recapture of certain land formerly part of Fort Devens, Massachusetts (in time of war, or national emergency, or of emergency declared by the President)
- 41 Recapture of certain land near Houston, Texas (in time of war, or of national emergency declared by Congress or the President)
- 45 Recapture of land formerly the Bruns General Hospital area, Santa Fe, New Mexico (during a national emergency declared by the President or Congress)
- 48 Recapture of certain part of Ethan Allen Air Force Base, Colchester, Vermont (in time of national emergency declared by Congress or the President)
- 49 Recapture of certain land in the vicinity of Williamsburg, Virginia (whenever Congress declares a state of war or other national emergency, or the President declares a state of emergency)
- 51 Recapture of certain land in Montgomery, West Virginia (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)

- 52 Recapture of certain land in Bexar County, Texas (in time of war, or national emergency, declared by Congress, or of national emergency declared by the President)
- 53 Recapture of land known as the Clackamas National Guard target range, Clackamas, Oregon (whenever Congress declares a state of war or other national emergency or the President declares a state of emergency)
- 56 Recapture of Esler Field, Louisiana (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 58 Recapture of certain parts of Veterans' Administration Center Reservation, Los Angeles, California (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 59 Recapture of certain land formerly the United States Marine Corps Air Station, Eagle Mountain Lake, Texas (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 61 Recapture of certain land in York County, Virginia (in time of war, or national emergency declared by Congress, or of emergency declared by the President)
- 62 Recapture of certain land in Boston Neck, Narragansett, Washington County, Rhode Island (in time of war, or national emergency declared by Congress, or of emergency declared by the President)
- 63 Recapture of certain part of Army and Navy General Hospital reservation, Hot Springs National Park, Arkansas (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 66 Recapture of certain part of the Des Plaines Public Hunting and Refuge Area and Joliet Arsenal Military Reservation, Will County, Illinois (whenever Congress declares a state of war or national emergency, or the President declares a state of emergency)
- 69 Recapture of land formerly a part of the Fort Miles Military Reservation, Delaware (in time of national emergency declared by the President or Congress)

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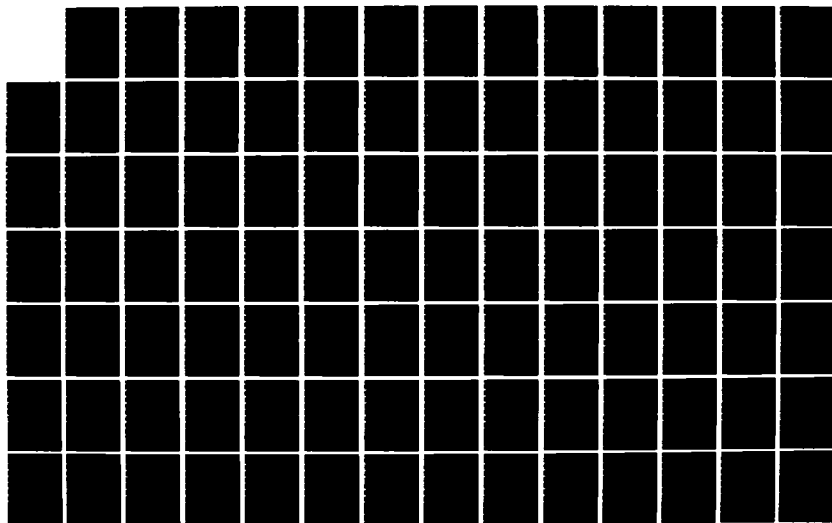
AN ANALYSIS OF DEPARTMENT OF DEFENSE FINANCIAL AND
ACQUISITION POLICIES I. (U) NAVAL POSTGRADUATE SCHOOL
MONTEREY CA J S PROCTOR ET AL. MAR 84

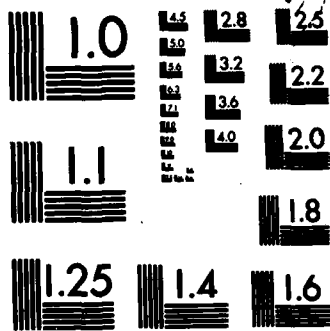
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MICROCOPY RESOLUTION TEST CHART
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- 72 Recapture of National Guard facility, Pier 91, Seattle, Washington (in time of war or national emergency declared by Congress or the President)
- 82 Entry of civilian employees on military service (in time of war, or of national emergency declared by Congress or the President)
- 89 Suspension of certain provisions of law relating to reserve commissioned officers (in time of war, or of national emergency declared by Congress)
- 95 Composition and authorized strength of Ready Reserve (in time of war, or of national emergency declared by Congress or the President)
- 99 Term of enlistment in reserve components (at the beginning of a war or of a national emergency declared by Congress, or entered into during such a war or emergency)
- 100 Term of enlistment of enlisted members transferred to reserve components (in time of war or of national emergency declared by Congress)
- 102 Suspension of laws limiting active duty officers (in time of war or national emergency declared by Congress or the President)
- 103 Suspension of laws for promotion, or mandatory retirement or separation, of regular warrant officers (in time of war, or of emergency declared after May 29, 1954, by Congress or the President)
- 104 Suspension of laws for promotion, or mandatory retirement or separation, of reserve warrant officers (in time of war or of emergency declared after May 29, 1954 by Congress or the President)
- 104A Presidential appointment of temporary commissioned officer grades (in time of war or national emergency declared by Congress or the President)
- 104B Presidential suspension of laws relating to promotion, involuntary retirement and separation of commissioned officers (in time of war or of national emergency declared by Congress or the President)

- 106 Active duty of members or units of reserve components (in time of war or of national emergency declared by Congress)
- 109 Order to active duty (other than for training) of members or units of Standby Reserve (in time of war, or of national emergency declared by Congress)
- 110 Order of members of Retired Reserve to active duty (in time of war, or of national emergency declared by Congress)
- 112 Extension of active duty agreements of Reserves (during a war, or a national emergency declared by Congress or the President after January 1, 1953)
- 113 Release of Reserves from active duty (in time of war, or of national emergency declared by Congress or the President after January 1, 1953)
- 115 Authorized strength of retired general and flag officers may be exceeded
- 124 Exemption of certain purchases and contracts from formal advertising requirements (during a national emergency declared by Congress or the President, in a national emergency, or when the public exigency will not permit the delay incident to advertising)
- 128 Transportation of private plant personnel engaged in defense production (during a war, a national emergency declared by Congress or the President, or whenever the Secretary concerned determines that it is necessary)
- 135 Army Staff: Air Staff: limitation on number of officers assigned or detailed for permanent duty in the executive part of the Department of Army or Air Force (not applicable in time of war, or of national emergency, or when the President finds it in the national interest)
- 137 Reappointment of Army Chief of Staff, Chief of Naval Operations, Air Force Chief of Staff, and Commandant of the Marine Corps for four-year term (in time of war or national emergency declared by Congress after December 31, 1968)
- 138 Discontinuance or consolidation of basic branches of Army (for duration of any war, or any national emergency declared by Congress)

- 140 Authorized strength of Army general officers may be exceeded
- 171 Authorized strength of retired Navy flag officers on active duty may be exceeded
(only during a war or national emergency declared after May 5, 1954, by Congress or the President)
- 188 Authority to order members of the Fleet Reserve or Fleet Marine Corps Reserve to active duty (in time of war or of national emergency declared by Congress or the President)
- 190 Release of members of the Fleet Reserve or Fleet Marine Corps Reserve from active duty (in time of war, or of national emergency declared by Congress or the President after January 1, 1953)
- 192 Procurement of 20 percent of the aviation cadets each fiscal year from qualified members from Regular Navy and Regular Marine Corps (except in time of war, or emergency declared by Congress)
- 202 Authorized strength of Air Force general officers may be exceeded

Procurement of 20 percent of the aviation cadets each fiscal year from qualified members of the Regular Army or Regular Air Force (except in time of war, or emergency declared by Congress)
- 204 Procurement of 20 percent of the aviation cadets each fiscal year from qualified enlisted members of the Regular Army or Regular Air Force (except in time of war, or emergency declared by Congress)
- 215 Authority of Secretary of Air Force to authorize payments of travel expenses and allowances for members of Civil Air Patrol carrying out missions assigned by Air Force (in time of war, or of national emergency declared by Congress or the President after May 27, 1954)
- 226 Authority to (1) suspend law for selection, promotion, or involuntary separation of Coast Guard officers and (2) promote certain warrant officers (in time of war, or of national emergency declared by the President or Congress)

- 232A Transportation of private-plant personnel engaged in defense production (during a war, a national emergency declared by Congress or the President, or whenever the Secretary [of Transportation] determines that it is necessary)
- 233 Suspension of certain provisions of law relating to reserve commissioned officers of the Coast Guard (in time of war or national emergency declared by Congress)
- 239 Possession and control of property of Tennessee Valley Authority for manufacture of explosives or for other war purposes (in time of war, or of national emergency declared by Congress)
- 243 Espionage and protection of defense material (in time of war, or of national emergency declared by Congress or the President)
- 268 Reduction or set-off against payments due an assignee under a contract of the Department of Defense (in time of war, or of national emergency proclaimed by the President or by act or joint resolution of Congress)
- 274 Suspension of certain provisions of law relating to Federal recognition of commissioned officers of the National Guard (in time of war, or of national emergency declared by Congress)
- 298A Health care services furnished to members of the Armed Forces by VA
- 302 Suspension of maximum rental on buildings to military departments for defense purposes (in time of war, or of national emergency declared by Congress or the President)
- 305 Authority to waive requirements for public advertising for bids in disposal of surplus property (during a national emergency declared by the President or Congress or to promote the public health, safety, or national security)
- 315 Authority to suspend leases of outer Continental Shelf lands (during a state of war, or national emergency declared by Congress or the President after August 7, 1953)

- 327 Authority to waive formal application for radio station construction permit or station license (in time of war, or of national emergency declared by the President or Congress, and when necessary for the national defense)
- 345 Suspension of licenses for sale and transportation, or recapture of supplies, of helium by Secretary of the Interior, upon his determination (whenever Congress or the President declares that a war or national emergency exists)
- 350 National defense contracts exempt from certain statutory limitations (during a national emergency declared by the President or Congress and for six months thereafter, or until such earlier time as Congress by concurrent resolution may designate)
- 351 Suspension of restrictions concerning chemical and biological warfare agents by the President (during any war declared by Congress and during any national emergency declared by Congress or the President)
- 355 Modification of physical and mental qualifications for induction in National Security Training Corps (except in time of war or national emergency declared by Congress)
- 356 Persons liable to induction by draft are permitted to enlist in Regular Army for a period equal to the induction period (except after a declaration of war or national emergency by Congress)
- 357 Exemption of certain persons from induction who have otherwise served (except after a declaration of war or national emergency by Congress)
- 358 Exemption of certain reservists and guardsmen from induction who have otherwise served (except after a declaration of war or national emergency by Congress)
- 359 Exemption of sole surviving son from induction (except during a war or national emergency declared by Congress)
- 369 Recapture of airports disposed of as surplus (during any national emergency declared by the President or Congress)

TABLE DLAWS EFFECTIVE IN TIME OF NATIONAL EMERGENCY

This table shows those laws that are effective by their terms in time of national emergency. None of these laws require by their terms a specific declaration of national emergency by either the President or Congress. The "Item No." refers to a numbered item in Part I.

<u>Item No.</u>	<u>Subject</u>
2	Recapture of Hoboken Manufacturers' Railroad Company (in time of war, or of national emergency)
3	Recapture of land formerly part of the Presidio of San Francisco, California (in time of war, or of national emergency)
13	Recapture of Hoboken Pier Terminals (in time of national emergency, and upon order of the President)
14	Recapture of Fort Morgan, Alabama (in time of national emergency)
21	Recapture of former Naval Air Station Kahului, Wailuku, Maui, Hawaii, or equivalent (in time of war or national emergency)
32	Recapture of former Hughes Stout Plant occupied by Texas National Guard, Houston, Texas (in time of war or national emergency)
37	Recapture of Jackson Barracks, Louisiana (in time of national emergency)
40	Recapture of a certain part of the former O'Reilly General Hospital, Springfield, Green County, Missouri (in time of national emergency)
44	Recapture of land comprising Camp Livingston and Camp Beauregard, Louisiana (during a national emergency)
46	Recapture of certain land on Anastasia Island, Florida (in time of national emergency)
54	Recapture of Fort Preble Military Reservation, South Portland, Maine (in time of war, or of a national emergency)

- 77 Authority to appoint retired members to a civilian office in the Department of Defense within 180 days after retirement (in time of national emergency)
- 78 President's plan as alternative to agent's recommendation for comparability adjustment of civilian employee pay (if, because of national emergency or economic conditions, he considers recommended adjustment inappropriate)
- 93 Purpose of reserve components (in time of war or of national emergency and at such other time as national security requires)
- 114 Suspends disability pay or other compensation of a Reserve of the Army, Navy, Air Force, Marine Corps or Coast Guard ordered to extended active duty for more than 30 days, unless it exceeds his active duty compensation (in time of war, or of national emergency)
- 117 Detail of members of armed forces to assist foreign governments (during a war, a declared national emergency, or whenever the President considers it in the public interest).
- 118 Certain articles of the Uniform Code of Military Justice (in time of war; upon a declaration of war; in time of national emergency; or in time of peace)
- 121 Retirement for physical disability of Regulars and members on active duty for more than 30 days (in time of war or national emergency)
- 122 Separation for physical disability of Regulars and members on active duty for more than 30 days (in time of war or national emergency)
- 123 Purpose of facilities for reserve components and use by armed forces (in time of war or national emergency)
- 124 Exemption of certain purchases and contracts from formal advertising requirements (during a national emergency declared by Congress or the President, in a national emergency, or when the public exigency will not permit the delay incident to advertising)
- 160 Designation of officers of the Navy above the grade of commander to command fleets and occupy other high positions (in time of war or national emergency)

- 161 Designation of officers of the Marine Corps above the grade of lieutenant colonel to exercise higher commands and occupy other high positions (in time of war or national emergency)
- 162 Suspension of grade limitations relating to Navy admirals and vice admirals and Marine Corps generals and lieutenant generals (during a war or national emergency)
- 176 Suspension of provisions of 10 U.S.C. 5651-5661 relating to running mates (during a war or national emergency)
- 177 Suspension of provisions of 10 U.S.C. 5701-5710 relating to selection boards for officers of the Navy and Marine Corps (during a war or national emergency)
- 178 Suspension of provisions of 10 U.S.C. 5751-5784 relating to promotion of officers of the Navy and Marine Corps (during a war or national emergency)
- 187 Authority to order retired enlisted members of Regular Navy or Regular Marine Corps to active duty (in time of war or national emergency)
- 227 Authority to order regular officers of Coast Guard on retired list to active duty (in time of war or national emergency)
- 228 Authority to order retired enlisted men of the Coast Guard to active duty (in time of war or national emergency)
- 235 Recapture of Fort McHenry (in a national emergency)
- 240 Espionage and protection of defense information (in time of war or of national emergency)
- 280 Temporary promotions of personnel of ESSA serving in a military department (in time of war or national emergency)
- 281 Transfer of vessels, equipment stations, and personnel of Environmental Science Service Administration to a military department (when the President finds that a sufficient national emergency exists)

- 285 Commodores on the retired list holding a permanent appointment are, when on active duty, entitled to the pay of an admiral of the upper half, if they serve satisfactorily on active duty for two years in that grade or in a higher grade (in time of war or national emergency)
- 300 Exemption for construction on military, naval, and Air Force reservations within the National Capital and its environs (in time of war or national emergency)
- 301 Suspension of laws relating to pay of laborers and mechanics under certain contracts to which the United States is a party (in time of national emergency)
- 344 Stockpiling of strategic and critical materials (in time of national emergency)
- 351A Reporting requirements for introducing troops into hostilities

TABLE ELaws Effective in Time of Emergency

This table shows those laws that are effective by their terms in time of emergency. Some of these laws require by their terms a specific declaration of emergency by either the President or Congress. The "Item No." refers to a numbered item in Part I.

<u>Item No.</u>	<u>Subject</u>
1	Recapture of certain part of the military reservation on Anastasia Island, Florida (in an emergency)
4	Recapture of municipal aviation field at Tucson, Arizona (in an emergency, or when considered advisable)
5	Recapture of aviation field at Yuma, Arizona (in an emergency, or when considered advisable by the Secretary of the Air Force)
18	Recapture of certain lands formerly part of Camp Robinson, Arkansas (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
24	Recapture of certain land of the Veterans' Administration in Johnson City, Tennessee (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
25	Recapture of certain land in Windsor Locks, Connecticut (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
26	Recapture of certain land in the former Camp Butner Military Reservation, North Carolina (in time of war, or national emergency declared by Congress, or of emergency declared by the President)
30	Recapture of certain land formerly part of Fort Bliss, Texas (in time of war or national emergency, declared by Congress, or of emergency declared by the President)

- 33 Recapture of certain land in Klamath County, Oregon (in time of war, or national emergency declared by Congress, or of emergency declared by the President)
- 35 Recapture of certain land in Austin, Texas (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 38 Recapture of certain land near Lake Guernsey, Wyoming (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 39 Recapture of certain land formerly part of Fort Devens, Massachusetts (in time of war, or national emergency declared by Congress, or of emergency declared by the President)
- 49 Recapture of certain land in the vicinity of Williamsburg, Virginia (whenever Congress declares a state of war or other national emergency, or the President declares a state of emergency)
- 51 Recapture of certain land in Montgomery, West Virginia (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 52 Recapture of certain land in Bexar County, Texas (in time of war, or national emergency declared by Congress, or of emergency declared by the President)
- 53 Recapture of land known as the Clackamas National Guard target range, Clackamas, Oregon (whenever Congress declares a state of war or other national emergency, or the President declares a state of emergency)
- 56 Recapture of Esler Field, Louisiana (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 58 Recapture of certain part of Veterans' Administration Center Reservation, Los Angeles, California (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 59 Recapture of certain land formerly the United States Marine Corps Air Station, Eagle Mountain Lake, Texas (in time of war, or national emergency, declared by Congress or of emergency declared by the President)

- 61 Recapture of certain land in York County, Virginia (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 62 Recapture of certain land in Boston Neck, Narragansett, Washington County, Rhode Island (in time of war, or national emergency, declared by Congress, or of emergency declared by the President)
- 63 Recapture of certain part of Army and Navy General Hospital reservation, Hot Springs National Park, Arkansas (in time of war, of national emergency, declared by Congress, or emergency declared by the President)
- 66 Recapture of certain part of the Des Plaines Public Hunting and Refuge area and Joliet Arsenal Military Reservation, Will County, Illinois (whenever Congress declares a state of war or national emergency, or the President declares a state of emergency)
- 80 Offers preservation of successive step-increase to civilian employees who continuous service is interrupted by service in the armed forces.
- 96 Details the power of the President to deal with insurrection within his border.
- 101 Duration of temporary enlistments in an armed force (in time of war or emergency declared by Congress)
- 149 Employment of contract surgeons (in an emergency)
- 155 Emergency construction of temporary forts, air bases, or fortifications (in an emergency)
- 247 Extension of time for performance of certain Acts under the Tariff Act of 1930, and free importation of food, clothing, and medical supplies for relief work (whenever the President, by proclamation, declares an emergency to exist by reason of a state of war or otherwise)
- 262 Administrative examination of monthly accounts of armed forces disbursing officers (in time of war, or during any emergency declared by Congress or the President)
- 275 Extension of enlistments in National Guard (if an emergency is declared by Congress)

- 305A Details procedures for the disposal of urban lands and the acquisition or change of use of real property.
- 308 Use of Public Health Service and its commissioned corps (in time of war, or of emergency proclaimed by the President)
- 321 Exceptions and conditions to foreign sales of passenger vessels (in time of emergency)
- 324 Waiver of requirement for transportation of cargo on United States-flag vessels (whenever the Congress by concurrent resolution or otherwise, or the President or the Secretary of Defense, declares that an emergency exists)

TABLE FLaws Effective During a Definite Period
Fixed by the Particular Statute

This table shows those laws that are effective during a definite stated period or until the happening of a stated event. Most of these laws are temporary in nature and will expire on the date fixed or upon the happening of the stated event. The "Item No." refers to a numbered item in Part I.

<u>Item No.</u>	<u>Subject</u>
23	Authority to continue in effect appointments of commissioned and warrant officers who are in a missing status (until the termination of the national emergency proclaimed by the President on December 16, 1950)
70	Prohibits disposal of Bolling-Anacostia complex except for interim lease of facilities to FAA (until January 1, 1980)
71	Authority to receive foreign decorations, orders, and emblems for service in Vietnam after February 28, 1961 (during certain periods of armed conflict or hostilities in Vietnam and one year thereafter)
76	Initial appointments of civilian employees on other than a permanent basis (until the termination of the national emergency declared by the President on December 16, 1973)
83	Authority for special milk program for armed forces ration (until December 31, 1981)
87	Service during Vietnam or other subsequent armed conflict as a basis to reduce naturalization requirements
119	Excepts, from maximum amount entitled to interest, foreign duty savings deposits of members missing as defined in 37 U.S.C. 551(2) (made during Vietnam conflict, beginning February 28, 1961 and ending on the date designated by Executive Order as the date of the termination of combatant activities in Vietnam)
222	Insurance of servicemen's home mortgages by the Federal Housing Commissioner (until May 20, 1983)

- 223 Insurance of mortgages by the Federal Housing Commissioner on housing for civilians at certain research and development installations (until May 20, 1983)
- 224 Insurance on mortgages by the Federal Housing Commissioner on off-base rental housing at armed services installations and certain research and development installations (until May 20, 1983)
- 248 Financial assistance for school maintenance and operation in areas affected by Federal activities (until September 30, 1983)
- 249 Financial assistance for school construction in areas affected by Federal activities (until September 30, 1983)
- 288 Special pay for physicians, dentists, optometrists, and veterinarians entering on active duty
- 289 Bonus for enlistment or extension of enlistment or reenlistment in skills designated critical (until March 31, 1983)
- 291 Special pay to nuclear-qualified submarine officers who extend their period of active service (until September 30, 1987)
- 292 Qualified naval enlisted personnel may obtain reenlistment bonus for nuclear-trained duty requirements provided agreements are entered by June 30, 1975
- 295 [Monthly allowance to certain missing members with dependents who are not entitled to family separation allowance (during Vietnam conflict ending on date designated by Executive Order as the date of termination of combat activities in Vietnam)]
- 310 Wage credits under title II of the Social Security Act for military service (before January 1, 1975)
- 326 War-risk insurance of agencies of the United States for protection of vessels, cargoes, and crews (until September 30, 1984)
- 340 Aviation insurance of agencies of the United States (until September 30, 1987)
- 362 Termination of induction authority (July 1, 1973)

- 366 Second War Powers Act, 1942, Title XIII: right to inspect and audit plants, books, and records of war contractors (until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, or until such earlier date as may be designated by Congress by concurrent resolution or by the President)
- 367 Photographing, sketching, or making representations of defense properties or materials prohibited (until six months after the termination of the national emergency proclaimed by the President on December 16, 1950)
- 368 Renegotiation Act of 1951: procedures for eliminating profits under contracts with the Department of Defense, the military departments, and certain other departments and agencies (until December 31, 1975)
- 371 Requires allocation of supplies of materials and equipment in order to maximize domestic energy supplies (if directed by the President prior to January 1, 1985)
- 372 System for determining priorities and allocations of materials and facilities for national defense under title I of the Defense Production Act of 1950 (until September 30, 1982, unless sooner terminated by concurrent resolution of Congress or proclamation of the President)
- 373 Expansion of productive capacity and supply under title III of the Defense Production Act of 1950 (September 30, 1982, unless sooner terminated by concurrent resolution of the Congress or proclamation of the President)
- 374 Encouragement of small business under title VII of the Defense Production Act of 1950 (until September 30, 1982, unless sooner terminated by concurrent resolution of the Congress or proclamation of the President)
- 375 Employment of experts and consultants under the Defense Production Act of 1950 (until March 31, 1983, unless sooner terminated by concurrent resolution of the Congress or proclamation of the President)
- 380 Authorizes (1) payment of travel expenses and per diem for students at civil defense training schools,

(2) procurement and maintenance and loan or grant of certain equipment to States, and (3) payments to States, for civil defense personnel and administrative expenses

381

Export controls (until September 30, 1983, unless sooner terminated by concurrent resolution of Congress or proclamation of the President)

TABLE GLaws Effective in Miscellaneous Circumstances

This table shows those laws that are effective in miscellaneous circumstances related to a war or an emergency. The "Item No." refers to a numbered item in Part I.

<u>Item No.</u>	<u>Subject</u>
4	Recapture of municipal aviation field at Tucson, Arizona (in an emergency, or when considered advisable)
5	Recapture of aviation field at Yuma, Arizona (in an emergency, or when considered advisable by the Secretary of the Air Force)
8	Recapture of certain rights-of-way in Arlington, Virginia (when in the judgment of the President an emergency exists that requires the use of the property for public defense)
10	Recapture of certain land in Hawaii (when in the judgment of the President an emergency exists that requires the use of the property for public defense)
12	Recapture of Fort Schuyler, New York (when in the judgment of the Secretary of the Army an emergency exists that requires the use of the property for public defense)
68	Expression of the United States determination to prevent extension of communist influence in, and from, Cuba
71	Authority to receive foreign decorations, orders, and emblems for service in Vietnam after February 28, 1961 (during certain period of armed conflict or hostilities in Vietnam and one year thereafter)
75	Recapture of land in the Kisatchie National Forest, Louisiana (during a national emergency declared by the President or if the Secretary of Defense determines it is in the interest of national defense)
79	Advances of pay may be made to a civilian employee of the United States (in case of emergency evacuation)

- 81 Benefits for persons ((1) missing, (2) missing in action, (3) interned in a foreign country, (4) captured, beleaguered, or besieged by a hostile force, or (5) detained in a foreign country)
- 90 Transfer, reassignment, or consolidation or any function assigned to the military services (if the President determines that it is necessary because of hostilities or imminent threat of hostilities)
- 92 Limitation on tour of duty of a member, or of the Director, of the Joint Staff (except in time of war)
- 93 Purpose of reserve components (in time of war or national emergency and at such other time as the national security requires)
- 94 Basic policy for order of Army (Air) National Guard of United States into Federal service (whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces)
- 96 Details the power of the President to deal with insurrection within his border.
- 97 Arming of American vessels or aircraft (during a war and at any other time when the President determines that the security of the United States is threatened, etc.)
- 108 Authority for President to call 50,000 members of the selected reserve to active duty for 90 days without having to declare an emergency
- 110 Active duty agreement of Reserves (not applicable in time of war declared by Congress)
- 111 Authorize periods of active duty under written agreement for reservists of not longer than five years (not applicable in time of war)
- 113 Release of Reserves from active duty (not applicable to an armed force during a period of demobilization or reduction in strength)
- 116 Accumulation of leave by a member of the armed forces (in a missing status)

- 117 Detail of members of armed forces to assist foreign governments (during a war, a declared national emergency, or whenever the President considers it in the public interest)
- 118 Certain articles of the Uniform Code of Military Justice (in time of war; upon a declaration of war; in time of national emergency; or in time of peace)
- 120 Gold star lapel buttons for families of servicemen who died (during World War I or II or subsequent armed hostilities or conflict)
- 124 Exemptions of certain purchases and contracts from formal advertising requirements (during a national emergency declared by Congress or the President, in a national emergency, or when the public exigency will not permit the delay incident to advertising)
- 125 Allows the Secretary of a military department to lend equipment to the American Red Cross for use in training
- 126 Acceptance of services, cooperation, and the assistance to United Seamen's Service (whenever the President finds it necessary in the interest of United States commitments abroad)
- 127 Authorizes cooperation with the United Seaman's Service in providing facilities and services to U.S. merchant seamen in foreign areas (when the President finds it necessary in the interest of U.S. commitment abroad)
- 128 Transportation of private-plant personnel engaged in defense production (during a war, a national emergency declared by Congress or the President, or whenever the Secretary concerned determines that it is necessary)
- 129 Acquisition of real property by condemnation for defense purposes (in time of war or when war is imminent)
- 130 Acquisition of property by condemnation for lumber production (in time of war or when war is imminent)
- 131 Lease of non-excess property (whenever the Secretary of a military department considers it advantageous to the United States)

- 132 Authorizes real property acquisition when urgency does not allow delay necessary for enactment of an authorization
- 134 Military claims: property loss: personal injury or death: incident to noncombat activities of the Army, Navy, Air Force, or Coast Guard (in time of war or armed conflict, or if a war or armed conflict intervenes within two years after it accrues)
- 135 Army Staff: Air Staff: limitation on number of officers assigned or detailed for permanent duty in the executive part of the Department of the Army or Air Force (not applicable in time of war, or of national emergency declared by Congress, or whenever the President finds that it is in the national interest to increase the number of officers)
- 136 Army Staff: Air Staff: limitation on tour of duty of commissioned officers in the executive part of the Department of the Army or Air Force (not applicable in time of war, or of national emergency declared by Congress)
- 141 Persons not qualified for original enlistment in the Army or Air Force (in time of peace)
- 146 Call of members or units of Army National Guard or Air National Guard into active Federal service (whenever the United States is invaded or is in danger of invasion by a foreign nation, there is a rebellion or danger of rebellion against the authority of the Government of the United States, or the President is unable with the regular forces to execute the laws of the United States)
- 148 Decorations and awards to members of armed forces for valor (in action against an enemy of the United States or other armed conflict)
- 151 Priority of mandatory orders for necessary products or materials (in time of war or when war is imminent)
- 152 Seizure of plants and manufacture in seized plants (in time of war or when war is imminent)
- 153 Use of proceeds from operating a public utility in connection with operations of the Corps of Engineers

- of the Army, or of the Air Force, in the field overseas (during actual or threatened hostilities)
- 156 Lease of buildings in the District of Columbia (in time of war or when war is imminent)
- 158 Exemption of bureau chiefs from sea duty (except in time of war)
- 170 Limitation on number of retired flag officers on active duty (except in time of war or national emergency)
- 172 Enlisted members of naval service retained aboard a vessel in foreign waters beyond term of enlistment entitled to 25 percent increase in basic pay (except in time of war)
- 181 Hospitalization, medical treatment, transportation, and subsistence for members of Naval Reserve or Marine Corps Reserve who become ill or contract disease in line of duty while on active duty, or performing inactive duty training (in time of peace)
- 189 Authority to order members of Fleet Reserve or Fleet Marine Corps Reserve to active duty for training (in time of peace)
- 190 Release of members of Fleet Reserve or Fleet Marine Corps Reserve from active duty (not applicable during a period of demobilization or reduction in strength of the Navy or Marine Corps)
- 193 Extension of obligated tour of active duty of aviation pilots of Naval Reserve and Marine Corps Reserve (in time of peace)
- 195 Contracts for construction, alteration, furnishing, or equipping of naval vessels are subject to 41 U.S.C. 35-45 (unless the President determines that this requirement is not in the interest of national defense)
- 195A Restriction on construction of naval vessels in foreign shipyards (unless the President determines it in the national interest to permit such construction)
- 206 Appointment as commissioned officers of Air Force reserve of aviation cadets with wartime service as

- commissioned or flight officers in Army or Air Force (currently effective with respect to wartime service)
- 225 Coast Guard as a service in the Navy (upon the declaration of war or when the President directs)
- 229 Detention of members of Coast Guard beyond term of enlistment (in time of war, or of national emergency proclaimed by the President, and in the interest of national defense)
- 230 Procurement of 20 percent of the aviation cadets each fiscal year from qualified enlisted members of the Coast Guard (except in time of war, or of emergency declared by Congress)
- 232A Transportation of private-plant personnel engaged in defense production (during a war, a national emergency declared by Congress or the President, or whenever the Secretary [of Transportation] determines that it is necessary)
- 234 President may prohibit imports, seize vessels, and use land and naval forces to prevent discrimination against certain American interests (during existence of a war in which the United States is not engaged)
- 236 Requisition of power projects for manufacture of munitions (when the President considers, as evidenced by a written report to the licensee, that the safety of the United States demands it)
- 237 Temporary connection, or construction, of facilities for transmission of electric energy to prevent shortages (in time of war or of emergency requiring immediate action)
- 238 Transmission of TVA power to Atomic Energy Commission and Department of Defense (whenever the President certifies that an emergency need exists)
- 242 Detention of armed vessels (during any war in which the United States is neutral)
- 250 Prohibited activities during period of United States neutrality (whenever the President, or Congress by concurrent resolution, finds that a state of war exists between foreign states, and that it is necessary to promote the security or preserve the

peace of the United States, or to protect the lives of its citizens)

- 251 Military assistance programs with, and use of armed forces for protection of, Middle East nations (until the President determines that the peace and security of those nations are assured, unless the authority is terminated earlier by concurrent resolution of Congress)
- 252 Disposition of foreign decorations awarded for active field service (in time of combat operations)
- 253 Defense of the Panama Canal when attacked or when threatening conditions exist
- 255 Income tax exemption for certain members of the armed forces who served in a combat zone, and income and estate tax exemption for members who died as a result of service (in a combat zone during). Postponement of liability for filing return or paying tax (during service, or hospitalization as result of service, in a combat zone and 180 days thereafter). Time extension for filing claims.
- 257 Suspension of certain periods of limitation of gain from sale or exchange of residence of members of the armed forces (serving on extended active duty)
- 259 Exemption of tax on toll telephone service for members of armed forces (within a combat zone)
- 263 Time limitation on claims or demands by members of the military or naval forces against the United States (in time of war, or when war interenes within five years after claim accrues)
- 266 Military and civilian claims: property loss: incident to service: members of uniformed services; civilian officers and employees of the United States (in time of war or armed conflict or because of political unrest or hostile acts)
- 270 Organization and composition of units of Army [Air] National Guard same as those prescribed for Army [Air Force] subject to such general exceptions as the Secretary concerned may authorize (in time of peace)

- 271 Authority of President to (1) detail a commissioned officer of Regular Army to perform duties of chief of staff for each fully organized division of Army National Guard, and (2) detail a commissioned officer of Regular Air Force to perform similar duties for each fully organized division of the Air National Guard (in time of peace)
- 272 Prohibition against States, territories, Puerto Rico, the Virgin Islands, the Canal Zone, or the District of Columbia maintaining troops other than those of its National Guard and defense forces (in time of peace)
- 273 Authority of States, territories, Puerto Rico, the Virgin Islands, the Canal Zone, or the District of Columbia to use its National Guard or its defense forces within its borders (in time of peace)
- 276 Prohibition against extension of enlistments in active or inactive National Guard (in time of peace)
- 277 Discharge of enlisted members of National Guard before expiration of enlistment (in time of peace)
- 278 Requisition of supplies or military publications by United States from National Guard (in time of actual or threatened war)
- 279 Military claims: property loss; personal injury or death: incident to certain National Guard activities (in time of war or armed conflict, or if a war or armed conflict intervenes within two years after it accrues)
- 282 Authorizes the Defense and Commerce Departments to prescribe joint regulations governing the duties of the Environmental Science Services Administration (in time of peace in preparation for its duties in war)
- 284 Service flags and lapel buttons for families of servicemen (during war or hostilities in which the United States is engaged)
- 290 Special pay for duty subject to hostile fire or explosion (except in time of war declared by Congress)
- 294 Limitation on payment of dislocation allowance for members of uniformed services (not applicable in time

- of war, or national emergency declared after April 1, 1955)
- 295 Authorization of family separation allowance (except in time of war or national emergency declared by Congress after October 1963) and \$30 monthly allowance for members separated from dependents but not qualifying for an allowance under 37 U.S.C. 427(b) (during the Vietnam conflict)
- 296 Benefits for members of the uniformed service ((1) missing, (2) missing in action, (3) interned in a foreign country, (4) captured, beleaguered, or besieged, (5) detained in a foreign country, (6) injured or (7) ill)
- 298 Advances of pay may be made directly to military or Public Health Service dependents (in cases of emergency evacuation from overseas areas)
- 299 Provides mailing privileges for members of United States armed forces and of friendly foreign nations (where the armed forces are engaged in action against an enemy of the United States, engaged in military operations involving armed conflict with a hostile foreign force, or serving with a friendly foreign force in an armed conflict in which the United States is not a belligerent)
- 304 Limitation or exemption of eight-hour day, forty-hour week requirement in public contracts (when necessary to avoid serious impairment of the conduct of Government business)
- 305 Authority to waive requirement for public advertising for bids on disposal of surplus property (during a national emergency declared by the President or Congress or to promote the public health, safety, or national security)
- 305A Details procedures for the disposal of urban lands and the acquisition or change of use of real property
- 307 Gives the government the right of first refusal on all natural resources.
- 311 Transfer of certain categories of materials for military application to another nation (whenever the President determines that it will promote and will

- not constitute an unreasonable risk to common defense and security)
- 312 Communication or exchange of Restricted Data with another nation or regional defense organization (whenever the President determines that it will promote and will not constitute an unreasonable risk to common defense or security)
- 313 Prohibits withdrawals, reservations, or restrictions of more than 5,000 acres of public lands by the Department of Defense for defense purposes, except by Act of Congress (except in time of war, or national emergency declared by Congress or the President after February 28, 1958)
- 314 Payments to grazing permit-holders when public lands used for grazing purposes are withdrawn (for war or national defense purposes)
- 316 Suspension of requirements for filing and preservation of documents (in the event of an attack or threatened attack upon the continental United States)
- 317 Destruction of military or naval records (during a state of war between the United States and another nation, or when hostile action by a foreign power appears imminent)
- 318 Waiver of compliance with navigation and vessel inspection laws (upon request of the Secretary of Defense to the extent deemed necessary in the interest of national defense by the Secretary of Defense)
- 323 Termination of charters of Maritime Administration vessels without cost to the United States (whenever the President proclaims that the security of the national defense makes it advisable, or during a national emergency proclaimed by the President)
- 325 Requisition, purchase, or charter of vessels by the Secretary of Commerce (whenever the President proclaims that the security of the national defense makes it advisable, or during a national emergency proclaimed by the President)
- 327 Authority to waive formal application for radio station construction permit or station license (in

time of war, or of national emergency declared by the President or Congress, and when necessary for the national defense)

- 328 War powers of the President with respect to communications (in time of war, threat of war, national emergency proclaimed by the President, public peril or disaster, or in order to preserve the neutrality of the United States)
- 329 Authority of Governor of Virgin Islands (in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it)
- 330 Authority of Governor of Guam (to prevent or suppress violence, insurrection, rebellion, or invasion)
- 332 Retains right of President to establish naval defensive sea areas and naval air space reservations around and over the islands of Guam, American Samoa, and the Virgin Islands (which he deems necessary for national defense)
- 333 The President may exclude from the current jurisdiction of Guam persons found, acts performed, and offenses committed on property of the United States under the control of the Secretary of Defense (to such extent and in such circumstances as he finds required in the interest of national defense)
- 335 Exercise of authority and discharge of duties under the Federal Aviation Act (Administrator must consider needs of national defense)
- 336 Military aircraft authorized to deviate from air traffic rules issued by the Federal Aviation Agency (when essential because of military necessity determined by appropriate military authority after notifying the Administrator of the Federal Aviation Agency)
- 337 Duties of Administrator of the Federal Aviation Agency with respect to navigable airspace and needs of national defense (except for those needs of military which are peculiar to air warfare and primarily of military concern)
- 338 Extension of jurisdiction of Federal Aviation Agency to areas outside the United States (whenever the

President determines that such action would be in the national interest)

- 339 Security control of air traffic in the airspace of the United States (whenever the Administrator of the Federal Aviation Agency finds it necessary in the interests of the national defense and after consultation with the Department of Defense)
- 341 Restraint, regulation, and removal of alien enemies (whenever there is a declared war, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the United States by any foreign nation or government)
- 344 Disposal of stockpiles strategic and critical materials prohibited, without prior notice to Congress (except where the revised determination is based on the obsolescence of that material for use in time of war); release, use, sale, or other disposition (in time of war, national emergency declared by the President, or in the event of an enemy attack upon the continental United States, exclusive of Alaska)
- 346 Regulation of anchorage and movement of vessels in territorial waters of United States (in time of national emergency declared by the President, or whenever the President finds that the security of the United States is endangered by actual or threatened war, invasion, insurrection, subversive activity, or disturbances or threatened disturbances of the international relations of the United States)
- 347 Purchase, requisition, or charter of vessels lying idle in territorial waters of United States (whenever the President proclaims that the security of the national defense makes it advisable, or during a national emergency proclaimed by the President)
- 348 Powers and duties of the Secretary of Defense with respect to the Defense Industrial Reserves (the Secretary of Defense is directed in the interest of national security to manage and protect our Industrial Reserves)
- 349 Authorization of employment, detail, or assignment of personnel in the National Security Agency pending completion of full field investigation (during war

declared by Congress or when the Secretary of Defense determines it necessary in the national interest)

- 351A Reporting requirement for introducing troops into hostilities
- 361 Authority of the President to suspend voluntary enlistment in the armed forces (whenever Congress or the President declares that the national interest is imperiled)
- 363 Mandatory orders of materials and articles for industrial mobilization (whenever the President determines it is in the interest of national security to obtain prompt delivery for use of the armed forces or the Atomic Energy Commission)
- 364 Rights and benefits for members of armed forces under Soldiers' and Sailor's Civil Relief Act of 1940
- 365 Power of attorney executed during Vietnam era by military person who is later in a missing status which designates spouse or relative shall not expire while person is in such status unless instrument clearly provided to the contrary.
- 370 Placement of vessels in the national defense reserve fleet and use for benefit of a department or agency (whenever the President proclaims that the security of the national defense makes it advisable, during any national emergency proclaimed by the President)

PART III
TABLE OF LAWS DIGESTED
a. Uncodified Laws

Feb.	21,	1925,	ch.	282,	43	Stat.	959	
Feb.	26,	1925,	ch.	340,	43	Stat.	984	
Mar.	3,	1925,	ch.	450,	43	Stat.	1129	
Apr.	12,	1926,	ch.	116,	44	Stat.	241	
May	29,	1926,	ch.	424,	44	Stat.	677	
May	14,	1930,	ch.	278,	\$10,	46	Stat.	332
May	29,	1930,	ch.	350,	46	Stat.	479	
Feb.	28,	1933	ch.	135,	47	Stat.	1367	
June	19,	1936,	ch.	604,	49	Stat.	1535	
June	20,	1936,	ch.	636,	49	Stat.	1557	
Aug.	19,	1937,	ch.	697,	50	Stat.	696	
June	21,	1938,	ch.	557,	52	Stat.	833	
June	28,	1946,	ch.	513,	60	Stat.	332	
June	30,	1950,	ch.	429,	64	Stat.	310	
Sept	5,	1950,	ch.	850,	64	Stat.	591	
June	5,	1952,	ch.	371,	66	Stat.	128	
July	16,	1952,	ch.	884,	66	Stat.	727	
May	27,	1953,	ch.	73,	67	Stat.	38	
June	6,	1953,	ch.	107,	67	Stat.	54	
Mar.	26,	1954,	ch.	105,	68	Stat.	31	
Apr.	12,	1954,	ch.	133,	68	Stat.	50	
June	4,	1954,	ch.	262,	68	Stat.	171	
July	14,	1954,	ch.	482,	68	Stat.	474	
July	27,	1954,	ch.	579	\$103,	68	Stat.	474
Aug.	30,	1954,	ch.	1081,	68	Stat.	974	
Aug.	30,	1954,	ch.	1082,	68	Stat.	975	
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OSD (P) COMPENDIUM OF EMERGENCY AUTHORITIES

COMPENDIUM
OF
EMERGENCY AUTHORITIES

PREPARED FOR
OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR POLICY

April 1981

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INTRODUCTION

This Compendium summarizes emergency authorities of importance to DOD crisis management, and discusses their adequacy. The term "emergency authority," as used in this Compendium, refers to those portions of the United States Code and public laws, federal regulations, Executive Orders, interagency agreements, and departmental directives and regulations that confer extraordinary powers on the Executive Branch to deal with matters related to national security. Some of these authorities are applicable only during war or when a national emergency is declared by the President or Congress; others apply in peacetime and during contingencies in which a national emergency has not been declared.

The Compendium is intended to be a working document that will be regularly updated and improved. It can be used as a ready reference for both the provisions and the deficiencies of the emergency authorities. It is not intended as an authoritative legal document.

The Compendium addresses a broader range of authorities and contingencies than "The DOD Digest of War and Emergency Legislation Affecting the Department of Defense," published by the Air Force as executive agent for the DOD General Counsel. The Digest deals only with the U.S. Code, not with regulations and interagency agreements, and only with authorities that come into effect during a war or national emergency, and certain other laws affecting DOD that have a specific termination date.

Organization of the Compendium

The Sections that follow this introduction are:

- o Assessment - This section assesses the adequacy and the deficiencies of the current emergency authorities.
- o National Emergency Act - This section summarizes an act (PL 94-412, September 14, 1976, 50 USC 1601-1651) that should be understood by crisis managers before they consider the use of the emergency authorities in this Compendium. Some of its key features are:
 - Terminates, as of Sept. 14, 1978, all existing states of national emergency.
 - Mandates twice-yearly Congressional review of any declaration of national emergency, automatic termination after one year in the absence of an extension by the President, and gives Congress the power to terminate at any time by concurrent resolution.
 - Prohibits the exercise of emergency authorities, such as those in this Compendium, without a specific Presidential invocation through the declaration of a national emergency or issuance of an executive order transmitted to the Congress.
- o Summary of Emergency Authorities - This section is intended as a guide to the complete listing of emergency authorities. It is a more detailed version of the Table of Contents, stating briefly the subject of each of the emergency authorities and where it may be found in the Compendium.
- o Emergency Authorities - This section is the heart of the Compendium. It is divided into 16 headings, arranged by function. Each heading begins with an introductory section ("Analysis") explaining the general nature of the authorities under that heading, and discussing their adequacy.
- o Appendix A - This section lists properties that, although transferred from federal use, may be retaken in time of war or national emergency.
- o Appendix B - This section comprises two lists. The first ("Sequential Index") arrays all the laws, executive orders, regulations, etc. on which the emergency authorities are based in alpha-numeric order, together with the page where they appear in this Compendium.

The second list ("Agency Index") lists all the authorities affecting a given agency or department.

ASSESSMENT

Criteria for adequacy of the emergency authorities include:

- Completeness
- Consistency
- Clarity
- Currency

Many of the authorities in this Compendium do not satisfy these criteria. Although the Federal Law (as embodied in the U.S. Code and Public Law) provides the executive branch with a wide degree of flexibility in responding to national emergencies, it is in places incomplete, inconsistent, unclear, and out of date.

An even more significant deficiency concerns the body of emergency authorities that stem from the law -- Executive Orders, regulations, and interagency agreements. These authorities are particularly deficient with respect to completeness and currency. For example, the particulars of some important actions requiring multi-agency cooperation have not been properly worked out and then documented through interagency agreements. Many of the agreements and regulations that do exist are 10-20 years old. The most important deficiencies are:

Functions, Powers and Duties of Organizations:

- To decrease the chances of misinterpretation, EO 11490 should be republished to consolidate the changes and amendments made since it was originally issued (1969).
- The Code of Emergency Federal Regulations is intended to be a single source of standby regulations, from all departments and agencies, that will amend and supplement existing law in emergency situations. This 16-year-old document appears outdated and lacks standby regulations from several major departments with significant emergency preparedness roles.

Manpower:

- Executive Orders 10480 and 11490 have been changed and amended so many times since they were initially issued that there now is high risk of error and confusion in using their important emergency preparedness authorities. They should be reviewed and republished.
- DOD Directive 3005.6, Civilian Personnel Procurement and Manpower Control during Mobilization (1962), requires review and updating.

Materials:

- The important provisions of the Defense Production Act (50 USC App 2061-2166) relating to priority performance on contracts to maximize domestic energy supplies and allocation authority for materials are due to end in 1984.
- Defense Mobilization Order-11, which provides policy guidance on stockpile requirements, requires review.

Transportation:

- The Department of Transportation Standby Order DOT 1940.4 (1970), which contains emergency authorities and procedures covering sea, air, and surface transportation, requires review and updating.
- The 1954 Defense/Commerce agreement regarding utilization, transfer and allocation of merchant shipping requires review and updating. The question of crew availability for shipping allocated to support Defense requirements is potentially a major limiting factor and should be addressed.
- The 1958 Commerce/Maritime Administration voluntary plan for tanker support requires review. Its voluntary nature may no longer be adequate, and changes in the U.S. tanker fleet since 1958 should be assessed.
- Means to assure rapid maritime support for Defense requirements in situations short of war or declared national emergency are not apparent. This issue should be examined with the Department of Commerce and the Maritime Administration. Contractually obligated support similar to that involved in the Civil Reserve Air Fleet program may be necessary.
- The Interstate Commerce Commission 1969 Emergency Standby Orders, which address surface transportation within CONUS, require review. Changes in regulatory practices, governmental structure, and the structure of domestic transportation systems have occurred since 1969 and should be taken into account.

Medical:

- The Department of Health and Human Services and the Veterans Administration have not developed implementing agreements to meet the responsibilities assigned to them by EO 11490 regarding medical support in emergency situations.
- The 1965 DOD/VA understanding regarding military use of VA facilities requires review and updating because of changes in DOD concepts for health support.
- The Navy does not have emergency authority to hire contract surgeons in the same manner as the Army and Air Force.

Industrial and Defense Production:

- The limit of \$25 million for mandatory orders, as established by 50 USC App 468, is too low considering inflation and material costs.
- The Defense Mobilization Orders contained in Title 44, Code of Federal Regulations, require review.

Contracts and Procurement:

- The \$25 million limit in making or amending contracts without prior notice to Congress, as allowed by the National Defense Contracts Act (50 USC 1431-1435), is too low considering inflation and material costs.
- The important provisions of the Defense Production Act (50 USC App 2061-2166) relating to priority performance on defense contracts are not sufficiently permanent. They are due to end on September 31, 1981.
- The \$38 million limit on loan guarantees to private contractors engaged in defense production, as allowed by the Defense Production Act, may be too low considering inflation.
- The provisions of 41 USC 11 and DOD Directive 7220.8, which allow contracts and purchases without appropriation, may be obsolete, and should be reviewed.

Transfer of Civil Agencies to DOD:

- The 1966 Defense/Federal Aviation Agency (FAA) understanding regarding transfer of the FAA to Defense requires review and updating. Governmental organization has changed since 1966, and FAA responsibilities to agencies other than Defense should be clarified.
- The question of crew availability for any NOAA vessels transferred to the DOD should be addressed by Defense, Commerce, and NOAA.

Noncombatant Evacuation:

- The CONUS reception phase of noncombatant evacuation -- a responsibility of the Department of Health and Human Services -- is not adequately addressed by essential support agreements. This issue must be resolved between the Department of Health and Human Services, state and local government agencies, and the volunteer organizations that would have to support CONUS operations.

Environmental Protection/Occupational Safety and Health

- Environmental protection and occupational safety and health laws do not appear to provide sufficient flexibility for emergency and mobilization situations, and could limit industrial surge production.

NATIONAL EMERGENCIES ACT

(50 USC 1601-1651)

50 USC 1601Termination of Existing Emergencies

All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as a result of any declaration of national emergency in effect on September 4, 1976 are terminated on September 14, 1978. "Any national emergency in effect" means a general declaration of emergency made by the President.

50 USC 1621Declaration of Future National Emergencies

With respect to Acts of Congress authorizing the exercise of any special or extraordinary power during the period of a national emergency, the President is authorized to declare such national emergency. Such proclamation shall be transmitted immediately to the Congress and published in the Federal Register. Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect only when the President specifically declares a national emergency and only in accordance with this Act.

50 USC 1622Termination Methods

- (a) Any national emergency declared by the President shall terminate if:
 - (1) Congress terminates the emergency by concurrent resolution; or
 - (2) The President issues a proclamation terminating the emergency.Any national emergency declared by the President shall be terminated

on the date specified in the concurrent resolution of Congress or in the Presidential proclamation of termination, whichever is earlier. Powers and authorities exercised by reason of the emergency shall cease to be exercised after such specified date of termination except for continuing actions or proceedings based on actions committed prior to the termination date.

- (b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.
- (c) A concurrent resolution to terminate a national emergency declared by the President shall be considered and voted upon expeditiously.
- (d) Any national emergency declared by the President, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice that the emergency is to continue in effect after such anniversary.

50 USC 1631

Exercise of Emergency Power and Authorities

When the President declares a national emergency, no powers and authorities made available by law for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which

he proposes that he, or other officers will act. Such specification may be made either in the declaration of national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

50 USC 1641

Accountability and Reporting Requirements
of the President

- (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations. Each Executive agency shall also maintain a file and index of all rules and regulations issued during such emergency or war and pursuant to such declaration of emergency or war.
- (b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted promptly to the Congress.
- (c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the U.S. Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declarations. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

50 USC 1651Application to Other Provisions of Law

The provisions of this act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

- 40 USC 278b: allows suspension of ceilings on rents and leases for buildings.
- 41 USC 252: allows certain contracts, without advertising, for agencies other than Defense, the Coast Guard, and the National Aeronautics and Space Agency.
- 31 USC 203: provides that contracts made by certain agencies shall not be subject to reduction or set-off against assignee.
- 41 USC 15: provides that contracts made by certain agencies shall not be subject to reduction or set-off against assignee.
- 50 USC 1431-1435: allows certain procurement contracts for national defense without regard to other laws.
- 10 USC 2304(a)(1): allows suspension of requirements for formal advertising for contracts.

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50 USC 832 - Allows Sec Def to grant certain waivers for security clearance requirements for National Security Agency.	III-32

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- 5 USC 3325 - Allows federal employment of retired military personnel in certain situations. III-33
- EO 11490 - Assigns responsibilities for civilian manpower mobilization to federal agencies. III-33
- EO 10480 - Assigns responsibilities for meeting labor needs of defense industry and essential civilian employment to Secretary of Labor. III-34
- EO 11179 - Provides for establishment of National Defense Executive Reserve. III-34
- DOD Dir. 1100.6 - Implements EO 11179. III-34
- DOD Dir. 3005.6 - Provides policy guidance on civilian personnel procurement and manpower control during mobilization. III-35
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- 5 USC 5335 - Provides for continuation of step-increases for civilian employees serving in the armed forces during war or emergency. III-36
- 10 USC 4025 - Provides that regular working hours of civilian employees of the Army may be exceeded during emergency with increased rate of pay. III-36
- 10 USC 9025 - Provides that regular working hours of civilian employees of the Air Force may be exceeded during emergency with increased rate of pay. III-36

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- 5 USC 8332 - Provides certain employment protection to civil service employees who enter the military service. III-37

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| 43 USC 1314 - Reserves rights of U.S. to purchase natural resources within certain areas within a State. | IV-1 |
| 43 USC 1341 - Reserves rights of the U.S. to purchase minerals from the Outer Continental Shelf; also allows suspension of commercial operations in that area. | IV-1 |
| 50 USC 98 - Provides authority to establish stockpile of strategic and critical materials, and to release materials from the stockpile. | IV-2 |
| EO 11490 - Assigns emergency preparedness responsibilities to federal agencies regarding strategic and critical materials. | IV-2 |
| EO 12155 - Delegates certain authority with respect to strategic and critical materials. | IV-3 |
| 50 USC App 2061-2166 - Designates energy as a strategic and critical material; allows acquisition/transfer/storage of these materials. | IV-4 |
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A. General Authority to Control Transportation

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| 10 USC 4742 - Allows possession and control, through the Army, of transportation systems. | V-1 |
| 10 USC 9742 - Allows possession and control, through the Air Force, of transportation systems. | V-1 |
| 49 USC 1 - Enables preference or priority in transportation for certain traffic. | V-1 |
| 49 USC 6 - Enables preference or priority for military traffic. | V-1 |
| 49 USC 1020 - Requires preference or priority by freight forwarders. | V-2 |
| 50 USC App 2071 - Enables requirement of priority performance and allocation of materials and facilities. | V-2 |

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DOT 1940.4 - Provides emergency procedures for control of civil transportation, land, sea and air. V-4

DOD Dir. 3005.7 - Policy guidance for use of domestic civil transportation assets. V-6

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46 USC 1242 - Allows requisition or purchase of private vessels. V-7

50 USC 196-198 - Allows requisition, or purchase of foreign vessels idle in U.S. waters. V-7

46 USC 1132 - Allows suspension of requirement that licensed officers of U.S. registered vessels be U.S. citizens. V-8

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50 USC App 1744 - Provides for establishment of National Defense Reserve Fleet (NDRF); provides conditions for release/use of NDRF. V-8

Memo of Agreement; Commerce and Defense, 1954 - Provides guidance on utilization, transfer and allocation of merchant ships to support defense needs. V-9

46 USC 835 - Prohibits transfer or sale of U.S. registered vessels. V-10

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MOU, Defense and Commerce, 1963 - Policy on use of Civil Reserve Air Fleet (CRAF) to meet Defense needs in an emergency. V-11

14 CFR 290.1-290.7 - Allows CRAF operators to lease aircraft among themselves to enable meeting CRAF commitments. V-11

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49 USC 10713 - Allows carriers to violate commercial contracts in emergency. V-12

49 USC 11123 - Allows ICC to suspend rules to promote rail service. V-12

49 USC 11127 - Allows ICC to suspend rules to promote service by freight forwarders. V-12

49 USC 11128 - Priority of rail service in war emergency V-13

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Emergency Motor Carrier Service V-14

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10 USC 2632 - Allows domicile to duty transportation for defense workers under certain conditions. V-14

10 USC 7224 - Allows transportation and subsistence of certain civilians on Navy vessels. V-15

46 USC 1151 - Allows construction subsidies for certain vessels to be operated in foreign trade. V-15

46 USC 1161 - Allows establishment of reserve funds for construction or acquisition of certain vessels. V-15

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42 USC 266 - Allows quarantine/detention of persons deemed health threat to armed forces. VI-1

EO 11490 - Assigns emergency preparedness responsibilities with respect to provision of health care and services. VI-1

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44 CFR Part 325 - Provides listing of Health Manpower Occupations anticipated to be required in an emergency. VI-3

44 CFR Part 326 - Provides policy guidance on National Emergency Blood Program. VI-3

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A. Industrial Preparedness

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DOD Dir. 4005.1 - Implements EO 11490, provides policies and assigns responsibilities for industrial preparedness planning. VII-3

B. Defense Industrial Reserves

50 USC 451 - Establishes Defense Industrial Reserves program to maintain essential nucleus of industrial facilities. VII-2

50 USC 452 - Defines terms associated with Defense Industrial Reserve program. VII-4

50 USC 453 - Provides powers and duties of Secretary of Defense regarding Defense Industrial Reserves program. VII-5

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10 USC 9501 - Allows mandatory orders for defense production; allows seizure, control and use of industrial facilities by the Air Force. VII-7

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- 44 CFR Part 323 - Guidance on priority use of resources in post-attack period. VII-10
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- 50 USC 82 - Relates to procurement of ships and war materials, in general. VIII-3
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- 31 USC 80 - Allows time extension for examination of monthly accounts of Army and Air Force expenditures. IX-1
- 31 USC 80 a, b - Allows time extension for examination of monthly accounts of disbursing officers of all armed forces. IX-1

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31 USC 203 - Provides that contracts made by certain agencies shall not be subject to reduction or set-off against assignee.	IX-2
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46 USC 1151 - Allows construction subsidy if certain vessels to be used in foreign trade are considered suitable for military purposes.	IX-2
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10 USC 4591 - Allows Army to use proceeds from operation of a public utility overseas.	IX-3
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10 USC 712 - Allows detail of members of the armed forces to assist the governments of the Western Hemisphere nations in military matters.	XI-1
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10 USC 2664 - Allows acquisition of land needed for lumber production immediately on filing petition for condemnation.	XII-1
10 USC 2672 - Allows acquisition of real property without authorization act in urgent situation.	XII-2
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40 USC 278 - Allows suspension of ceilings on rents and leases for buildings.	XII-4
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- 50 USC App 1622 - Allows recapture of airports previously disposed of as surplus. XII-5
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- 16 USC 831 - Allows possession of certain property of Tennessee Valley Authority for manufacture of explosives. XII-7
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- 49 USC 1343 - Authorizes transfer of FAA to DOD. XIII-1
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- B. National Oceanic and Atmospheric Administration (NOAA)
- 33 USC 855 - Authorizes transfer of vessels, equipment, stations and commissioned officers to a military department. XIII-3
- EO 11023 - Provides implementing guidance on how such transfer is to be effected. XIII-4
- DOD/DOC Regulations; Cooperation of NOAA with DOD XIII-4
- C. Public Health Service (PHS)
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D. National Intelligence Tasking Center (NITC)

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EO 11490 - Assigns emergency responsibilities for non-combatant evacuation. XIV-1

DOD Dir. 5100.51 - Provides basic policies and describes responsibilities of State and Defense. XIV-1

42 USC 1313 - Authorizes temporary assistance for evacuees. XIV-2

5 USC 5522 - Allows certain pay advances to civilian employees in case of evacuation. XIV-2

DOD Dir 1400.11 - Implementing guidance for authority in 5 USC 5522. XIV-3

37 USC 1006 - Authorizes certain pay allowances to dependents of members of the uniformed services in case of evacuation. XIV-3

XV. Claims/Civil & Criminal Law/UCMJ

A. Admiralty Law

10 USC 7721-7727 - Allows stay of suit in admiralty proceedings. XV-1

B. Other Claims

10 USC 2733 - Allows extension of time limit for presentation of certain claims incident to non-combat activities of the armed forces. XV-1

32 USC 715 - Allows extension of time limit for presentation of certain claims incident to non-combat activities of the National Guard. XV-2

28 USC 2680 - Excludes combat activities of the armed forces from jurisdictions of U.S. district courts and administrative adjustment of tort claims. XV-2

- 31 USC 71, 237 - Allows extension of time limits for presentation of certain claims against the government by military personnel. XV-2
- 31 USC 241 - Allows extension of time limits for presentation of claims against the government for certain losses incident to military service. XV-2
- C. Loss of Nationality
- 8 USC 1481 - Provides for loss of nationality, under conditions, for desertion or remaining outside jurisdiction of U.S. to avoid military service. XV-3
- D. Protection of U.S. Neutrality
- 18 USC 756 - Penalties for aiding escape of interned belligerent. XV-4
- 13 USC 960 - Penalties for carrying out military activities against friendly nations. XV-4
- 18 USC 961 - Penalties for strengthening an armed vessel in violation of U.S. neutrality. XV-4
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- 18 USC 963 - Penalties for taking out of port, vessels detained to protect U.S. neutrality. XV-4
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- 18 USC 965 - Penalties for actions designed to take certain vessels out of U.S. ports. XV-5
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- 18 USC 3058 - Provides that interned members of armed forces of belligerent nations who escape are subject to arrest. XV-6

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- 18 USC 793 - Penalties for gathering, transmitting or losing certain defense information. XV-7
- 18 USC 794 - Penalties for providing defense information to the enemy. XV-7
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- 18 USC 798 - Penalties for unauthorized disclosure of classified information. XV-7
- 18 USC 2153, 2154 - Penalties for destruction or production of defective war materials. XV-8
- 18 USC 2388 - Penalties for sedition, promotion of disloyalty, insubordination, mutiny, disaffection. XV-8
- 18 USC 3287 - Suspension of running of statute of limitations for certain offenses of fraud. XV-9

F. UCMJ

- EO 11476 - Prescribes Manual for Courts-Martial, 1969, provides for suspension of certain limitations on punishments on declaration of war. XV-9

XVI. Environmental Protection/Occupational Safety and Health

A. Environmental Protection

- 15 USC 2601 et. seq. - Provides for control of toxic substances; allows suspension for national defense. XVI-1
- 33 USC 1251 et. seq. - Provides for control of water pollution; allows suspension of prohibition on contracts with violators. XVI-1
- 42 USC 300f - Provides for regulation of public water supply systems; allows waiver of compliance with regulations for Federal agencies in interests of national defense. XVI-1
- 42 USC 7401 et. seq. - Provides for control of release of pollutants into air; allows certain exemptions from compliance; allows exception for procurement from violators. XVI-2

- 42 USC 4901 et. seq. - Provides for noise control; allows limited exceptions only for Federal agencies. XVI-3
- 42 USC 6901 et. seq. - Provides for regulation of solid waste disposal; allows exemption only for Federal agencies. XVI-4
- 33 USC 1401 et. seq., 16 USC 1431-1434 - Protection of Marine environment; no specific waiver/exemption. XVI-4
- 7 USC 136 et. seq. - Provides for control of insecticides, pesticides, rodenticides; exemptions allowed for emergencies. XVI-4
- 42 USC 4321-4361 - Provides general environmental policy; basis for environmental impact statements; no relief provision. XVI-5
- EO 12088 - Provides that federal agencies will comply with environmental requirements; exemptions to be based on Presidential determinations where allowed. XVI-5
- B. Occupational Safety and Health
- 29 USC 651-678 - Provides regulatory power to establish mandatory safety and health standards; limited exemption authority. XV-6

I. FUNCTIONS, POWERS, AND DUTIES OF ORGANIZATIONS

ANALYSIS

The authorities described in this section provide the basic missions and functions of the armed forces of the United States in time of war. It should be noted that the President may transfer or reassign functions of the four armed services if this is considered necessary because of hostilities or the imminent threat of hostilities (10 USC 125). Transfer of the Coast Guard to the Navy may be accomplished upon a declaration of war or when the President directs (14 USC 3).

Emergency preparedness functions and responsibilities for the Department of Defense and other federal departments and agencies are also described. These functions and responsibilities are assigned by Executive Order 11490 (October, 1969). The numerous changes and amendments to this Executive Order make review and republication desirable.

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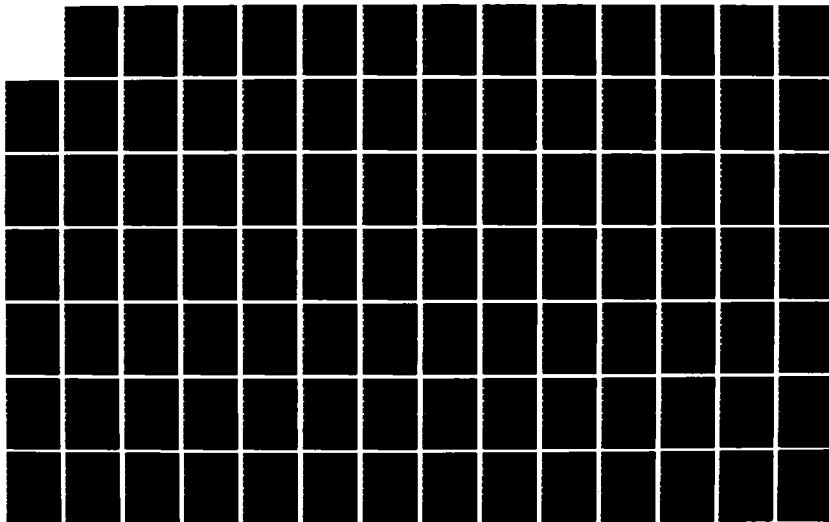
AN ANALYSIS OF DEPARTMENT OF DEFENSE FINANCIAL AND
ACQUISITION POLICIES I. (U) NAVAL POSTGRADUATE SCHOOL
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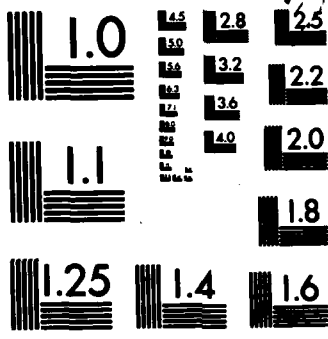
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MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

A. Department of Defense1. 10USC 125 (a), (b), (c) Functions, Powers and Duties; Transfer, Reassignment, Consolidation or Abolition

(a) Subject to 50USC 401, as cited below, the Secretary of Defense shall take appropriate action (including the transfer, reassignment, consolidation, or abolition of any functions power or duty) to provide more effective, efficient, and economical administration and operation, and to eliminate duplication, in the Department of Defense. However, except as provided by subsections (b) and (c), below, a function, power or duty vested by law in the Department of Defense, or an officer, agency or official thereof, may not be substantially transferred, reassigned, consolidated or abolished unless the Secretary makes prior report to the Senate and House Armed Services Committees for their oversight and action.

(b) Notwithstanding subsection (a), above, if the President determines it to be necessary because of hostilities or an imminent threat of hostilities, any function, power, or duty, including one assigned to the Army, Navy, Air Force, or Marine Corps by 10USC 3062 (b), 10USC 3012,

10USC 5013, or 10USC 8062 (c), may be transferred, reassigned or consolidated. The transfer, reassignment or consolidation remains in effect until the President determines that hostilities have terminated or that there is no longer an imminent threat of hostilities, as the case may be.

(c) Notwithstanding subsection (a), above, the Secretary of Defense may assign or reassign the development and operational use of new weapons or weapons systems to one or more of the Military departments or the armed forces. However, notwithstanding any other provisions of law, the Secretary of Defense shall not direct or approve a plan to initiate or reduce or eliminate a major weapons system until reporting the proposed action to the Congress while it is in session.

2. 50USC 401 Congressional Declaration of Purpose; National Security Act of 1947, as amended

Provides statement of the intent of Congress in enacting the National Security Act of 1947, as amended. This section clearly provides that there shall be three Military Departments of the Army, the Navy (including naval aviation and the United States Marine Corps) and the Air Force under the direction, authority, and control of the Secretary of Defense; further, that these departments shall be subject to unified direction

under civilian control of the Secretary of Defense but these departments or services shall not be merged.

B. Army

1. 10USC 3062 (a), (b), (c) Policy and Composition

- (a) It is the intent of Congress to provide an Army capable, in conjunction with the other armed forces, of -
- (1) preserving the peace and security, and providing for the defense of the U.S., its Territories, Commonwealths, possessions and any area occupied by the U.S.
 - (2) supporting national policies,
 - (3) implementing national objectives, and
 - (4) overcoming foreign nations responsible for aggressive acts that imperil the peace and security of the U.S.
- (b) The Army includes land combat and service forces, organic aviation and water transport. It shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations on land.
- (c) The Army consists of the Regular Army, the Army National Guard, the Army Reserve, and persons appointed, enlisted, or conscripted into the Army without component.

2. 10USC 3063 (a), (b) Basic Branches

- (a) Establishes the basic branches of the Army.
- (b) The Secretary of the Army may discontinue or consolidate the basic branches of the Army for the duration of any war or of any national emergency declared by Congress.

C. Navy

10USC 5012 Composition and Functions

The Navy includes, in general, naval combat and service forces and such aviation as may be organic therein. The Navy shall be organized, trained and equipped primarily for prompt and sustained combat incident to operations at sea. It is responsible for the preparation of naval forces necessary for the effective prosecution of war except as otherwise assigned and is generally responsible for naval reconnaissance, antisubmarine warfare and protection of shipping.

D. Air Force

10USC 8062 (a), (c), (d) Policy and Composition

- (a) Provides statement of the intent of Congress in providing an Air Force; uses same language as in 10USC 3062 (a), above, which pertains to the Army.
- (c) In general, the Air Force includes aviation forces both combat and service not otherwise assigned. It shall be organized, trained, and equipped primarily for prompt and

sustained offensive and defensive air operations.

(d) The Air Force consists of the Regular Air Force, the Air National Guard, the Air Force Reserve, and persons appointed, enlisted or conscripted into the Air Force without component.

E. Marine Corps

10USC 5013

Composition and Functions

The Marine Corps shall be so organized as to include not less than three combat divisions and three air wings and such other land combat, aviation and other services, as may be organic. The Marine Corps shall be organized, trained, and equipped to provide fleet marine forces of combined arms, together with supporting air components, for service with the fleet in the seizure or defense of advanced naval bases and for the conduct of such land operations as may be essential to the prosecution of a naval campaign.

F. Reserve Components

1. 10USC 262

Purpose

The purpose of each reserve component is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency and at such other times as the national security requires, to fill the need of

the armed forces whenever, during, and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components.

2. 32USC 102 National Guard; General Policy

In accordance with the traditional military policy of the U.S., it is essential that the strength and organization of the Army National Guard and Air National Guard as an integral part of the first line defenses of the U.S. be maintained and assured at all times. Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the U.S. and the Air National Guard of the U.S., or such parts of them as are needed, together with such units of other reserve components as are necessary for a balanced force, shall be ordered to active Federal service and retained as long as so needed.

3. 10USC 5251 Navy Reserve

The Naval Reserve is the reserve component of the Navy. It shall be organized, administered, trained, and supplied under the direction of the Chief of Naval Operations.

4. 10USC 5252 Marine Corps Reserve

The Marine Corps Reserve is the reserve component of the Marine Corps. It shall be organized, administered, trained, and supplied under the direction of the Commandant of the Marine Corps.

G. Coast Guard

14USC 3 Service in the Navy

Upon the declaration of war or when the President directs, the Coast Guard shall operate as a service in the Navy, and shall so continue until the President, by executive order, transfers the Coast Guard back to the Department of Transportation. While operating as a service in the Navy, the Coast Guard shall be subject to the orders of the Secretary of the Navy who may order changes in Coast Guard operations to make them uniform to the extent he deems advisable, with Navy operations.

H. Other Agencies

1. 33USC 858 National Oceanic and Atmospheric Administration (NOAA)

The Secretary of Defense and the Secretary of Commerce shall jointly prescribe regulations governing the duties to be performed by NOAA in time of war, and for the cooperation of that service with the military departments in time of peace

in preparation for its duties in war, which regulations shall not be effective unless approved by each of those Secretaries, and included therein may be rules and regulations for making reports and communications between a military department and NOAA.

2. 49USC 1347 Federal Aviation Agency (FAA), National Defense and Civil Needs

In exercising the authority granted in and discharging the duties imposed by the Federal Aviation Act of 1958 (49USC 1301 et. seq.), the Administrator shall give full consideration to the requirements of national defense, and of commercial and general aviation, and to the public rights of freedom of transit through the navigable airspace.

3. See also Section XIII regarding the transfer of NOAA, and the FAA to the Department of Defense.

I. Executive Orders

11490 Assigning Emergency Preparedness Functions to Federal Departments and Agencies, October 28, 1969, as amended

Provides planning guidance for emergency national planning and preparedness functions, under the general guidance of the Director of the Federal Emergency Management Agency, to departments and agencies of the Federal government. Part 4 of EO11490 prescribes preparedness functions of the Department of Defense in the following general areas:

- Provide strategic guidance for emergency preparedness planning and programming.
- Develop quantitative and time-phased Military requirements for selected end-items and supporting resources.
- Advise and assist FEMA in developing a national system of production urgencies.
- Assist FEMA, in conjunction with State, in developing a system for the international allocations of critical materials and products among the U.S. and various foreign claimants.
- Plan for and administer priorities and allocations authority delegated to Defense.
- Assist Commerce in developing production and distribution controls plans.
- Develop with industry, plans for procurement and production of selected military equipment.
- Develop with industry, plans to minimize attack damage to plants producing major military equipment and supplies.
- Recommend to FEMA measures to overcome potential production deficiencies.
- Furnish advice and assistance on use of strategic and critical materials in defense production.

- Analyze and take action to overcome problems in maintaining an adequate mobilization production base..
- Assist Commerce in identification and evaluation of facilities important to national defense.
- Advise and assist FEMA in developing and reviewing standards for strategic location and physical security of essential industries, services, government and other activities.
- Develop and operate damage assessment systems; assist FEMA in preparing estimates of potential damage.
- Advise and assist FEMA in developing overall manpower policies.
- Advise on communications facilities and military requirements for commercial communications facilities.
- Furnish military requirements for all forms of transportation and transportation facilities.
- Assist FEMA in preparation of legislative programs and plans for coordinating non-military support of emergency preparedness programs.
- Develop plans and procedures for Defense use of non-industrial facilities.

- Advise and assist FEMA in determining key foreign facilities and operating rights important to U.S. security and in obtaining appropriate protection against sabotage.
- Develop plans and procedures to carry out Defense responsibilities regarding censorship.
- Coordinate with State in planning for evacuation of U.S. citizens from overseas areas, develop appropriate plans for implementation.
- Develop plans for authorized support to members of foreign forces as may be present in the U.S.
- Develop plans for the control of civil and military air traffic with Transportation and the Federal Communications Commission.
- Develop with the Federal Communications Commission, plans for emergency control of electromagnetic emitters.
- Develop, under the guidance of Interior, plans to meet emergency water requirements in watershed areas regulated by the Corps of Engineers or other Defense elements.
- Develop plans for emergency assistance to public water supply utilities.
- Develop, in coordination with appropriate agencies, emergency plans regarding harbors, ports, and waterways for the use and benefit of navigation.

Other agency responsibilities which interface with Department of Defense functions are:

- Part 2 - Department of State: in consultation with Defense formulate contingency plans with allies; supervise and direct military assistance programs; protection or evacuation of American citizens abroad.
- Part 5, Department of Justice: in consultation with Defense, plan to adjust security standards relating to Federal personnel and contractors.
- Part 6, U.S. Postal Service: censorship of international mails in consultation with Defense.
- Part 9, Department of Commerce: production and distribution of materials and the use of production facilities; operational control and allocation of ports and shipping; geodetic, hydrographic and oceanographic data and services to Defense.
- Part 10, Department of Labor: Civilian manpower mobilization and management.
- Part 11, Department of Health and Human Services: prepare national emergency plans and preparedness programs covering health services, manpower and resources.
- Part 13, Department of Transportation: transportation planning, coordination and allocation.

- Part 14, Department of Energy: essential manufacture and development of nuclear weapons.
- Part 15, Civil Aeronautics Board: emergency resource management of the War Air Service Program.
- Part 20, General Services Administration: develop plans for industrial plants and production equipment in the national industrial reserve; assist FEMA in formulating plans for the stockpile of strategic and critical materials.
- Part 22, National Aeronautics and Space Administration: Provide direct assistance as requested by Defense in support of military operations.
- Part 23, National Science Foundation: in consultation with Defense, Labor and the Selective Service System, develop plans to assure the most effective use of scientific and engineering manpower.
- Part 27, Tennessee Valley Authority: perform chemical research in munitions, maintain standby munitions production facilities, plan for conversion of fertilizer facilities to munitions production.
- Part 28, International Communications Agency: support military psychological warfare operations.
- Part 29, Veterans Administration: plan for provision of emergency medical treatment.

II. OPERATIONAL AUTHORITIES

ANALYSIS

The authorities of major interest in this section allow mobilization of the Reserve Components. The President may order 100,000 members of the Selected Reserve to active duty for a period of 90 days without a declaration of national emergency (10 USC 673b). If the President declares a national emergency, up to one million members of the Ready Reserve may be ordered to active duty for a period of two years (10 USC 673 (a), (c)). If Congress declares war or a national emergency, reserve components may be ordered to active duty for the duration of the war or emergency plus six months (10 USC 672a). Implementing guidance for mobilization of the reserve components is provided by DOD Directives 1235.9 and 1235.10. Execution authority for mobilization is vested in the Department of Defense and the military departments. (Related authorities that address recall of retired personnel, extension of terms of service, and screening of reservists are described in Section III.)

These authorities do provide for significant increases in active military forces with a declaration of national emergency or war. Without such declarations, the only immediately available measure is the call-up of 100,000 members of the Selected Reserve for 90 days.

A. Ordering Reserve Components to Active Duty

1. 10USC 673 b Selected Reserve: 100K Call-Up other than in War or Emergency

Notwithstanding other provisions of law, when the President determines it necessary to augment the active forces for any operational mission, he may order any unit or individual of the selected reserve to active duty for not more than 90 days. Not more than 100,000 may be on active duty at any one time. Within 24 hours, the President shall report to the Congress explaining the necessity for this action. Either the President or the Congress by concurrent resolution may terminate the active duty order. This authority is not to be used to perform the functions described in 10 USC 331-333 (domestic insurrection, see page II-11) or 10 USC 3500, 3500 (active Federal service for the National Guard, see page II-5). This authority is not to be used to provide assistance to the Federal Government or a State in time of serious natural or manmade disaster, accident or catastrophe.

2. 10USC 673 (a), (c) Ready Reserve (1M Callup)

- (a) In time of national emergency declared by the President, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any member or unit in the Ready Reserve to active duty (other than for training) for not more than 24 consecutive months.
- (c) Not more than one million members of the Ready Reserve may be on involuntary active duty under this section at any one time.

3. DOD Dir 1235.10 Mobilization of the Ready Reserve, October 27, 1970 (with change thru October 15, 1977)

General policy guidance for administration and management of Reserve Components during planning, alerting and mobilization of units and individuals of the Ready Reserve for active Federal service.

4. 10USC 672(a) Reserve Components: General

In time of war or national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned, may order any member or unit of a reserve component under the jurisdiction of that Secretary to active duty (other than for training) for the duration of the war or emergency and for six months thereafter.

However, a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.

5. 10USC 674 (a), (b) Standby Reserve

- a. Units and members in the Standby Reserve may be ordered to active duty (other than for training) only as provided

in 10 U.S.C. 672 (i.e., in time of war, of national emergency declared by Congress, or when otherwise authorized by law).

(b) In time of national emergency declared by Congress-- no unit or individual in the Standby Reserve may be ordered to active duty unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough of the required kinds of units in the Ready Reserve that are readily available or qualified members.

6. DOD Dir. 1235.9 Management and Mobilization of the Standby Reserve, August 23, 1973

Prescribes general policy guidance regarding the active and inactive lists of the Standby Reserves. When mobilization is authorized in accordance with 10 USC 672 (a), Secretaries of Military departments may order Standby Reservists to active duty involuntarily subject to appropriate determinations as required by 10 USC 672 (a) (1) and (2). Volunteers for the Standby Reserve may be ordered to active duty but volunteers from the National Guard require consent of the Governor to order to active duty. Determination by Selective Service System is not required for volunteers.

(Note: 10 USC 672(a) was amended by PL 96-357, September 24, 1980, to delete requirement for Selective Service determination of availability of Standby Reservists. DOD Dir. 1235.9 should be revised to reflect this change in law)

7. 10USC 675 Retired Reserves

See Section III, D.

8. 10USC 263 Basic Policy for Army and Air National Guard

Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them are needed, together with such units of other reserve components as are needed for a balanced force, shall be ordered to active duty and retained as long as so needed.

9. 32USC 102 National Guard

See Section I.F.

10. 10USC 3500 Army National Guard

Whenever the United States is invaded or is in danger of invasion by a foreign nation, there is a rebellion or danger of rebellion against the authority of the Government of the United States, or the President is unable with the regular forces to execute the laws of the United States, the President may call into active Federal Service members and units of the Army National Guard of any State, any territory, the District of Columbia or Puerto Rico, in such numbers as he considers necessary.

(See also entry in this section regarding use of armed forces in domestic situations.)

11. 10USC 8500 Air National Guard

Provides same provisions as 10USC 3500, above, with respect to the Air National Guard.

12. 33 CFR 8.1505 Coast Guard Reserve

Any Reservist may be ordered to active duty by the Commandant in time of war or when the President declares a national emergency to exist, and may be required to perform active duty throughout the war or until the President declares that such national emergency no longer exists. (NOTE: 10 USC 261 defines the Reserve Components of the Armed Forces and includes the Coast Guard Reserve within this definition. Thus, the Coast Guard Reserve is subject to those general provisions of law regarding ordering Reserves to active duty.)

B. Arming of Vessels and Aircraft10USC 351Arming of Vessels and Aircraft

During a war and at any other time when the President determines that the security of the U.S. is threatened by the application or imminent danger of application of physical force by a foreign government or agency, the President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft capable of being used as a means of transportation in, over or under the water, which is documented, registered or licensed under U.S. law.
(The provisions of 22 USC 463 (Neutrality Laws) do not apply to vessels armed under this provision.)

C. Suspension of Certain Restrictions on Chemical and Biological Warfare Agents50USC 1515Suspension of Certain Restrictions on
Chemical and Biological Warfare Agents

Restrictions placed on the research, development, test and evaluation, procurement, storage, deployment, disposal, or transportation of chemical and biological warfare agents by the provisions of 50 USC 1511-1516, may be suspended by the President during the period of any war declared by the Congress and during the period of any national emergency declared by the Congress or by the President.

D. Movement Controls

II-7

1. Personnel

50 USC 21

Enemy Aliens

Whenever there is a declared war, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the U.S. by any foreign nation or government, and the President makes public proclamation of the event, citizens of the hostile nation shall be liable to be apprehended, restrained, secured and removed as alien enemies. The President, by proclamation or other public act, is authorized to direct the manner in which the U.S. shall act in this situation and to establish regulations found necessary for the public safety.

2. Aircraft

49USC 1348 (f)

U.S. Military Aircraft allowed to Deviate from FAA Control in Emergencies

When it is essential to the defense of the U.S. because of a military emergency or urgent military necessity, and when appropriate military authority so determines, and when prior notice is given to the FAA, such military authority may authorize deviation by U.S. military aircraft from FAA air traffic rules. Prior notice will be given FAA at the earliest practical time.

49 USC 1510

Extension of FAA Jurisdiction

Whenever the President determines that action would be in the national interest, he may extend the application of the Federal Aviation Act of 1958 to any areas of land or water

outside the U.S. and the overlying airspace thereof in which the U.S. has the legal authority to take such action.

49 USC 1522

Security Control of Air Traffic

Whenever he finds it in the interest of national defense,
the Administrator, in consultation with the Department of Defense,
shall establish zones or areas in the airspace of the U.S.,
and may prohibit or restrict the flight of civil aircraft
under certain conditions.

E011490

Assigning Emergency Preparedness
Functions to Federal Departments
and Agencies, October 18, 1969,
as amended

Part 4, Section 401 (26): The Secretary of Defense shall develop with the Department of Transportation and the Federal Communications Commission plans and programs for the control of air traffic, civil and military, during an emergency.

Part 13, Section 1303, (2): The Secretary of Transportation shall, except for those resources owned, controlled, or under the jurisdiction of the Department of Defense, prepare plans and programs for the emergency management and control of civil and military air traffic.

Part 18, Section 1802, (5): The Federal Communications Commission shall develop plans and procedures to close any radio station or device capable of emitting electromagnetic radiation, in any emergency, except those belonging to, or operated by, any department or agency of the U.S. Government.

DOD Instr. 5030.36 Plan for the Security Control of
Air Traffic and Air Navigation Aids
(SCATANA), February 9, 1976.

Emergency preparedness plan which prescribes joint action to be taken by appropriate elements of DOD, FAA and FCC in the interest of national security to effect control of air traffic and air navigation aids under emergency conditions.

3. Vessels

50 USC 191-195 Anchorage and Movement of Vessels

In time of national emergency declared by the President because of actual or threatened disturbance of the international relations of the United States, the Secretary of Transportation may make, subject to approval of the President, rules and regulations governing the anchorage and movement of any vessel in the territorial waters of the United States.

The Secretary of the Navy may exercise these powers when the Coast Guard is operating as part of the Navy.

Whenever the President finds that the security of the United States is endangered by actual or threatened war, invasion, insurrection, subversive activity, or disturbances or threatened disturbances of the international relations of the United States, he may institute such measures and issue rules and regulations to--

- govern the anchorage and movement of foreign-flag vessels in the territorial waters of the United States; and,

- safeguard vessels, harbors, ports, and facilities from acts of sabotage.

50 U.S.C. 194 provides that the President may employ those departments, agencies, officers, or instrumentalities of the United States that he considers necessary to carry out the purposes of 50 U.S.C. 191-195.

EO 11490, Part 13, Section 1303 (5) - The Secretary of Transportation shall develop plans and programs to carry out responsibilities for maritime safety and law enforcement over, upon and under the high seas and waters, subject to the jurisdiction of the U.S., to include safeguarding vessels harbors, ports, and water front facilities from destruction, loss or injury, accidents or other causes of a similar nature.

48 USC 1706 (a) - Naval Defensive Sea Areas; Guam, Virgin Islands, American Samoa

The President may establish naval defensive sea areas and naval air space reservations when deemed necessary for national defense around and over the islands of Guam, American Samoa and the Virgin Islands.

32 CFR 761.1 - 761.20 Naval Defensive Sea Areas and Airspace Reservations

Provides regulations governing the entry of persons, ships and aircraft into Naval Defensive Sea Areas and Naval Airspace Reservations as may be established by executive order of the President; in areas placed under the Secretary of the Navy for administrative purposes by executive order of the President; and the Trust Territory of the Pacific Islands.

E. Use of Armed Forces in Domestic Situations10 USC 331Federal Assistance to State Governments

If there is insurrection in any State against its government, the President may, upon request of its legislature or of its governor if the legislature cannot be convened, call into Federal service the militia of the other states and use the armed forces as he considers necessary to suppress the insurrection.

10 USC 332Enforcement of Federal Authority

Whenever the President considers that unlawful obstructions or assemblages or rebellion against the authority of the U.S. makes it impracticable to enforce the laws of the U.S. in any State or Territory by ordinary judicial proceedings, he may call the militia into Federal service and use the armed forces as he considers necessary to enforce those laws or suppress the rebellion.

10 USC 333Prevention of Interference with State and Federal Law

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress in any State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it -

- (1) so hinders the execution of the laws of that State, and of the U.S. within that State, that any part or class of its people is denied equal protection of the laws secured by the Constitution; or

- (2) opposes or obstructs the execution of the laws of the U.S. or the course of justice under those laws.

10 USC 334Presidential Proclamation to Disperse

Whenever the President considers it necessary to use the militia or the armed forces under these provisions (10 USC 331-333), he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time.

48 USC 1422Authority of the Governor of Guam to Use Armed Forces

Whenever it becomes necessary, the Governor of Guam may call for assistance from the commanders of the military and naval forces of the U.S., or summon the posse comitatus, or call out the militia, to prevent rebellion; and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, place the island under martial law.

48 USC 1591Authority of the Governor of the Virgin Islands to Use Armed Forces

Provides same authority as in 48 USC 1422 to the Governor of the Virgin Islands.

32 CFR 501.1 - 501.7Employment of Troops in Aid of Civil Authorities

Provides basic policy for commitment of Federal Armed Forces in aid of or support to civil authorities. Department of the Army is designated the Executive Agent for the Department of

Defense for planning, deployment and employment of military resources in the event of civil disturbances. Also addresses general nature of response to emergency situations, command authority, martial law, protection of federal property, end of commitment and the loan of military resources to civil authority.

F. Neutrality Laws

22 USC 441

Presidential Proclamation of State
of War between Foreign States

Whenever the President, or the Congress by concurrent resolution, shall find that there exists a state of war between foreign states, and that it is necessary to promote the security or preserve the peace of the U.S., or to protect the lives of the citizens of the U.S., the President shall issue a proclamation naming the states involved.

22 USC 445

Travel Forbidden on vessels of
Belligerent States

Upon Presidential proclamation issued under 22 USC 441, it shall be unlawful for any U.S. citizen to travel on any vessel of any state named in such proclamation, except in accordance with such rules and regulations as may be prescribed.

22 USC 447

Financial Transactions with Belligerents
Forbidden

Upon issuance of a proclamation under authority of 22 USC 441, it shall be illegal for any person in the U.S. to engage in any financial transactions with the government or political subdivisions or agent of any state named in the proclamation. This provision shall not be operative when the U.S. is at war.

22 USC 448Collection of Funds and Contributions
For Belligerent Forbidden

Upon issuance of a proclamation under authority of 22 USC 441, it shall be unlawful for any person within the U.S. to solicit or collect any contributions for or in behalf of any government, instrumentality or agent of any state named in the proclamation. This prohibition does not apply to collections and contributions to be used to relieve human suffering and which are not in behalf of the government of such state.

22 USC 449Non-Applicability to American Republics

Provisions of 22 USC 441-457 shall not apply to an American republic engaged in war against a non-American state or states, provided the American republic is not cooperating with a non-American state or states in such war.

22 USC 450Restrictions on Use of American Ports

(a) When the President, or his designated representative has reason to believe that any vessel, domestic or foreign, is about to depart a U.S. port carrying certain material to a military or a supply ship of a belligerent state named in a proclamation issued under 22 USC 441, but evidence is not sufficient to forbid departure pursuant to 18 USC 967 (See Section XV), he may require the posting of a bond in an amount deemed proper conditioned that the vessel will not deliver such cargo to such foreign vessels.

- (b) If the President, or his designated representative, shall find that a vessel, domestic or foreign, has previously departed from a U.S. port and carried certain materials to vessels of a belligerent state named in a proclamation issued under 22 USC 441, he may prohibit the departure of such vessel during the duration of the war.
- (c) Upon issuance of a proclamation under 22 USC 441 the President may require the owner, master, or person in command of any vessel, domestic or foreign, to give a bond, in amounts deemed proper, conditioned that no alien seaman who arrived on such vessel shall remain in the U.S.

22 USC 451Restrictions on Submarines and Armed Merchant Vessels

During a war in which the U.S. is neutral, the President by proclamation may restrict, limit or prohibit the departure from or entry into U.S. ports and territorial waters of submarines or armed merchant vessel of a foreign state.

22 USC 461Employment of land or naval forces for enforcement of Neutrality

The President, or his designated representative, may employ the land or naval forces or the militia of the U.S. to take possession of and detain vessels violating the neutrality of the U.S. and to prevent the carrying on of any expedition or enterprise from the territory or jurisdiction of the U.S. in violation of U.S. neutrality.

22 USC 462Compelling foreign vessels to depart; Detention of foreign vessels

The President may employ the land or naval forces or the militia of the U.S. to compel any foreign vessel to depart the U.S., or to detain and prevent departure by such vessels, in accordance with the law of nations or the treaties of the U.S.

22 USC 463Bonds from Armed Vessels in Clearing

The owners or consignees of armed vessels sailing out of ports under U.S. jurisdiction, shall, before clearing, give certain bond conditioned that the vessel will not commit hostilities against foreign parties with whom the U.S. is at peace.

22 USC 464Detention of Vessels by Collectors of Customs

Collectors of customs shall detain any vessel built for warlike purposes, which is about to depart U.S. jurisdiction, when the the circumstance make it probable that such vessel is intended to commit hostilities against foreign parties with whom the U.S. is at peace, until the decision of the President is had thereon, or until bond is given as required by 22 USC 463.

22 USC 465Use of Armed Forces for Enforcement

The President may employ such part of the land or naval forces of the U.S. as deemed necessary to carry out the purposes of this

section, 22 USC 462, and 18 USC 756, 960, 963-967, and 3058.

(See Section XVI for these provisions of Title 18.)

15 USC 76, 77

Unfair Competition: Discrimination by
Belligerent States; Use of Armed forces

These sections provide that, during the existence of a war in which the U.S. is not engaged, the President may order reciprocal retaliation against belligerent states, which discriminate against U.S. trade, commerce, traffic or citizens in a manner contrary to the law and practice of nations. Use of the land and naval forces of the U.S. is authorized for enforcement purposes.

NOTE: See also 47 USC 606 (c) in Section X which describes actions the President may take regarding domestic communications facilities in order to protect U.S. neutrality.

G. Public/Military Records

44 USC 1505 (c)

Suspend Publication of Federal Register

In the event of an attack or threatened attack upon the continental U.S. and a determination by the President that as a result of this situation that -

- publication of the Federal Register or filing of documents is impracticable, or,
- publication of the Federal Register under existing conditions would not give appropriate public notice;

He may suspend any requirements for filing documents with the Federal Register. Suspensions shall remain in effect until revoked by the President or by concurrent resolution of the Congress. The President shall establish alternative methods of public notice and documents issued under these methods will be preserved.

44 USC 3311

Destruction of Military Records
Outside the Continental U.S.

During a state of war between the U.S. and another nation, or when hostile action by a foreign power appears imminent, the head of an agency of the U.S. Government may authorize the destruction of records in his legal custody situated in a military or naval establishment, ship or other depository, outside the territorial limits of the U.S. if -

- retention would be prejudicial to the interests of the U.S. or,
- the space occupied is urgently needed for other military purposes and the records are without sufficient value to justify retention.

A written report on such destruction is required within six months.

H. Acquisition of Electric Power

16 USC 831n-4 (a) Acquisition of Electric Power from Tennessee Valley Authority

Notwithstanding statutory restrictions on the transmission area, TVA power may be transmitted to the Department of Energy (Atomic Energy Commission) or the Department of Defense, or any agency thereof, on certification by the President that an emergency defense need for such power exists.

I. Censorship/Wartime Information Security Program (WISP)

EO 11490 Assigning Emergency Preparedness Functions to Federal Departments and Agencies; October 29, 1969, as amended.

Section 401(22): DOD shall develop plans and procedures to carry out responsibilities regarding censorship.

Section 601(2)(a): U.S. Postal Service shall prepare plans and programs regarding censorship of international mails in cooperation with DOD, Treasury, and FEMA. (Note: Treasury responsibilities cited in EO 11490 make no mention of this subject.)

DOD Dir. 5230.7 Wartime Information Security Program (WISP)
June 25, 1965; with C-3, May 21, 1971.

Provides basic guidance on WISP and makes following assumptions:

- WISP will be imposed by President in event of war,
- WISP will be supported by appropriate legislation,

- President will establish Office of WISP as an independent Federal agency reporting directly to the President.

FEMA is responsible for coordination of all aspects of WISP planning and for developing, in conjunction with DOD, plans to establish Office of WISP. DOD is responsible for developing plans for National Postal and Travelers WISP, National Telecommunications WISP, elements of Office of WISP, and preparing to incorporate these into the Office of WISP when it is activated.

COMMENT: EO 11490 prescribes planning functions only and provides that execution will not be accomplished without authority from law or a directive issued by the President pursuant to statutes or the Constitution.

III. MANPOWER

ANALYSIS

The most significant among the wide range of authorities in this section are those relating to retention of active duty strength by extending enlistments; the recall to active duty of retired regulars; officer promotion, distribution, and appointment; and civilian and defense workforce. (Conscription is prohibited by 50 USC App 467(c). This provision of law must be repealed by Congress before personnel may be inducted into the armed forces. No allowance is made for conditions of war or national emergency.)

- The enlistments or periods of service of personnel on active duty may be extended, only in time of war, for the duration of the war plus six months (10 USC 506,671a). A declaration of national emergency is not sufficient to allow extension of enlistments. These provisions apply to both Regulars and Reservists on active duty. Enlistments in Reserve Components which are in effect during a war or national emergency declared by Congress continue in effect until six months after the end of the war or emergency (10 USC 511, 32 USC 302, 14 USC 367).

Enactment of the Defense Officer Personnel Management Act (PL96-513, December 12, 1980) simplified and made uniform the personnel laws regarding recall of retired regulars and appointment, promotion, distribution, separation, and retirement of officers of the Army, Navy, Air Force and Marine Corps. This act greatly facilitates the use of emergency authority.

- Retired regulars of the Army, Navy, Air Force, and Marine Corps may be recalled to active duty at any time by the appropriate Service Secretary (10 USC 688). Recall to active duty of retired regulars of the Coast Guard is conditioned upon war or declaration of national emergency (14 USC 331, 359).
- Temporary appointments to any commissioned officer grade in the Army, Navy, Air Force, and Marine Corps may be made in time of war or national emergency (10 USC 603). Temporary officer appointments in the Coast Guard may be made "as the needs of the Coast Guard may require (14 USC 214)."
- Strength and grade distribution provisions for commissioned officers of the Army, Navy, Air Force, and Marine Corps may be suspended in time of war or national emergency (10 USC 526).
- Promotion, separation, and retirement provisions for commissioned officers of the Army, Navy, Air Force, and Marine Corps may be suspended in time of war or national emergency (10 USC 644). Similar authority is available with respect to the Coast Guard (14 USC 275, 722).

Civilian personnel procurement for the Department of Defense, the military services, and defense contractors is the responsibility of civilian agencies. Specific guidance is contained in EOs 10480 (1953) and 11490 (1969). The Departments of Labor and (with respect to medical manpower) Health and Human Services are to develop plans and programs to meet essential defense and civilian labor needs in an emergency. DOD Dir 3005.6

(1962) provides that DOD's civilian manpower requirements will be made known to these civilian agencies. Further, DOD components are to support defense contractors in their presentation of manpower requirements. The age of these documents and the numerous amendments which have been made to them indicate that review is warranted.

A. Accession of Aviation Cadets

1. 10 USC 6911(b) Naval Service Aviation Cadets

Except in time of war or emergency declared by Congress, 20 percent of the aviation cadets procured in each fiscal year shall be procured from qualified enlisted members of the Regular Navy and the Marine Corps.

2. 10 USC 8257(b) Regular Air Force Aviation Cadets

Except in time of war or emergency declared by Congress, at least 20 percent of the aviation cadets designated in each fiscal year shall be selected from members of the Regular Air Force or the Regular Army who are eligible and qualified.

3. 14 USC 371(b) Coast Guard Aviation Cadets

Except in time of war or national emergency declared by Congress, not less than 20 percent of the aviation cadets procured in each fiscal year shall be procured from qualified enlisted members of the Coast Guard.

B. Initial Term of Service

10USC 519Temporary enlistments in an
Armed Force; During War or Emergency

Except as provided in 10USC 505 and except for enlistment as Reserves of an armed force, temporary enlistments entered into in time of war or of emergency declared by the Congress shall be for the duration of the war or emergency plus six months. Only persons at least 18 years of age and otherwise qualified are eligible for such enlistments.

NOTE: 10USC 505 provides for original enlistments and reenlistments in the regular components of the various armed services.

C. Extension of Terms of Service

(1) 10USC 506Regular Components; extension of enlistment in wartime

An enlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in effect at the beginning of, or during, a war, unless sooner terminated by the President, continues in effect until six months after the termination of that war.

- (2) 10USC 671 a Active Armed Forces; extension of service in wartime

Unless terminated at an earlier date by the Secretary concerned, the period of active service of any member of an armed force is extended for the duration of any war in which the U.S. may be engaged and for six months thereafter.

- (3) 10USC 671b Armed Forces; extension when Congress is not in Session

Notwithstanding any other provision of law, when the President determines that the national interest so requires he may, if Congress is not in session, having adjourned sine die, authorize the Secretary of Defense to extend for not more than six months enlistments, appointments, periods of active duty, periods of active duty for training, periods of obligated service, or other military status, in any component of the Armed Forces of the U.S. that expire before the thirtieth day after Congress next convenes or reconvenes.

- (4) 10USC 511 (a), (c) Reserve Components; extension of enlistment

(a) Enlistments as Reserves are for terms prescribed by the Secretary concerned. However, an enlistment that is in effect at the beginning of a war or of a national emergency declared by Congress, or entered into during such a war or emergency, and that would otherwise expire, continues in effect until six months after the

end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(c) In time of war or of national emergency declared by Congress, the term of service of an enlisted member transferred to a reserve component according to law, that would otherwise expire, continues until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(5) 10USC 679 (a), (d) Reserve Components; Terms of Active Duty Agreements

(a) The Secretary concerned may make a standard written agreement with any member of a reserve component under his jurisdiction, with the member's consent, requiring a period of active duty (other than for training) of not more than five years. Upon expiration, a new agreement may be made. This provision does not apply in time of war declared by Congress.

(d) If an agreement made under 10USC 679 (a) expires during a war or during a national emergency declared by Congress or the President after January 1, 1953, the Reserve concerned may be kept on active duty, without his consent, as otherwise prescribed by law.

- (6) 32USC 302 (c) (2) National Guard; Extension of Enlistment or Reenlistment

Enlistments or reenlistments in the National Guard may be extended by proclamation of the President, if Congress declares an emergency, until six months after termination of that emergency.

- (7) 14USC 367 (a) (3) Coast Guard; Extension of Enlistment

Under regulations prescribed by the Secretary, an enlisted man may be detained in the Coast Guard beyond the term of his enlistment during a period of war or national emergency as proclaimed by the President, and, in the interest of national defense, for a period not to exceed six months after the end of the war or the termination of the emergency.

D. RECALL OF RETIRED PERSONNEL

1. Armed Forces:10 USC 688Ordering Retired Regulars to Active Duty; Limitations on Recall of Retired General or Flag Officers

Under regulations prescribed by the Secretary of Defense, a retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps may be ordered to active duty by the Secretary of the military department concerned at any time. Except in time of war or national emergency declared by the Congress or the President, not more than fifteen retired general officers of the Army, Air Force or Marine Corps, and not more than fifteen retired flag officers of the Navy may be on active duty at any one time.

10USC 6482Authority to Recall retired enlisted members of the Regular Navy and Regular Marine Corps

In time of war or national emergency, the Secretary of the Navy may order to active duty any retired enlisted member of the Regular Navy or the Regular Marine Corps. (COMMENT: This provision seems unnecessary in view of 10 USC 688.)

10USC 6485 (a)Fleet Reserve and Fleet Marine Reserve

A member of the Fleet Reserve or the Fleet Marine Corps Reserve may be ordered by competent authority to active duty without his consent--

- (1) in time of war, or of national emergency declared by Congress, for the duration of the war or national emergency and for six months thereafter;

(2) in time of national emergency declared by the President;
or

(3) when otherwise authorized by law.

2. Coast Guard

14USC 331

Authority to recall retired officers
of the Regular Coast Guard

In time of war or national emergency, the Secretary (of Transportation) may order any regular officer on the retired list to active duty.

14USC 359

Authority to recall retired enlisted
members of the Coast Guard

In time of war or emergency, the Commandant may order any enlisted man on the retired list to active duty.

3. Reserve Components (All Armed Forces)

10USC 675

Authority to recall members of the
Retired Reserve

A member in the Retired Reserve may, if qualified, be ordered to active duty without his consent, but only as provided in 10USC 672 (a). (NOTE: 10USC 672 (a) provides that members of the Retired Reserve may be called to active duty in time of war or national emergency declared by Congress or when otherwise authorized by law, for the duration of the war or emergency and for six months thereafter, only if the Secretary concerned, with the approval of the Secretary of Defense in the case of a military department, determines there are not enough qualified Reserves in an active status or in the inactive National Guard, who are readily available.)

E. Strength and Grade Distribution; Limitations, Suspension of
Limitations

1. General:

10USC 522

Authorized Regular Commissioned
Officer Strengths, all Armed
Services

Provides authorized total strengths for regular commissioned officers above grade W-4 for the Army, Navy, Air Force and Marine Corps.

10USC 523

Authorized Strengths for Field Grade
Officers, All Armed Services

Provides authorized total strengths for active duty officers in grades O4, O5 and O6 for the Army, Navy, Air Force and Marine Corps; figures based on total numbers of officers on active duty.

10USC 524

Authorized Strengths for Certain
Field Grade Reserve Commissioned
Officers in Active Duty

Provides authorized strengths in grades O4, O5 and O6 for Reserve Officers of the Army, Navy, Air Force or Marine Corps who may be on active duty for administration of the Reserves.

10USC 525

Distribution of General and Flag
Officers

Provides for general percentage distribution among general and flag officer grades in the Army, Navy, Air Force and Marine Corps.

10USC 526Suspension of Certain Strength and
Grade Distribution Provisions

In time of war or national emergency declared by the Congress
or the President, the President may suspend the operation of
any provision of 10USC 523, 524, or 525.

2. Army:10USC 3202Authorized General Officer Strength:
Suspension of Limitations

Provides total authorized general officer strength for the Army based on total strength of the officer corps. Subsection (c) provides for suspension of these limitations by the President in time of war or national emergency declared by the Congress or the President.

3. Air Force10USC 8202Authorized General Officer Strength;
Suspension of Limitations

Provides total authorized general officer strength for the Air Force based on total strength of the officer corps. Subsection (c) provides for suspension of these limitations by the President in time of war or national emergency declared by the Congress or the President.

4. Navy10USC 5442Authorized Strength, Commodore
Admiral and Rear Admiral of the
Line

Provides total authorized active strength for Commodore Admiral and Rear Admiral of the line, based on total line officer strength.

10USC 5444Authorized Strength; Staff Corps
Commodore Admiral and Rear Admiral

Provides total authorized active strength for Commodore Admirals and Rear Admirals in the Staff Corps of the Navy, based on the total number of staff corps officers on active duty.

10USC 5450Authorized Number of Retired Flag
Officers on Active Duty

Except in time of war or national emergency, not more than 10 retired officers of the Regular Navy in the grade of Rear Admiral and above may be on active duty. This provision does not apply to Fleet Admirals or to retired officers on temporary active duty to serve on promotion selection boards. (See also 10 USC 688 above.)

10USC 5451Suspension of Limitations

During a war or national emergency declared by the Congress or the Congress or the President, the President may suspend the provisions of 10USC 5441-5450.

5. Marine Corps10USC 5443Authorized Strength; Brigadier
General and Major General

Provides total authorized strengths for Brigadier General and Major General based on total active officer strength.

10USC 5451Suspension of Limitations

During a war or national emergency declared by the Congress or the President, the President may suspend the provisions of 10USC 5441-5450.

6. Ready Reserve10USC 268 (a)Authorized Strength

The Ready Reserve consists of units or Reserves, or both, liable for active duty as provided in 10USC 672 and 673. The authorized strength of the Ready Reserve is 3,900,000.

7. Coast Guard14USC 42Commissioned Officers

The total active commissioned officer strength of the Coast Guard shall not exceed 6,000. Also provides percentages allowed for officers above the grade of Lieutenant. The Secretary of Transportation (or Navy when the Coast Guard is operating as a service in the Navy) shall prescribe percentages for the grades of Ensign, Lieutenant (Junior Grade), and Lieutenant.

8. National Oceanic and Atmospheric Administration33USC 851

Provides that there shall be 399 Commissioned officers on the active list of the National Oceanic and Atmospheric Administration.

9. DOD Guidance on Wartime Manpower PlanningDOD Dir 1100.18Wartime Manpower Planning,
August 26, 1980

Provides general policy guidance on manpower planning during peacetime, manpower utilization during wartime, and standard DOD-wide methodology for determining projected wartime manpower requirements, demand, and supply. Applicable to active military personnel, Reserve Components, and DOD civilian employees.

DOD Instr 1100.19Wartime Manpower Program Policies
and Procedures

Provides implementing instructions for DOD Dir 1100.18 with regard to computing and portraying wartime manpower requirements, demands and supply. Establishes Wartime Manpower Program System (WARMAPS) as governing source for DOD wartime manpower program data and provides detailed guidance on use of WARMAPS.

F. Military Appointments

1. General Authority

10 USC 603Temporary Appointment of Officers; All
Armed Services

In time of war or national emergency declared by the Congress or the President, the President may appoint any qualified person (whether or not already a member of the armed forces) to any commissioned officer grade in the Army, Navy, Air Force or Marine Corps.

Appointments under this section shall be made only by the President and may not be made in warrant officer grades or in grades above Major General or Rear Admiral.

2. Organization of the Joint Chiefs of Staff

10 USC 142(a)Chairman, Joint Chiefs of Staff

Provides for a limit of two 2-year terms of tenure for the Chairman of the Joint Chiefs of Staff. Also provides that in time of war declared by Congress, there is no limitation on the number of times the Chairman may be reappointed.

10 USC 143 (a)(b)Members of the Joint Staff; Director of
the Joint Staff

(a) Except in time of war, the tenure of a member of the Joint Staff may not exceed three years. Further, an officer may not be reassigned to the Joint Staff within three years of completing such a tour of duty except in time of war.

(b) Except in time of war, the tenure of duty of the Director, Joint Staff, may not exceed three years. Further, an officer completing a tour of duty as Director, Joint Staff, may not be reassigned to the Joint Staff except in time of war.

3. Army

10 USC 3034(a) Chief of Staff

Provides that in time of war or national emergency, an officer may be reappointed as Chief of Staff for a term of not more than four years.

10 USC 3395 Appointment of Reserve Officers

In addition to appointments in time of war under 10 USC Chapter 339, appointments of Reserve officers may be made in time of war.

NOTE: 10 USC Chapter 339 relates to temporary commissioned and warrant officer appointments in both the regular and reserve components; both in time of war or emergency and in normal times.

4. Air Force

10 USC 8034(a) Chief of Staff

Provides same authority as 10 USC 3034(a), above.

10 USC 8395 Appointment of Reserve Officers

Provides same authority as 10 USC 3395, above.

NOTE: 10 USC 8395 also refers to appointments made under 10 USC Chapter 839. This chapter provides same provisions as 10 USC Chapter 339.

5. Navy and Marine Corps

10 USC 5081(a) Chief of Naval Operations

Provides same authority as 10 USC 3034(a), above.

10 USC 5201(a) Commandant of the Marine Corps

Provides same authority as 10 USC 3034(a), above.

6. Coast Guard

14 USC 214 Appointment of Temporary Officers

Provides for Presidential/Secretarial appointment of temporary commissioned officers (not above the grade of Lieutenant), commissioned warrant officers, and warrant officers in the Regular Coast Guard, as the needs of the Coast Guard may require. Such appointments may be made, as appropriate, from among commissioned warrant officer, warrant officers, and enlisted men of the Coast Guard, and from licensed officers of the United States merchant marine.

Comment: The phrase "as the needs of the Coast Guard may require" could be interpreted as having the same effect as "in time of war or national emergency."

7. Reserve Components/National Guard

10 USC 123 Reserve Commissioned Officers

In time of war, or of national emergency declared by Congress, the President may suspend the operation of any provisions of law listed in 10 USC 123 relative to reserve commissioned officers of any armed force. The provisions listed pertain to peacetime criteria regarding appointment, selection, promotion, separation, and discharge of reserve commissioned officers.

32 USC 111Federal Recognition of National Guard Officers

In time of war, or of emergency declared by Congress, the President may suspend the operation of any provisions of 32 USC 307(e), 309, 310, and 323(d) and (e), which relate to conditions for Federal recognition of any commissioned officers of the Army National Guard and the Air National Guard.

E.O. 11390Delegation of Certain Functions of the President to the Secretary of Defense, January 22, 1968

Section 1(11): Delegates to the Secretary of Defense, and any of the Secretaries, Under Secretaries and Assistant Secretaries of the military departments as he may designate the authority to invoke the provisions of 10 USC 123 and 32 USC 111.

8. National Oceanic and Atmospheric Administration (NOAA)

33 USC 854a(3)Temporary Appointment of Commissioned Officers

In time of war or national emergency, temporary appointments may be made in all grades to which original appointments in the NOAA are authorized, however, the number of officers holding temporary appointments shall not exceed the number of officers transferred to a military department under the provisions of 33 USC 854-858.

G. Limitations on Assignments to Military Department Executive Staffs1. 10 USC 3031 (c),(d) Army Staff; limitation on assignment of officers

(c) Not more than 3,000 officers of the Army may be assigned or detailed to permanent duty in the executive part of the Department of the Army. Of this number not more than 1,000 may be assigned to the Army General Staff. These limitations do not apply in time of war, or of national emergency declared by Congress, or whenever the President finds it is in the national interest to increase the number of officers so assigned.

(d) No commissioned officer may serve a tour of duty of more than four years in the executive part of the Department of the Army. However, the Secretary of the Army may extend such a tour of duty if he makes a special finding that an extension is in the public interest. Reassignment of an officer to such positions within two years after relief from such positions also requires a special finding by the Secretary of the Army. This provision does not apply in time of war, or of national emergency declared by Congress.

2. 10 USC 8031 (c),(d) Air Staff; limitations on assignment of officers

(c) Not more than 2,800 officers of the Air Force may be assigned or detailed to permanent duty in the executive part of the Air Force. This limitation does not apply in time of war, or of national emergency declared by Congress, or whenever the President finds it is in the national interest to increase the number of officers so assigned.

(d) Provides same restrictions and relief to the Department of the Air Force as contained in 10 USC 3031(d), above.

H. Promotion/Separation/Involuntary Retirement

General Authority

10 USC 644Suspension of Personnel Laws Regarding
Commissioned Officers

In time of war or of national emergency declared by Congress or the President, the President may suspend the operation of any provision of 10 USC Chapter 36 (Promotion, Separation, and Involuntary Retirement of Officers on the Active Duty List) or any other law relating to the promotion, involuntary retirement or separation of commissioned officers of the Army, Navy, Air Force or Marine Corps.

10 USC 565/599Suspension of Laws for Promotion
or Mandatory Retirement or Separation

In time of war or of emergency declared by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation of permanent Regular Warrant Officers/permanent Reserve Warrant Officers of any armed force.

EO 11390Delegation of Certain Functions of the
President to the Secretary of Defense
January 22, 1968

Section 1, (4) delegates the authority of 10 USC 565, 599 to Secretary of Defense, and to such Secretaries, Under Secretaries, and Assistant Secretaries of the military departments as he may designate.

RESERVE COMPONENTS/NATIONAL GUARD

See 10 USC 123 and 32 USC 111 in Section III F.

COAST GUARD14 USC 275Temporary Wartime Promotion

In time of war or national emergency declared by the President or Congress, the President may suspend any provisions of 14 USC 271-277 relating to selection, promotion or involuntary separation of officers. Such suspension may not continue beyond six months after termination of the war or national emergency. Promotions under this section shall be made by temporary appointment. Further,

- Upon such suspension, the President may, under regulations prescribed by him, promote to a higher grade, any commissioned officer serving on active duty.
- In time of war or national emergency declared by the President or Congress, the President may, under regulations prescribed by him, promote any warrant officer serving on active duty to the next higher warrant officer grade.
- The grade of Commodore is established for purposes of this section.
- Promotions above the grade of Lieutenant require the recommendation of a selection board.
- Appointments to grades above Captain, or above Lieutenant Commander in the Coast Guard Reserve, shall be made by the President with the advice and consent of the Senate.

14 USC 722Reserve Commissioned Officers

In time of war or national emergency declared by the Congress, the President is authorized in his discretion, to suspend the operation of any or all of the provisions of 14 USC 720-746 (NOTE: these provisions relate to appointment, selection, promotion and elimination of Reserve Commissioned Officers of the Coast Guard.)

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)33 USC 853 i (b)Promotions During War or Emergency

In time of emergency declared by the President or Congress, and in time of war, the President is authorized, in his discretion to suspend the operations of all or any part or parts of the several provisions of law pertaining to promotion of commissioned officers.

33 USC 854a (1),(2)Temporary Appointment or Advancement

Personnel of the NOAA shall be subject in like manner and to the same extent as personnel of the Navy to all laws authorizing temporary appointment or advancement of commissioned officers in time of war or national emergency subject to certain limitations.

- Commissioned officers in the service of a military department may, upon the recommendation of the Secretary of the Military Department concerned, be temporarily promoted to higher ranks or grades.
- Commissioned officer in the service of the NOAA may be temporarily promoted to fill vacancies caused by the transfer of commissioned officers to the service and jurisdiction of a military department.

NOTE: See also 33 USC 854a (3), in Section III, F., regarding temporary appointments in NOAA.

PUBLIC HEALTH SERVICE42 USC 211 (k)Temporary Promotion

In time of war or of national emergency proclaimed by the President, any commissioned officer of the Regular Corps in any grade in any professional category may be recommended to the President for promotion to any higher grade in such category, up to and including the director grade, whether or not a vacancy exists in that grade.

I. DISMISSAL/RELEASE FROM ACTIVE DUTY

(1) 10USC 1161 (a) Commissioned Officers; dismissal

No commissioned officer may be dismissed from any armed force except -

- (1) by sentence of a general court-martial;
- (2) in commutation of a sentence of a general court-martial;
or;
- (3) in time of war, by order of the President.

(2) 10USC 6408 (a) Navy and Marine Corps Warrant Officers (W-1) dismissal

No officer who holds the grade of Warrant Officer, W-1, may be dismissed from the Navy or Marine Corps except in time of war, by order of the President.

(3) 10USC 631 (b) Reserve Components; Release from active duty

In time of war or of national emergency declared by Congress or the President after January 1, 1953, a member of a reserve component may be released from active duty (other than for training) only if -

- (1) a board of officers convened at his request by an authority designated by the Secretary concerned recommends the release and the recommendation is approved;
- (2) the member does not request that a board be convened; or
- (3) his release is otherwise authorized by law.

- (4) 10USC 6486 (b) Fleet Reserve and Fleet Marine Reserve;
Release from active duty

Provides to the Department of the Navy, the same authority as in 10USC 681 (b), above.

COMMENT: 10 USC 6486 (b) seems superfluous in view of 10 USC 681 (b).

- (5) See also Section III, I, which describes other provisions of law regarding separation or discharge.

J. Decorations and Awards

1. Authorities cited below provide that a member of the Armed Forces may be eligible for certain decorations and awards for valorous service --

- "(1) While engaged in an action against an enemy of the United States;
- (2) While engaged in military operations involving conflict with an opposing foreign force; or
- (3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party."

a. Medal of Honor

- 10 USC 3741 (Army)
- 10 USC 6241 (Navy and Marine Corps)
- 10 USC 8741 (Air Force)
- 14 USC 491 (Coast Guard)

- b. Distinguished Service Cross; 10 USC 3742 (Army)
- Navy Cross; 10 USC 6242 (Navy and Marine Corps)
- Air Force Cross; 10 USC 8742 (Air Force)

c. Silver Star

- 10 USC 3746 (Army)
- 10 USC 6244 (Navy and Marine Corps)
- 10 USC 8746 (Air Force)

- d. Bronze Star; E01146 (all services)

- e. Purple Heart; E011016 (all services)

2. Foreign decorations and awards

22 USC 2624 Decorations: foreign disposition

Allows acceptance, retention and wear of foreign decorations which recognize active field service "in time of combat operations" or other outstanding meritorious service, subject to approval of department, agency, office or other entity in which person is employed and the concurrence of the Secretary of State.

K. Pay and Allowances

1. Missing, Interned or Captured Persons

5USC 5561-5568Civilian Employees:

An employee of the U.S. who is (1) missing, (2) missing in action, (3) interned in a foreign country, (4) captured, beleaguered, or besieged by a hostile force, or (5) detained in a foreign country against his will, is entitled, while in such status, to continuation of pay and allowances and allotments, travel and transportation for dependents and household and personal effects, deferment of Federal income tax, and the payment for or crediting of accrued annual leave.

37USC 551-558Military Personnel

Provides essentially the same authority as in 5USC 5561-5568 (see above) to members of the uniformed services. Two additional qualifying conditions are added; injury or illness. These sections further provide that promotion of a member while in a missing status is fully effective for all purposes, even though the Secretary concerned determines under 37USC 556 b that the member died before the promotion was made.

2. Special Pay, Allowances

37USC 310Special Pay: Duty Subject to Hostile Fire

Except in time of war declared by Congress, a member of a uniformed service may be paid special pay at a rate of

\$65 a month, under regulations prescribed by the Secretary of Defense, for any month in which he was entitled to basic pay and in which he was subject to certain hostile action.

37USC 407

Dislocation Allowance

A member of a uniformed service is not entitled to payment of more than one dislocation allowance during a fiscal year unless the Secretary concerned determines that exigencies of the service require more than one such change of station during that fiscal year or the member is ordered to a service school as a change of permanent station. This limitation does not apply in time of declared national emergency or in time of war.

37USC 427 (b)

Family Separation Allowance

Except in time of war or of national emergency declared by Congress, a member of a uniformed service with dependents may, in certain specified situations of separation from his dependents, be entitled to an additional monthly allowance of \$30.

10USC 684 (b)

Reserves; Suspension of disability compensation

In time of war or national emergency, the disability pay or other compensation of a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who is ordered to active duty for more than 30 days is suspended for the period of that duty unless his disability compensation exceeds his active duty compensation.

37USC 301 (d) Suspension of Certain Incentive Pay
37USC 301 a (c)
37USC 304 (b)

301 (d): In time of war, the President may suspend payment of hazardous duty incentive pay.

301 a (c): In time of war, the President may suspend payment of aviation career incentive pay.

304 (b): In time of war, the President may suspend payment of diving duty incentive pay.

10USC 9441 (b) (7) Civil Air Patrol: Payment of Travel Expenses and Allowances

In time of war, or of national emergency declared by Congress or the President, the Secretary of the Air Force, under regulations prescribed by him with the approval of the Secretary of Defense, may authorize the payment of travel expenses and allowance to members of the Civil Air Patrol while carrying out any mission specifically assigned by the Air Force.

37USC 901 Commissioned Officer Exercising Command Higher than his Grade

In time of war, an officer of an armed force who is serving with troops operating against an enemy and who, under assignment in orders issued by competent authority, exercises a command above that pertaining to his grade, is entitled to the pay and allowances (not above pay grade O-7) appropriate to the command so exercised.

3. Separation, Retired Pay

37USC 202Pay Grades: Rear Admirals
Holding Certain Positions
in the Coast Guard

An officer of the Coast Guard holding a permanent position in the grade of rear admiral on the retired list who is entitled to the basic pay of a rear admiral of the lower half and who, in time of war or national emergency has served satisfactorily on active duty for two years in that grade or in a higher grade, is entitled when on active duty to the basic pay of a rear admiral of the upper half.

10USC 687Reserves; Readjustment Pay

A member of reserve component involuntarily released from active duty is entitled to a lump-sum readjustment payment computed on the basis of his active service, other than service in time of war or of national emergency declared by Congress after June 28, 1962.

L. Screening of Reservists

1. 10 USC 271 Reserve Components: Ready Reserve; Continuous Screening

Under regulations to be prescribed by the President, each armed force shall provide a system of continuous screening of units and members of the Ready Reserve to ensure that -

- (1) there will be no significant attrition of members or units during a mobilization;
- (2) there is a proper balance of military skills;
- (3) except for those with military skills for which there is an overriding requirement, members having critical civilian skills are not retained in numbers beyond the need for those skills;
- (4) with due regard to national security and military requirements, recognition will be given to participation in combat; and
- (5) members whose mobilization in an emergency would result in extreme personal or community hardship are not retained in the Ready Reserve.

2. E0 11190 Providing for the Screening of the Ready Reserve of the Armed Forces, December 29, 1964, (as amended by E011382)

The authority of 10 USC 271 to prescribe regulations for the screening of units and members of the Ready Reserve is delegated to the Secretary of Defense. This authority is also delegated to the Secretary of Transportation with respect to the Coast Guard.

3. DOD DIR 1200.7 Screening the Ready Reserve, November 28, 1978

Provides general policy guidance, in accordance with 10 USC 271 and 10 11190.

M. Housing

1. 42 USC 1591 Housing of Persons Engaged in National Defense
Determination of Critical Areas by the President

The President may declare an area a critical defense housing area if he determines that all of the following conditions exist:

- (1) a new defense plant or installation has been or is to be provided, or an existing defense plant or installation has been or is to be reactivated or its operations substantially expanded;
- (2) substantial in-migration of defense workers or military personnel is required to carry out activities at such plant or installation; and
- (3) a substantial shortage of housing required for such defense workers or military personnel exists or impends which impedes or threatens to impede activities at such defense plant or installation, or that community facilities or services required for such defense workers or military personnel are not available, or are insufficient or both.

2. 42 USC 1592 Housing of Persons Engaged in National Defense
Authority of Secretary of Housing and Urban Development

Subject to the Presidential determination required by the provisions 42 USC 1592, the Secretary, HUD, is authorized to provide housing in any areas needed for defense workers or military personnel or to extend assistance for the provision of, or to provide, community services required in connection with national defense activities in any area which the President has determined to be a critical defense housing area.

N. Security Clearances

50USC 832(a) National Security Agency Conditional Employment or Assignment

During any period of war declared by the Congress, or during any period in which the Secretary of Defense determines that a national disaster exists, or in exceptional cases in which the Secretary (or his designee) determines in writing that his action is necessary or advisable in the national interest, he may authorize the employment of any person in, or the detail or assignment to, the National Security Agency, and may grant access to classified information on a temporary basis, pending completion of the required full field investigation, and clearance for access to classified information if the Secretary determines that such action is clearly consistent with the national security.

O. CIVILIAN EMPLOYEES/DEFENSE WORKFORCE

1. Personnel Procurement

5 USC 3326 Appointment of retired members of the armed forces to civilian office.

A retired member of the armed forces may be appointed to a civilian office in the DOD within 180 days after his retirement only if - - -

- (1) authorized by Secretary of Defense; or,
- (2) rates of basic compensation have increased; or,
- "(3) a state of national emergency exists."

EO 11490 Assigning Emergency Preparedness Functions to Federal Departments and Agencies, October 28, 1969. (as amended).

Part 4, Section 401 (16): The Secretary of Defense shall advise and assist FEMA in the development of over-all manpower policies to be instituted in event of an emergency, including provision of information relating to size and composition of the Armed Forces.

Part 10: The Secretary of Labor shall have primary responsibility for preparing national emergency plans and developing preparedness programs covering civilian manpower mobilization and utilization of limited manpower resources in support of defense and essential civilian activities.

Part 11: The Secretary of HHS shall prepare national emergency plans and develop preparedness programs covering health resources and civilian health manpower.

EO 10480 Further Providing for the Administration of the Defense Mobilization Program. August 14, 1953 (as amended).

Part IV: The Secretary of Labor shall utilize the functions vested in him so as to meet most effectively the labor needs of defense industry and essential civilian employment, and to this end he shall - - -

- assemble and analyze data on labor requirements for defense and other needs,
- consult with and advise FEMA on labor supply and utilization,
- formulate plans and programs to meet defense and essential civilian labor needs.

EO 11179 Providing for the National Defense Executive Reserve, September 22, 1964.

Establishes National Defense Executive Reserve on authority of 50 USC App. 2153 (a), 2160 (e); a program designed to provide trained executive level civilian personnel for employment. EO 11179 authorizes head of any department or agency to establish a unit of the Executive reserve. DOD Dir 1100.6, National Defense Executive Reserve, March 30, 1965, establishes program within DOD.

COMMENT: EO 11179 and DOD Dir 1100.6 cite provisions of the Defense Production Act of 1950 (specifically 50 USC App. 2153 (a), 2160 (e)) as authority. Both of these particular provisions of law will terminate on September 30, 1981.

DOD Dir 3005.6 Civilian Personnel Procurement and Manpower Control

during a Mobilization, March 20, 1962.

Provides general guidance to DOD components and advises that other Federal agencies (FEMA, Labor, HHS, OPM, SSS) have principal responsibilities. Civilian manpower procurement and control to be administered by FEMA/Labor thru regional offices and State employment agencies. DOD components are to place their requirements on these regional offices and support defense contractors' requirements to these offices. ASD(MRA&L) represents DOD in dealing with civilian agencies in development of policies and programs and will resolve or take further action to assist DOD components and defense contractors in filling requirements where local action is not successful.

44 CFR Part 324National Security Policy Governing
Scientific and Engineering Manpower
(Defense Mobilization Order -5)

Provides a general policy statement; scientific and engineering manpower requirements will be projected sufficiently into the future to permit long-range planning, to relate these requirements to other resource requirements to include other manpower skills, to relate peacetime and emergency requirements and to cooperate with educators, industry, professional societies and employee associations.

No specific department or agency responsibilities functions or duties are prescribed.

2. Pay and Benefits

5 USC 5335 (b) Periodic Step-Increases for Civilian Employees

The benefit of successive step-increases shall be preserved for civilian employees who occupy a permanent position in the General Schedule and whose continuous services is interrupted in the public interest by service with the armed forces or by service in essential non-Government Civilian employment during a period of war or national emergency.

10 USC 4025 Civilian Employees; Production of supplies and munitions; hours and pay of laborers and mechanics.

-- during a national emergency declared by the President, the regular working hours of laborers and mechanics of the Department of the Army producing military supplies or munitions are 8 hours a day or 40 hours a week. However, under regulations prescribed by the Secretary of the Army these hours may be exceeded, with compensation at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40.

10 USC 9025 Provides same authority as 10 USC 4025 above to Department of the Air Force.

Additional References:

- (1) See 10 USC 2632 at Section V, which relates to providing transportation in certain circumstances for persons working in a military department or private plant manufacturing military material.
- (2) See 42 USC 1591, 1592 at Section III, N., which relate to housing of persons engaged in national defense activities, under certain conditions.
- (3) See 5 USC 5522 at Section XIV, which relates to advance pay for civilian employees in case of emergency evacuation.

3. Protection of Civilian Employment

5 USC 8332 (g) Civilian Employees Entry on Military Service

During the period of a war, or of a national emergency as proclaimed by the President or declared by Congress, a civilian employee of the US who leaves his position to enter the military service is not considered, for the purposes of 5 USC, Chapter 83, subchapter III (Civil Service Retirement Act Amendments of 1956), as separated from his civilian position because of such military service, unless he applies for and receives a lump-sum benefit under that act. However, such an employee is not considered as retaining his civilian position after the expiration of five years of such military service.

P. Conscription

50USC App 467(c)Prohibition of Conscription

Notwithstanding any other provisions of the Military Selective Service Act, no person shall be inducted for training and service in the Armed Forces after July 1, 1973.

COMMENT: This provision of law must be repealed prior to initiation of conscription.

Memorandum of Understanding Between the Selective Service System (SSS) and the Department of Defense Concerning Planning for and Implementation of Military Manpower Mobilization, February 6, 1980.

Provides that DOD and SSS will share facilities and resources wherever possible to include specifically computer and telecommunications facilities necessary for a manpower mobilization system responsive to the needs of both DOD and SSS.

Memorandum of Understanding Between SSS and DOD for Support and Assistance During Mobilization, February 8, 1980.

Prescribes support that DOD will provide SSS in the event of mobilization and induction. DOD support will include specific facilities (Armed Forces Recruiting Office) and individuals (Reserve Officers) and general administrative support and supplies. The understanding also addresses peacetime activities, including training and proficiency exercises, which will be accomplished in peacetime to support implementation during mobilization and induction.

IV. MATERIALS (STRATEGIC AND CRITICAL)

ANALYSIS

The major authorities in this section deal with the stockpile of strategic and critical materials (National Defense Stockpile) and domestic energy supplies. The stockpile is established by 50 USC 98 and release authority is vested in the President. Materials may be released at any time for national defense purposes on the order of the President or by appropriately designated authority in time of declared war or national emergency. Agency responsibilities for management of the stockpile are prescribed by Executive Orders 11490 and 12155. Defense has only an advisory responsibility. Further policy guidance is provided by Defense Mobilization Order-11 (Title 44, Code of Federal Regulations, Part 328) but this guidance is so general that it may be of limited usefulness.

Strategic and critical materials as well as domestic energy supplies are addressed by the Defense Production Act (50 USC App 2061-2166). This act is not "emergency authority" since its provisions are operative at all times. It authorizes the President to require priority performance in contracts and orders to maximize domestic energy supplies. This authority terminates on December 31, 1984. This act also provides authority for purchase and transfer of strategic and critical materials.

A. 43 USC 1314 (b) Reservation of Rights to Purchase
Certain Natural Resources

In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the U.S. shall have right of first refusal to purchase natural resources and use the land under navigable waters within a state. Proceedings in accordance with due process of law and just compensation are required.

B. 43 USC 1341 (b), (c) Reservation of Rights to Outer Continen-
tal Shelf; Suspension of Operations

(b) In time of war or when the President shall prescribe, the U.S. shall have right of first refusal to purchase minerals produced from the Outer Continental Shelf.

(c) All leases on the Outer Continental Shelf under 43USC Chapter 29, Subchapter III, shall, or are construed to contain, a clause where the Secretary of the Interior, upon the recommendation of the Secretary of Defense during a state of war or national emergency declared by Congress or the President, may suspend operations under any lease.

C. 50 USC 98Strategic and Critical Materials
Stockpiling Act

Provides for acquisition, retention and disposal/use of strategic and critical materials for national defense purposes. Objective of program is a three year sufficiency in event of emergency. Authority to release materials from stockpile is vested in the President by Section 98F:

- "(1) On order of the President for national defense purposes; or
- (2) in time of war declared by Congress or during a national emergency on the order of any employee designated by the President to have such authority"

(NOTE: National emergency is defined by Section 98 h-3 as -- "a general declaration of emergency with respect to the national defense made by the President or by the Congress").

D. EO 11490Assigning Emergency Preparedness
Functions to Federal Departments and
Agencies, October 28, 1969 (as amended)

Part 4, Section 401(11) The Secretary of Defense shall furnish advice and assistance on the utilization of strategic and critical materials in defense production, including changes that occur from time to time.

Part 7, Section 703 (1) The Secretary of Interior shall develop programs and encourage the exploration, development, and mining of strategic and critical minerals for emergency purposes.

Part 20, Section 2004 The Administrator of General Services shall assist the Director, FEMA, in formulating plans, programs, and reports relating to the stockpiling of strategic and critical materials. Within these plans and programs, the Administrator shall provide for the procurement (for this purpose, procurement includes upgrading, rotation, and beneficiation), storage, security, maintenance, inspections, withdrawal, and disposal of materials, supplies, and equipment.

Part 30, Section 3005 General Provision: The head of each department and agency, with appropriate emergency responsibilities, shall assist the Director, FEMA, in formulating and carrying out plans for stockpiling of strategic and critical materials, and survival items.

E. EO 12155 Strategic and Critical Materials,
September 10, 1979

Delegates authority to perform certain functions specified in 50USC 98 as follows:

- (1) FEMA responsible for determining materials and quantities required.
- (2) GSA responsible for stockpile acquisition, management, storage, processing, etc.

(3) Departments of Interior and Agriculture responsible for scientific, technological, and economic investigation regarding the development of domestic sources of such materials.

EO 12155 does not delegate Presidential authority to release stockpiled assets during peacetime for national defense purposes. No functions or responsibilities are vested in DOD by this EO.

F. 50 USC App 2061-2166 Strategic and Critical Materials;
(Defense Production Act of 1950)

2071: The President is authorized to require priority performance on contracts and orders in order to maximize domestic supplies of energy when such supplies become scarce. (NOTE: this authority terminates on December 31, 1984.)

2076: Energy is designated as a strategic and critical material, however, this designation does not grant new authority for allocation and pricing of fuels or other forms of energy.

2093: The President may make provisions for the purchase of metals, minerals and materials, not including agricultural commodities, in order to promote national defense and to encourage exploration and development of strategic and critical materials. (NOTE: this authority terminates on September 30, 1995.) Further, the President may, under certain conditions --

- install additional equipment/facilities in government-owned plants or place government-owned equipment in private facilities when necessary to assist in national defense;

- transfer material acquired under this act, which becomes excess, to the National Defense Stockpile (50 USC 98 et seq, Strategic and Critical Materials Act)
- Make provisions for developing substitutes for strategic and critical materials where such action would aid national defense.

COMMENT: The provisions of the Defense Production Act of 1950 (50 USC App 2061-2166) do not contain the phrase - "in time of war or national emergency" - but they do provide some additional flexibility to the executive in order to assist in promoting national defense. Except where specifically noted above, the provisions of this act are to terminate on September 30, 1981, in accordance with PL 96-294, June 30, 1980. However, this Act has been extended in short-term increments almost annually since its original passage. See also Section VIII, Contracts and Procurements, for other provisions of the Defense Production Act.

G. 44 CFR Part 323

General Policies for Strategic
and Critical Materials Stockpiling
(Defense Mobilization Order - 11)

Provides general policy guidance in stockpile requirements and administration. No specific functions or responsibilities are prescribed. (COMMENT: The guidance is so general as to be no more than common sense.)

H. 50 USC 167c (a), (d) Helium Gas: Licensing, Reacquisition
of Supplies

- (a) Whenever the President determines that the defense, security, and general welfare of the U.S. requires such action, the Secretary of the Interior shall issue such regulations as he deems necessary for the sale and transportation of helium in interstate commerce.
- (d) Whenever Congress or the President declares that a war or national emergency exists, the Secretary of the Interior is authorized to suspend any license granted under this chapter (50USC 161-167) if in his judgement such suspension is necessary to the defense and security of the U.S., and he is further authorized to take such steps as may be necessary to recapture or reacquire supplies of helium.

ANALYSIS

Broad authority is granted by the US Code in the area of transportation. This authority encompasses the control and management of transportation systems, the requisition of assets, and the priority movement of personnel and materials. The law, as supplemented by Executive Order 11490, provides a basis for interagency cooperation regarding transportation. Major deficiencies in transportation authorities are in the area of interagency agreements and directives. Many appear obsolete. Further, the ability to improve military preparedness is constrained by the requirements for declarations of war or national emergency prior to invoking certain authorities. As an alternative, the priorities and allocations authority of the Defense Production Act (50 USC App 2061-2166) could be used to support military preparedness measures without a declaration of war or national emergency.

a. General Transportation Authority:

In time of war, the President is empowered to take possession and control, through the Army and Air Force, of all or any part of any transportation system (10 USC 4742, 9742). Executive Order 11490 prescribes responsibilities of the Departments of Commerce and Transportation regarding the provision of transportation assets in emergency situations. A Department of Transportation Standby Order, DOT 1940.4 (1970), contains emergency authorities and procedures covering all aspects of transportation -- sea, air, and surface. It is a useful document, but needs review because of its age. DOD Directive 3005.7 (1978) provides policy guidance regarding the use of domestic civil transportation assets during periods of national emergency.

b. Maritime Transportation:

Upon Presidential proclamation or declaration of national emergency, the Secretary of Commerce can requisition or purchase private vessels (46 USC 1242); requisition, purchase, or charter foreign vessels lying idle in U.S. waters

(50 USC 196-198); and terminate existing charters of Department of Commerce vessels (46 USC 1202). Commerce responsibilities for maritime transportation are addressed in a 1954 Defense/Commerce agreement. Because of its age and ensuing changes in governmental organization and military force structure, this document needs review. Maritime tanker support for Defense requirements is addressed in a Commerce/Maritime Administration voluntary plan dated 1958. This plan also needs review because of its voluntary nature and the changes in the U.S. tanker fleet since 1958. None of these agreements addresses the question of crew availability. This could become a major limiting factor, notwithstanding the authority of 46 USC 1132, which in time of national emergency allows suspension of the requirement that crews of U.S. documented vessels be U.S. citizens.

Maritime transportation authorities are extensive if a national emergency is declared. Without such declaration, access to and control of additional maritime assets could be severely constrained. This condition could perhaps be alleviated through negotiation and enactment of a maritime preparedness program similar to the Civil Reserve Air Fleet program, which provides contractually obligated airlift support to DOD.

c. Air Transportation

The Department of Transportation is responsible for meeting Defense requirements for air transportation (EO 11490), the primary mechanism being the Civil Reserve Air Fleet (CRAF) program. CRAF is based on a 1963 agreement between Defense and Commerce (now Transportation) according to which contractually obligated civil air carriers will augment military airlift assets in specified situations. Portions of the CRAF may be used incrementally without requiring a declaration of national emergency.

A draft revision has been prepared.

d. Surface Transportation:

Priority movement of military personnel over surface transportation systems within CONUS, in time of war or threatened war, is assured by 49 USC 1(15), 6(8), and 1020. The Interstate Commerce Commission (ICC) has authority to direct such priority. The ICC is also responsible for meeting surface transportation needs in emergency situations. To meet this responsibility, the ICC has developed a series of Standby Emergency Orders to become effective automatically upon a declaration of emergency. These orders are designed to facilitate the movement of materials, services, and personnel across inland waterways, highways, and railways. They are contained in DOT 1940.4, dated 1969. Review is needed because of their age and the ensuing changes in regulatory practices and the structure of domestic transportation systems. A 1980 procedural agreement between Defense and Transportation provides that Transportation will take action to assure priority motor carrier support for Defense requirements in contingency situations less than those involving declaration of war or national emergency.

A. General Authority to Control Transportation

1. 10 U.S.C. 4742 & 9742 Control of Transportation Systems
In Time of War

In time of war, the President, through the Secretary of the Army (and Air Force), may take possession and assume control of all or part of any system of transportation to transport troops, war material, and equipment, or for other purposes related to the emergency. So far as necessary, he may use the system to the exclusion of other traffic.

2. 49 U.S.C. 1 (15) Priority of Traffic Essential to
National Defense or Security

In time of war or threatened war, the President may certify to the (Interstate Commerce) Commission that it is essential that certain traffic shall have preference or priority in transportation, and the Commission shall, under the power herein conferred, direct that such preference or priority be afforded.

3. 49 U.S.C. 6 (8) Preference to Shipments for United
States

In time of war or threatened war, preference and precedence shall, upon demand of the President of the United States be given, over all other traffic, for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic.

4. 49 U.S.C. 1020Special Powers During Time of War
or Other Emergency

The provision of section 1 of this title (having to do with priority of traffic) shall be applicable with respect to freight forwarders, as well as the service, equipment and facilities of freight forwarders.

5. 50 USC app 2071Required Priority Performance,
Defense Production Act

This gives the President delegatable authority in situations short of a declaration of war or national emergency, to require priority performance and to allocate materials and facilities as necessary or appropriate to promote the national defense.

NOTE: This authority is due to terminate on September 30, 1981, however, the Defense Production Act has a long history of repeated, short-term extensions on an almost annual basis.

6. EO 11490Assigns Emergency Preparedness
Functions to Federal Departments
and Agencies (as amended)
October 28, 1969Section 401(18)Department of Defense

Furnish military requirements for all forms of transportation and transportation facilities in planning for and in the event of emergency, including an attack upon the United States.

(26) Develop with the Department of Transportation and Federal Communications Commission plans and programs for the control of air traffic, civil and military, during an emergency.

Section 901(2)Department of Commerce

Federal Emergency operational control responsibilities with respect to ocean shipping, ports, and port facilities, except those owned by, controlled by, or under the jurisdiction of the Department of Defense, and except those responsibilities of the Department of Treasury with respect to the entrance and clearance of vessels.

Section 903 (Maritime functions)

Within the areas designated in Section 901(2) of this part, the Secretary of Commerce shall develop plans and procedures in consonance with international treaties, under coordinating authority of the Secretary of Transportation and in cooperation with other appropriate Federal agencies and the States and their political subdivisions, to provide for Federal operational control of ocean ports and shipping.

Section 1302(1)Department of Transportation

Obtain, assemble, analyze, and evaluate data on current and projected emergency requirements of all claimants for all forms of civil transportation to meet the needs of the military and of the civil economy, and on current and projected civil transportation resources - of all forms available to the United States to move passengers or materials in an emergency.

(4) Develop systems for the control of the movement of passengers and cargo by all forms of transportation, except for those resources owned by, controlled by, or under the jurisdiction of the Department of Defense, including allocation of resources and assignment of priorities, and develop policies, standards, and procedures for emergency enforcement of these controls.

Section 1303(1)

Allocate specifically designated civil air carrier type aircraft to the Civil Reserve Air Fleet (CRAF) and to the War Air Service Program (WASP). -

(2a) When CRAF is activated by the Secretary of Defense, the Secretary of Transportation retains the responsibility for the claimancy function for CRAF aircraft.

(5a) Safeguard vessels, harbors, ports, and waterfront facilities from destruction, loss or injury, accidents, or other causes of a similar nature.

7. DOT 1940.4

Emergency Procedures for the Control
of Civil Transportation February, 1970

The purpose of this order is to prescribe civil transportation emergency control procedures for use by Federal claimants for transportation services and by the Federal transportation community, under emergency conditions.

DOT 1940.4 is itself not merely one DOT regulation. Rather, it is a kind of compendium of emergency authorities and procedures pertaining to transportation. Most of its important aspects which relate to DOD (e.g., CRAF, NDRF) are mentioned in other sections of this report. A few parts however, are not included elsewhere in this report and deserve mention here.

Emergency Transportation Advisory Committees

There is an advisory committee - Transportation Allocations, Priorities and Controls (TAPAC) - chaired by an official of DOT and responsible for providing advice to DOT national headquarters during emergencies. This committee is composed of representatives of the Federal claimant and operating agencies and may be varied in membership from time to time at the discretion of the Secretary (A DOD representative, therefore, would sit on the committee).

Civil Surface and Inland Water Priorities

I. Interstate Commerce Commission Emergency Standby Orders

A. The ICC has been charged by EO 10480 with the responsibility to provide urgent transportation services to meet immediate needs in the event of an emergency. As a result the ICC has published a series of emergency standby orders identified as "General Order ICC TM" series, to cover the period immediately following declarations of emergency. These standby orders become automatically effective upon the proclamation of the existence of a state of an emergency by the President or by concurrent resolution of the Congress.

These standby orders are geared to facilitate the movement of goods and services and people across inland waterways, highways, and railways in support of a national or civil defense effort during times of war or emergency.

DOC/MARAD Voluntary Plan Under PL774, 81st Congress, as amended, for the Contribution of Tanker Capacity for National Defense Requirements, amended as of March 20, 1956.

This plan sets up the procedure under which the owners and charterers of oil tankers agree voluntarily to make tankers and tanker space available to DOD at the request of MARAD.

(NOTE: The voluntary nature of this plan and the changed characteristics of the U.S. tanker fleet and U.S. military requirements suggest that review is desirable.)

8. DOD DIR 3005.7

Emergency Requirements, Allocations,
Priorities and Permits for DOD Use
of Domestic Civil Transportation, July 5, 1978

This establishes policy and provides guidance to DOD components as regards the use of domestic civil transportation assets during periods of national emergency. It does not apply to carriers otherwise supporting Corps of Engineers Civil Works Projects, the Federal Emergency Management Agency or the Civil Reserve Air Fleet.

Policy Planning

The Department of Transportation is chiefly responsible for national emergency civil transportation planning. The Secretary of Transportation will provide DOD with emergency guidance and, in the event of regional isolation, such information will be provided by DOT emergency organization Regional offices.

B. Maritime Transport

1. 46 U.S.C. 1202

Termination of Charter in National
Emergency

(d) Whenever the President shall proclaim that the security of the national defense makes it advisable, or during any national emergency declared by proclamation of the President, the Secretary of Commerce may terminate the charter of vessels owned by the Department of Commerce without cost to the United States, upon such notice to the charterers as the President shall determine.

2. 46 U.S.C. 1242Requisition or Purchase of Vessels
in Time of Emergency

(a) Whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President, it shall be lawful for the Secretary of Commerce to requisition or purchase any vessel or other watercraft owned by citizens of the United States, or under construction within the United States, or for any period during such emergency, to requisition or charter the use of any such property.

3. 50 U.S.C. 196-198Emergency Foreign Vessel Acquisition;
Purchase or Requisition of Vessels
Lying Idle in United States Waters

Whenever the President proclaims that the security of the national defense makes it advisable or during a national emergency proclaimed by the President, the President may, through the Secretary of Commerce, purchase or requisition, or charter or requisition the use of, or take over title or possession of, for such use as he may direct, any merchant vessel not owned by citizens of the United States which is lying idle in waters under the jurisdiction of the United States, and which he finds to be necessary to the national defense.

4. 46 U.S.C. 1132 Citizenship of Officers and Crew

- (a) All licensed officers of documented vessels must be U.S. citizens, either native-born or naturalized.
- (h) During a national emergency as proclaimed by the President, he may, in his discretion, suspend any or all of the provisions of this section.

5. 46 U.S.C. 1241 Transportation in American Vessels
of Government Personnel and Certain
Cargoes

Whenever the Congress, by concurrent resolution or otherwise, or the President or the Secretary of Defense, declares that an emergency exists, the requirement that at least 50 percent of the gross tonnage of certain equipment, materials, or commodities be transported on privately owned United States flag commercial ocean vessels may be waived.

6. 50 U.S.C. App. 1744 Composition of National Defense
Reserve Fleet

The Secretary of Commerce shall place in the national defense reserve certain vessels owned by the Secretary of Commerce, including those he considers should be retained for the national defense after consultation with the Secretary of the Army and the Secretary of the Navy. Vessels placed in the reserve may be used only for the benefit of a department or agency whenever the President proclaims that the security of the national defense makes it advisable or during any national emergency proclaimed by the President.

7. Memorandum of Agreement Between the Department of Defense and the Department of Commerce Dealing with the Utilization, Transfer, and Allocation of Merchant Ships, July 1, 1954.

Both DOD and DOC agree to the need for a National Shipping Authority, or a wartime counterpart, with powers of control over ocean-going merchant ships. This agency is to assure that military drafts for merchant type ships are met, and that they will be operated and controlled according to the requirements of the military authorities. Further, a nucleus fleet of size and composition to meet current conditions and military requirements will be maintained at all times.

The Military Sealift Command, under the command of the Chief of Naval Operations, is the sole agency of DOD for providing all ocean-going transportation for DOD (excluding personnel and cargo transported by units of the fleet), and as authorized or directed for other Government agencies or departments of the United States, subject to priorities established by JCS.

Ships of the MSC operating nucleus fleet which are replaced or no longer required by MSC will be placed in the National Defense Reserve Fleet (see 50 U.S.C. App. 1744(a)).

Ship requirements under conditions of full mobilization

- a) DOC will provide the additional merchant type ships required to be under the exclusive custody, jurisdiction, and control of DOD in meeting the requirements of the latter under conditions of full mobilization.

8. 46 U.S.C. 835 Restrictions on Transfer of Shipping
Facilities During War or National
Emergency

When the United States is at war or during any national emergency
the existence of which is declared by proclamation of the
President, it shall be unlawful, without the consent of the
Federal Maritime Board, to transfer American ships to a foreign
registry, to sell American vessels to other citizens. Also,
it shall be unlawful to sell, mortgage, lease, charter, deliver,
or in any manner transfer, to any person not a citizen of the
United States, any shipyard, drydock, shipbuilding or ship-
repairing plant or facilities.

C. Air Transportation

1. Memorandum of Understanding By and Between Secretary of Defense and Secretary of Commerce, August 8, 1963.

The Department of Commerce (now Transportation) is responsible for providing civil air carrier support to meet Defense needs in an emergency situation by means of the Civil Reserve Air Fleet (CRAF). CRAF may be activated incrementally based on the emergency situation at hand:

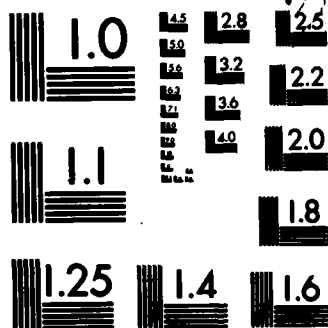
	<u>Description</u>	<u>Authority to Execute</u>
Emergency Stage I	Localized emergencies	Commander, MAC
Emergency Stage II	Limited War	President (SECDEF)
Emergency State III	Major Engagement	Declaration of a National Emergency

Actual numbers of CRAF aircraft to be provided are based on prior contractual arrangements with civil air carriers as developed by the Office of Emergency Transportation and the Military Airlift Command (DOD CRAF Manager for Airlift).

(NOTE: There is a draft revision of this agreement dated May 13, 1980. Major provisions are unchanged.)

2. 14 CFR 290.1-290.7 Transfer of Airlift Among Aircarriers in Certain Emergencies

In short, this allows CRAF operators to lease aircraft to each other to replace aircraft which have been furnished to the Government on a contractual basis to meet CRAF requirements.



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

3. War Air Service Program (WASP) Air Priorities Manual

(Civil Aeronautics Board, April 1971)

Provides planning guidance and implementation procedures for controlled priorities system for the preferential air transportation of traffic essential to national defense emergency activities. (Military department implementing regulations are: AR 59-10; OPNAV Instr 4600.19B; AFR 75-22; MC Order P4632.9B; and, DLA Req 4500.18)

D. Land Transportation

49 USC 10713

Violation of Commercial Contracts

The ICC may not require rail carriers to violate commercial contracts except to comply with 49 USC 11128. (See below)

49 USC 11123

Situations Requiring Immediate Action

When the ICC considers, on its own initiative or on application, that a shortage of rail equipment or congestion of traffic or other emergency requiring immediate action exists in a section of the U.S., it may, for a period not to exceed 30 days; suspend rules or practices, take action to promote service in the public interest, require joint or common use of terminals, and direct preference or priority in transportation.

49 USC 11127

Service of Freight Forwarders

Applies essentially the same authority as contained in 49 USC 11123 to freight forwarders under the jurisdiction of the ICC.

49 USC 11128War Emergencies

When the President, during time of war or threatened war, certifies to the ICC that it is essential to the defense and security of the U.S. to give preference or priority to movement of certain traffic, the ICC shall direct that preference or priority be given to that traffic under 49 USC 11123 and 11127.

When the President, during time of war or threatened war, demands that preference and priority be given to the transport of troops and materials of war over all other traffic, all carriers subject to ICC jurisdiction shall take every means to facilitate and expedite the military traffic.

An embargo imposed by any carrier shall not apply to shipments consigned to agents of the U.S. Government for its use. Such shipments shall be delivered as promptly as possible.

Procedural Arrangement; Defense and Transportation; Contingency Reaction for Acquisition of Motor Transportation Services During Defense Contingencies, July 1980.

Provides procedural guidance regarding motor carrier service to meet Defense requirements in case of contingencies, to include situations less than a declaration of war or national defense emergency. When priority motor carrier services are required but not available in such situations, Defense will advise Transportation. Transportation will promptly arrange for such priority service. (Note: See also ICC Emergency Standby Orders, contained in DOT 1940.4, page V-5.)

E. Other Authority

1. 10 U.S.C. 2632

Transportation to and From Certain Places of Employment

- (a) During a war or a national emergency, the Secretary of a military department may, under certain conditions, provide assured and adequate transportation, by motor vehicle or water carrier to and from their places of employment for persons attached to, or employed in, a private plant that is manufacturing material for that department.

2. 10 U.S.C. 7224Transportation on Naval Vessels
During Wartime

In time of war or during a national emergency declared by the President,
such persons as the Secretary of the Navy authorizes by regulation may be
transported and subsisted on naval vessels at Government expense.

3. 46 U.S.C. 1151Subsidy Authorized for Vessels to be
Operated in Foreign Trade

The Secretary of Commerce will not approve an application for
a construction-differential subsidy unless the specifications
of the new vessel will be suitable for use by the United States
for national defense or military purposes in time of war or
national emergency.

4. 46 U.S.C. 1161Reserve Funds for Construction
or Acquisition of Vessels; Taxation

Reserve funds for the construction or acquisition of vessels
may be established only after the vessels have been declared
to be desirable for use by the United States in case of war
or national emergency.

VI. MEDICAL

ANALYSIS

Limited authority is available to meet emergency and mobilization situations that could significantly increase Defense requirements for medical support and facilities. The Army and Air Force are authorized, in an emergency, to hire as many contract surgeons as may be necessary (10 USC 4022 (a), 9022 (a)). No similar authority is granted the Navy. EO 11490 assigns emergency health services responsibilities to the Department of Health and Human Services. Additionally, this EO assigns emergency responsibilities to the Veterans Administration for such participation with Defense and Health and Human Services as is provided for in interagency agreements. A 1965 understanding between Defense and the VA addresses generally the military use of VA hospital facilities. This understanding appears outdated because of changed DOD plans for supporting health care. No further agreements were noted regarding the provision of emergency health services by Health and Human Services or the VA. Defense Mobilization Orders 6 and 7, which appear in Title 44, CFR, provide, respectively, a title listing of health specialists that may be needed in an emergency, and general policy guidance for a national emergency blood program. Specific guidance implementing the assignment of responsibilities made by EO 11490 with regard to Health and Human Services and VA roles in meeting medical requirements in an emergency situation appears to be lacking.

A. 10 USC 4022 (a) Civilian employees: employment of contract surgeon.

"In an emergency," the Surgeon General of the Army with the approval of the Secretary of the Army, may employ as many contract surgeons as may be necessary.

B. 10 USC 9022 (a) Provides same authority as 10 USC 4022 (a) above to Department of the Air Force.

C. 42 USC 266 Quarantine: infected persons: protection of members of the Armed Forces and war workers.

"In time of war," the Surgeon General of the United States may, by regulation, provide for the apprehension, examination, and detention of any person reasonably believed to be infected with a communicable disease who is a probable source of infection to members of the armed forces, or to individuals engaged in the production or transportation of arms or other supplies for the armed forces.

D. EO 11490 Assigning Emergency Preparedness Functions to Federal Departments and Agencies, October 28, 1969, as amended.

Part 11: Secretary of HHS shall prepare national emergency plans and preparedness programs covering health services, civilian health manpower, health resources.

Part 29: Veterans Administration shall develop policies, plans and procedures for the emergency conduct of inpatient and outpatient care and treatment in VA Medical facilities and participation with DOD and HHS as provided for in interagency agreements.

E. Memorandum of Understanding; VA and DOD; Regarding Utilization of Beds in VA Hospitals for Military Patients in Support of a National Emergency When the US is not Under Attack; March 1965.

Prescribes following general policy guidance for emergency situations:

- VA hospitals will remain under VA management.
- In event of all out attack on CONUS, primary use of VA resources will be in support of local emergency medical needs.
- DASD(Health and Medical) will represent DOD in effecting necessary coordination with the VA.
- DOD will reimburse the VA in accordance with established procedures.
- The Armed Services Medical Regulating Office will be responsible for coordinating movement of military patients to VA hospitals.

Joint emergency preparedness planning is to be conducted. VA will provide estimates of hospital capabilities. DOD will provide requirements and plans to use VA facilities.

COMMENT: Because of the age of this MOU and new DOD direction and planning for health care support, the MOU should be reviewed and updated.

F. 44 CFR Part 325Emergency Health and Medical Occupations
(Defense Mobilization Order -6)

Provides a listing of Health Manpower Occupations anticipated to be immediately required for provision of essential emergency public health and medical services. (Only occupational titles are provided. No attempt is made to quantify the numbers or types of health specialists which might be required in an emergency situation.)

G. 44 CFR Part 326Policy Guidance for a National
Emergency Blood Program (Defense
Mobilization Order -7)

FEMA prescribes objectives, policies and responsibilities of National Emergency Blood Program designed, to meet national requirements for blood and other related products.

Responsibilities:

- FEMA will exercise overall coordination of program.
- Defense will administer military aspects of program and maintain an interagency committee to coordinate Federal funding and programming for research and development projects relating to this program.
- Health and Human Services will administer the civilian aspects of program.

H. See also:

- Section VIII, (41 USC 11), regarding contracts and purchases for medical purposes by the military departments without an appropriation.
- Section XIII, (42 USC 217), regarding the Public Health Service as a military service.

VII. INDUSTRIAL & DEFENSE PRODUCTION

ANALYSIS

This section addresses three general areas: industrial preparedness; defense industrial reserves; and industrial mobilization.

Industrial preparedness is addressed by EO 11490 which prescribes the planning functions of Defense, Commerce, FEMA, GSA, and the TVA. Commerce has primary responsibility for national emergency plans and preparedness programs for industrial production.

The Defense Industrial Reserves program is established to maintain an essential nucleus of government-owned industrial facilities and a reserve of machine tools and manufacturing equipment (50 USC 451-461). The purpose of this program is to supply the immediate needs of the Armed Forces in time of emergency. Defense has the primary management responsibility for this program.

Industrial mobilization in time of war or when war is imminent is facilitated by the provisions of 10 USC 4501 and 9501. These laws can be invoked, under certain conditions, to enable seizure and operation of industrial facilities in order to produce military supplies. The provisions of 50 USC App 468 may be used, whenever the President deems it in the interest of national security, to place mandatory orders for materials. This law requires manufacturers to give priority to such orders. Use of this authority for an expenditure in excess of \$25 million requires a prior report to Congress. Raising this limit appears justified in view of inflation and increased cost of materials.

Supplemental guidance with regard to industrial mobilization and production is contained in a series of Defense Mobilization Orders that appear in Title 44, Code of Federal Regulations. These orders should be reviewed; many are highly general in nature, and some appear to be republications of documents from the 1950s and 1960s.

A. Industrial Preparedness

E011490Assigning Emergency Preparedness Functions
to Federal Departments and Agencies,
October 28, 1969 (as amended)Part 4, Section 401: The Secretary of Defense shall:

- (2) Develop and furnish quantitative and time-phased military requirements for selected end-items ---
- (3) Advise and assist Director, FEMA, in developing a national system of production urgencies.
- (5) Plan for and administer priorities and allocations authority delegated to the Department of Defense. Authorize procurement and production schedules and make allotments of controlled materials pursuant to program determinations of the Director, FEMA.
- (6) Assist the Department of Commerce and other appropriate agencies in the development of production and distribution control plans for use in any emergency.
- (7) Develop with industry, plans for the procurement and production of selected military equipment and supplies needed to fulfill emergency requirements, making maximum use of plants in dispersed locations, and, where essential and appropriate, providing for alternative sources of supply in order to minimize the affects of enemy attack.

- (9) Recommend to Director, FEMA, measures for overcoming potential deficiencies in production capacity to produce selected military supplies and equipment needed to fulfill emergency requirements, when necessary measures cannot be effected by the Department of Defense.
- (12) Analyze problems that may arise in maintaining an adequate mobilization base in military-product industries and take necessary actions to overcome these problems within the limits of the authority and funds available to the Department of Defense.
- (13) Assist the Secretary of Commerce with respect to the identification and evaluation of facilities important to the national defense.

Part 9: Secretary of Commerce shall prepare national emergency plans and develop preparedness programs covering, among other things, the production and distribution of all materials, the use of all production facilities (except those owned by, controlled by, or under the jurisdiction of the Department of Defense or the Department of Energy), the control of all construction facilities, and the furnishing of basic industrial services, except those otherwise assigned, ---

Part 20, Section 2002 (9) National Industrial Reserve and Machine Tool Program

The Administrator of General Services, shall develop plans for the custody of industrial plants and production equipment in the national industrial reserve and assist the Department

of Defense, in collaboration with the Department of Commerce, in the development of plans and procedures for the disposition, emergency reactivations, and utilization of the plants and equipment of this reserve in the custody of the Administrator.

Part 27, Section 2701 (7) Munitions Production

The Board of Directors of the Tennessee Valley Authority shall perform chemical research in munitions as requested by the Department of Defense, maintain standby munitions production facilities, and develop plans for converting and utilizing fertilizer facilities as required in support of the Department of Defense's munitions program.

DOD Dir 4005.1

DOD Industrial Preparedness Production Planning, July 28, 1972

Issued pursuant to EO11490, Section 401, and provides DOD policies and assigns responsibilities governing industrial preparedness planning for the production of essential military items in a national emergency. The military departments and the Defense Logistics Agency are to develop and issue implementing instructions.

8. Defense Industrial Reserves

50 USC 451

Defense Industrial Reserves; Purpose and Policy

Congress states intent to maintain essential nucleus of Government-owned industrial plants and a national reserve of machine tools and industrial manufacturing equipment for immediate use to supply the needs of the armed forces in time of national

emergency or in anticipation thereof; such Government-owned plants and reserves are not to exceed the minimum requirements for immediate use in time of national emergency.

Further, excess items shall be disposed of expeditiously, maximum reliance will be placed on private industry to support defense production, and, items retained in reserves shall be held to maintain a high state of readiness for productions of critical defense material, to provide capacity not available in private industry, or to assist private industry in time of national disaster.

50USC 452

Defense Industrial Reserves; Definitions

(a) Defines "Defense Industrial Reserve" as -

- (1) a general reserve of industrial manufacturing equipment including machine tools, selected by the Secretary of Defense for retention for national defense or for other emergency use;
- (2) those industrial plants and installations held by or under the control of the Department of Defense in an active or inactive status, including Government-owned/ Government-operated plants and installations and Government-owned/contractor-operated plants and installations which are retained for use in their entirety, or in part, for production of military weapons systems, munitions, components, or supplies.
- (3) those industrial plants and installations under the control of the Secretary which are not required for the immediate need of any department or agency of

the government and which should be sold, leased, or otherwise disposed of.

- (b) Defines "plant equipment package" as a complement of active and idle machine tools and other industrial manufacturing equipment held by and under the control of the Department of Defense and approved by the Secretary for retention to produce particular defense material or defense supporting items at a specific level of output in the event of an emergency.

50 USC 453

Defense Industrial Reserves; Powers and Duties of the Secretary of Defense

Authorizes and directs the Secretary to -

- (1) determine which industrial facilities (to include machine tools and other industrial manufacturing equipment) should become a part of the defense industrial reserve;
- (2) designate excess industrial property for disposal;
- (3) establish general policies and provide for transportation, handling, care, storage, protection, maintenance, repair, rebuilding, utilization, recording, leasing, and security of such property;
- (4) direct transfer without reimbursement of such property to other Government agencies with their consent;
- (5) direct the leasing of such property to designated leasees;

- (6) authorize the disposition in accordance with existing law of any such property no longer needed by the Department of Defense; and,
- (7) authorize and regulate the loan of such property, under certain conditions, to non-profit educational institutions or training schools.

C. Industrial Mobilization

10 USC 4501 (a), (c), (d) Industrial Mobilization; orders, possession of plants, manufacture

- (a) In time of war or when war is imminent, the President, through the head of any department, may order from any person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry.
- (c) In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the Secretary of the Army is capable of being readily transformed into a plant for manufacturing arms or ammunition, parts thereof, or necessary supplies for the Army, if the person or industry owning or operating the plant, or the responsible head thereof, refuses -
 - (1) to give precedence to the order of the President;

- (2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies, as ordered by the Secretary; or
- (3) to furnish them at a reasonable price as determined by the President.

(d) The President, through the Ordnance Corps, may manufacture products that are needed in time of war or when war is imminent, in any plant that is seized under subsection (c) above.

NOTE: 10USC 4501 also provides for fair compensation to owners and for criminal penalties for failure to comply with this section.

10USC 4502

Industrial Mobilization; lists of Plants

Directs Secretary of the Army to maintain data and lists regarding privately owned plants equipped or capable of being converted for the production of arms, and ammunition and to prepare comprehensive plans for conversion of those plants capable of conversion to the production of arms and ammunition.

10USC 9501, 9502

Industrial Mobilization

Provides same authority to the Department of the Air Force as is given in 10USC 4501, 4502, above, to the Department of the Army.

50USC APP 468Industrial Mobilization: Mandatory
Orders for Materials

Whenever the President determines it is in the interest of national security to obtain prompt delivery of materials or articles for use of the armed forces or the Department of Energy (Atomic Energy Commission), he may place mandatory orders for such materials or articles through the head of any department. Such orders are to be given priority and precedence by manufacturers. However, expenditure in excess of \$25M shall be reported to Congress prior to ordering.

44 CFR Part 134Preservation of the Mobilization
Base through the Placement of
Procurement and Facilities in
Labor Surplus Areas
(Defense Manpower Policy -4B)

States general policy of the Federal Government to award appropriate contracts to eligible labor surplus areas concerns, to place production facilities in labor surplus areas and to make the best use of natural, industrial and labor resources.

Policy is applicable to all Federal departments and agencies with Commerce having a major role.

44 CFR Part 320Dispersion and Protective Construction:
Policy, Criteria, Responsibilities
(Defense Mobilization Order -1)

Provides general policy encouraging and, when appropriate, requiring that new facilities and major expansions of existing facilities important to national security be located and constructed, in so far as practicable, to minimize the risk of damage in the event of attack.

Provides general planning criteria to be taken into consideration and general responsibilities of Federal departments and agencies.

44 CFR Part 321Maintenance of the Mobilization Base
(Department of Defense, Department
of Energy, Maritime Administration)

Provides general policy guidance regarding the mobilization base (facilities, machine tools, production equipment, skilled workforce) required to meet the wartime needs of Defense, Energy and the Maritime Administration.

Provides general planning criteria with respect to selection of facilities for the mobilization base, maintenance of the mobilization

base, achieving production readiness and retention of industrial facilities.

44 CFR Part 322

Defense Production: Priorities and Allocations Authority (Defense Mobilization Order -3)

Provides that the authority of Title I, Defense Production Act of 1950, as amended, to control the distribution and use of materials and facilities, shall not be used except to require preference in the performance of contracts and orders and to allocate materials and facilities to accomplish direct military and atomic energy programs and other related programs and activities certified by the Departments of Defense or Energy and specifically authorized by FEMA. (NOTE: The authority of Title I, Defense Production Act (50 USC Appl 2071-2076) will terminate on September 30, 1981.)

44 CFR 323

Guidance on Priority Use of Resources in Immediate Post Attack Period (Defense Mobilization Order -4)

Provides general policy guidance that in an immediate post attack period, all decisions regarding the use of resources will be directed to the objective of national survival and recovery. Priority activities for claims in resources are:

- Immediate military defense and retaliatory combat operations, to include support of military personnel and production and distribution of military and atomic weapons, materials and equipment.
- Maintenance or reestablishment of government authority and control.
- Production and distribution of survival items and services essential for continued survival and recovery.
- Essential communications and transportation services.
- Provision of supplies, equipment and spare parts to produce and distribute goods needed for the above activities.

44 CFR Part 327Policy on Use of Government-Owned
Industrial Plant Equipment by Private
Industry (Defense Mobilization
Order - 10A)

Provides general policy in order to maintain effective and available reserve of such equipment for emergency preparedness programs ---

- Primary reliance on private industry.
- Government-owned equipment can be made available to private industry, under certain conditions, to ensure required production capability or for emergency use by essential contractors whose facilities have been destroyed or damaged.
- Equipment so furnished will be subject to a fair rental return to the government.
- Such equipment can also be leased to private industry for commercial use if necessary to keep the equipment in a high state of readiness through regular usage.

44 CFR Part 329Use of Priorities and Allocation
Authority for Federal Supply
Classification (FSC) Common Use
Items (Defense Mobilization Order -12)

Provides that the use of priorities and allocations authority of 50 USC App 2071 (Defense Production Act of 1950) may not be used for certain FSC Groups, Classes and Items, as specified by the Department of Commerce, which:

- are of the types commonly available in commercial markets for general consumption;
- do not require major modification for military or other government use, and
- are in sufficient supply so as not to hinder the accomplishment of military or other national defense objectives.

Use of priorities and allocations authority, for procurement of other authorized FSC Groups, Classes and Items, is limited to those quantities required to meet needs of approved programs. (NOTE: The authority of 50 USC App. 2071 will terminate on September 30, 1981.)

VIII. CONTRACTS AND PROCUREMENT

ANALYSIS

There are several emergency authority provisions allowing relief from peacetime restrictions on procurement. Additionally, there are other provisions of law, not contingent upon an emergency, that allow priority procurement for national defense purposes.

The National Defense Contracts Act (50 USC 1431-1435) provides emergency authority to enter into or amend contracts to facilitate national defense. It provides obligation authority up to \$25 million without prior notification of Congress. Inflation and growing procurement costs indicate the need to raise this limit. This authority is excluded from the National Emergencies Act and thus may be used as continuing authority. The exercise of this authority is delegated to the Secretary of Defense and the Service Secretaries by EO 10789.

Certain provisions of the Defense Production Act of 1950, as amended (50 USC App 2061-2166) allow the President to require priority performance on national defense contracts and orders, and to allocate materials and facilities for such purposes. Further, the Departments of Defense, Energy and Commerce may guarantee loans, up to \$38 million per commitment, to contractors to expedite production. This limit may also be too low for current conditions. These provisions are continuing authority and do not depend on war or emergency situations. They are, however, due to terminate on September 31, 1981. This Act has a long history of repeated short-term extensions on an almost annual basis. A more permanent basis is desirable. EO 10480 delegates the loan guarantee authority to Defense, Energy, and Commerce. DOD Dir. 5100.34 further delegates this authority to the military departments and the Defense Logistics Agency.

The requirement for formal advertising for contracts in time of national emergency (10 USC 2304) is also excluded from the National Emergencies Acts and therefore can be used as continuing authority.

The contract or purchase of certain supplies by the military departments without authorization and appropriation acts is allowed by 41 USC 11, and implemented by DOD Directive 7220.8. However, this provision of law dates from the Civil War era, and its application to current situations may not be valid or supportable. The DOD Directive is dated 1956.

50 USC 1431-1435National Defense Contracts

In time of national emergency declared by the Congress or the President, the President may authorize any department or agency which exercises functions in connection with the national defense to enter into or amend contracts without regard to other provisions of law regarding such contracts if this would facilitate national defense. However, this authority will not be used to obligate the US in excess of \$50,000 without approval at the level of Assistant Secretary or Deputy Assistant Secretary. Further, this authority may not be used to obligate the US in any amount in excess of \$25M without prior notification to Congress.

COMMENT: The provisions of the National Emergencies Act (50 USC 1601-1651) do not apply to the authority conferred by 50 USC 1431-1435 and actions taken under this authority.

EO 10782

Contracting Authority of Government
Agencies in Connection with National
Defense Functions, November 14, 1958,
as amended

Authorizes the Department of Defense, and specifically the Secretaries of Defense, Army, Navy, Air Force and their authorized representatives, to exercise the authority contained in 50 USC 1431-1435.

50 USC APP 2061-2166

Contracts and Procurement, (Defense
Production Act of 1950)

2071: The President is authorized to require priority performance on contracts and orders necessary to promote national defense and he may allocate materials and facilities for these purposes.

2091: The President may authorize the Departments of Defense, Energy

and Commerce, and other departments and agencies engaged in procurement for national defense to guarantee loans to contractors in order to expedite production and delivery. However, the maximum obligation of any guaranteeing agency shall not exceed \$38M per commitment.

2092: Under certain conditions, the President may make provisions for loans to private businesses in order to assist in the procurement of goods and services for national defense purposes.

COMMENT: The provisions of the Defense Production Act of 1950 are not dependent upon "war or national emergency" but they do provide certain flexibility in defense contracting and procurement. The provisions cited above are due to terminate on September 30, 1981, by virtue of PL 96-294, June 30, 1980. In this regard, it should be noted that the Defense Production Act of 1950 has a long history of repeated short-term extensions on an almost annual basis.

EO 10480

Further Providing for the Administration
of the Defense Mobilization Program,
August 14, 1953, as amended

Part I provides that FEMA shall coordinate all mobilization activities of the executive branch, to include procurement.

Part II delegates the authority of 50 USC APP 2071 to the Director, FEMA. Part III delegates to Defense, Energy, Commerce, Interior, Agriculture, GSA, and NASA, the authority of 50 USC App 2091 and 2092, to be exercised under the general guidance of FEMA.

DOD Dir 5100.34Defense Contract Financing - Guaranteed Loans, December 8, 1962

The Secretary of Defense appoints the Departments of the Army, Navy and Air Force, and the Defense Logistics Agency, as guaranteeing agencies in accordance with 50 USC App 2091. Also delegates the authority of Part III, EO 10480, to the Secretaries and the Director, Defense Logistics Agency.

10 USC 2304Formal Advertising for Contracts not Required

Contracts for supplies and services may be negotiated without advertising if, among other conditions, it is determined that such action is in the public interest during a national emergency declared by the Congress or the President. (NOTE: The provision is excluded from the National Emergency Act.)

50 USC 82Mandatory Orders; Requisition of Plants

In time of war, the President may place mandatory orders for ships, aircraft and war materials; and he may requisition and operate factories for such production.

41 USC 11Contracts or Purchases Without Appropriation

No contract or purchase shall be made unless authorized by law and under an appropriation, except in the Departments of the Army, Navy and Air Force, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year. The Secretary of Defense shall immediately

advise Congress of the exercise of the authority and the estimated obligation incurred.

NOTE: 41 USC 11 derived from Civil War era legislation where slow communications presented difficulties in authorizing expenditures in support of the armed forces. Thus, the authority in 41 USC 11 was provided to assure well-being of armed forces pending Congressional action in authorization and appropriation bills. Current views tend to suggest that this authority is no longer valid or appropriate since conditions which led to its enactment no longer obtain. (See Senate Report 93 - 549, November 19, 1973, pp. 319-321).

DOD DIR 7220.8

Policies and Procedures Governing the Use of the Authority of Section 3732, Revised Statutes (41 USC 11), August 16, 1956

The use of authority of 41 USC 11 is limited to emergency situations where immediate action is imperative. Action taken under this authority must be limited to the necessities of the situation at hand. The use of this authority must be reported to ASD(C) along with specified certifications, justifications and explanations of actions taken to obtain relief.

32 USC 703

Purchase of Supplies for the National Guard; Federal Recapture

The states may purchase supplies from the Army and Air Force for the National Guard, however, in time of actual or threatened war, the US may requisition for military use any such supplies and property.

14 USC 652Purchases and Contracts; Coast Guard

Any law removing for the duration of a war or national emergency proclaimed by the President any restriction containing in then-existing law as applied to the Navy, including restrictions on purchases, contracting, fiscal operations and personnel, shall apply equally to the Coast Guard.

IX. FUNDING AND FISCAL PROCEDURES

ANALYSIS

There do not seem to be any significant emergency authorities regarding fiscal and budget requirements. There are, however, emergency authorities that address such matters as extending suspenses for examination of accounts, precluding certain contracts from being subject to reduction or set-off, vessel construction subsidies, and use of proceeds from public utilities.

A. 31USC 80 Time Extension for Examination of
Monthly Accounts of Army and Air
Force Expenditures

In time of war, the time for examination of monthly accounts of Army and Air Force expenditures may be extended to 90 days by the Comptroller General upon request of the Secretary concerned.

B. 31USC 80 a, b Time Extension for Examination of
Monthly Accounts of Disbursing Officers
of the Armed Forces

In time of war, or during any emergency declared by Congress or the President, and for 18 months after that war or emergency, the time for examinations of monthly accounts covering expenditures by disbursing officers of the Army, Navy, Air Force, Marine Corps, and Coast Guard, is extended from 60 to 90 days.

C. 31USC 80 c Time Extension for Examination of
Quarterly Accounts of Disbursing Officers
of the Navy

In time of war, or during any emergency declared by Congress or the President, and for 18 months after that war or emergency, the time for examination of quarterly accounts covering expenditures by disbursing officers of the Navy is extended from 60 to 90 days.

D. 31USC 203 Contracts Not Subject to Reduction
41USC 15 or Set-Off Against Assignees

In time of war or national emergency proclaimed by the President or by Act or joint resolution of the Congress, any contract of the Department of Defense, the General Services Administration, the Department of Energy (Atomic Energy Commission), or any other department or agency designated by the President, except a contract under which full payment has been made, may provide or be amended to provide without consideration, that payments to be made to any assignee shall not be subject to reduction or set-off.

(NOTE: Provisions of the National Emergencies Act do not apply to powers and authorities conferred by 31USC 103 or 41USC 15, or to actions taken under these authorities. See 50USC 1651.)

E. 46USC 1151 Construction Subsidy for Certain
Vessels to be Operated in Foreign Trade

Any proposed ship purchaser who is a citizen of the U.S. or any ship yard of the U.S. may apply for a construction-differential subsidy if the new vessel is to be used in foreign commerce of the U.S. Approval of such application is contingent upon, among other conditions, a determination by the Secretary of Commerce and the Navy Department that the vessel will be suitable for use by the U.S. for national defense or military purposes in time of war or national emergency.

F. 46USC 1402 Construction Subsidy for Fishing Vessels

Any citizen of the U.S. may apply for a construction subsidy to aid in construction of a new fishing vessel or the remodeling of an existing vessel. Approval is contingent upon, among other conditions, a determination by the Secretary of Commerce that the vessel will be suitable for use by the U.S. for national defense or military purposes in time of war or national emergency. (Note: This provision does not require a Navy Department determination.)

G. 10USC 4591 Use of Proceeds from Operation of Public Utility Overseas by the Army

During actual or threatened hostilities, proceeds from operating a public utility in connection with operations of the Army in the field overseas are available for that utility until the close of the fiscal year following that in which they are received.

H. 10USC 9591 Use of Proceeds from Operation of a Public Utility Overseas by the Air Force

Provides same language as 10USC 4591, above, with respect to the Air Force.

X. COMMUNICATIONS

ANALYSIS

Emergency authorities concerning communications systems and facilities depend primarily on the existence of a state of war or threat of war, not on a declaration of national emergency. If a state of war exists, the Executive branch may exercise almost total control over wire and radio communication systems. This control allows amendment or suspension of normal rules and regulations, the closing of facilities and removal of equipment, the control and use of facilities by the government, priority and preference for national defense communications, and the use of armed forces to prevent obstruction of communications (47 USC 606 (a), (b), (c), (d)). Authority drawn from a declaration of national emergency is restricted to suspension or amendment of normal rules and regulations and authorization for government use of wire and radio facilities subject to just compensation (47 USC 606 (c)).

Implementing directives provide a delineation of responsibilities and include:

- Presidential memorandum of August 21, 1963 regarding the establishment of a National Communications System through linking the existing communications facilities of federal agencies. Defense is the executive agent for planning and operation of this system.
- EO 11490 which assigns communications planning functions to the Federal Communications Commission.
- EO 12046 which assigns responsibilities to the Director, Office of Science and Technology Policy (OSTP) and the National Security Council (NSC). Upon the instruction of the President, the Director, OSTP, shall implement communications war powers and the NSC shall provide policy direction.

A. 47 USC 606 (a),(b),(c),(d) Communications War Powers of the President

(a) During the continuance of a war in which the US is engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that communications essential to national defense and security shall have preference and priority with any carrier subject to the jurisdiction of the Federal Communications Commission (FCC).

(b) During any war in which the US is engaged, it shall be unlawful for any person to knowingly or willingly by use or threat of physical force to obstruct or retard interstate or foreign communications by radio or wire. The President is authorized to employ the armed forces to prevent such acts.

(c) Upon proclamation by the President that there exists war or a threat of war, or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President, if he deems it necessary in the interest of national security, or defense, may suspend or amend, for such time as he may see fit, rules and regulations applicable to stations or devices or he may authorize their use by any department of the Government subject to regulations he may prescribe and upon just compensation..

(d) Upon proclamation by the President that there exists a state or threat of war involving the US, the President, if he deems it necessary in the interest of the national security and defense, may:

- (1) Suspend or amend the rules and regulations applicable to facilities or stations for wire communications within the jurisdiction of the US;
- (2) Close any facility or stations for wire communications and remove its apparatus and equipment;
- (3) Authorize the use and control of any such facility or station by any department of the Government subject to regulations he may prescribe and upon just compensation.

This authority (49USC 606(d)) may be exercised until six months after the termination of such state or threat of war and not later than such earlier date as the Congress by concurrent resolution may designate.

B. Presidential Memorandum of August 21, 1963, Establishment of a National Communications System

States requirement for a unified governmental communications system to be called the National Communications System (NCS). Objective of the NCS is to provide necessary communications under all conditions ranging from normal operations to emergency or war to nuclear attack. The NCS is to be established and developed by linking together and extending on an evolutionary basis the communications facilities of the various Federal agencies. The National Security Council is responsible for policy direction for the development and operation of the NCS. The Secretary of Defense is designated Executive Agent for technical planning and operations of the NCS.

C. EO 11490 Assigning Emergency Preparedness Functions to Federal Departments and Agencies, October 28, 1959 (as amended)

Section 401 Department of Defense Functions

(17). Advise on existing communications facilities and furnish military requirements for commercial communications facilities and services in planning for and in event of an emergency, including an attack on the US.

(27) Develop with the FCC and the National Security Council (NSC) plans and programs for the emergency control of all devices capable of emitting electromagnetic radiation.

Section 1802 The FCC shall develop policies, plans, and procedures, in consonance with national telecommunications plans and policies developed pursuant to EO 1246, the Presidential Memorandum of August 21, 1963, "Establishment of the National Communication System," and other appropriate authority, covering common carrier service, broadcasting service, safety and special radio service, radio frequency assignment, electromagnetic radiation, and investigation and enforcement.

D. EO 12046 Relating to the Transfer of Telecommunications Functions
March 27, 1978

Section 4 Functions assigned to the National Security Council (NSC) and the Office of Science and Technology Policy (OSTP).

4-102 Director, OSTP, shall prepare to direct the exercise of the war power functions of the President under 47USC 606, and the NSC shall prepare to exercise appropriate policy direction, should the President so instruct. These instructions would be given in accordance with the National Emergencies Act (50USC 1601).

4-103 Director, OSTP, shall prepare Presidential policy options with respect to evaluation of the capability of existing and planned communications systems to meet national security and emergency preparedness requirements. Results and recommended actions shall be reported to the President and the NSC.

4-201, 202 The NSC is responsible for policy direction of the development and operation of a National Communications System (Presidential memorandum of August 21, 1963, as amended).

4-301, 302 The NSC shall assist the President in coordinating the development of policy, plans, programs and standards for the mobilization and use of the nation's telecommunications resources in any emergency.

E. 47 USC 308 (a) Communications, Waiver of Formal Application Requirements

During a national emergency proclaimed by the President or declared by the Congress and during the continuation of any war in which the US is engaged and when such action is necessary for the national defense or security, or otherwise in furtherance of the war effort, the Federal Communications Commission may grant construction permits, station licenses, or modifications or renewals thereof, without the filing of a formal application.

F. See also DOD Dir 5030.36, Plan for the Security Control of Air Traffic and Air Navigation Aids (short title: SCATANA), February 19, 1976, in Section II, which cites, among other authority 47 USC 605 (c). This directive is an emergency preparedness plan prescribing joint actions to be taken by DOD, FAA and FCC to control air traffic and air navigation aids under certain emergency conditions.

XI. MILITARY/FOREIGN ASSISTANCE/SALES

ANALYSIS

The detailing of members of the armed forces to assist nations in the Western Hemisphere may be accomplished whenever the President considers this to be in the public interest (10 USC 712). During a war or declared national emergency, military personnel may be detailed to assist any nation where this is considered desirable (10 USC 712). Authorization to sell war materials and factories and lands within the US to foreign countries allied with the US in time of war is provided by 40 USC 314. This provision of law dates from WWI, and may now be obsolete.

A. 10USC 712Foreign Governments: Detail of
Personnel to Assist

- (a) Upon application of the country concerned, the President whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters -
- (1) Any republic in North America, Central America, or South America.
 - (2) the Republic of Cuba, Haiti or Santo Domingo; and
 - (3) during a war or declared national emergency, any other country that he considers it advisable to assist in in the interest of national defense.
- (b) Subject to prior approval of Secretary of the military department concerned, a member detailed may accept any office from the country to which detailed. The member is entitled to credit for all service while detailed as if serving with the armed forces of the United States.

B. 22USC 1962Military Assistance: Use of Armed
Forces

The President is authorized to undertake, in the general area of the Middle East, military assistance programs with any nation or group of nations of that area desiring such assistance. Furthermore, the United States regards as vital to the national interest and

world peace, the preservation of the independence and integrity of the nations of the Middle East. To this end, if the President determines the necessity thereof, the United States is prepared to use armed force to assist any such nation or group of nations requesting assistance against armed aggression from any country controlled by international communism: Provided, that such employment shall be consonant with the treaty obligations and the Constitution of the United States.

C. 22USC 1963 Assistance: United Nations Emergency Force

The President should continue to furnish facilities and military assistance, within the provisions of applicable law and established policies, to the United Nations Emergency Force in the Middle East, with a view to maintaining the truce in that region.

D. 22USC 1965 Expiration of Preceding, Provisions

This Chapter (22USC 1961 - 1965) shall expire when the President shall determine that the peace and security of the nations in the general area of the Middle East are reasonably assured by international conditions created by action of the United Nations, or otherwise, except that it may be terminated earlier by a concurrent resolution of the two Houses of Congress.

E. 40USC 314Sale of War Supplies, Lands and Buildings

The President is authorized, through the head of any executive department, to sell to, among certain others, any foreign State or Government, engaged in war against any Government with which the United States is at war, any war supplies, material and equipment, and any by-products thereof, and any building, plant or factory, acquired since April 6, 1917, including the lands upon which the plant or factory may be situated, for the production of such war supplies, materials and equipment.

COMMENT: This provision of law appears directed primarily at actions related to WWI and may now be obsolete with respect to sales to foreign governments.

NOTE: More specific details regarding foreign assistance, to include security assistance programs, are contained in 22USC Chapter 32, Foreign Assistance, and particularly Subchapter II, Military Assistance (22USC 2301-2348). These sections address general and specific provisions of foreign assistance and security assistance programs but do not contain "emergency authority" in the sense this term is used in this document.

XII. PROPERTY

ANALYSIS

Significant emergency authority exists in law to acquire real property in time of war or when war is imminent. This authority, 10 USC 2663 (b) and 2664 (d), allows the acquisition of land for military facilities, construction and operation of munitions facilities, production of timber, and the development of power, immediately upon the filing of a petition for condemnation. There is no reference to declaration of national emergency in these authorities. In that regard they may not be all-encompassing unless a declaration of national emergency strongly suggests that hostilities are imminent.

Other authority, not conditioned upon war or emergency, authorizes the Service Secretaries to acquire land needed urgently in the interest of national defense without an authorization act by Congress (10 USC 2672 a). This is implemented by DOD Dir. 4270,32 which provides procedures for use of this authority in conjunction with contingency construction funds.

Other emergency authorities, conditioned upon time of war or declaration of national emergency, allow withdrawal and use of public lands by Defense (43 USC 155-157); the recapture of airports previously disposed of as surplus (50 USC App. 1622 (g) (2) (3)); any use of reserve component facilities deemed necessary (10 USC 2231); and the negotiation of building leases without regard to legally established ceilings (40 USC 278 (b)). This latter provision may be viewed as continuing authority since it is excluded from the provision of the National Emergencies Act.

NOTE: See also Appendix A for a listing of property, previously transferred to the States, that can be recaptured in an emergency.

A. ACQUISITION

1. 10USC 2663 (b) Real Property: Acquisition and Immediate Possession

In time of war or when war is imminent, the U.S. may, immediately upon the filing of a petition for condemnation by the Secretary of military department, take and use the land to the extent needed for fortifications or training camps, construction and operation of plants for the production of explosives and munitions, and the development and transmission of power for such plants.

2. 10USC 2664 (d) Real Property for Lumber Production: Acquisition and Immediate Possession

In time of war or when war is imminent, the U.S. may, immediately upon the filing of a petition for condemnation by the Secretary of a military department or certain other officials, take and use property or facilities needed for the production of lumber and timber products required for production of aircraft, vessels, dry docks, equipment and supplies, and housing for persons employed by the U.S. in connection with the functions of the armed forces or certain other agencies.

3. 10USC 2672 a Real Property: Urgent Acquisition without Authorization Act

When the Secretary of a military department, or his designee, determines that the acquisition of an interest in land is needed in the interest of national defense, and considerations of urgency do not permit the delay necessary to include the acquisition in an annual Military Construction Authorization Act, the interest in land required may be secured by using military construction appropriations. However, written notice must be provided the Senate and House Armed Services Committees at least 30 days prior to any action being taken.

4. DOD Dir 4270.32 Secretary of Defense Military Construction Contingency Authority, February 18, 1972

Provides guidance on use of authority given the Secretary of Defense in PL 91-142, Section 401, and PL 91-511 (Military Construction Authorization Acts for FY 1970 and FY 1971), and any subsequent similar laws which provide the Secretary authority to establish or develop installations he determines to be vital to the security of the U.S.

COMMENT: The Public Laws cited are now outdated but the general nature of the directive and the reference to "subsequent similar laws" appear to give DOD Dir 4270.32 continuing validity. Any Military Construction Authorization Act which provides the Sec Def with contingency construction funds could enable the use of these funds by invoking the directive. The provisions of 10USC 2672a, above, could also be invoked to use these appropriations to acquire land to "establish or develop installations vital to the security of the U.S.".

5. 10USC 4780 (a), (b) Acquisition and Requisition of Buildings in the District of Columbia by the Army

(a) In time of war or when war is imminent, the Secretary of the Army may acquire by lease any building or part thereof, in the District of Columbia that may be needed for military purposes.

(b) At any time, the Secretary may, for the purposes of the Department of the Army, requisition the use and take possession of any building or space therein in the District of Columbia except dwellings and buildings occupied by other agencies of the U.S.

6. 10USC 9780 (a), (b) Acquisition and Requisition of Buildings in the District of Columbia by the Air Force

Provides same authority as in 10USC 4780 (a), (b), (above) to the Department of the Air Force.

7. 43USC 155-157 Withdrawal, Reservation or Restriction of Public Lands for Defense Purposes

In time of war or national emergency declared by the President or the Congress, certain public lands of the U.S. may be withdrawn, restricted, reserved, and utilized by the Department of Defense for defense purposes. However, such action involving, in the aggregate, more than 5,000 acres for any one defense project or facility requires an Act of Congress.

B. LEASING40USC 278 bLeases of Real Property Excluded from
Application of Maximum Rental Ceilings

In time of war, or of national emergency declared by Congress or the President, the ceilings on rent of buildings or parts thereof, as prescribed by 40USC 278a, do not apply to leases or renewals certified by the Secretary of the Military department concerned as necessary for the prosecution of the war or vital in the national emergency.

NOTE: Provisions of the National Emergencies Act do not apply to powers and authorities conferred by 40USC 178b, or to actions taken under these authorities. See 50USC 1651.

C. USE

1. 10USC 2231
10USC 2235 (b) (2)
10USC 2236 (d) (2)

Other Uses of Facilities
for Reserve Components in an Emergency

In time of war or national emergency, facilities for reserve components may be used by other units of the armed forces or by the U.S. for any other purposes. The Secretary of Defense, or a State or territory, Puerto Rico, or the District of Columbia unless otherwise agreed with respect to a contributed facility, may not permit any use or disposition of a facility that would interfere with its use as prescribed above.

2. 10USC 4776, 9776 Real Property: Emergency Construction on Private Land

If in an emergency the President considers it urgent, a temporary fort, fortification, or airbase may be built on private land if the owner consents in writing.

3. 40USC 71 d (b) Military Construction in the National Capital area

In time of war or national emergency, the procedures related to comprehensive planning and development within the National Capital area do not apply to construction by the Department of Defense within existing military, naval or Air Force installations. However, the appropriate defense agency must consult with the National Capital Park and Planning Commission regarding developments materially affecting traffic or surrounding areas.

4. 50USC APP. 1622 (a) (2) (e) Recapture of Airports Previously Disposed of as Surplus

During any national emergency declared by the President or the Congress, the U.S. shall have the right to make exclusive or non-exclusive use and have exclusive or non-exclusive control and possession of airports previously disposed as surplus property.

5. 14 CFR 155.1 - 155.13Release of Airport Property

Provides that the Administrator, FAA, after consultation with the Department of Defense, may vacate restrictions placed in instruments of disposal for airports previously released as surplus.

6. 16USC 831s Recapture of Tennessee Valley Authority property for Manufacture of explosives

In case of war, or of national emergency declared by Congress, the U.S. may take possession of any property described or referred to in the Tennessee Valley Authority Act of 1933 (16USC 831 et seq) for the purpose of manufacturing explosives or for other war purposes.

D. DISPOSAL

1. 40USC 484 (e) (3) Disposal of Certain Surplus Property without Public Advertising

Disposals and contracts for disposals of certain surplus property under the Federal Property and Administrative Services Act of 1949, as amended, may be negotiated without public advertising for bids when, among other conditions, it is necessary in the public interest during a national emergency declared by the President or Congress, or, the public health, safety, or national security will be promoted.

2. 40USC 534 Waiver of Certain Procedures for Disposal, Acquisition or Use of Urban Lands

During any period of national emergency proclaimed by the President, the procedures described in 40USC 532, 533 for disposal, acquisition or use of urban land by the General Services Administration may be waived.

(NOTE: These procedures relate to affording local governments the opportunity to exercise zoning jurisdiction before disposal, and Federal compliance with local zoning, where practicable, in the case of acquisition or use.)

XIII. TRANSFER OF CIVIL AGENCIES TO DOD

ANALYSIS

Emergency authorities allow the transfer of the Federal Aviation Agency (FAA) and a portion of the National Oceanic and Atmospheric Administration (NOAA) to DOD. The commissioned corps of the Public Health Service (PHS) may be declared a military service. Continuing authority, not dependent on war or emergency, allows the transfer of the National Intelligence Tasking Center (NITC) to DOD. There is authoritative legal basis for each of these actions but different conditions are applicable.

The FAA may be transferred only in time of war and upon executive order directing such transfer (49 USC 1343 (c)). This authority is further implemented by EO 11161 and a 1966 understanding between DOD and FAA which provide planning guidance to both agencies regarding such transfer. The 1966 understanding should be reviewed because of its age, subsequent changes in governmental organization, and the need to clarify FAA responsibilities to agencies other than Defense.

Transfer of the commissioned corps and equipment, vessels, and stations of NOAA may be accomplished when the President deems a sufficient national emergency exists (33 USC 855). This authority is further amplified by EO 11023 which delegates transfer authority to the Secretary of Commerce but allows transfer only upon Presidential proclamation of national emergency. A 1971 Defense/Commerce regulation provides guidance regarding NOAA cooperation with DOD in peacetime and the transfer of ships, aircraft, equipment, stations, and commissioned officers in wartime. These authorities do not address the question of crew availability if transfer is directed.

The commissioned corps of the PHS may be declared a military service and made subject to the Uniform Code of Military Justice in time of war or upon a

Presidential proclamation of emergency involving the national defense. In either case, an executive order is required (42 USC 217). Actual transfer of the commissioned corps of the PHS to DOD is not specifically directed or implied.

Transfer of the NITC to DOD is authorized by EO 12036 and may be accomplished at any time upon the express direction of the President.

A. Federal Aviation Agency (FAA)

1. 49USC 1343(c) Federal Aviation Agency; Transfer of Functions

-- in the event of war, the President, by Executive Order may transfer to the Department of Defense any functions (including powers, duties, activities, facilities, and parts of functions) of the FAA --

2. EO 11161 Relating to Certain Relationships Between the DOD and the FAA (July 7, 1964, as amended by EO 11382, November 28, 1967)

Directs SecDef and Sec Transportation to plan for possible transfer along following lines:

- FAA to function as adjunct to DOD with Administrator directly responsible to SecDef
- SecDef empowered to direct Administrator to place elements of FAA under direct operational control of appropriate military commander
- FAA to remain organizationally intact under Administrator, subject to direction and control of Sec Def

Memorandum of Understanding; DOD and FAA; Implementing EO 11161, April 1966

Prescribes relationships in event of transfer of FAA to DOD. Describes functions and procedures to meet essential defense requirements in time of war or in emergency short of war.

Wartime relationships:

- Upon transfer, FAA to remain organizationally intact under the Administrator and subject to authority, direction and control of SecDef.

- Operational elements of FAA may be placed under direct operational control of appropriate military commanders.
- FAA tasks include air traffic control, surveillance, information collection and reporting.
- FAA will revert to normal status on order of President.

Emergencies short of war:

- FAA will respond, within statutory responsibilities and resources, to meet military requirements essential to national defense needs.
- Joint military/FAA plans or agreements will be developed covering FAA responsibilities and functions.

Planning Premises:

- Primary DOD requirements for FAA support relate to surveillance and airspace control.
- During war, in the event FAA becomes an adjunct of DOD, operational control of airspace will be exercised thru military channels.
- During emergency short of war, operational control of FAA elements will be exercised thru FAA organizational channels.
- In the event of degradation of FAA capabilities during wartime, augmentation and/or assistance will be provided by military resources so as to meet military requirements.
- FAA responsibilities to other governmental and nongovernmental agencies must be considered in development of joint plans for wartime roles and missions.

B. National Oceanic and Atmospheric Administration (NOAA)

1. 33USC 855 NOAA; Transfer to Military Department

The President is authorized, whenever in his judgement a sufficient national emergency exists, to transfer to the service and jurisdiction of a military department such vessels, equipment, stations, and commissioned officers of the NOAA as he may deem to be in the best interest of the country.

2. EO 11023 "Providing for the Performance by the Secretary of Commerce of Certain Functions Relating to the NOAA" (May 28, 1962)

Section 1 (k): Delegates to Secretary of Commerce authority vested in President by 33USC 855 to transfer to service and jurisdiction of DOD, as he may deem to be in the best interest of the country, vessels, equipment, stations, and personnel of NOAA, but such transfers may be effected only during the existence of a state of national emergency proclaimed by the President. Commissioned officers transferred become a part of the active armed forces of the US and subject to jurisdiction of the armed force to which transferred. Secretary of Commerce may return all transferred to jurisdiction of Department of Commerce, but in time of national emergency only with concurrence of Secretary of Defense.

Department of Defense/Department of Commerce Regulations Governing Cooperation of the NOAA with DOD, November 1971.

Provides further implementing guidance based on the provisions of 33 USC 855, 858 and EO 11023.

In time of peace and to the extent feasible, NOAA shall:

- coordinate its programs with DOD and provide assistance in matters related to national defense consistent with resources and facilities.
- undertake training programs to prepare personnel for effective service in time of national emergency.
- Maintain necessary liaison with DOD.

In time of declared national emergency, continue above activities and promptly effect such transfers of ships, aircraft, equipment, stations and commissioned officers to the military departments as may be directed by Executive Order.

An Interdepartmental Board for the Cooperation of NOAA with DOD is established to pursue peacetime planning for the wartime duties of NOAA.

COMMENT: The question of vessel crews is not addressed in the authorities which provide for transfer of NOAA elements to DOD. Crew members are civilian employees and could decide not to accompany those vessels transferred to DOD. It is understood that the Interdepartmental Board is currently addressing this question.

C. Public Health Service (PHS)

42USC 217 PHS: Commissioned Corps as Military Service

In time of war, or of emergency proclaimed by the President, he may use the PHS in such manner as he considers will promote the public interest.
In time of war, or of emergency involving the national defense proclaimed by the President, he may by executive order declare the commissioned corps of the PHS to be a military service. After such declaration and during that war or emergency or part thereof as the President prescribes, the commissioned corps shall (1) be a branch of the land and naval forces; (2) be subject to the Uniform Code of Military Justice; and (3) continue to operate as a part of the PHS, except as the President as Commander-in-Chief may direct.

COMMENT: The differing language in the sentences of this provision suggests that the type of emergency contemplated by the first sentence is one involving public health, not national defense or security. The terms "military service" and "branch of the land and naval forces" should be taken as generic terms. They do not imply or direct the actual transfer of the PHS to another department such as DOD.

D. National Intelligence Tasking Center (NITC)

EO 12036 United States Foreign Intelligence Activities, January 24, 1978.

Section 1-5: NITC is established under the direction and control of the Director of Central Intelligence for the coordination and tasking of national foreign intelligence collection activities. Responsibilities of NITC are:

- translate national foreign intelligence requirements and priorities into specific collection objectives and targets;
- assign collection objectives and targets to collection organizations and systems;
- ensure timely dissemination and exploitation of data,
- provide advisory taskings to agencies not a part of the National Foreign Intelligence Program but which have collection capability or assets.

Para 1-504, Transfer of Authority: All responsibilities and authorities of the Director of Central Intelligence concerning the NITC shall be transferred to the Secretary of Defense upon the express direction of the President. To maintain readiness

for such transfer, the Secretary of Defense shall, with advance agreement of the Director of Central Intelligence, assume temporarily during regular practice exercises all responsibilities of the Director of Central Intelligence regarding the NITC.

- E. COMMENT: Different requirements are applicable to the transfer of agencies to the DOD. The FAA may be transferred only in time of war and upon executive order directing such transfer. Transfer of NOAA is conditioned upon a Presidential proclamation of national emergency because of the provisions of EO 11023 which implements 33USC 855. At that time, the Secretary of Commerce has the authority to effect the transfer. Upon Presidential proclamation of a national emergency involving national defense, the commissioned corps of the PHS may be declared a military service and made subject to the UCMJ. However, the transfer of the commissioned corps of the PHS to another department or service is not specifically directed or necessarily implied by this provision of law. Transfer of the NITC could be accomplished at any time upon the express direction of the President. Conceivably, this express direction could take the form of a Presidential Memorandum as well as an Executive Order.

XIV. NONCOMBATANT EVACUATION

ANALYSIS

The Departments of State, Defense, and Health and Human Services (HHS) all have responsibilities for noncombatant evacuation, prescribed by EO 11490 and 42 USC 1313. Responsibility rests with State and Defense for the overseas phase, and with HHS for the CONUS phase. Basic policies and responsibilities of State and Defense are addressed by DOD Directive 5100.51. There appear to be no interagency agreements regarding functions and responsibilities associated with the CONUS phase of noncombatant evacuation. Such agreements are necessary to clarify responsibilities and facilitate the coordination of overseas evacuation operations with reception, assistance, and onward movement operations to be carried out in CONUS. HHS is currently developing a repatriation plan to implement responsibilities for reception, assistance, and onward movement of evacuees.

A. EO 11490 Assigning Emergency Preparedness Functions to Federal Departments and Agencies, October 28, 1969, (as amended)

1. Section 201 The Secretary of State shall develop plans for, among other things, -- protection and evacuation of American citizens and nationals abroad and safeguarding their property.
2. Section 401 The Secretary of Defense shall --
 - (23) Advise and assist the Department of State in planning for the evacuation of dependents from overseas areas, United States teachers and administrators in the overseas dependents schools, and such other United States citizens as may be working in United States schools overseas.
 - (24) Develop plans for implementation of approved Department of State/Department of Defense policies and procedures for the protection and evacuation of United States citizens and certain designated aliens abroad.
3. Section 1104(4) The Secretary of HHS shall develop plans and procedures for, assistance at ports of entry to U.S. personnel evacuated from overseas areas, their onward movement to final destination, and followup assistance after arrival at final destination.

B. DOD Dir 5100.51 Noncombatants Evacuation, October 11, 1966 (with changes through February 16, 1973)

Addressess basic policies and responsibilities of the Department of State and the Department of Defense. The Chief of a Diplomatic Mission has the primary responsibility for protections and evacuation of all US noncombatants. The Departments of State and Defense will continuously review conditions abroad and will maintain plans for the evacuation of US

citizens to the US or other areas. The Department of Defense has primary responsibility for evacuation of US noncombatants in West Berlin, the Panama Canal Zone and the US Naval Base, Guantanamo. Basic responsibility and authority for implementation of evacuation plans rest with Chiefs of Mission and principal diplomatic officers. Military support and assistance will be provided as requested/required and CINCs will plan for cooperation with diplomatic officials, as requested. Military operations in support of evacuation are the sole responsibility of military commanders.

C. 42USC 1313 Assistance for US Citizens Returned from Foreign Countries

The Secretary of HHS is authorized to provide temporary assistance to citizens of the US and their dependents if they are identified by the Secretary of State as having been returned from a foreign country because, among other reasons, of war, threat of war, invasion, or similar crisis, and they are without available resources. Further, the Secretary is authorized to develop plans and arrangements for such assistance after consultation with the Secretary of State, the Attorney General and the Secretary of Defense.

D. 5USC 5522 Pay Advance to Civilian Employees in Case of Emergency Evacuation

Heads of Government agencies may authorize allowance payment, of not more than 30 days, to an employee whose evacuation, or the evacuation of his dependents as the case may be, from within or outside the US is ordered for military or other reasons which create imminent danger to the life of the employee or his immediate family.

E. DOD Dir 1400.11 Payments to Civilian Employees and Their Dependents During an Evacuation, February 18, 1980

Implements 5USC 5522-5527 regarding payments during an evacuation and is applicable to all DOD components. Use of Department of State regulations is prescribed in case of evacuation from foreign countries (including the Trust Territory of the Pacific Islands). Use of Office of Personnel Management regulations is prescribed in case of evacuation in the 50 states, the District of Columbia, Puerto Rico, and territories and possessions.

F. 37USC 1006 Pay Advances to Dependents

An advance of not more than two months' basic pay to a member of a uniformed service may be made directly to his previously designated dependents in case of their emergency evacuation from overseas areas.

XV. CLAIMS/CIVIL & CRIMINAL LAW/UCMJ

ANALYSIS

The major emergency authorities in this section deal with claims. In time of war, admiralty suits arising from damages caused by naval vessels may be stayed, if such suits would interfere with military operations, until the end of hostilities (10 USC 7721-7727). Claims arising from combatant activities of the Armed Forces are excluded from certain court and administrative jurisdiction (28 USC 2680 (j)). Other authorities noted in this section address claims arising from noncombatant activities, protection of US neutrality, and provisions of criminal law and the UCMJ that are operative in time of war or emergency.

A. Admiralty Claims

10 USC 7721-7727Stay of Suit in Time of War

In time of war, whenever the Secretary of the Navy certifies to a court, or to a judge of a court, in which a suit under the Public Vessels Act (46 USC 781 et seq.) is pending (for damages caused by a vessel in the Naval service, or for compensation for towing or salvage services for a vessel in the Naval service), that the proceedings would tend to endanger the security of the US or any of its naval or military operations or interfere with such operations, all further proceedings shall be stayed.

A stay of proceedings remains effective for the period specified in the certificate upon which it is based unless the Secretary issues a new certificate changing the termination date. However, a stay may not remain in force longer than six months after the cessation of hostilities.

B. Other Claims

10 USC 2733Property Loss, Personal Injury
or Death, Incident to Noncombat
Activities of the Armed Forces

Provides that the Secretary concerned, or the Judge Advocate General of an Armed Force, or the Chief Legal Officer of the Coast Guard, may settle certain claims against the U.S. based on actions by officers, members, or employees of the military departments or the Coast Guard which are within their scope of employment or otherwise incident to noncombat operations. A claim is allowed only if presented within two years after it accrues, except that if it accrues in time of war or armed conflict or if such war or armed conflict intervenes within two years after it accrues, it may be presented not later than two years after the war or

armed conflict is terminated if good cause is shown.

32 USC 715

Property Loss, Personal Injury or
Death, Incident to Noncombat Activities
of the National Guard

Provides the same provisions as in 10 USC 2733 (above) with respect to the Army National Guard and the Air National Guard.

28 USC 2680 (j)

Combatant Activities of Armed Forces
Excluded From Certain Jurisdiction

Claims arising from combatant activities of the Armed Forces in time of war are excluded from: (1) jurisdiction of US district courts acting under 28 USC 1346 (b); and (2) administrative adjustment of tort claims under 28 USC 2671 et. seq.

31 USC 71a, 237

Claims Against the Government by
Military Personnel

Provides that the time limit of six years for presentation by members of the armed forces of claims against the government which are payable by the General Accounting Office is extended, when such claim accrues during a war or when war intervenes after the claim accrues, for five years after peace is established.

31 USC 241

Claims for Loss or Damage of Property
Incident to Military Service

Provides that the normal time limit of 2 years for presentation to the Secretary of a military department of certain claims for damage or loss of personal property of members of the armed forces incident to military

service may be extended for two years if the claim accrues in time of war or armed conflict and this situation interferes with pursuit of the claim.

C. Loss of Nationality

8 USC 1481

Desertion; Evasion or Avoidance
of Compulsory Service

Provides for loss of US nationality for:

- desertion from an armed force in time of war, if dismissed or dishonorably discharged as a result of conviction for desertion by court-martial.
- leaving or remaining outside the jurisdiction of the US to evade or avoid training and service in the armed forces in time of war, or of national emergency declared by the President.

D. Protection of US Neutrality

18 USC 756Internee of Belligerent Nation

Penalties of \$1,000 fine, or 1 year imprisonment, or both, for aiding or enticing escape or attempted escape of member of an armed force of a belligerent nation who is interned. (See also 18 USC 3058 below)

18 USC 960Expeditions Against Friendly Nations

Penalties of \$3,000 fine, or 3 years imprisonment, or both, for certain involvement in military or naval activities to be carried on from within the US against any foreign party with whom the US is at peace.

18 USC 961Strengthening an Armed Vessel of a Foreign Nation

Penalties of \$1,000 fine, or 1 year imprisonment, or both, for increasing or augmenting the armament of an armed vessel of a foreign nation which is at war with a nation with whom the US is at peace.

18 USC 962Arming Vessels Against Friendly Nations

Penalties of \$10,000 fine, or 3 years imprisonment, or both, for arming or attempting to arm any vessel with intent to employ it in the service of a foreign nation to commit hostilities against a nation with whom the US is at peace.

18 USC 963Detention of Armed Vessels

Penalties of a \$10,000 fine, or 10 years imprisonment, or both, for actions designed to take out of US ports, certain vessels which have been detained in order to protect the neutrality of the U.S.

18 USC 964Delivering Armed Vessels to Belligerent Nations

Penalties of \$10,000 fine, or 10 years imprisonment, or both, for actions designed to deliver from the US, armed vessels likely to be employed in the service of a belligerent nation in violation of US neutrality.

18 USC 965Verified Statements as Prerequisite to Vessel's Departure

Penalties of \$10,000 fine, or 10 years imprisonment, or both, for actions designed to take out of the US, certain vessels which have not given required certification as to the disposition of cargo in respect of US neutrality laws.

18 USC 966Departure of Vessel Forbidden for False Statements

Penalties of \$10,000 fine, or 10 years imprisonment, or both, for actions designed to take out of the US, a vessel detained because of reasonable belief that certification as required by 18 USC 965 (above) is false.

18 USC 967Departure of Vessel Forbidden in Aid of Neutrality

Penalties of \$10,000 fine, or 10 years imprisonment, or both, for actions designed to take out of the US, certain vessels forbidden to depart because of reasonable belief that such vessel will provide support to a belligerent nation in violation of US neutrality.

18 USC 3058Interned Belligerent Nationals

Provides that an interned member of an armed force of belligerent nation, who leaves or attempts to leave US jurisdiction, or otherwise violates conditions of internment shall be subject to arrest by US authorities, to include military and naval authorities.

NOTE: See also Section II which contains operative authority with respect to US neutrality, particularly 22 USC 465 which allows the use of the armed forces for enforcement of those provisions of Title 18 USC cited above except for 18 USC 961 and 962.

E. Other Criminal Law

18 U.S.C. 793Gathering, Transmitting or
Losing Defense Information

Provides penalties of \$10,000 fine or 10 years imprisonment or both for gathering, transmitting or losing defense information designated by the President by proclamation in time of war or in case of national emergency as being vital to national security.

18 U.S.C. 794Gather or Delivering of Defense
Information to Aid Foreign Govern-
ment

Whoever, in time of war, gives military information to the enemy can be punished by death or by imprisonment for any term of years or for life.

18 U.S.C. 795Photographing and Sketching
Defense Installations

Provides penalties of \$1,000 fine or 1 year imprisonment or both for making photographs or other graphical representations, without proper authorization, of certain designated defense installations, facilities or equipment.

18 U.S.C. 798Disclosure of Classified Information

Whoever knowingly and willfully communicates, furnishes or transmits classified information - having to do with intelligence activities or devices - to an unauthorized person or government can be fined not more

than \$10,000 or imprisoned not more than ten years, or both.

("Classified information" is information which is, for reasons of national security, designated by a United States Government Agency for limited or restricted dissemination of distribution.)

18 U.S.C. 2153, 2154

Destruction of War Material,
War Premises, or War Utilities;
Production of Defective War
Material, War Premises, or War
Utilities

When the United States is at war, or in time of national emergency as declared by the President or the Congress, willful injury to or intentional destruction of war material or the purposeful production of defective war material can result in a fine of \$10,000 or imprisonment up to thirty years, or both.

18 U.S.C. 2388

Activities Affecting the Armed
Forces in Time of War

Provides penalties of \$10,000 fine or 20 years imprisonment or both, for persons who, in time of war, willfully make false statements with the intent to interfere with military operations of the U.S. or promote the success of its enemies or cause disloyalty, insubordination or mutiny or obstruct recruitment or enlistment activities of the armed forces.

18 U.S.C. 3287Wartime Suspension of Limitation
or Fraud

During wartime, the statute of limitations will be suspended with respect to certain offenses of fraud against the government which affect the prosecution of the war, until three years after termination of hostilities.

F. UCMJ

EO 11476

Prescribing the Manual for Courts-Martial, United States, 1969, (Revised Edition), June 19, 1969. (As amended by EO 11835, January 27, 1975.)

Promulgates and prescribes the Manual for Courts-Martial. Paragraph 127,c,(15) provides that, on declaration of war, the prescribed limitations on punishments for violations of Articles 82, 85, 86(3), 87, 90, 91 (1), (2), 113 and 115 will be suspended until formal termination of the war or until restored by Executive Order. These Articles, and other Articles of the UCMJ which have certain applicability in time of war are noted below along with the relevant provisions of the U.S. Code:

Article 2(10): Provides that civilian persons serving with or accompanying armed forces in the field in time of war are subject to the UCMJ. (10 USC 802(10))

Article 43(a): Removes statute of limitations for desertion or absent without leave in time of war or for aiding the enemy, mutiny or murder. (10 USC 843(a))

- Article 43(e):** Allows delay of trial by courts-martial, in time of war, until six months after termination of hostilities if the Secretary concerned certifies to the President that proceedings would be inimical to national security or detrimental to prosecution of the war. (10 USC 843(e))
- Article 43(f):** When the US is at war, the running of the statute of limitations for certain offenses of fraud against the government is suspended until three years after termination of hostilities. (10 USC 843(f))
- Article 71(b):** In time of war or national emergency, the Secretary concerned may commute a sentence of dismissal, other than for flag or general officers, to reduction to any enlisted grade. In such cases, service is required for the duration of the war or emergency plus six months. (10 USC 871(b))
- Article 82:** Solicitation or advice to another to misbehave before the enemy or to commit sedition shall, if the offense advised is committed, be punishable in the same manner as the act of misbehavior or sedition itself. (10 USC 882)
- Article 85:** Provides for the death penalty for deserting or attempting to desert in time of war. (10 USC 885)
- Article 86(3):** Relates to being absent without leave from assigned unit or place of duty. (10 USC 886(3))

- Article 87: Relates to missing movement. (10 USC 887)
- Article 90: Assaulting or willfully disobeying a superior in time of war may be punished by death. (10 USC 890)
- Article 101(1): Improper use of the countersign in time of war may be punished by death. (10 USC 901(1))
- Article 105: Certain misconduct as a prisoner in time of war may be punished as a court-marshal may direct. (10 USC 905)
- Article 106: In time of war, spies may be punished by death. (10 USC 906)
- Article 113: Misbehavior as a sentinel in time of war may be punished by death. (10 USC 913)
- Article 115: Relates to offense of and penalties for malingering. (10 USC 915)

XVI. ENVIRONMENTAL PROTECTION/OCCUPATIONAL SAFETY AND HEALTH

ANALYSIS

A. Environmental Protection

A rather substantial body of law exists with respect to environmental protection. These laws provide for regulatory procedures and enforcement of standards. Provisions that allow waiver of or exemption from environmental requirements generally cite reasons of national security, national defense, or the paramount interest of the U.S. Situations of "war or national emergency" are not cited. The application of waiver or exemption authority is not uniform.

There is no waiver or exemption authority concerning protection of the marine environment (33 USC 1401 et seq, 16 USC 1431-1435) or the Environmental Policy Act (42 USC 4321 et seq), which is the basis for requirements for environmental impact statements. Waiver or exemption authority for both the public and private sectors is available regarding the control of toxic substances (15 USC 2621) and the control of pollutants that may be released into the air (42 USC 7412 (c), 7522 (c)). However, procurement of goods from facilities in violation of clean air requirements requires a separate exemption (42 USC 7606). Waiver or exemption authority is available only to Federal agencies and facilities for public health and safe drinking water standards (42 USC 300 j-6) and solid waste disposal (42 USC 6961). These waiver or exemption authorities do not apply to the private sector. Limited waiver or exemption authority is available only to Federal agencies and facilities for noise control (42 USC 4903 (b)). Regulations controlling the use of insecticides, pesticides and rodenticides may be waived to meet an emergency condition (7 USC 136 p). Exemption authority is provided to allow procurement from facilities in violation of water pollution standards (33 USC 1368).

EO 12088 directs compliance with environmental requirements by Federal agencies and facilities. Exemptions, where allowed, will be based on Presidential determinations.

B. Occupational Safety and Health

Occupational safety and health regulatory power is vested in the Secretary of Labor. The authority for reasonable exemption from mandatory standards is based on serious impairment of the national defense (29 USC 665). Exemption authority is limited. Prior notice and hearing is required and exemptions will not be in effect for more than six months without notification to affected employees and a hearing.

A. Environmental Protection

15 USC 2601 et seqToxic Substances Control

Provides that Administrator, Environmental Protection Agency (EPA), shall establish regulations regarding the manufacture, processing, distribution, use or disposal of chemical substances which may harm the environment.

2621:National Defense Waiver

Administrator, EPA, shall waive compliance with any provisions upon a request and determination by the President that such waiver is necessary in the interests of national defense.

33 USC 1251 et seqWater Pollution Control

Provides basis for regulation by EPA of the discharge of pollutants into water sources, to include navigable waters, the territorial sea and contiguous zone and the oceans.

1368:Exemptions

Provides that no Federal agency may contract for the procurement of goods, materials, or services if the contract is to be performed at a facility which is in violation of standards or has been convicted of such violation and the conditions have not been corrected. However, the President may exempt any contract, loan or grant from this prohibition upon a determination that such exemption is in the paramount interest of the U.S.

42 USC 300fPublic Health/Safe Drinking Water

Provides for regulations by EPA of public water supply systems and sources.

300j-6National Defense Waiver

Provides that Federal agencies shall comply with all applicable Federal, State and local requirements. However, the Administrator, EPA shall waive compliance on the request of the Secretary of Defense and upon a determination by the President that such waiver is necessary in the interests of national defense.

42 USC 7401 et seqClean Air

Provides for regulation by EPA of release of pollutants into the air from all sources.

7412(c)Stationary Sources of Pollution;
National Security Exemption

Requires compliance by both private and public sector with emission standards for stationary sources as set by EPA. However, the President may exempt compliance for a period of two years if technology to enable compliance is not available and the operation of the source facility is required for reasons of national security. Exemptions may be extended for additional two year periods. Reports to Congress of such exemptions are required.

7522(c)Moving Sources of Pollution; National
Security Exemption

Requires similar compliance by moving sources of emissions (vehicles); however, Administrator, EPA, may exempt new vehicles and engines for reasons of national security.

7606:Procurement from Violators;
Exemptions

Prohibits procurement contracts where the contract is to be performed at a facility which is in violation of standards or has been convicted of such violation and the condition has not been corrected. However, the President may exempt any contract, loan or grant where he determines such exemption is necessary in the paramount interest of the U.S.

42 USC 4901 et seqNoise Control

Provides for standardized noise control regulations by EPA for transport vehicles, equipment, machinery and other products in commerce to avoid jeopardy to health and welfare. Federal agencies are to comply with Federal, State and local standards and requirements.

4903(b)Exemptions for Federal Agencies

The President may exempt Federal agencies and facilities if he determines this to be in the paramount interest of the U.S. However, exemptions are not allowed for motor vehicles, railroad equipment and facilities, or common commercial equipment. Military weapons and equipment may be exempted. Exemptions shall be for a one year period with additional one year exemptions also allowed. Reports to Congress are required.

NOTE: There are no provisions which allow exemptions for civilian industry or defense contractors.

42 USC 6901 et seqSolid Waste Disposal

Provides for EPA regulation of solid waste management and disposal facilities.

6961:Exemptions for Federal Agencies

Federal agencies having solid waste management or disposal facilities shall comply with applicable Federal, State and local laws. However, the President may grant exemptions if he determines that such exemption is in the paramount interest of the U.S. Exemptions will be for one year with additional one year exemptions also allowed. Reports to Congress are required.

NOTE: There are no provisions which allow exemptions for civilian industry or defense contractors.

33 USC 1401 et seq
16 USC 1431-1434Protection of the Marine Environment

Provides for EPA regulation of ocean dumping and the establishment of marine sanctuaries. No specific exemption/waiver provisions.

7 USC 136 et seqUse of Insecticides, Pesticides
and Rodenticides

Provides for EPA regulation of control and use of insecticides, pesticides and rodenticides. Administrator can waive regulations to allow use to meet certain emergency conditions such as outbreak of pests, etc.

136pExemptions for Federal and State Agencies

Administrator may exempt Federal and State agencies from regulations where certain emergency conditions exist.

42 USC 4321-4361Environmental Policy

Congressional declaration of policy and intent to improve the national environments. These provisions are the basis for requirements for environmental impact statements. There are no provisions allowing relief/exemption from the requirement.

EO 12088Federal Compliance with Pollution Control Standards, October 18, 1978

Para 1-101, 102: Heads of Executive agencies are responsible for ensuring necessary action taken so that federal facilities and activities are in compliance with environmental requirements and standards issued on the basis of those laws cited above.

Para 1-701; Exemptions: Exemptions from applicable standards may only be granted with respect to Toxic Substances, Water Pollution, Public Health/Safe Drinking Water, Clear Air, Noise Control, and Solid Waste Disposal (as described above) if the President makes the required statutory determination that such exemption is necessary in the interest of national security or in the paramount interest of the U.S.

Para 1-702: The head of an agency may recommend to the President, through the Director of the Office of Management and Budget, that facilities and activities be exempt from applicable control standards.

COMMENT: There is no common exemption/waiver theme to the environmental protection laws cited above. Some allow relief only to Federal agencies/facilities. Others allow relief to both the public and

private sectors. Some allow no relief whatever (i.e.-Noise Control with respect to motor vehicles, railroad equipment and facilities, common commercial equipment; Environmental Policy with respect to environmental impact statements). Much of exemption/waiver authority is restricted to one or two year periods with renewals authorized. The total effect of these laws in an emergency/mobilization situation could be highly detrimental to the generation of a total, coordinated national response.

B. Occupational Safety and Health

29 USC 651-678

Occupational Safety and Health Act

Provides the Secretary of Labor with regulatory power to establish mandatory safety and health standards.

665:

Exemptions

The Secretary, after notice and opportunity for a hearing, may make reasonable exemptions to the provisions of this Act as he deems necessary to avoid serious impairment of the national defense. Such action will not be in effect for more than six months without notification to affected employees and an opportunity afforded for a hearing.

668:

Federal Agencies

Directs heads of Federal agencies to establish programs consistent with standards applicable to the civilian sector.

COMMENT: It seems likely that attempts to secure quick exemption from safety and health regulations for national defense purposes. (i.e. - national emergency/mobilization) could be stalled by the requirement in 29 USC 665 for prior public notice and hearing.

APPENDIX A - PROPERTY

GENERAL: Transfers of public properties by public law or statute contain clauses allowing reversion to Federal use, possession and/or control in time of war or national emergency. The precise language in each instance may vary but the general thrust and intent is the same.

ALABAMA

- Fort Morgan Military reservation, PL 79-465, June 28, 1946

ARIZONA

- Municipal Aviation Field, Tucson, PL 69-99, April 12, 1926
- Aviation Field, Yuma, PL 69-314, May 29, 1926

ARKANSAS

- Municipal Airport, Little Rock, PL 74-598, May 15, 1936
- Camp Joseph T. Robinson, PL 81-593, June 30, 1950
- Portion of Army and Navy General Hospital, Hot Springs National Park, PL 86-323, September 21, 1956

CALIFORNIA

- Portion of the military reservation of the Presidio of San Francisco, PL 68-568, March 3, 1925
- Portion of the Veterans Center Reservation, Los Angeles, PL 85-236, August 30, 1957

CONNECTICUT

- Certain land at Bradley Field, Windsor Locks, PL 83-315, March 26, 1954

DELAWARE

- Portion of Fort Miles Military Reservation, PL 88-228, December 23, 1963

FLORIDA

- Easement in portion of military reservation on Anastasia Island, Saint Augustine, PL 68-438, February 21, 1925
- Certain land on Anastasia Island, Saint Augustine, PL 84-616, June 25, 1956
- Portion of Santa Rosa Island, Okaloosa County, PL 80-885, July 2, 1948
- Certain land within Camp Blanding Military Reservation, PL 83-493, July 14, 1954
- Certain land in Okaloosa County, PL 85-799, August 28, 1958

HAWAII

- Certain land at Kahului, PL 74-704, June 19, 1936
- Naval Air Station, Kahului, PL 82-377, June 5, 1952 (As amended by PL 87-654, September 10, 1962)

ILLINOIS

- Portion of Joliet Arsenal Military Reservation and other lands, PL 84-611, July 12, 1960

INDIANA

- Certain land in Marion County, PL 83-386, June 4, 1954

IOWA

- Camp Dodge Military Reservation and Polk County Target Range, PL 84-50, June 1, 1955

LOUISIANA

- Floating dry dock, New Orleans Naval Station, PL 71-222, May 14, 1930
- Jackson Barracks, PL 84-52, June 1, 1955
- Camp Livingston and Camp Beauregard, PL 84-521, May 14, 1956 (As amended by PL 85-204, August 28, 1957)
- Esler Field, PL 85-204 and PL 85-205, August 1957

MAINE

- Fort Preble Military Reservation, South Portland, PL 85-185, August 28, 1957

MARYLAND

- Fort McHenry, 16 USC 440

MASSACHUSETTS

- Lease of naval destroyer and submarine base, Squantum, PL 71-280, May 29, 1930
- Castle Island Terminal Facility, South Boston, PL 82-222, October 27, 1951, as amended
- Lease of portion of Boston Army Base, PL 83-534, July 27, 1954
- Portion of Fort Devens Military Reservation, PL 84-142, July 11, 1955
- Portion of Boston Naval Shipyard, PL 86-602, July 7, 1960

MISSOURI

- Portion of O'Reilly General Hospital, Springfield, PL 84-301, August 9, 1956

NEW JERSEY

- Hoboken Pier Terminals, PL 75-689, June 21, 1938
- Port Newark Army Base, PL 74-730, June 20, 1936; as amended by PL 84-413, February 18, 1956

NEW MEXICO

- Portion of the former BRUNS General Hospital Area, Santa Fe, PL 84-598, June 19, 1956

NEW YORK

- Hoboken Manufacturers' Railroad, PL 68-479, February 26, 1925
- Fort Schuyler Military Reservation, PL 75-316, August 19, 1937; PL 81-755, September 5, 1950, PL 82-559, July 16, 1952, and PL 85-250, September 2, 1957

NORTH CAROLINA

- Portion of Camp Butner Military Reservation, PL 83-327, April 2, 1954

OREGON

- Certain property in Klamath County, PL 83-716, August 30, 1954
- Certain property in Clackamas County, PL 84-872, August 1, 1956

PENNSYLVANIA

- Hog Island, Philadelphia, PL 83-556, July 29, 1954

RHODE ISLAND

- Certain land in Boston Neck, Narragansett, PL 85-548, July 22, 1958

SOUTH CAROLINA

- Portion of Charleston Army Base Terminal, PL 74-624, May 27, 1936; as amended by PL 81-97, June 10, 1949, and PL 84-428, March 2, 1956

TENNESSEE

- Certain property of the Veterans' Administration, Johnson City, PL 83-556, June 6, 1953

TEXAS

- Portion of Fort Bliss Military Reservation, PL 83-711, August 30, 1954, PL 91-202, March 4, 1970, and PL 92-145
- Martindale Auxiliary Field, San Antonio, PL 83-712, August 30, 1954
- Certain land in Houston, PL 83-713, August 30, 1954, and PL 84-410, February 15, 1956
- Camp Mabry, Austin, PL 84-49, June 1, 1955
- Certain land in Bexar County, PL 84-819, July 27, 1956
- USMC Air Station, Eagle Mountain Lake, PL 85-258, September 2, 1957

VERMONT

- Portion of Ethan Allen Air Force Base, PL 84-706, July 14, 1956

VIRGINIA

- Certain land in Arlington County, PL 72-382, February 28, 1933
- Certain land near Williamsburg, PL 84-719, July 14, 1956
- Certain land in York County, PL 85-545, July 22, 1958

WASHINGTON

- National Guard Facility, Pier 91, Seattle, PL 91-142, December 5, 1969

WEST VIRGINIA

- Certain land in Montgomery, PL 84-740, July 20, 1956

WISCONSIN

- La Crosse National Guard Target Range, PL 84-729, July 18, 1956, as amended by PL 85-431, May 29, 1958 and PL 86-551, June 29, 1960

WYOMING

- Certain property in the Wyoming National Guard Camp Guernsey area, PL 84-77, June 16, 1955
- Portion of land near Douglas, PL 84-618, June 25, 1956

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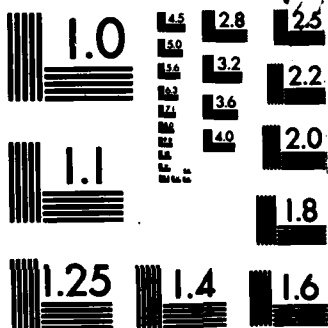
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APPENDIX E: U.S. ARMY PROPOSED "SURGE" LEGISLATION
DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Enclosed is a draft of legislation, "To amend chapter 137 of title 10, United States Code, relating to the procurement of supplies and services for the Armed Forces, by adding an authority for the expedited procurement of surge-related necessities during a National emergency."

The proposal is a part of the Department of Defense Legislative Program for the 97th Congress, and the Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Army has been designated the representative of the Department of Defense for the legislation. The Army recommends that the proposal be enacted by the Congress.

Purpose of the Legislation

The purpose of the legislative proposal is to provide an authorization of appropriations for the procurement of surge-related materials and supplies (ammunition, weapons, basic military supplies) in a time of National emergency that threatens to cause serious harm to vital United States security interests. Currently the military can reprogram some funds and expend other authorized funds that are not obligated, in order to meet some immediate military and naval requirements.

Historical perspective and recent military mobilization practice exercises highlight the need for quick action to expand the industrial base when there is a need to meet a National threat. Such action, of course, to become effective, must be funded and undertaken in a swift fashion. Taking action with the promise that funds are on their way or that authority will be forthcoming not only is bad business but also makes the National security dependent on the good will of its industrial base. Reprogramming of funds and otherwise unobligated available funds are not considered sufficient or secure budgetary devices to meet this emergency need. The enclosed proposal requests the Congress to legitimize necessary swift executive action by an advance appropriation of funds when there is a threat to National security.

The proposal would provide a reserved power to the Executive branch of our Government not to be used until grave and specific conditions requires it. The Legislative branch would maintain control by being

Honorable Thomas P. O'Neill, Jr.

informed of the use of the funds and by being authorized to terminate by resolution further use of the funds. Implicit in this proposal is the defensive nature of the fund utilization. The War Powers Resolution requires close coordination between the President and the Congress for the introduction of our Armed Forces in hostilities. This proposal would work to the effectiveness of those forces as well as to the support and protection for those forces. In a declared emergency, it would be an authority, if determined necessary, that the President must specify under the National Emergencies Act. In each case, and under the provisions of the proposed authority, Congress could limit further use by the Armed Force concerned of the subject appropriated funds. The procurement authority expending the funds must state that no other funds are available to meet the emergency requirement and must define the emergency. Use of these funds does not terminate the normal Executive action of a request for a supplemental appropriation. It is only a stop-gap measure to insure that the resources of our Nation are available for the defense of our country when needed.

Enactment of this proposal will permit mobilization planning with a legitimate role by the Executive in a crisis situation and it would be an incentive to our industrial base. It will strengthen our ability to meet an external threat while not costing additional funds unless the external threat becomes a reality.

Cost and Budget Data

The enactment of this proposal will cause no apparent increase in the budgetary requirements for the Department of Defense.

Sincerely,

Enclosure
Proposed bill

A B I L L

To amend chapter 137 of title 10, United States Code, relating to the procurement of supplies and services for the Armed Forces, by adding an authority for the expedited procurement of surge-related necessities during a National emergency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Chapter 137 of title 10, United States Code, is amended (a) by adding after section 2314 --

"§2315. National emergency; procurement for surge production; funding authority

"(a) Subject to the provisions of subsection (b), the head of an agency may procure, under the provisions of this chapter, utilizing the funds appropriated in subsection (c), those items listed in section 2303(b) of this title that are necessary to meet an immediate military or naval requirement. Any procurement made under this section shall cite this authority, contain a statement defining the emergency necessitating the procurement, and state that no other funds are available for the procurement.

"(b) The authority in subsection (a) may be exercised under this section only if no other funds are available to meet the emergency requirement and --

"(1) the Congress has declared a state of war or national emergency, or

"(2) the President has either --

(A) declared a national emergency, or

(B) reported, in writing, to the Speaker of the House of Representatives (or, if not available, to the most senior

Member of the House of Representatives available in Washington, D.C.) and to the President pro tempore of the Senate (or, if not available, to the most senior Senator in Washington, D.C.) that an unforeseen emergency is in progress that requires an immediate procurement of property, without which serious harm to vital United States security interests is anticipated, and that funds are not available under current appropriations.

"(c) The head of an agency is appropriated for the purposes of subsection (a), out of any money in the Treasury not otherwise appropriated, until a request for a supplemental appropriation can be made to the Congress, an amount of funds that equals fifteen percent of the total funds appropriated for such agency in the next preceding fiscal year to the fiscal year in which the procurement by this section causes an obligation of funds. Such appropriation continues until either

(A) the appropriated funds are depleted, or

(B) the Congress, both houses concurring by majority vote, either authorizes a supplemental appropriation to the agency concerned or resolves that the further authority of this section is terminated for the emergency military or naval requirement that precipitated the use of this funding authority. The funds authorized to be appropriated under this subsection that are not obligated for the purposes of section (a) at the termination of the immediate military or naval requirement revert to the Treasury of the United States as funds not otherwise appropriated.

"(d) The head of an agency shall advise Congress of the exercise of any

procurement under this section and shall report monthly to the Congress on the estimated obligations incurred pursuant to this section as well as why a supplement request for appropriations has not been made under normal procedures."; and

(b) the table of sections at the beginning of such chapter is amended by adding after the item referring to section 2314 the following:

"2315. National emergency; procurement for surge production; funding authority.".

APPENDIX F

ODSD MEMORANDUM, IMPROVING THE
ACQUISITION PROCESS 20 OCTOBER 1982

DAC #76-39 20 OCTOBER 1982

(REPRINT OF DEPUTY SECRETARY OF DEFENSE
MEMORANDUM WITH ATTACHMENTS (ITEM II))



THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

April 30, 1981

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL
ASSISTANTS TO THE SECRETARY OF DEFENSE

SUBJECT: Improving the Acquisition Process

On 2 March 1981, I directed a 30-day assessment of the Defense acquisition system with the priority objectives of reducing cost, making the acquisition process more efficient, increasing the stability of programs, and decreasing the acquisition time of military hardware. The report, delivered to me on 31 March 1981, provided many specific recommendations and posed a number of major issues for decision.

I have discussed the report with the Steering Group, the Joint Chiefs of Staff, the Service Secretaries, and the Under Secretaries and selected Assistant Secretaries of Defense. Based on the report and those meetings, the Secretary and I have decided to make major changes both in the acquisition philosophy and the acquisition process itself. We are convinced that we have now a historic and unique opportunity to significantly improve the Defense acquisition system. We ask for your cooperation and assistance in carrying out these decisions.

The acquisition decisions are recorded in detail in the attachments to this memorandum. I would like to highlight here the major decisions and their implications for DoD in the following paragraphs.

DoD Acquisition Management Philosophy

The DoD management philosophy that I described in my 27 March 1981 PPBS decision memorandum also applies to the acquisition policy and process. Through controlled decentralization, subordinate line executives will be held accountable for the execution of policy decisions and programs as approved. The review of the acquisition process is a good example of participative management where the Services and other DoD staffs, working together, have jointly agreed on

what should be done. All points of view were considered prior to decision. Now that decisions are made, the Secretary and I expect full support of DoD staffs and the Services in implementation.

I affirm the following acquisition management principles:

1. We must improve long-range planning to enhance acquisition program stability.
2. Both OSD and the Services must delegate more responsibility, authority and accountability for programs; in particular, the Service program manager should have the responsibility, authority and resources adequate to execute efficiently the program for which he is responsible.
3. We must examine evolutionary alternatives which use a lower risk approach to technology than solutions at the frontier of technology.
4. We must achieve more economic rates of production.
5. We must realistically cost, budget, and fully fund in the FYDP and Extended Planning Annex, procurement, logistics and manpower for major acquisition programs.
6. Readiness and sustainability of deployed weapons are primary objectives and must be considered from the start of weapon system programs.
7. A strong industrial base is necessary for a strong defense. The proper arms-length relationships with industry should not be interpreted by DoD or industry as adversarial.

DoD-OMB and Congress

Many of the decisions announced in this memorandum can be implemented within DoD's legislative authority. Some decisions need to be coordinated with OMB. A number of recommendations will need Congressional action before final implementation can take place. In those latter cases, we will work closely with appropriate Congressional committees and their staffs to explain and justify our recommendations for changes to legislative requirements.

DoD-Industry Relationship

While DoD should be tough in contract negotiations as part of the buyer-seller relationship, this does not mean that relationships between management and industry should necessarily be adversarial. Industry and government have a shared responsibility and must assume a new spirit of

cooperation. A healthy, innovative, and competitive industrial capability is a primary national objective. I direct all top DoD management, in OSD, in JCS, and in the Services, to ensure this is understood at all levels.

Economies, Efficiencies and Savings

A primary objective in streamlining the DoD acquisition process is reducing costs. All DoD staffs and Service managers should keep this uppermost in their minds. We all must be more aggressive and imaginative in looking for ways to save money throughout all phases of the acquisition process. I look to each of you to use your enhanced authority to bring about major savings and improved methods of operation.

Decisions to Improve Acquisition Policy and Process

The Secretary and I are determined to reduce substantially cost overruns, deploy adequate quantities of needed systems that are operationally effective and ready, and do this in the shortest possible time. We are convinced that the actions directed in the attachment will significantly contribute to achieving these objectives. The major decisions for improvement can be summarized in four categories:

Reduce Acquisition Cost

- Increase program stability by fully funding R&D and procurement at levels sufficient to ensure efficient cost, supportability and schedule performance, and minimizing changes to the approved program.
- Implement multi-year procurement to improve production processes, increase economy-of-scale lot buying, decrease financial borrowing costs and reduce administrative burden in contracting.
- Reduce administrative costs by simplifying procedures, seeking relief from costly legislative requirements and reducing the number of DoD regulations and directives.
- Encourage capital investment to increase productivity in the defense industry by improved contracting, more reasonable risk sharing, and increased incentives.
- Promote Services use of economic production rates to reduce unit costs and decrease acquisition time.
- Require Services to budget to most likely cost to reduce cost overruns and provide stability.

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Shorten Acquisition Time

- o Implement Preplanned Product Improvement to reduce unit costs and decrease acquisition time.
- o Provide adequate "front end" funding for test hardware.

Improve Weapons Support and Readiness

- o Stress acquisition strategies that provide incentives to contractors to attain reliability and maintainability goals.
- o Establish readiness objectives early in development programs.

Improve the DSARC Process

- o Move toward controlled decentralization of the acquisition process to the Services.
- o Reduce the data and briefings required by the Services and other DoD staffs.
- o Tie the acquisition process more closely to the PPBS.

Implementation of the Decisions

Implementation of the decisions announced in this memorandum is as important as the decisions themselves. Many decisions, even those within DoD's authority, will take time to implement fully. A large number of DoD managers will have to take part on a worldwide basis.

I assign overall responsibility to the Under Secretary of Defense for Research, Engineering and Acquisition for monitoring and follow-up of all decisions in this report. I expect him to establish an appropriate implementing and reporting system. The first report will be submitted to me by the end of May and every month thereafter until further notice.

Both the Secretary and I appreciate the work you and your staffs have provided during this assessment.



Frank C. Carlucci

Attachments

SUMMARY OF MAJOR RECOMMENDATIONS AND ISSUES FOR DECISION

RECOMMENDATIONS	IMPACT		REQUIRED ACTION		COORDINATION				
	NEAR TERM (1 YEAR)	LONG TERM	INTERNAL ONLY	INTERNATIONALS OR CONGRESS ALSO	RESPONSIBLE OFFICE	USDR	ASD(C)	ASD (M&A)	ASD (PAGE)
1. Management Principles	X		X		USDR	X			
2. Preplanned Product Improvement		X	X		USDR	X			
3. Multiyear Procurement		X		X	USDR		X		X
4. Increase Program Stability		X	X		ASD(PAGE)	X	X		
5. Encourage Capital Investment to Enhance Productivity		X		X	USDR	X	X		X
6. Budget to Most Likely Costs	X		X		ASD(C)	X		X	
7. Economic Production Rates		X	X		USDR		X		X
8. Assure Appropriate Contract Type		X	X		USDR	X			
9. Improve Support and Readiness		X	X		ASD(MR&E)	X		X	
10. Reduce the Administrative Cost and Time to Procure Items		X		X	USDR		X		X
11. Budget Funds for Technological Risk		X			USDR				
12. Front End Funding For Test Hardware	X		X		USDR	X			X

SUMMARY OF MAJOR RECOMMENDATIONS AND ISSUES FOR DECISION

RECOMMENDATIONS	IMPACT		REQUIRED ACTION			COORDINATION					
	NEAR TERM (1 YEAR)	LONG TERM	INTERNAL ONLY	COMB OR CONGRESS ALSO	RESPONSIBLE OFFICE	Services	ASDRE	ASD(C)	ASD (M&A/L)	ASD (PAGE)	OGC
13. Governmental Programs		X		X	USDRE	X	X				X
14. Reduce the Number of DoD Directives	X		X		USDRE	X					
15. Funding Flexibility		X		X	ASD(C)	X					X
16. Contractor Incentives to Improve Reliability and Support		X	X		USDRE	X		X			
17. Reduce DSARC Briefing and Data Requirements	X		X		USDRE	X	X	X			X
18. Budgeting for Inflation		X		X	ASD(C)/ASD(PAGE)	X					
19. Forecasting Business Base at Major Defense Plants	X		X		ASD(PAGE)	X					
20. Improve the Source Selection Process	X		X		USDRE	X					
21. Standard Operational and Support Systems		X	X		USDRE	X			X		
22. Provide More Appropriate Design to Cost Goals		X	X		USDRE	X				X	
23. Assure Implementation	X			X	USDRE	X					X

SUMMARY OF MAJOR RECOMMENDATIONS AND ISSUES FOR DECISION

ISSUES FOR DECISION	IMPACT		REQUIRED ACTION			COORDINATION				
	NEAR TERM (1 YEAR)	LONG TERM	INTERNATIONALS ONLY	CONGRESS ALSO	RESPONSIBLE OFFICE	USDR	ASD(C)	ASD	ASD (PA&E)	OC
<p>A. <u>DSARC Decision Milestones</u></p> <p>Alt. 1: Reduces current four SecDef decisions to three.</p> <p>Alt. 2: Reduces SecDef decisions to two. (II and III)</p> <p>* Alt. 3: Reduces SecDef decisions to two. (I' and II')</p> <p>Alt. 4: Eliminates SecDef decisions; delegates to Service Secretaries.</p>	X		X	X	USDR					
<p>B. <u>Mission Element Needs Statement</u></p> <p>* Alt. 1: Service submits MENS with POM. SecDef approves MENS by accepting POM.</p> <p>Alt. 2: Eliminates MENS. Congressional Descriptive Summary would document Milestone O.</p>	X			X	USDR					
<p>C. <u>DSARC Membership</u></p> <p>Alt. 1: Maintain status quo.</p> <p>* Alt. 2: Would include appropriate Service Secretary or Chief as full member.</p>	X		X	X	USDR					
<p>* Approved Alternative</p>										

SUMMARY OF MAJOR RECOMMENDATIONS AND ISSUES FOR DECISION

ISSUES FOR DECISION	IMPACT		REQUIRED ACTION		COORDINATION					
	NEAR TERM (1 YEAR)	LONG TERM	INTERNAL ONLY	OR CONGRESS ALSO	RESPONSIBLE OFFICE	USDRS	ASD(C)	ASST (M&A)	ASD (PA&E)	OGC
<p><u>D. Defense Acquisition Executive</u></p> <p>*Alt. 1: Would retain USDRE as DAE.</p> <p>Alt. 2: Would designate DepSecDef as DAE.</p> <p><u>E. DSARC Review Criteria</u></p> <p>Alt 1: Continues present system.</p> <p>*Alt 2: Doubles \$ guidelines for major systems to \$200M RDT&E and \$1B Procurement in FY 80 \$.</p> <p><u>F. DSARC-PPBS Decision Integration</u></p> <p>Alt 1: Continue present practice.</p> <p>*Alt 2: Provide that DSARC reviewed programs be accompanied by assurance that sufficient resources are in FYDP and EPA to execute the recommended program. DSARC review would certify program ready for next stage.</p> <p>Alt 3: Have DRB assume DSARC functions.</p>	X		X		USDRE					
*Approved Alternative										

SUMMARY OF MAJOR RECOMMENDATIONS AND ISSUES FOR DECISION

ISSUES FOR DECISION	IMPACT		REQUIRED ACTION		COORDINATION					
	NEAR TERM (1 YEAR)	LONG TERM	INTERNAL ONLY	OMB OR CONGRESS ALSO	RESPONSIBLE OFFICE	USDRM	ASD (C)	ASD (M&L)	ASD (PA&E)	OGG
<p>G. <u>Program Manager Control of Support</u></p> <p>Alt 1: Would continue present system.</p> <p>Alt 2: Services subalt support resource requirements and readiness objectives with POM for systems entering early production.</p> <p>*Alt 3: Same as 2 but gives Program Manager more influence over support resources, funding and execution.</p>	X		X		ASD(MRA&L)	X				
<p>H. <u>Improve Reliability and Support</u></p> <p>*Alt 1: Requires early decision on system support approach, objectives and resources, and incentives to balance risks in reliability and support.</p> <p>Alt 2: Does not require up-front efforts to reduce risks. Shifts focus to fixing problems by subsequent re-design of hardware and incorporation of fixes.</p>	X		X		USDRE	X		X		

Recommendation 1

MANAGEMENT PRINCIPLES

The Steering Group recommends that the Deputy Secretary of Defense reaffirm the following major acquisition management principles:

1. An improved statement of long-range Defense policy, strategy and resources will be provided to the Services in order to establish a framework for military objectives, goals, and mission planning to enhance program stability.
2. Responsibility, authority and accountability for programs should be at the lowest levels of the organization at which a total view of the program rests.
3. Service Program Managers should have the responsibility, authority, resources, and guidelines (goals and thresholds) adequate to efficiently execute the program. This should include the system specific acquisition strategy for attainment of the required operational and readiness capability, and appropriate flexibility to tailor the acquisition strategy to estimates of the development priorities and risks.
4. Evolutionary alternatives which use a lower risk approach to technology must be examined when new programs are proposed. Solutions at the frontiers of technology must provide an alternative which offers an evolutionary approach. Pre-planned Product Improvement (P³I) should become an integral part of the Acquisition Strategy.
5. Achievement of economic rates of production is a fundamental goal of the acquisition process.
6. The Services should plan to realistically budget and fully fund in the FYDP and Extended Planning Annex (EPA) the R&D, procurement, logistics and manpower costs at the levels necessary to protect the acquisition schedule established at program approval points, and to achieve acceptable readiness levels.
7. Improved readiness is a primary objective of the acquisition process of comparable importance to reduced unit cost or reduced acquisition time. Resources to achieve readiness will receive the same emphasis as those required to achieve schedule or performance objectives. Include from the start of weapon system programs designed-in reliability, maintainability and support.
8. The proper "arms-length" buyer-seller relationship should not be interpreted by government or industry as adversarial. The DoD should be tough in contract negotiations. But weapons acquisition should be managed on a participating basis using industry as a full constructive team member. A strong industrial base is necessary for a strong defense.

Approved: _____
Idea Needs More Development: _____
I Need More Information: _____
Disapproved: _____

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Recommendation 2

PREPLANNED PRODUCT IMPROVEMENT

A revolutionary system development approach which uses new and untried technology to meet a military threat can offer dramatic potential payoffs, but frequently ends up with large cost increases and schedule slippages.

An evolutionary approach offers an alternative which minimizes technological risk, and consciously inserts advanced technology through planned upgrades of those deployed subsystems which offer the greatest benefits. In this manner the lead time to field technological advances can be shortened while an aggressive scheduling of fielded performance improvements can be expected during the service life of the systems. This concept is called Preplanned Product Improvement (P3I), and is commonly used in commercial industry.

Recommendation - Most new and existing systems should be partitioned for performance growth through the application of sequential upgrades to key subsystems in order to reduce development risk, and take best advantage of technological advance.

Advantages - Can reduce acquisition time, reduce development risk and cost, and enhance fielded performance through the deployment of upgrades. A revolutionary approach can always be adopted when the demands of the threat or other compelling military needs require such an approach.

Disadvantages - The performance needed to meet a critical threat may dictate the use of distant technology, but the factors involved in such a decision are seldom incisive. Therefore, the choice between alternatives is not likely to be absolutely clear.

Action Required:

- USDRE, working with the Services, develop within 30 days a plan for implementing Preplanned Product Improvement including definitions and criteria for application.
- USDRE request the Services to evaluate ongoing programs to determine potential for payoff from the application of preplanned product improvement, and to present results at the next DSARC.
- USDRE assure Services have fixed the responsibility for review of opportunities for product improvement after any system reaches the field, and to develop a product improvement plan.

Approved:

Idea Needs More Development: _____

I Need More Information: _____

Disapproved: _____

Recommendation 3

MULTIYEAR PROCUREMENT

Recommendation: Encourage extensive use of multiyear procurement based upon a case-by-case benefit/risk analysis.

Advantages: Multiyear procurement could result in average dollar savings of 10 to 20% in unit procurement cost through improved economies and efficiencies in production processes, economy-of-scale lot buying, decreased financial borrowing costs, better utilization of industrial facilities, and a reduction in the administrative burden in the placement and administration of contracts. In addition, the stimulated investment in production equipment will result in lower-defect, higher quality products. The market stability will also enhance the continuity of subcontractor supply lines and thereby decrease acquisition time. Surge capability will also be improved.

Disadvantages: This funding technique fences in money and commits future Congresses. If used to excess, it would significantly reduce the flexibility of the Secretary of Defense to respond to unforeseen changes in the external threat. If a multiyear procurement was used to lock in a border line program, costs would be increased if the program was cancelled. In order to avoid these potential disadvantages, the following criteria are recommended as general guidelines to screen potential multiyear candidates: (1) significant benefit to the Government; (2) stability of requirements, configuration, and funding; and (3) degree of confidence in cost estimates and contractor capabilities.

Action Required:

- a. General Counsel must respond in writing to Congressman Daniel's Bill HR 745.
- b. USDRE and ASD(Comptroller) should brief Appropriation and Armed Services Congressional Committees on recommended multiyear procurement procedures and concepts.
- c. USDRE should prepare special policy memorandum to the Military Departments for SecDef signature defining procedures and requesting identification of potential FY 83 multiyear procurement candidates.
- d. USDRE and ASD(Comptroller) should modify DoD Directive 7200.4 and the Defense Acquisition Regulation (DAR) and should interface with OMB to modify Directive A-11 as required.
- e. SecDef will present FY 83 President's Budget containing multiyear candidates.

Approved: _____
 Idea Needs More Development: _____
 I Need More Information: _____
 Disapproved: _____

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Recommendation 4

INCREASE PROGRAM STABILITY IN THE ACQUISITION PROCESS

Program instability is inherently costly in both time and money. The 47 major programs covered by the December 31, 1980, Selected Acquisition Reports (SARs) reflected total cost growth of 129 percent over the Milestone II estimates. Reasons for growth are economic or inflation (27 percent), quantity changes (26 percent), estimating changes (18 percent), schedule changes (15 percent), support changes (7 percent), engineering changes (5 percent), and other changes (2 percent). Forty one (41) percent of all cost growth is due to quantity and schedule changes.

Of the 47 programs, 19 have had quantity increases, 20 quantity decreases, and 8 are unchanged. Schedule changes have resulted in reduced costs on 4 programs and increased costs on 41. The most common cause for these changes is financial. The budget levels and relative priorities of competing programs force tough decisions to terminate programs, reduce the number of weapons, stretch the development program, delay planned production or stretch the planned buy.

Recommendation: SecDef, OSD and Services should fully fund the R&D and procurement of major systems at levels necessary to protect the acquisition schedule established at the time the program is baselined, currently Milestone II. Limit stretch-outs due to funding constraints (except when mandated by the Secretary or Congress). Establish procedures which will phase the scheduling of sequential milestones so that manpower "peaks and valleys" can be minimized consistent with balancing the risks. In general, only changes which are directed by changed requirements or development problems should be made.

Advantages: Reduces costs and saves time by stabilizing schedules, quantities, and production rates. Will enhance the ability to plan force modernizations.

Disadvantages: Budget flexibility will be reduced.

Action Required: SecDef directs that during program and budget reviews by OSD (DRB) the Service Secretaries must explain and justify differences between program baselines established at Milestone II and the quantity and funding in the program or budget under review.

ASD(C) and ASD(PA&E) include above direction in FY-83 POM and Budget Guidance.

Approved: _____
 Idea Needs More Development: _____
 I Need More Information: _____
 Disapproved: _____

Recommendation 5

ENCOURAGE CAPITAL INVESTMENT TO ENHANCE PRODUCTIVITY

Productivity in the defense sector of the U.S. economy has been lagging, in large part because of low levels of capital investment compared to U.S. manufacturing in general. Cash flow problems, tax policy, high interest rates, and low return on investment (ROI) tend to limit available investment capital. The industry views low profits and program instability as precluding investment in capital equipment. This situation has two major implications: a tendency to shift from defense to commercial business, and a decrease in funds available for facilitization.

Recommendation: Encourage capital investment.

Advantages: Will increase long-term investments which should lead to lower unit costs of weapons systems. Increase productivity.

Disadvantages: Earlier Government disbursements. Some reduction in tax revenues.

Action Required: USDRE should have the prime responsibility to implement the following actions working closely with General Counsel, Legislative Affairs, and the Service Material Commands.

- a. General Counsel should support legislative initiatives to permit more rapid capital equipment depreciation and to recognize replacement depreciation costs by amending or repealing Cost Accounting Standard (CAS) 409, "Depreciation of Tangible Assets."
- b. Structure contracts to permit companies to share in cost reductions resulting from productivity investments. Modify the Defense Acquisition Regulation (DAR) profit formula. Allow for award fees inversely proportional to maintainability costs.
- c. Increase use and frequency of milestone billings and advanced funding. Expedite paying cycle.
- d. Provide for negotiation of profit levels commensurate with risk and contractor investment; ensure that recent profit policy changes are implemented at all levels.
- e. Instruct the Services of the need to grant equitable Economic Price Adjustment (EPA) clauses in all appropriate procurements. Contract price adjustments made in accordance with EPA provisions should recognize the impact of inflation on profits. Ensure that these clauses are extended to subcontractors.
- f. Increase emphasis on Manufacturing Technology Programs.
- g. Provide a consistent policy which will promote innovation by giving contractors all the economic and commercial incentives of the patent system. Provide policies to protect proprietary rights and data.
- h. General Counsel should work to repeal the Vinson-Trammell Act.

Approved: _____
 Idea Needs More Development: 2
 I Need More Information: _____
 Disapproved: _____

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Recommendation 6

BUDGET TO MOST LIKELY COSTS

Intentionally low initial cost estimates are a prime contributor to apparent cost growth. Program costs are sometimes purposely understated either because DoD is forcing a program to fit available funding rather than the funding it takes to do the job, or because the contractors are purposely lowering their cost estimates in order to win a contract with hopes of recovering costs on follow-on contracts. Either practice is referred to as "buying in." When the actual costs become apparent, DoD is severely criticized for cost overruns and there are insufficient funds available to procure at economic production rates. Also, the negotiated contract cost does not include future engineering changes or post-contract award negotiations which can drive costs higher.

Recommendation: Require the Services to budget to most likely or expected costs, including predictable cost increases due to risk. Provide incentives for acquisition officers and industry to make and use realistic cost estimates.

Advantages: Less cost growth. More realistic long-term defense acquisition budget. Increased program stability.

Disadvantages: Difficulty in determining if a contractor is providing realistic estimates. Political difficulty in rejecting bids that project prices lower than costs. Difficult to budget funding greater than publicly-known contractual funding.

Action Required: ASD(C) require the Services to budget to most likely or expected costs including predictable cost increases due to risk, instead of the contractually agreed-upon cost. USDRE and the Services provide incentives for acquisition officers and contractors to accurately project costs, including financial incentives and performance evaluation considerations to DoD personnel, and profit incentives to industry to reduce costs.

Approved: _____
 Idea Needs More Development: _____
 I Need More Information: _____
 Disapproved: _____

R

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Recommendation 7

ECONOMIC PRODUCTION RATES

The cost and time needed to put a weapon system into the field can be reduced by establishing and sustaining economic rates of production (i.e., the rate at which unit cost doesn't decrease significantly with further rate increases). Tight budgets and strong competition between programs have forced many programs to accept funding levels in the budget which will not sustain an economic rate of production.

A commitment to economic production rates cannot rule out sound arguments for lower (or higher) rates. For example, the Services may wish to stretch a program over a number of years in order to preserve a warm production base to permit rapid mobilization to meet a crisis or war. However, this requires stockpiling of materials, parts and subsystems to be effective.

Recommendation: Services must use economic production rates in their program and budget requests, or explain and be prepared to defend the reason why a different rate was selected.

Advantages: Save time and reduce cost of acquiring new systems.

Disadvantages: Will buy out the total system faster (shorter production run for a given quantity) with peak funding competing with other systems, possible workload fluctuations in certain industries with occasional dead time and possible erosion of the industrial base. Can increase cost of correcting support problems.

Action Required: Secretary of Defense establish policy requiring Services to fund programs at economic rates or justify any differences during budget reviews by OSD and the DRB. USDRE and ASD(C) include this requirement in the FY 83 program and budget guidance.

Approved: _____
 Idea Needs More Development: _____
 I Need More Information: _____
 Disapproved: _____

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Recommendation 8

ASSURE APPROPRIATE CONTRACT TYPE

Industry has repeatedly, over a long period, expressed serious concerns about the recurring use of the wrong type of contract. In particular, fixed price contracts are frequently employed for RDT&E and early production, which have legitimate cost uncertainties. This leads to a high risk situation for the contractors and to cost overruns for DoD. Current DoD policies and regulations give guidance as to the use of appropriate contract types; however, this guidance is not being followed in the field.

Recommendation: Give the Program Managers the responsibility to tailor contract types to balance program needs and cost savings with realistic assessment of an acceptable balance of contractor and government risk. Recommendation 1/Management Principle 3 states that the Program Managers be given the authority to determine the specific acquisition strategy.

Advantages: Precludes a company from being forced to assume cost risk beyond their financial ability.

May increase competition if contractor risks are recognized.

Gives the Program Managers more flexibility to accommodate program needs.

Disadvantages: Government assumes more cost risk.

Action Required: USDRE establish an OSD, Service, Industry working group to develop an implementation plan to ensure that appropriate contract types are used. USDRE and the Service Secretaries ensure that Program Managers have the responsibility for determining the appropriate contract type. USDRE should ensure that the regulations are clear on this point.

Approved: _____

Idea Needs More Development: _____

I Need More Information: _____

Disapproved: _____

Recommendation 9

IMPROVE SYSTEM SUPPORT AND READINESS

As a result of recurring problems with weapons system support, the recent revision of acquisition policies includes a major emphasis on support issues, including reliability, maintenance, spares, test equipment, and maintenance manpower. These recent policies are generally sound, are not directly influenced by the major acquisition process options presently under consideration and can be undertaken under any option.

To be effective the policies require Secretary of Defense commitment. The need for this specific commitment results from the competition among the conflicting objectives of high performance, lower cost, shorter schedules, better reliability and maintenance, and support.

Recommendation: Establish readiness objectives for each development program to include estimates of the readiness level to be achieved at early fielding and at maturity. Implement acquisition policy establishing "designed-in" reliability and readiness capabilities. The implementation must emphasize the objectives of shortening the overall time to deliver equipment to the troops which meet mission and readiness needs; the need for improved estimates of the R&D and support resources required; and additionally, ask that some force elements(s) be targeted for a major improvement in designed-in support capability to be less dependent on a support tail.

Advantages: Clarifies that improvement in readiness is a major objective of the Administration, and that implementation must take place.

Disadvantages: Will require additional technical effort and resources early in acquisition programs.

Action Required: MRA&L draft SecDef policy letter to be issued within thirty days, reaffirming weapons support policy and objectives, and tasking the Services to develop implementing guidelines, including procedures for addressing support early in acquisition programs.

Approved: _____
 Idea Needs More Development: _____
 I Need More Information: _____
 Disapproved: _____

Recommendation 10

REDUCE THE ADMINISTRATIVE COST AND TIME TO PROCURE ITEMS

In 1974, less stringent requirements were established for DOD Contract procedures associated with purchases under \$10,000. The purpose was to reduce both the time and paperwork costs to a level commensurate with the value of the item being purchased. Over the years the tendency of a bureaucracy to take precautions has expanded the paperwork associated with a procurement, and inflation has reduced the purchasing power of the dollar until the \$10,000 item of 1974 would cost almost twice that much to purchase today.

A similar inequity exists in the administrative procedures governing contract funding execution. Department of Defense and Service procedures place numerous administrative requirements on the obligation of funds. They provide unnecessarily cumbersome safeguards for the public interest, to a certain extent thereby, thwarting that interest. There is also a general tendency to apply the most burdensome procedures, even if administrative shortcuts are allowed. The DoD is motivating its contract and fund administrators to avoid the least possibility of criticism rather than to use economic procedures.

a. Recommendation: Raise the \$10K limit for purchase order contract use to \$25K to accommodate inflation and reduce unnecessary paperwork and review. Letter is enroute from Joint Logistics Commanders to DEPSECDEF recommending change. Proposal is currently in staffing at OMB for inclusion in the Uniform Procurement System (UPS) and as a legislative initiative.

Action Required: DEPSECDEF recommend that OMB (OFPP) initiate change to 10 USC 2304.

b. Recommendation: Raise threshold for contractor costing data input from \$100K to \$500K to accommodate inflation and reflect current auditing procedures. (Paperwork load is such that only data for contracts over \$500K is actually audited today.)

Action Required: DEPSECDEF recommend that OMB (OFPP) initiate legislative change to USC 2306.

c. Recommendation: Raise threshold for Service Secretary review of Contract Determination and Findings (D&F) for RDT&E from \$100,000 to \$1 million. Current level was set in mid-1960s. Higher level would still cover 90 + % of expenditures (dollars). Higher limit supported by JLC.

Action Required: DepSecDef recommendation to OMB (OFPP) for approval; subsequent change to Defense Acquisition Regulations (DAR).

d. Recommendation: Encourage greater use of class (D&Fs) which allows one D&F to cover multiple contracts. Reduces total volume of contracts which must be reviewed, thus speeding up processing time.

Action Required: USDR&E prepare policy statement encouraging greater use of class D&Fs.

e. Recommendation: Raise reprogramming thresholds from \$2M to \$10M for RDT&E appropriations and from \$5M to \$25M for procurement. Thresholds were set 10 years ago with no inflation accommodation. Greatly reduces Service flexibility to answer program.

Action Required: Renew SecDef/DepSecDef efforts to obtain Congressional Committee approval (HASC, SASC, HAC, SAC).

Advantages (all above recommendations): Provides immediate relief from unnecessary paperwork burden. Reduces administrative lead time, which will result in reductions in in-house and industry overhead cost. Supports a far more efficient Government cash flow management.

Disadvantages: Less opportunities for legal reviews.

f. Recommendation: Eliminate the need for non-Secretarial level D&Fs for competitive negotiated contract awards.

Advantages: Reduced paperwork and administrative lead times. In conjunction with recommendation C above, to increase D&F thresholds, the D&F requirement would be considerably reduced.

Disadvantages: Many smaller procurement actions would not be reviewed above program office level.

Action Required: SecDef submit recommended legislation to review public law.

g. Overall Action: USDR&E prepare implementation plan and required SecDef letters within 60 days. Tie cost thresholds to inflation.

Approved:
 Idea Needs More Development:
 I Need More Information:
 Disapproved:

20 OCTOBER 1982

Recommendation 11

INCORPORATE THE USE OF BUDGETED FUNDS
FOR TECHNOLOGICAL RISK

Material development and early production programs are subject to uncertainties. Program managers who explicitly request funds to address these uncertainties usually find these funds deleted either in the DoD PPBS process, by OMB, or by Congress. Then when such uncertainties occur, undesirable funding adjustments are required or the program must be delayed until the formal funding process can respond with additional dollars.

The Army has initiated, and Congress has accepted, a Total Risk Assessing Cost Estimate (TRACE) to explicitly address program uncertainties in the development of RDT&E budget estimates. The Army is studying the application of this concept to early production cost estimates. The other Services lack a similar concept to justify reserve funds for dealing with developmental uncertainties.

Recommendation: Increase DoD efforts to quantify risk and expand the use of budgeted funds to deal with uncertainty. Encourage all Services to use such budgeting where appropriate.

Advantages: Cost estimates will be more realistic over time. Programs will be more fully funded and overall programs will be more stable.

Disadvantages: Can encourage a more costly treatment of problems that might be solved in other ways (self-fulfilling prophecy). Higher initial program estimates would result in fewer programs within a stated total obligation authority.

Action Required: SecDef emphasize the requirement to evaluate, quantify and plan for risk. USDRE direct all Services to budget funds for risk. In particular, each Service should review the TRACE concept and either adopt it or propose an alternative for their use to USDRE within 60 days.

Approved: _____
 Idea Needs More Development: 2
 I Need More Information: _____
 Disapproved: _____

Recommendation 12

PROVIDE ADEQUATE FRONT END FUNDING FOR TEST HARDWARE

Weapon system development programs often have too few test articles to allow parallel tests for performance, reliability, etc., and in order to shorten development time without substantially increasing risks. Procurement of too few test articles forces a sequential approach whereby the available test articles are dedicated exclusively to development testing. Consequently, operational and other testing cannot be accomplished concurrently (within acceptable levels of risk) to save time.

In addition to designing for the major performance objectives, increased emphasis should be placed on designing for reliability by providing adequate design margins, while giving full consideration to adequate testing, fault isolation and maintainability. Adequate test hardware should be provided in the program to permit early combined environmental tests of the subsystems and subsequent system tests, to allow iteration of the design using the test-fix test process to achieve early design maturity.

Recommendation: Provide sufficient test hardware to meet the subsystem, system and software engineers' needs to properly engineer and test development of the end item hardware using parallel testing to reduce overall schedule time. The number of test articles must be defined and explained during preparation of Service programs and budgets.

Advantages: Saves time in the total acquisition process by emphasizing reliability up front and eliminating lengthy and costly problem identification and correction effort; also allows realistic concurrent development and operational testing.

Disadvantages: Requires increased front end funding.

Action Required: USDRE ensure that the acquisition strategy identify plans for and funding required to acquire adequate subsystem and system test hardware to reduce overall schedule time and risks.

Approved: _____ 2
 Idea Needs More Development: _____
 I Need More Information: _____
 Disapproved: _____

Recommendation 13

GOVERNMENTAL LEGISLATION RELATED TO ACQUISITION

Over the past decade, the acquisition process has become overburdened with governmental legislation and requirements. Individually, these regulations have worthwhile objectives; collectively, they impose a costly and burdensome requirement on industry and the acquisition process.

Recommendation: Seek DoD relief from the more burdensome requirements of governmental regulations.

Advantages: Less cost to contractors in doing business with the Government. Reduce program costs. Simpler contracting procedures. Faster contract awards.

Disadvantages: Reduced benefits which are considered important national goals. Request for relief will certainly spark debates with the various interested groups.

Action Required: USDR&E establish joint OSD and Service team to weigh the impact of the various governmental requirements and regulations on the efficiency and effectiveness of the total DoD acquisition and contracting process. Industry and OMB should participate to the maximum extent possible. A report should be prepared for the DepSecDef within 45 days.

Approved:
Idea Needs More Development:
I Need More Information:
Disapproved:

Recommendation 14

REDUCE THE NUMBER OF DOD DIRECTIVES

The current acquisition directive refers to 114 (up from 15 in 1971 and 26 in 1977) related directives and instructions. The Services emulate these directives in implementation with their own implementing instructions. There is rarely a challenge to these well-intentioned directions, nor is there a cost-benefit check performed. Program manager and industry initiatives are often stilted by overregulation. With each new directive additional paperwork, manhours and other direct costs are expended in compliance. Congressional, GAO, industry, OSD, and OFPP studies have indicated that contractually imposed management systems and data requirements cost 8 cents out of every contract dollar. With defense contracting approaching \$100 billion a year, it means that these management-imposed requirements cost approximately \$8 billion per year. A 20% improvement would save \$116 million per year.

Recommendation: Reduce the number of directives. Require that the Defense Acquisition Executive be the sole issuer of DoD directives related to acquisition. This would not mean that DAE would draft all such documents, only that DAE would have final review and releasing authority.

Advantages: Coordinates requirements and reduces the issuance of superfluous directives. Will reduce program costs to the extent that directives require reports, data, documentation.

Disadvantages: Adds an additional layer to the process of issuing or revising a directive. Places the DAE in control of directives for areas of acquisition for which he may have little expertise.

Action Required: USDPE establish a joint OSD, Service, Industry team to provide recommendations within 90 days to substantially reduce the number of directives, and the documentation required in contracts.

Approved: _____
 Idea Needs More Development: _____
 I Need More Information: _____
 Disapproved: _____

Recommendation 15
FUNDING FLEXIBILITY

Program continuity requires that we budget for procurement funds more than a year in advance of the actual transition date of major acquisition programs from R&D to procurement. Since most development program schedules are success oriented, sometimes the procurement transition date arrives and the system is not ready to buy. Because procurement funds have been budgeted, there is considerable pressure to proceed with production rather than accept program delay. If the Secretary (and/or Military Departments) had the authority to transfer these procurement funds to R&D to correct deficiencies without the prior approval of OMB and Congress, it could significantly decrease the time involved in resolving program problems. Section 734 of P.L. 96-527 (DoD Appropriation Act) provides a general authority for transfers, not to exceed \$750 million between DoD appropriations. Its use requires a determination by SecDef that such action is in the National Interest and must have prior approval by OMB. Our current reprogramming arrangements with the Congressional Oversight Committee provide that any such transfer is of "special interest of the Congress" and requires their prior approval, in effect, negating the independent use of transfer authority by the Department.

The proposal would require the support of the Oversight Committees and OMB. Ideally, such approval should be included in the general provisions of the Appropriations Act as a subsection of 734. We will have to work closely with Congress to ensure that this authority would apply only to the movement of funds programmed for an individual weapon system, and would not be used to transfer funds between programs.

Recommendation: Obtain legislative authority to transfer individual weapon system Procurement funds to RDT&E.

Advantages: Provides DoD with more flexibility to resolve weapon system funding deficiencies.

Avoids program delays associated with OMB/ Congressional review and approval of funding adjustments.

Maintains program stability by enabling program manager to resolve problems within total available acquisition funding of the program involved

Disadvantages: OMB/Congressional visibility occurs after the fact.

Could jeopardise current appropriation and authorization process.

Could jeopardise current reprogramming arrangements with Congress.

May be destabilizing.

Action Required: ASD(C), working with the General Counsel, OMB and Congress establish procedures for DoD approval of the transfer of funds in a given fiscal year from Procurement to RDT&E for an individual weapon system when the Secretary of Defense determines that it is in the National Interest to do so.

Approved:

Idea Needs More Development:

I Need More Information:

Disapproved:

Recommendation 16

CONTRACTOR INCENTIVES TO IMPROVE RELIABILITY AND SUPPORT

Industry has said that even though there is recently more attention paid to "support" in DoD solicitations, there is a widespread belief that performance and schedule are DoD's principal objectives. There is a need for industry to apply more of their design talents to reducing reliability and support problems. Beyond this a need to improve the identification and specification of maintenance manpower constraints and for industry to include these constraints in the designs.

Recommendation: Acquisition strategies should identify the approaches to incentivize contractor attainment of reliability and maintainability (R&M) goals and reduce maintenance manpower and skill levels. These should include the approach taken in the RFP evaluation, as well as specific awards, incentives and guarantees, such as specific rewards for improving reliability. The Services should develop greater expertise in support related contractor incentives through analysis of experience gained on DoD programs.

Improvements should be developed in the method of projecting critical maintenance manpower skill limitations and translating these into design constraints and objectives for inclusion in RFPs and specifications.

Advantages: Improves reliability and support. Reduces maintenance manpower requirements.

Disadvantages: Incentives other than competition require additional funds.

Action Required: USDRE working with the Services, develop guidelines to include the approaches to incentivize contractors to improve support within 60 days, followed by a USDRE and Service evaluation of incentives within the next year.

USDRE develop with the Services, within one year, improved approaches to translate maintenance manpower skill projections into system design objectives.

Approved: _____
 Idea Needs More Development: _____
 I Need More Information: _____
 Disapproved: _____

20 OCTOBER 1982

Recommendation 17

DECREASE DSARC BRIEFING AND DATA REQUIREMENTS

During recent years there has been a growing tendency to centralize the decision process within the DoD. This practice has multiplied throughout the numerous levels of authority in each of the Services, and has complicated the review process. This practice has, in and of itself, lengthened the acquisition cycle; created cost increases due to delays in decisions; confused the authority, responsibility and accountability of the designated Services Managers; and has stifled innovation which could produce program improvements leading to cost savings. The principle of decentralization should be applied to acquisition management.

Recommendation: Emphasize the requirement to achieve appropriate delegation of responsibility, authority and accountability to and within each Service for system acquisition to reduce the time and effort required for DSARC and Service major system reviews.

Advantages: Reduced system cost and shorter acquisition cycles. More efficient reporting by and within the Services. More streamlined program management. More efficient DSARC and other program reviews. Potential elimination of layered management resulting in lean organizations.

Disadvantages: Some risk of losing a thorough functional analysis of the system because of the elimination of more detailed reviews.

Action Required: USDRE make explicit the changed character and the reduced number of briefings and data for the DSARC review.

Approved: _____
 Idea Needs More Development: _____
 I Need More Information: _____
 Disapprove: _____

20 OCTOBER 1982

Recommendation 18

BUDGETING WEAPONS SYSTEMS FOR INFLATION

Historically, inflation predictions have been lesser than the actual inflation that come to pass. The situation has been most severe in major weapon programs that spend out slowly and extend into those years when inflation estimates have been poorest. The result is that unpredicted inflation has cut heavily into real program by as much as \$6 or \$7 billion a year. In addition to the serious underfunding of major weapon and other purchases, DoD is charged with poor management because of the amounts of cost growth in current dollars appearing in reports and in the process.

Recommendation: Review various methods and alternatives for budgeting more realistically for inflation.

Required Action: Comptroller and PA&E develop in more detail the various alternatives addressing the inflation issue as related to planning and budgeting for major acquisition programs and provide a decision paper to the Deputy Secretary of Defense within 30 days; discuss draft options with OMB and appropriate Congressional staff.

Approved:
Idea Needs More Development:
I Need More Information:
Disapproved:

R.

20 OCTOBER 1982

Recommendation 19

FORECASTING OF BUSINESS BASE CONDITIONS AT
MAJOR DEFENSE PLANTS

The business base at key defense plants is not adequately considered in DoD program development. Cross-Service impacts and the effects of non-DoD work distorts business base projections and seriously increases overhead costs. This has caused large cost growth for certain weapons systems. Too little consideration is given to this factor in DoD planning and decision-making.

Recommendation: The Services will increase the effort to coordinate programming information that affects other Service overhead costs at given defense plants. Program offices will provide program projections to plant representatives so that overall business projections can be made available to the Services for planning and budgeting.

Advantages: Better cost estimates and lower cost to the government. Provides more realistic costs and stability.

Action Required: Contract Administration functions will be directed to maintain a business base projection, and government offices will be directed to support this effort and utilize these data in planning and budgeting. The OSD Cost Analysis Improvement Group (CAIG) will maintain a data exchange for the Services to assist in improved forecasting.

Approved: _____
Idea Needs More Development:
I Need More Information: _____
Disapproved: _____

Recommendation 20

IMPROVE THE SOURCE SELECTION PROCESS

Some DoD competitively-selected contractors have performed poorly. In some instances, source selection criteria do not sufficiently take into account past performance or plans for future phases of a program. Also, the credibility and realism of contractor cost proposals are not always challenged.

Recommendation: Improve the source selection process to place added emphasis on past performance, schedule realism, facilitization plans and cost credibility. De-emphasize the importance of lowest proposed cost. Devote more attention to evaluating contractors' performance during and at the time of contract completion. Provide award fee contract structure to encourage good performance. This both provides an incentive for good performance, and a measure of contractor performance to be used in future source evaluations. Establish quality ratings where possible and ensure these past performance ratings are available for use by source selection personnel.

Advantages: Eliminate poor performers, eliminate proposals that are unrealistically priced, thereby reducing the risk of buy-ins.

Disadvantages: May limit competition. Will be difficult to implement and apply fairly.

Action Required: USDRE modify the source selection directive, DoDD 4105.67, to emphasize the objectives stated above. USDRE establish a DoD system for recording, documenting and sharing contractor performance.

Approved:
Idea Needs More Development:
I Need More Information:
Disapproved:

2

20 OCTOBER 1982

Recommendation 21

DEVELOP AND USE STANDARD OPERATIONAL AND SUPPORT SYSTEMS

New subsystems and support systems are developed that are peculiar to specific weapon systems, yet have many performance features in common with other systems. Use of standard, off-the-shelf subsystems and/or support systems for some of the long lead time items can reduce development time.

Recommendation: Identify and develop standard subsystems and support systems or their technology (independent of weapon systems) to meet projected weapon system needs. Support a program of weapon support R&D to put diagnostic, repair, and logistic technology on the shelf.

Advantages: Earlier deployment with lower risk. Enhanced supportability. Reduction in operating costs.

Disadvantages: Standard systems or technology may not be best match for the weapon system needs. Requires increased funding to implement. Could be overemphasized.

Action Required: USDRE working with the Services submits a proposed program for FY 82 and beyond within six months.

Approved: _____
Idea Needs More Development: _____
I Need More Information: _____
Disapproved: _____

20 OCTOBER 1982

Recommendation 22

PROVIDE MCOPE APPROPRIATE DESIGN TO COST GOALS

Design to Cost (DTC) fee awards are made as a result of paper analysis. There is little or no tie to actual costs in production. DTC incentive fees and awards are payable during and at the conclusion of Full-Scale Development. Award is based on the forecasted average cost for the production quantity.

Recommendation: Provide appropriate incentives to industry by associating fee awards to actual costs achieved during the early production runs.

Advantages: Ties award to "real" achievement. Makes DTC meaningful.

Disadvantages: Changes in program (rates, quantity, inflation, etc.) complicate analysis of results. Longer time between DTC effort and award payment.

Action Required: Insure program managers and contracting officers develop contract terms and procedures to provide for the payment of Design to Cost (DTC) awards and incentives based upon costs actually achieved during early production runs. Base payments on demonstration that initial costs are on track with DTC goal for total forecasted production.

Approved: _____
Idea Needs More Development: _____
I Need More Information: _____
Disapprove: _____

 r

ASSURE IMPLEMENTATION OF ACQUISITION PROCESS DECISIONS

The acquisition process has been studied many times by many organizations. Most of the recommendations presented here have been made before. However, few of these recommendations have been implemented. Congress, GAO, OMB, OFPP, industry, and OSD have continuously criticized the Services for not following DODD 5000.1 and DODI 5000.2. A recent Navy acquisition study reviewed the implementation status of past acquisition process studies and found that of 50 recurrent recommendations, some progress is perceived to have occurred in 29 and almost no progress is perceived to have occurred in the remainder.

A difficulty with implementing recommendations regarding the acquisition process is the great number of players involved to make implementation succeed. This requires persistent, intensive, follow-up effort to make sure that the recommendations really do take hold. The most common reason for non-implementation is simply that relentless action on the part of top management is not taken to insure that recommendations are, indeed, implemented. OSD has, in the past, focused a great amount of management attention on policy development and resolution. However, OSD has not monitored implementation of the policies on a program basis.

Since potential decisions could lead to major changes to the process and even to DoD organizations and their roles, it will be difficult for the existing DoD organizations to execute changes without high level attention by the SecDef and DepSecDef. Elimination of the complexity inherent in the current process is masked unless the many different types of changes are considered in terms of the aggregate administrative and reporting load generated.

A fundamental determination which is required for each decision is whether implementation should reflect centralized control under OSD or decentralization to the Services. In selected areas a uniformity of action across Services may be desired.

Recommendation: Ensure that a determined management translates approved recommendations into implementable direction and fixes responsibility so that management has visibility of the actions taken.

Advantages: This plan will not succeed without a well planned, intensive, high visibility, relentless implementation phase. Without this effort, this report will degenerate into another study.

Disadvantages: Implementation will require a priority and time commitment from all levels of management ranging from the SecDef to the Program Manager for a number of years.

Action Required: a. Assign overall responsibility to USDRE for monitoring and follow-up of all decisions made in this report.

b. USDRE will assign a prime responsibility for action on every recommendation and decision in this report. In general, these assignments have been specified under the "Action Required" sections; however, in certain cases specific action responsibilities will be defined in the immediate future.

c. USDRE should consider utilizing a working group containing OSD and Service representatives to assist in implementation.

d. USDRE should consider utilizing a number of creative techniques to translate the intent of these recommendations to all levels. This could include formal training sessions, conferences, video taped training films, articles, and policy letters.

e. Both the SecDef and the DepSecDef must maintain a personal interest in ensuring that the changes are implemented, that there is continuous action to improve the acquisition process, that periodic reviews take place, and that all Services and OSD staff be made aware of the SecDef priority interest on this subject.

Approved: _____
Idea Needs More Development: _____
Need More Information: _____
Disapproved: _____

R

MAJOR ISSUES FOR DECISION

This section presents for decision the major issues identified in the Defense Systems Acquisition Review.

A. Issue: WHAT SHOULD BE THE SECDEF (DSARC) DECISION MILESTONES?

The current process provides four discrete SecDef decision points. All of the alternatives discussed below retain the current "milestone" process structure. However, all alternatives either de-emphasize or reduce the number of formal OSD level milestone reviews and SecDef decisions. Under some alternatives certain milestone reviews are delegated to the Service Secretaries. The Secretary of Defense decision authority and acquisition policy responsibilities are maintained and exercised through the PPBS process and/or by invoking explicit disapproval of proposed Service program acquisition decisions at any stage in the cycle. There are four alternatives shown schematically on page .

Alternative One (Page D-11) reduces the current four discrete SecDef decision milestones to three (with flexibility for only two) by altering Milestone Zero.

Milestone Zero SecDef review and decision is accomplished through the annual Planning, Programming and Budgeting System (PPBS).

Although Milestone I is retained, a SecDef decision would generally be necessary only when a program requires a significant prototype (Advanced Development) phase. When held, Milestone I documentation would be reduced.

Milestone II and III reviews would continue to be conducted by the DSARC with final approval action by the SecDef. Any pre- or post-Milestone III reviews deemed necessary would be held at the Service level except under unusual circumstances.

- Pro: - Reduced administrative burden.
- Increased flexibility
- Initial development program reviews and decisions are speeded.

- Con: - May be perceived as a lessening of SecDef control.

Alternative Two (Page D-16) reduces the number of formal SecDef DSARC reviews to Milestones II and III.

Milestone 0 would be reviewed by OSD during PPBS as in Alternative One above.

Milestone I would be delegated to the Service Secretaries. SecDef authority and oversight is maintained through notification of Service decisions with veto/disapproval authority if necessary.

Milestones II and III receive a full DSARC review and DSARC approval.

- Pro: - Further delegation of program responsibility and reduction in administrative burden.
- Front-end process is speeded as in Alternative One.
- Con: - Further reduction in SecDef control over acquisition of major programs at front-end; may restrict SecDef ability to redirect due to program momentum.
- May not be considered proper implementation of A-109 with regard to Milestone I (A-109 requires SecDef to retain decision authority at the four Milestone Decisions).

Alternative Three (Page D-19) reduces the SecDef decision milestones to two, but ensures full SecDef involvement in major program initiation, and improved program definition for program go-ahead. The first decision point, "Requirements Validation: (equivalent to combination of Zero and One), serves as a full DSARC/SecDef review and approval of major program initiation including threat, weapons concept, risk and schedule, readiness, and affordability goals. At this point a specific "not-to-exceed" dollar threshold is established which sets the funding to carry the program through Concept Validation and early Full-Scale Development activity up to the second decision point, "Full-Scale Development and Production." The goals to be achieved by, and the timing of the second SecDef decision point are defined at the first decision point.

The Program Go-Ahead, second SecDef decision point, occurs somewhat later than Milestone II in a "normal" program schedule, and it is selected to coincide with Preliminary Design Review. SecDef retains source veto/disapproval of a Service proposed action and program plans which shall include Full-Scale Development and Production, the program plan for Test and Evaluation, Support and Readiness, and the total acquisition strategy.

The production program review is delegated to the Service Secretary if there are no major changes to the program approved at the second decision point by the SecDef.

- Pro: - The administrative burden is reduced by fewer OSD level reviews.
- The review levels are linked more closely to major expenditure increases.
- Program commitment is delayed until program technical, performance and cost factors are more accurately determined.
- Provides more efficient transition between development and production.
- Con: - Same Cons as above; in addition the divergence from A-109 language is more acute.
- No separate SecDef production decision required.

Alternative Four (Page D-24) eliminates all SecDef decision milestones and delegates total program review responsibility to the Service Secretaries. The DSARC could be invoked at SecDef discretion but generally the SecDef would exercise control and decision authority on a by-exception veto/disapproval basis. Milestone Zero would be conducted through the PPBS process as described earlier.

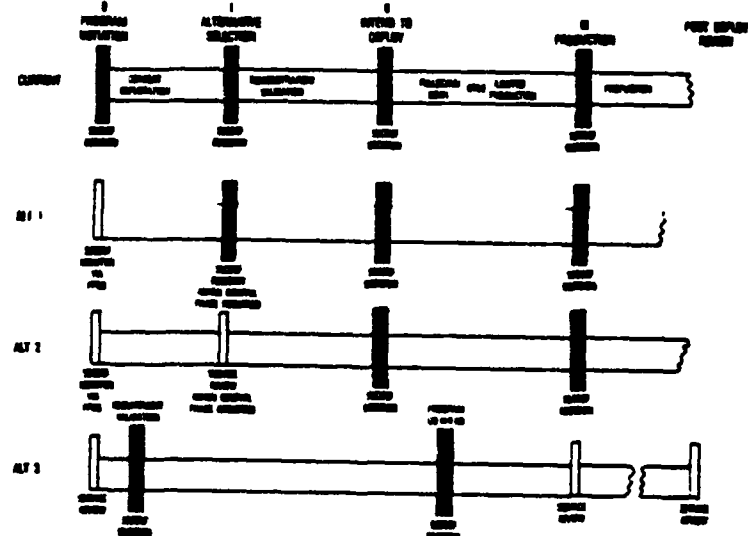
- Pro: - This alternative goes the furthest toward decentralization and reduction in administrative burden.
- Con: - SecDef direct control of major acquisitions is substantially reduced. Perceived violation of the intent of A-109 as regards agency head responsibility.

Action: USDRE revise DoD Directives 5000.1/2 appropriate to alternative selected.

Decision:

- Current: (Four SecDef Milestone Decisions) _____
- Alternative 1: (Three SecDef Milestone Decisions) _____
- Alternative 2: (Two SecDef Milestone Decisions) _____
- Alternative 3: (Two SecDef Milestone Decisions) *[Handwritten mark]* _____
- Alternative 4: (Zero SecDef Milestone Decisions) _____

ACQUISITION PROCESS ALTERNATIVES



B. Issue: SHOULD MENS BE ELIMINATED/REVISED?

Problem: The Mission Element Need Statement (MENS, is an internal DoD document used to support the SecDef decision at Milestone 0. The MENS is required by DoD implementation of OMB Circular A-109 (1976) requirements to state needs in terms of mission and that SecDef should certify the need. The MENS was to be 5 pages or less. In practice staffing has increased and detailed justification information often requested by OSD has contributed directly to perceptions of growth in the "front end" of the acquisition cycle. There are 30 MENS currently approved.

Alternative One would require submission of the MENS (shortened or as currently required) no later than with the Service POM thus linking the acquisition and PPBS process. SecDef approval of MENS would be by accepting POM in the absence of specific disapproval.

- Pro: - Consistent with reduced SecDef review options.
- Better integration of acquisition and PPBS processes as "new starts" would be reviewed in the context of the full Service/DoD budget formulation process.
- SecDef decision authority retained, but exercised by exception in the budget process.
- Con: - Some reduction in SecDef visibility and influence over preliminary program plans.

Alternative Two would eliminate MENS document entirely; Congressional Descriptive Summary (and other POM documentation already required) would document Milestone 0.

- Pro: - Reduced paperwork, simplified program documentation.
- Con: - MENS has been given considerable visibility in OJPP, OMB, and GAO, could be viewed as circumvention of A-109 though MENS not specifically required by A-109.

Action Required: USDRE revise DoD Directive 5000.1/DoD Instruction 5000.2 appropriate for alternative selected.

Decision:

Alternative 1 *sc*
 Alternative 2
 I Need More Information

20 OCTOBER 1982

C. Issue: SHOULD DSARC MEMBERSHIP BE REVISED?

Problem: Service Secretaries have statutory responsibility for the execution of contractual and financial responsibilities for their departments, yet they are not voting members of the DSARC. Service Chiefs also have no vote although they will be responsible for developing and operating the systems under consideration.

Alternative One would maintain current membership. (USDRE, Chairman; USDP; ASD(C); ASD(MRA&L); ASD(PA&E); Chairman, JCS; plus others in special cases).

- Pro: - Retains DSARC as a SecDef staff advisory council.
- Con: - Could place the DSARC in a position of recommending a position that is contradictory to that of the Service line executive responsible to the SecDef without explicitly reflecting the Service position.

Alternative Two would include the appropriate Service Secretary or Service Chief as full members of DSARC.

- Pro: - Provide SecDef with a broader advisory council.
- Reduces adversary nature of current procedure.
- Con: - Reduce the independence of the DSARC as OSD advisor to SecDef.
- Increases the size of the DSARC.

Action Required: USDRE revision of DoD Instruction 5000.2 required.

Decision:

Alternative 1 _____
Alternative 2 _____
I Need More Information _____

D. Issue: WHO SHOULD BE THE DEFENSE ACQUISITION EXECUTIVE (DAE)?

Problem: Current policy requires that a DAE be designated by the SecDef to be the principal advisor and staff assistant for the acquisition of defense systems and equipment. The USDRE is designated the DAE. However, the scope of the function encompasses procurement of material to support and sustain the force. There is continuing competition between modernization readiness, maintenance of forces and sustainability. The USDRE has primary staff responsibility for force modernization efforts of DoD.

Alternative One would retain USDRE as the DAE.

- **Pro:** - The USDRE is clearly the OSD executive with the greatest technical knowledge and systems development expertise.
- **Con:** - Primary USDRE responsibility is developing weapon systems as opposed to operating, maintaining, or supporting the military force.
 - The effort to rationalize and fund competing programs suffers because USDRE could be an R&D proponent himself.

Alternative Two would designate DepSecDef as DAE.

- **Pro:** - Improved balance between modernizing and operating the force and a more coherent defense program could result from having DepSecDef chair both the DRB and the DSARC.
- **Con:** - Increases the level of DepSecDef involvement in the acquisition process. USDRE is the OSD technical and system development expert.

Decision:

Alternative 1 *JK*
 Alternative 2
 I Need More Information

20 OCTOBER 1982

E. Issue: WHAT SHOULD BE THE CRITERION FOR SYSTEMS REVIEWED BY DSARC?

Problem: Currently, there are over 50 major programs designated for DSARC review. Although dollar thresholds (currently \$100M RDT&E or \$500M procurement in FY 1980 \$) are "guidelines," they are generally the rule of thumb used to select major programs. Major program designation is derived by subjective judgment based upon joint Service participation, estimated funding, manpower and support requirements, risk, politics, and other Secretary of Defense interests.

Alternative One would continue present system.

- Pro: - The current system allows flexibility in designation, and does not force uncontentious programs to become major strictly because of large investment.
- Con: - The largely subjective criteria causes uncertainty, and may be susceptible to an arbitrary designation.

Alternative Two increases dollar guidelines for major system designation to \$200M RDT&E and \$1B procurement in FY 80 \$.

- Pro: - The number of Service DSARCs and DSARC would be reduced approximately 25% while still insuring review of the most expensive major systems.
- Uncertainty and the opportunity for arbitrary, unnecessary designation are reduced.
- Con: - Reduces number of major systems of significant investment not reviewed at Secretary of Defense level.

Action Required: USORE revise DoD Directive 5000.1/DoD Instruction 5000.2 if Alternative Two is adopted.

Decision:

Alternative 1 _____
 Alternative 2 _____
 I Need More Information _____

P. Issue: HOW SHOULD THE DSARC/PPBS DECISION BE INTEGRATED?

Problem: It has been the perception that a DSARC endorsement and subsequent SecDef approval commits the SecDef/Service to fund the program as approved. This has led to confusion as to program status and stability. The DSARC process reviews single programs at significant milestones to determine readiness to proceed to the next phase. It is not feasible in that context to assess the financing of a major program vis a vis other Defense requirements. In contrast, the PPBS addresses all programs within a resource allocation framework without an in-depth review of technical issues and program structure. This "disconnect," the lack of explicit resource commitment (including support and manpower) resulting from a successful DSARC review and subsequent SecDef approval, is frequently cited as a flaw in the acquisition process.

Alternative One continues present practice.

- Pro: - Allows funding decisions during POM/budget development.
- Con: - Fosters program instabilities when DSARC program is not supported in PPBS cycle.
- May void contract with industry.

Alternative Two resolves the interface problems by providing that programs reviewed by the DSARC will be accompanied by assurance that sufficient agreed to resources are in the FYDP and EPA or can be programmed to execute the program as recommended. DSARC review would certify the program ready to proceed to the next acquisition stage. Affordability in the aggregate would be a function of the PPBS process.

- Pro: - This would lead to DSARC endorsement of fiscally executable programs and fosters program stability through resource commitment.
- Con: - Funding constraints may be set without regard to technical issues.

Alternative Three has the DRB assume the functions of the DSARC. This also makes DepSecDef the Acquisition Executive.

- Pro: - Decisions made by single body; no need to revisit in another forum.
- Forges a closer linkage between the acquisition process and the PPBS.
- Con: - Current DPP membership not optimal for technical program reviews.

Action Required: Alternative 2--DAE enforce current DoD Directive 5000.1 affordability policy and USDRE revise 5000.1 to strengthen policy and eliminate confusion.

Alternative 3--USDRE revise DoD Directive 5000.1/DoD Instruction 5000.2 to reflect changes in role and membership of DRB.

Decision:

Alternative 1 _____
Alternative 2
Alternative 3
I Need More Information _____

G. Issue: PROGRAM MANAGER CONTROL OVER LOGISTICS AND SUPPORT RESOURCES

Problem: Three programming and budgeting problems are disincentives for program managers to provide system support and readiness.

1. Support program and budget requirements are based on experience related measures (unrelated to readiness) instead of a system's support requirements and readiness factors.
2. Budget review by appropriation categories. The fielding of a weapons system involves several appropriations: R&D, procurement, military construction, operation and maintenance and military personnel. Normally budget decisions in these accounts occur without visibility of the impact on individual system's support or readiness.
3. Budget execution. Some weapon support funds (spares, training, depot) are controlled by Service activities not responsible to the program manager. Sometimes priorities do not match the program manager's and funds are diverted to fund other requirements.

The Program Manager may not know of or participate in PPBS decisions which impact on his system's support. Once decisions are made on his system's support, they may be altered by another activity during budget execution. This is particularly critical early in FSED as well as during the transition to production when large initial support resources are spent. At any given time, there would be an estimated 15-20 weapons total involved in transition. Procurement of spares with contracts separate from the system production contract increases spares costs.

OPTIONS: Alternatives 2 and 3 below would apply to selected weapon systems, those nearing production or in early production (15-20 systems). A two year trial is recommended for the selected alternative.

Alternative One would continue present management system (use traditional/experience related measures to review system support program and budget requirements; review budget by appropriation categories.

- Pro: - No cost of change.
- Con: - Disincentives for program manager to provide system support readiness remain. Budget review and budget execution problems are not addressed.
- Little program manager input to support budget execution.

Alternative Two would have Services submit with the POM support resource requirements and readiness objectives, by weapon system, for systems entering/or in early production. Direct OSD to have a single review of support associated with individual systems.

Pro:

Gives more PPBS visibility of the combined effects of major support decisions on readiness objectives.

Removes PPBS disincentives by reducing independent budget/PPBS decisions without visibility of effect on program as a whole.

Would move in the direction of a more mission oriented budget decision process.

Con:

Some extra work for the reviewers.

Alternative Three is the same as two but would additionally develop procedures to give the PM more control of support resources, funding and execution. Services would develop implementing approaches to deal with the problems identified on this issue. The basic option should give the Program Manager a voice in support resource allocation and budget execution process through increased and centralized resource visibility and coordination by the PM on changes to his plans.

Pro:

Giving the Program Manager a voice (or coordination) in major support resource decisions for his program would improve responsibility.

Con:

A moderate step requires procedural changes and may or may not be effective. More direct control of many resources would unbalance the overall use of logistic resources by the Service.

Action Required: ASD(MRA&L) letter to Services stating objectives to give more incentives to PM. ASD(MRA&L) would work with the Services to define and evaluate implementing options. Initial letter can be prepared within 30 days.

Decision:

Alternative 1
 Alternative 2
 Alternative 3 X
 I Need More Information

H. Issue: IMPROVING RELIABILITY AND SUPPORT FOR SHORTENED ACQUISITION CYCLE

Problem: In response to serious readiness and reliability problems in many of the systems we now operate, there have been increases in Service and OSD efforts to define reliability and support objectives and to demonstrate their accomplishment prior to major production commitment. Recent acquisition policies include this increased emphasis.

The new focus on shortening the development process is potentially in conflict with initiatives to improve reliability and support. Whereas the fastest acquisition approach involves initiating production prior to test of development models, the highest confidence of achieving reliability and other support goals in fielded hardware involves iterative design and testing before high rate production. A balance must be struck on each program. Many of the serious problems in current systems result from not striking the correct balance.

For those systems which are run on a fast track, there are requirements for additional early funding to design in reliability and support characteristics - including the need to pay this price in parallel or competing developments. Additional in-house talent must be brought to bear, and industry incentives need to be applied to avoid previously experienced support problems.

Because of the relative priority of reliability and support efforts compared to performance objectives, and the current shortage of in-house talent to address these problems, specific top management attention, priority and stress on support resources is needed.

Alternative One modifies the current acquisition procedures to require a specific early decision (circa Milestone 1 on many programs) on the approach, additional resources and incentives which will be used to balance the risks in the reliability and support area on each program. The vehicle for decision can be an acquisition strategy prepared by the Program Manager. This should include an option which goes as far as possible in extra efforts (design, parallel testing, contractual) to increase the likelihood of achievement of support objectives on concurrent programs.

- Pro: - Early decision on degree of concurrency sets in motion long lead steps to reduce support risks.
- Results in conscious decision to balance all the objectives in the light of Service and DoD priorities.
- Gets additional early resource needs considered.
- Provides clear support objectives to PM.

- Con: - Will require more up-front funds. Will be viewed by some as addressing support too early.
- Additional responsibility for PM (but the clear decisions may be helpful).

Alternative Two shifts more of the focus to fixing reliability and support problems experienced in fielding the system by subsequent redesign of production hardware and incorporation of fixes. Rely more on interim contractor support while problems are being fixed.

- Pro: - Easier to do.
- Leaves program manager freer to make the trade-offs without Service involvement.
- Con: - Requires more funds to fix later. Historically difficult to get funds for major fixes. Less likelihood of avoiding support problems.
- Congress will criticize the early fielding problems.

Action Required (If Alternative One is selected): USDRE issue guidance adding early assessment of support options to the current procedures. This could be part of a decision on overall acquisition strategy. Additionally request the Services to revise and develop support related planning guidelines.

Decision:

Alternative 1 X
 Alternative 2
 I Need More Information

APPENDIX G

ODSD MEMORANDUM, GUIDANCE ON THE
ACQUISITION IMPROVEMENT PROGRAM 8 JUNE 1983
THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

8 JUN 1983



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN, JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Guidance on the Acquisition Improvement Program (AIP)

Approximately two years ago we initiated the AIP as a concentrated, high-level effort to solve long-standing problems in the acquisition process. The original 32 AIP initiatives have clearly indicated to us various means of shortening the acquisition process, increasing readiness, providing cost savings, and strengthening the industrial base. Attached is a report from the AIP Steering Group reflecting the consensus on the progress we have made in implementing this management endeavor (Attachment A). This report provides a detailed status of each of the 32 AIP initiatives, describes specific actions that remain to be taken and recommends six major areas for my personal emphasis. The report notes that 13 of the initiatives have been implemented and require only periodic monitoring. Nine of the initiatives show varying degrees of progress but require further implementing action by the Office of the Secretary of Defense (OSD) and Service staffs, whom I charge with the responsibility of completing the specific actions called for in the report. The implementation objectives from the second year-end report are summarized in Attachment B.

I approve the recommendations in the report and plan to concentrate personally on improving the following six major areas: (1) Program Stability, (2) Multiyear Procurement, (3) Economic (Stable) Production Rates, (4) Realistic Budgeting, (5) Improved Readiness and Support, and (6) Encouraging Competition. These areas of emphasis offer both the greatest management challenges and the highest potential payoff. I am aware of the intractability of some of the problems they are designed to solve. Collectively, we need continuous high-level concentration to give fresh impetus to them through definitive management actions.

In order to emphasize my personal interest in the AIP, I have asked Sol Love to join my immediate staff to be my key representative for the AIP and to provide oversight to ensure implementation of these acquisition initiatives.

I am establishing high-level working groups from OSD and the Services for each of these six areas. These working groups will be chaired by representatives from the cognizant OSD offices and will identify specific milestones and plans of action within 45 days of the date of this memorandum. I would like the Services and OSD offices to nominate their members to Sol Love within seven days and would hope that there is some continuity in the AIP Steering Group representatives. I expect the working groups to report periodically on implementing these six AIP areas of emphasis.

I would also like the Joint Logistics Commanders to continue their fine efforts in implementing the entire package of acquisition initiatives in the buying commands and to report periodically to me on implementation progress with the primary focus on the six areas of emphasis.



Paul Thayer

Attachment
a/s

ACQUISITION IMPROVEMENT PROGRAM (AIP)

SECOND YEAR-END REPORT

May 18 1983


HARVEY GORDON
CHAIRMAN
AIP STEERING GROUP

Attachment A

Initiative No. 1: Acquisition Management Principles

The management principles include: improving long-range planning; delegating responsibility, authority, and accountability; emphasizing low-risk, evolutionary technology; achieving more economical production rates; budgeting realistically; improving readiness and sustainability; strengthening the industrial base; and improving relations with industry.

STATUS

This initiative has been essentially completed, but continued monitoring is required.

- o This is an umbrella initiative summarizing the key thrusts of the Acquisition Improvement Program. These principles have been institutionalized in DoD and Service documents, and are currently in practice.
- o DODD 5000.1, reissued in 1982 March, stresses the importance of the management principles.
- o Many of the principles such as readiness, realistic budgeting, and economical production rates are, of course, covered by specific initiatives. Others, such as delegation of authority, responsibility, and accountability within the Services require continuous management attention.
- o The Defense Systems Management College (DSMC) includes these principles in its courses.
- o DSMC and the Services are examining incentives for program managers and other acquisition personnel to ensure that the right motivators are in place to achieve desired results.
- o The planning process has been changed to incorporate a major DRB review of policy and options prior to issuing defense guidance.
- o An Indirect Cost Monitoring Office (ICMO) has been established in OUSDRE(AM) to monitor contractor overhead costs.
- o A Contract Administration Directorate in OUSDRE(AM) has been established to ensure consistent and improved contract administration policy throughout DoD.
- o An Industrial Productivity Directorate has been established in OUSDRE(AM) to act as a focal point and proponent for a broad range of issues fostering increased productivity of defense contractors.
- o DoD is working with the Office of Federal Procurement Policy to implement Executive Order 12352. DoD chairs 3 of the 4 interagency task forces that are developing model charters to enhance procurement efficiencies for the entire Federal government.
- o DoD, GSA, and NASA are developing a single simplified federal acquisition regulation (FAR) that will be used by all Federal agencies. It will have an effective implementation date of 1 April 1984.

RECOMMENDED ACTION

- o Continued monitoring by OSD and the Services.

Initiative No. 2: Pre-Planned Product Improvement (P³I)

This initiative is designed to ensure an evolutionary, lower-risk approach to weapon system design in order to reduce unit costs and decrease the time needed to field new equipment.

STATUS

Further staff action is required.

- o A DOD-wide P³I implementation plan was signed by the DEPSECDEF and issued in July 1981. It contained application criteria and required P³I focal points to be appointed in the three Services. The focal points are: Army - DCSRDA, Navy - NAVMAT, Air Force - AFRDX.
- o DODD 5000.1 was revised to require that P³I be considered for each new system and that product improvement of an existing system be considered as an alternative to a new development. Procedures for this were included in DODI 5000.2.
- o The FY84-89 Defense Guidance directed the Services to identify significant P³I efforts. As a result of P³I emphasis, 26 systems (8 Army, 8 Navy, 6 Air Force, and 4 joint Navy/Air Force programs) were highlighted. Resources have been applied to higher priority P³I efforts. For example, in the JVX program an existing engine will be adapted for the basic program. Simultaneously, development of a more capable, modern technology engine will begin. Other examples are the 120mm gun for the M-1 tank, incorporation of VLSI in the ASJP, and incorporation of VHSIC in JTIDS.
- o P³I is actively addressed in all DSARC's and an increasing number of Service SARC's. USDRE and the Services are examining the 15 FY83 and 10 FY84 new starts for P³I content. Such programs would build growth potential into the design for later incorporation of required evolutionary characteristics.
- o Philosophical bias continues to impede full implementation. DOD, and especially industry, generally prefer selection of new high-technology systems of great capability as opposed to modest improvements in existing systems, or new systems of more limited capability that can be upgraded later. Implementation is also hindered because providing for P³I frequently entails greater front-end cost and possible performance penalties.

RECOMMENDED ACTION

- o Continue the DOD review of P³I in the FY 1985-89 POM process focusing particularly on FY 1985 new starts.
- o Continue to consider P³I approaches at DSARC Milestones.
- o USDRE should review P³I content in the FY 1983 and FY 1984 new starts.
- o The Services and ASD(C) should ensure adequate front-end funding for P³I programs.

Initiative No. 3: Multiyear Procurement

This initiative is designed to reduce the cost of mature, low-risk weapon programs already in production by funding economical lot buys instead of small, piecemeal, annual buys.

STATUS

Significant progress has been made; however, this initiative should receive DEPSECDEF emphasis because of its high potential for cost savings.

- o Expanded use of multiyear procurement (MYP) on major weapon systems was approved in the FY82 Authorization Act.
- o Congress approved 8 initiatives in FY82 for a projected savings of \$.8B (F-16 airframe, TRC-170 radio, C-2 airframe, BLACKHAWK airframe, ALQ-136 jammer, SM-1 rocket motor, M-1 fire control, and NAVSTAR).
- o Congress has approved 5 (MLRS, BLACKHAWK engine, KC-10, NATO Sea Sparrow, MK-46 torpedo) of the 12 proposed FY83 multiyear candidates (estimated savings: \$1B). In addition, the DMSP program will be resubmitted in FY83.
- o Six new FY83 candidates for multiyear were proposed in the FY84 budget (AH-64 engine, CH-47D mod, M-60 tank thermal sight, Bradley Fighting Vehicle components, F/A-18 engines, B-1B airframe and major subsystems). Estimated savings: \$1.5B.
- o Eight FY84 candidates for multiyear are proposed (LSD-41, MK-30 target, SSQ-62 sonobuoy, TB-16 towed array, MK-45 gun mount, F-15, AN/TSQ-11 communications nodal control element, KC-135 re-engining). Estimated savings: \$1.1B.
- o DLA and Services have been using the MYP technique on many smaller programs - in the aggregate savings are substantial (in excess of \$200M).
- o In December 1982 OSD reaffirmed its MYP funding policy to fund economic order quantities to the limit of termination liability, but retained flexibility to allow other funding approaches on a case-by-case basis.
- o FY 1983 CRA restrictions have increased the reporting burden on DOD and delayed new multiyear starts.
 - prior notification required on all EOQ purchases
 - reporting required on all programs with cancellation ceiling greater than \$20M (o.f. to \$100M in FY82 authorization act)
 - all major system MYP candidates required to be specifically provided in authorization bill.
- o There is the continuing perception that funds for MYP up-front costs will come at the expense of other annual-buy programs.

RECOMMENDED ACTION

- o This initiative requires continuing DEPSECDEF emphasis.

- o USDRE and ASD(C) should work to convince the Congress to repeal the limitations on multiyear procurement in the FY 1983 Appropriations Act.
- o OSD should continue to provide up-front TOA.
- o DOD should continue to emphasize existing MYP, consider additional candidates for MYP, and also analyze the MYP cost benefits available in smaller dollar value programs.
- o The Services and OSD should collect data on actual savings already experienced.

Initiative No. 4: Program Stability

This initiative is designed to increase the stability of weapon system acquisition by adequately funding R&D and procurement in order to maintain the established baseline schedule and reduce cost growth.

STATUS

Further high-level effort is needed to assure full implementation.

- o A stable programs list has been developed. It consists of multiyear programs already approved by Congress for FY82 and FY83, and includes the new programs proposed for multiyear as additional FY83 and FY84 candidates. There are 27 programs in all.
- o Review of major system new starts is now part of the POM review process, and will focus on out-year affordability before new programs are approved. So far, decisions have not been made on this basis.
- o Major system new starts receive insufficient management attention because the budget year costs are modest compared to the typical multi-billion dollar decisions reviewed by the DRB. For example, the FY 1984 cost of the approved FY 1984 new starts is only \$177M, whereas estimated total program cost is \$64B.
- o OSD continues to approve all new starts submitted in the POM cycle. Although the near-term impact on the budget is slight, these programs will cause a worsening affordability problem in the outyears of the FYDP and the EPA. Once a program is initiated, advocates develop in industry, DOD, and the Congress and make it difficult to kill less effective, lower-priority programs.
- o Turbulence created by Congressional across-the-board procurement cuts continues to be a problem. The December 1982 CRA affected 280 programs and was a major setback to our progress in program stability.
- o A last minute reduction of the FY 1984 DOD topline by \$11.3B created additional instability.
- o Congressional action thus far in FY 1984 does not bode well for stability.

RECOMMENDED ACTIONS

- o This initiative requires DEPSECDEF emphasis.
- o The Services and the DRB should implement the Defense Guidance instructions on terminating lower-priority programs, when necessary, in order to fund and keep stable high-priority programs.
- o The Services and OSD staff should prepare cost estimates for all FY 1985 major system new starts, and a special DSARC or DRB should be convened in mid-July 1983 to review all FY 1985 new starts.

- o The Services and OSD must continue to assure that DSARC and PPBS reviews enforce DOD affordability policy (promulgated in DODD 5000.1).
- o In response to the Defense Guidance, a study on improved planning for program stability should be undertaken.
- o An attempt should be made to convince Congress of the need for greater program stability.
- o DEPSECDEF should appoint a small, high-level OSD-Service team to identify marginal programs to be used as offsets during the POM review cycle in order to preclude offsets being taken from program stretchouts.

Initiative No. 5: Capital Investment

This initiative encourages through a variety of mechanisms capital investment by DoD contractors to increase their productivity.

STATUS

Implementation is on track, but further staff action is required.

- o A USDRE memorandum to the Services dated 20 December 1982 encourages use of Cost Accounting Standard 409.50(e)(5) to permit advance agreement on shorter capital equipment life for depreciation purposes.
- o A test of the Industrial Modernization Incentives Program (IMIP), designed to encourage contractor capital investment was authorized by DEPSECDEF on 2 Nov 1982. The contract incentives being tested include shared savings rewards and contractor investment protection, and are aimed at motivating industry to make productivity enhancing investments.
- o Flexible progress payment procedures and increased progress payment rates have been implemented through USDRE(AM) letter dated 28 August 1981, and are incorporated in DAR E-530. Expedited paying cycle is required by OMB Circular A-125. The USDRE(AM) and USD(C) policy letters implementing this circular require specified due dates in contracts and mandate that bills not be paid earlier or later than the due date.
- o The DAR Pricing Subcommittee is completing its work on revising the Economic Price Adjustment coverage.
- o Negotiation of profit levels commensurate with risk is required by USDRE(AM) memorandum dated 19 June 1981.
- o Program funding for the manufacturing technology program for FY 1984-88 has been doubled over that of FY 1979-83. A scope of work for a manufacturing technology information analysis center has been prepared. Work on a tri-service manufacturing technology data base is underway. A draft of DODI 4200.15 "Manufacturing Technology Program" has been through one formal review, and is being refined based upon the comments received.
- o DOD Authorization Act of 1982, signed 1 Dec 1982, repealed the excess profit provisions of the 1934 Vinson-Trammell Act.

RECOMMENDED ACTION

- o OSD and the Services should continue to actively encourage and support the test of the Industrial Modernization Incentives Program which is underway. USDRE should report progress on the program to the DEPSECDEF quarterly.

- o DoD Contract Finance Committee should continue its work on milestone billings by drafting a DAR case and submitting it to the DAR Council. The DAR Council should publish the material after receipt from the Contract Finance Committee.
- *o The DAR Council Contract Administration Subcommittee and Pricing Subcommittee should continue efforts to revise DAR coverage on the expedited paying cycle to implement USDRE(AM) policy direction of 4 January 1983 and ASD(C) policy director of 1 February 1983, and forward it to the DAR Council for approval and publication.
- *o The DAR Council's Pricing Subcommittee should complete its work on Economic Price Adjustment coverage by May 1983.
- *o The DAR Council should review and implement the revised Economic Price Adjustment coverage by 31 December 1983.
- o USDRE(AM) should take the lead in establishing a tri-Service manufacturing technology data base by June 1984.
- o USDRE(AM) should revise and publish DODI 4200.15 by December 1983.

*Dates listed may be slipped due to the DAR Council's dedicated involvement in the executive review of and transition to use of the Federal Acquisition Regulation, effective date 1 April 1984 as mandated by the President's Executive Order #12352.

Initiative No. 6: Budget to Most Likely Cost

This initiative is designed to achieve realistic defense acquisition budgets, reduce apparent cost growth in weapon systems, and achieve greater program stability.

STATUS

Further high-level effort is needed to assure full implementation.

- o Program managers are now required to consider independent cost estimates in developing their budget estimates and to justify use of an estimate lower than the independent estimate.
- o Service Secretaries are required to provide an explanation of any decision leading to a choice of a budget based on the lowest estimate (independent or program manager's), and to provide plans for ensuring the lower budget is met.
- o Ten programs (F-15, AIM-54C, F-16, LHD-1, AV-8B, Bradley IFV, Pershing II, NAVSTAR, DIVAD, and AMRAAM) were selected by OSD for special review and evaluation of independent cost estimates in 1982.
- o For 1983, independent cost estimates for the budget review will be expanded to 25 programs (ALWT, DDG-51, AV-8B, Trident D-5, Tomahawk, MK-48 ADCAP, NGT, Combat IFF, Lantirn, C-5B, ALCM, Maverick, OTH-B, AMRAAM, MILSTAR, CBU-87, MCS, Singars, DSWS, Stinger, MLRS, Pershing II, Abrams tank, AFATDS).
- o Significant funds (greater than \$2B) were added to the FY 1984 budget to reflect CAIG estimates on the F-15, F-16, F-18, UH-60, and AMRAAM programs.
- o Implementation has been hindered by: program instability resulting from DOD decisions and Congressional direction; changing threat or new technology that requires system changes; and, optimistic cost projections on the part of sponsoring acquisition organizations.

RECOMMENDED ACTION

- o This initiative should become part of "Realistic Budgeting" for continuing DEPSECDEF emphasis.
- o Continue the requirement to submit independent cost estimates with Service POM's for selected programs.

Initiative No. 7: Economic Production Rates

This initiative involves buying weapon systems at a rate that assures economical production and reduces unit cost.

STATUS

Further high-level effort is needed to assure full implementation.

- o A concerted effort was made in conjunction with the FY83 budget submittal to accelerate to more economical production rates (EPRs). Eighteen programs were increased above the Carter FYDP at an estimated savings of \$2.3B. (Estimated savings are calculated by comparing the unit cost of each program at its previous rates to the cost of the same number of items procured at the higher rates.)
- o In addition to the savings, higher production rates result in delivering more materiel to the field.
- o By virtue of the FY84 budget submittal, the \$2.3B savings is now estimated to be \$2.6B despite a tighter budget projection in the out-years. The T-34C and a number of army ammunition lines were accelerated, however, 2 of last year's programs dropped from the list (the SH-60B LAMPS and the AN/BQQ5 Sonar).
- o In the FY 1984 budget process, however, 30 out of a total of 53 major programs were stretched. Reasons for stretches include technical problems, the need to match FY 1983 Congressional reductions, fiscal constraints, and "too many" programs. This is true even though nine were restored to more efficient production rates during the Program Budget Decision process.
- o To further promote the capability to achieve EPRs, greater emphasis is being placed on obtaining a producible design during engineering development, thereby easing the transition to production. Increased or greater consideration will be given to contractors' production capability and proposed producibility efforts in making source selections.

RECOMMENDED ACTION

- o This initiative requires continuing DEPSECDEF emphasis.
- o DoD should continue to examine the stability and economy of production rates in the PPBS.
- o DEPSECDEF should direct termination of lower-priority programs identified for the DRB during the POM review process, if necessary to fund fully the remaining higher-priority programs. If this is not done, the task will be left to the Congress, with results (stretchouts) similar to last year.
- o DoD should facilitate the transition to production by concentrating on Producibility Engineering and Planning (PEP). DSARC reviews should insure that proper planning and funding is included in development efforts to achieve a producible product.

Initiative No. 8: Appropriate Contract Type

This initiative balances program needs and cost savings with a realistic assessment of contractor and government risk by insuring the use of the appropriate contract type.

STATUS

Implementation has been essentially completed.

- o SECDEF letters have been issued emphasizing selection of appropriate contract type to ensure equitable distribution of risk between the government and the contractor.
- o Caution is being exercised not to use firm fixed-price contracts to project a degree of confidence and certainty that may be unwarranted (e.g., in R&D efforts). Reliance on a specific type of contract (i.e., fixed-price) does not lessen the need for effective program management. Normally, a cost reimbursable type contract is appropriate for R&D; and a fixed-price type contract for production. Fixed-price incentive contracts are usually needed for early production, with firm fixed-price contracts more appropriate for follow-on production.
- o For lead ships of a class which involve significant developmental or cost risk, the use of a cost type contract is appropriate. Fixed price incentive contracts are generally the most appropriate contract type for follow ships; however, the unique circumstances of individual procurements require that each decision be made on a case-by-case basis. For mature shipbuilding programs fixed-price incentive contracts utilizing share lines that place primary emphasis on cost and schedule with motivations for contractor performance above target cost at least as great as those below target cost are considered appropriate.

RECOMMENDED ACTION

- o The DSARC should continue to monitor the appropriateness of contract types at its milestone reviews.

Initiative No. 9: System Support and Readiness

This initiative involves establishing readiness objectives for each weapons development program and then designing in reliability and maintainability.

STATUS

Further high-level effort is required to assure full implementation.

- o Readiness goals are now part of the design objectives for new systems established at Milestone I.
- o Applicable Directives and Instructions (5000.1, 5000.2) have been revised and 5000.39 is in revision to increase the priority of support and readiness in acquisition programs.
- o Implementation of this initiative is reviewed in the DSARC process. Recent changes were made in the following DSARC major programs: ASW-SOW, Divad, AH-64, GLCM, LAMPS MK III, ASPJ, Patriot, and M-1 tank to improve readiness and support.
- o This initiative is being restructured to include key aspects of initiatives 12, 16, 30, and 31. This will allow us to address readiness objectives, management approach, contractor incentives, front-end test hardware funding, and adequacy of planned support in an orchestrated fashion.
- o Cost and schedule pressures continue to dominate the structure and acquisition strategy of most programs. Too little management attention and resources are devoted to structuring the early design and test sequences for achieving R&M and readiness objectives and implementing the most efficient support strategy.
- o More work is needed in applying existing analytical tools to relate design and resource decisions to readiness, and to assess the readiness implications of test results.
- o Institute for Defense Analysis and Defense Science Board major projects are underway to improve the understanding of what is needed to develop and produce reliable systems.

RECOMMENDED ACTION

- o Include initiatives 12, 16, 30, and 31 along with this initiative for continuing DEPSECDEF emphasis under the readiness and support area..
- o The DSARC, at each review, should address readiness objectives and management approach, contractor incentives, front-end test articles and funding, and adequacy of planned support.
- o MRA&L should periodically assess the Services' progress in applying this initiative to weapon systems by considering R&M success, weapon support implementation, and projected readiness improvement over contemporary systems.

- o ASD(C) and MRA&L should implement an improved PPBS capability to better estimate logistic resource requirements, track resources for specific weapons, and monitor execution.
- o MRA&L should monitor Service achievement of major advances in the status of improved techniques for readiness modeling, support cost estimating, and application of contractor incentives.
- o More Service advocacy is needed; increased front-end attention and funding should be emphasized.
- o Greater attention should be paid to review of T&E of support equipment in the Service SARC and the DSARC process.
- o Contracts should provide for payment of incentive awards based on attainment of readiness and supportability goals and thresholds, provided there is some assurance that subsequent changes in engineering development prototypes or production systems will not decrease supportability and reliability.

Initiative No. 10: Reduced Administrative Costs

This initiative reduces the administrative cost and time for procuring items by raising the dollar limit on purchase order contracts and cutting unneeded paperwork.

STATUS

Implementation has been essentially completed.

- o Threshold authority to negotiate small purchases was raised from \$10K to \$25K.
- o Contractor certificate of cost and pricing data threshold was raised from \$100K to \$500K.
- o Approval for secretarial signature of R&D determination and findings (D&FS) was raised from \$100K to \$5M.
- o The Air Force is testing a process to simplify and reduce paperwork for contracts of less than \$500K. This process is complicated by the many statutorily required contract clauses.

RECOMMENDED ACTION

- o Action on the original Initiative No. 10 has been essentially completed. A new action item has been initiated to develop a simplified contract format for purchases above the small purchase threshold and under \$500K. The Air Force will prepare a final report on this new effort by December 1983.

Initiative No. 11: Technological Risk Funding

This initiative provides for evaluating, quantifying, and budgeting for technological risk.

STATUS

The specific action to develop procedures to budget for technological risk has been implemented by the Services, and this initiative is now considered completed. Continuing action to implement risk funding will be taken under the DEPSECDEF "Realistic Budgeting" area of emphasis.

- o The Army and Navy (NAVAIR) have implemented a program known as Total Risk Assessing Cost Estimating (TRACE) to improve their budgeting for technological/program risk. The TRACE program quantifies risk and includes funds in the budget to cover the estimated cost associated with the risk. The risk funds are held at the service headquarters or at command level and distributed to the program manager as needed.
- o The Air Force uses techniques similar to the Army's for quantifying risk. However, the Air Force funding for risk is held at the program manager's level.
- o The Army and Navy have identified \$86.5M in FY84 for this purpose.
- o Removal of identified risk dollars during the OSD and Congressional budget review process is a continuing problem.

RECOMMENDED ACTION

- o Risk funding should remain part of "Realistic Budgeting" for continuing DEPSECDEF emphasis.
- o OSD and the Services should work with the Congressional authorization and appropriation committees to improve Congressional acceptance of risk budget requests. This is an action under "Realistic Budgeting."

Initiative No. 12: Test Hardware Funding

This initiative requires that adequate test hardware be obtained to reduce overall schedule time and risks.

STATUS

Further high-level effort under the Readiness and Support is needed to assure full implementation.

- o DEPSECDEF policy memos, dated 6 March 1982 require priority for front-end funding of test hardware.
- o Services have instituted procedures to review this provision in their test planning and in POM/budget preparation.
- o Implementation is being monitored in DSARC reviews and through approval of T&E Master Plans (e.g., DSARC directed additional test hardware for Army Helicopter Improvement Program and ASW Standoff Weapon).
- o DoD attitudes about test and evaluation (T&E) continue to be an impediment. Many people involved in the acquisition process take for granted that weapon systems will work as advertised and regard T&E as a wicket to be passed, rather than a tool in the acquisition process. Some program managers may be overly optimistic about their ability to solve technical problems when faced with poor weapon system test results.

RECOMMENDED ACTION

- o This initiative should be included with the Readiness and Support area for continuing DEPSECDEF emphasis. It is recognized that this initiative is broader than readiness and support hardware; however, when test assets are inadequate, the support parameters are usually the ones not tested.
- o USDRE should be alert at DSARC reviews to the need to increase test hardware.
- o D,DT&E should include this initiative in a revised version of DODD 5000.3, to be completed by December 1983.

Initiative No. 13: Acquisition Legislation

This initiative calls for a review of acquisition-related laws and regulations to identify and change those which are an unnecessary burden on the DoD acquisition process.

STATUS

OSD has forwarded its recommendations to OMB and the Department of Labor, and is awaiting action.

- o A few examples of these recommendations include:
 - Amending 13 statutory thresholds to \$25K to align these with small purchase negotiation authority and permit use of simplified small purchase procedures.
 - Amending the Armed Service procurement act to authorize negotiation for "second sourcing."
 - Amending Walsh-Healy Public Contract Act - contract work hours and safety standards act to permit a 4-day, 40 hour week without premium overtime compensation.

RECOMMENDED ACTION

- o DUSD(AM) should continue to review the status of these legislative initiatives.
- o DUSD(AM) should review the overall DoD acquisition process to determine if additional legislative initiatives are needed.
- o ODUSDRE(AM) and OGC should monitor legislative initiatives which would retard or impede implementation of the acquisition initiatives (i.e., dollar thresholds for certification and audit, multiyear procurement, synopsising, etc.) to ensure timely and appropriate DoD comment.

Initiative No. 14: Reduced Number of DoD Directives and Eliminate Non Cost-Effective Contract Requirements

This initiative requires a reduction in the number of DoD acquisition directives and the amount of contract documentation, and non cost-effective contract requirements..

STATUS

Progress is being made, but more staff action is required.

- o An OSD, Tri-Service, NSIA/AIA group completed a review of 132 acquisition-related DOD Directives. These reviews resulted in recommendations to cancel a total of 31 DOD acquisition-related directives (23% of the directives reviewed). Ten directives have been deleted thus far (DODD's 4105.55, 5230.3, 5230.4, DODIs 2140.1, 4105.65, 4500.41, 5000.22, 5000.32, 5100.38, 7720.16). Target dates are being identified for deletion of the remaining directives.
- o Focus is now being placed on reduction of contract documentation and non cost effective contract requirements. In January 1983, the USDRE requested that the Joint Logistics Commanders (JLC) select a major system in each Military Department as the basis for a detailed review to identify excessive data and management reporting. Industry input was also sought. The Defense Systems Management College (DSMC) will consolidate results of these reviews and provide recommendations to DUSDRE(AM) by 31 July 1983.
- o While a forceful review is being made of existing directives and several have been identified for cancellation, strong follow-up action is required to ensure that these directives are in fact eliminated. Additionally, a thorough requirement is needed to reduce the flow of new directives. For every problem and infraction, there is a tendency to see the need for another directive rather than to seek a solution to the individual problem at hand.

RECOMMENDED ACTION

- o DUSDRE(AM) will report to DEPSECDEF on the status of directives recommended for cancellation and on the status of efforts to reduce non cost-effective contract requirements by 30 June 1983.
- o The Defense Systems Management College will report to the DUSDRE(AM) by 31 July 1983 on the JLC-industry study of contract documentation and non cost-effective contract requirements.
- o DUSDRE(AM) will develop, in conjunction with the Military Departments, an action plan for implementing the JLC/DSMC recommendations by 30 September 1983.
- o DUSDRE(AM) will present to DEPSECDEF by 31 December 1983 progress attained on implementing plans to reduce contract documentation and other non cost-effective contractual requirements..

Initiative No. 15: Funding Flexibility

This initiative involves obtaining legislative authority to transfer funds from procurement to R&D for an individual weapon system without the prior approval of Congress.

STATUS

Progress has been made, but further staff action is required.

- o The efforts of ASD(C) to obtain an increase in reprogramming authority has resulted in the Congress agreeing to increase the reprogramming threshold for R&D programs from \$2M to \$4M, and the threshold for procurement and military personnel from \$5M to \$10M. These increases, approved in December 1981, will allow minor changes to program budgets with reduced administrative effort.
- o Efforts are ongoing to establish procedures for DOD approval of the transfer of funds in a given fiscal year from procurement to RDT&E for an individual weapon system when the SECDEF determines that it is in the national interest to do so. Approval of these procedures by Congress is dependent upon the Services providing valid examples of program efficiencies and cost savings which would justify the additional transfer authority.

RECOMMENDED ACTION

- o The Services should develop specific examples by 30 June 1983 of program efficiencies and cost savings that might be achieved through additional transfer authority and work with ASD(C) to obtain Congressional approval for transfer authority between the R&D and procurement accounts of weapon systems.

Initiative No. 16: Contractor Incentives for Reliability and Support

This initiative requires that incentives be developed to encourage contractors to improve reliability and support.

STATUS

Further high-level effort under the Readiness and Support area is needed to assure full implementation.

- o USDRE guidance was promulgated in August 1981 and policy changes included in revised DODD 5000.39 now in final coordination.
- o Services have evaluated their experience with source selection criteria, contract incentives, award fee, etc. The Air Force has established an analysis center for lessons learned which serves as a source of expertise.
- o MRA&L and the Services have developed guidelines on front-end logistic support analysis. Recent DSARC guidance on AHIP, ASPJ, Divad, and IR Maverick has put increased emphasis on use of contractor incentives.
- o Incentive approaches are difficult to structure and usually add complexity to the contracting process. There has been little technical analysis of the type of incentives that will work best in a given acquisition situation. Each Service has identified a shortage of qualified personnel in this area.
- o Some incentives may require the contractor to perform maintenance in the field, or in place of Service depots. The Services generally do not favor such arrangements.

RECOMMENDED ACTION

- o This initiative should be included with the Readiness and Support area for continuing DEPSECDEF emphasis.
- o The DSARC should continue to closely monitor progress on this initiative.
- o USDRE should review the Air Force's experience with the Product Performance Agreement Center and consider expanding it to a joint-Service center.

Initiative No. 17: Decreased DSARC Data

This initiative requires that DSARC briefing and data requirements be reduced.

STATUS

Implementation has been essentially completed.

- o Major reductions in the amount of documentation are being made via DODI 5000.2. Paperwork has been cut roughly in half: 5 page MENS replaced by 3 page JMSNS, Milestone Reference File eliminated, 60 page Integrated Program Summary (IPS) eliminated at Milestone I, and cut to 30 pages at Milestone II.
- o Arguments persist regarding the need for certain data, such as cost-effectiveness analyses, at all DSARC milestones. In certain cases these data will be essential to defend the need for the program in question, particularly if a Nunn/McCurdy unit-cost threshold is breached and a SECDEF certification is required. When such analyses are not required, care must be taken to assure that resources are not wasted on them.

RECOMMENDED ACTION

- o The Defense Acquisition Executive (DAE) should monitor the Services' implementation of DODD 5000.1 and DODI 5000.2, as well as the reasonableness of OSD staff requests for data.
- o DAE and the Services should monitor the number of briefings that program managers are required to give in preparation for a DSARC.
- o DAE should review the need for cost-effectiveness and other analyses required for DSARC milestones to assure that only essential analyses are performed.

Initiative No. 18: Budgeting for Inflation

This initiative requires that weapon system budgets be prepared using realistic forecasts of inflation.

STATUS

- o The specific action to use realistic inflation indices for weapon systems has been accomplished, and this initiative is considered complete. Continuing action to ensure that the inflation indices used in future budgets are as accurate as possible will be taken under the DEPSECDEF "Realistic Budgeting" area of emphasis.
- o Prior to FY83 DOD budget used estimates based on GNP deflator.
- o Impact of inflation is more severe on DOD than other Federal agencies (highly skilled labor, high technology, and wide use of scarce materials).
- o DOD has obtained approval to use special inflation indices for defense commodities developed by Department of Commerce Bureau of Economic Analysis:
 - Indices based on cost histories of weapons and higher inflation experienced.
 - Both FY83 budget and FY84 budget requests, as well as recent SARS, use these more realistic inflation indices.

RECOMMENDED ACTION

- o Action to track inflation budgeting should remain part of "Realistic Budgeting" for continuing DEPSECDEF emphasis.
- o The Services and ASD(C) should continue to monitor weapon system budgets to assure that proper inflation indices are used.

Initiative No. 19: Forecasting the Business Base

This initiative entails maintaining a data exchange covering business base conditions at major defense plants for use by the Services in planning and budgeting.

STATUS

Implementation has been essentially completed.

- o The Cost Analysis Improvement Group (CAIG) has established a central repository for business base information for individual defense plants.
- o The Military Services have begun submitting business base estimates directly to the CAIG, which in turn is making this information available throughout DOD for use in planning acquisition strategy and developing realistic cost estimates.
- o DPA&E has developed the defense economic impact modeling system to aid business forecasting by industry. The market potential for basic commodities (e.g.; steel, aluminum) is projected.

RECOMMENDED ACTION

- o The Services and D,PA&E should periodically review how the Services are using the data exchange in their planning and budgeting.

Initiative No. 20: Improved Source Selection Process

This initiative places added emphasis on contractors' past performance, schedule realism, facilitization plans, and cost credibility. It requires that a system be established for documenting and sharing information on contractor performance.

STATUS

Implementation is proceeding, but further staff action is required.

- o The DOD Source Selection Directive, DODD 4105.62, is being revised so as to be consistent with current recognized procedures and to emphasize contractor past performance and realism and credibility of cost estimates as source selection criteria. The revised directive is scheduled to be complete in December 1983.
- o There are legal ramifications of considering past performance in a context other than responsibility determinations.
- o The revised DoDD 4105.62 will separate the responsibility determination from relevant and recent examples of past performance that can be used as predictors of future performance under a specific proposal. In this way past performance can be used to assess the realism of the contractor's proposal. Relevant past performance is that which is in the same product area (for example, propulsion, guidance, or sensors) and by the same organizational element as the one in the proposal. The objective is to incorporate this new requirement in the source selection directive without creating excessive requirements for additional proposal material and source selection reviews.

RECOMMENDED ACTION

- o USDRE should revise and publish DODD 4105.62 by December 1983.

Initiative No. 21: Standardization of Operational and Support Systems

This initiative requires the development and use of standard operational and support systems to achieve earlier deployment and better support of weapon systems. The benefits are increased force readiness and support.

STATUS

Implementation is on track, but further staff action is required.

- o Defense FY83/84 standardization guidance systems has been issued that asks the Services to concentrate on high payoff technology areas and on issues inhibiting Initiative No. 21.
- o Service implementation is moving slowly -- particularly with respect to the issuance of Military Department guidance to the field.
- o Several specific elements of major programs have been standardized (e.g., MIL-STD 1750 processors in B-1B, F-16/F-18 standard flight data recorders, standard inertial navigation on F-16 and A-10, and standard central air data computer for many different Air Force and Navy aircraft).
- o OSD has tasked the Defense Materiel Standardization and Specification Board (DMSSB) to address issues surrounding standardization including: funding, the need for commodity panels, and the implementation of standardization guidance. The funding of standardization projects remains a critical issue. GAO is investigating this issue.
- o DARPA, OUSDRE(RA&T), OUSDRE(TWP), and DMSSO are working to better coordinate the approval of 6.3A/6.3B RDT&E projects before they are moved to 6.4 RDT&E status. This focuses standardization at the front-end of RDT&E.
- o New emphasis has been placed on standardization of TDME, (FSC 6625). Reductions of 70% to 80% have been achieved in the variety of some types of test equipment.

RECOMMENDED ACTION

- o The Assistant Secretaries of the Military Departments should focus attention on this initiative to ensure standardization is facilitated where appropriate.
- o USDRE should use the DMSSB as the focal point for assessing programs and recommending management improvements that are needed to more effectively support standardization guidance and report on progress made by October 1983.
- o USDRE should complete a study on the structure and influence of the standardization organizations by December 1983.

- o USDRE, MRA&L, and the Services should convene a panel on support and test equipment to review Service progress in developing standard support systems, and should devise a recommended DoD program.
- o USDRE has developed an action plan to address each of the major issues raised at the 1981 DoD standardization seminar. The Services should develop action plans that support USDRE action plan.
- o The Services should identify, fund, and develop a coordinated action plan to implement specific standardization projects that result in common operational and support systems.
- o USDRE should review the Services' standardization project during the POM process.

Initiative No. 22: Design to Cost Contract Incentives

This initiative requires that DoD provide appropriate incentives to industry by tying award fees to actual costs achieved during early production runs.

STATUS

Implementation will require further strong action.

- o DOD Directive 5000.28 (now DoDD 4245.3) was revised on 6 April 1983 to provide a better relationship between the DTC goals, the associated rewards paid to contractors for achieving them, and the actual cost of production.
- o Trade off latitude between production cost, life cycle cost, technical, and operational and support parameters will be emphasized; and goals will be adjusted for threat changes or because of other changes such as production rate, etc.
- o The Air Force is developing a Military Standard for design-to-cost, which will provide a standard reporting format to be used in contracts with design-to-cost requirements.

RECOMMENDED ACTION

- o The provisions of the revised DoDD 5000.28 (DoDD 4245.3) should be incorporated in every program and should be enforced at Service SARC's and DSARC's.

Initiative No. 23: Implementation of the AIP

This initiative assigns overall responsibility to USDRE to assure that the Acquisition Improvement Program is implemented.

STATUS

Implementation has been emphasized since the AIP was established in April 1981. This report indicates directions for future implementation.

- o Implementation of the initiatives package has been considered one of the initiatives from the beginning.
- o USDR&E has been given overall responsibility, and the DUSD(AM) has chaired an Acquisition Improvement Program (AIP) Steering Group comprised of the Services and principal OSD staff members concerned with these areas.
- o Policies have been established. DODD 5000.1 and DODI 5000.2 have been revised.
- o The Joint Logistics commanders of the 3 Services have been used to spearhead the effort to make sure the working levels in the development organizations implement this package.
- o Several reports have been written, of which this is the latest.
- o Initiatives are being prioritized to identify those:
 - a) For increased emphasis and the personal attention of DEPSECDEF.
 - b) Which are completed and can be "closed out."
 - c) For staff level monitoring and additional effort.

RECOMMENDED ACTION

- o Part III of this report details recommended actions for this initiative.

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AN ANALYSIS OF DEPARTMENT OF DEFENSE FINANCIAL AND
ACQUISITION POLICIES I. (U) NAVAL POSTGRADUATE SCHOOL
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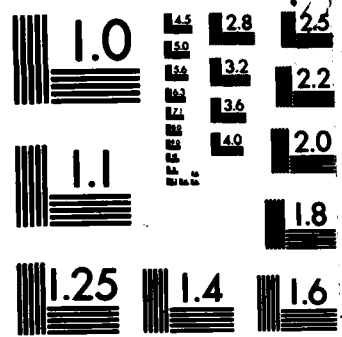
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Initiative No. 24: Decision Milestones

This initiative requires that DODD 5000.1 and DODI 5000.2 be revised to reflect a reduction in the number of DSARC milestones.

STATUS

Implementation has been essentially completed.

- o DoD Directive 5000.1, "Major Systems Acquisition," was reissued in March 1982 and DoD Instruction 5000.2, "Major Systems Acquisition Procedures," was reissued in March 1983.
- o DSARC milestones have been cut from 4 to 2 in order to streamline the DSARC process. Milestone "0" is part of budget process per Initiative 25 and Milestone III is normally delegated to Services.
- o DSARC Milestone II timing is now flexible (i.e., either start of full scale engineering or at early design review). Whenever the timing of the Milestone II is decided, it is ensured that the program manager briefs OSD and the Service SARC in close time proximity.
- o Eight programs have had Milestone III production decision delegated (KC-135 re-engineing, Tomahawk, Inertial Upper Stage, Space Shuttle Utilization, HELLFIRE, MLRS, Patriot, M-1). Going beyond the above streamlining, we have also delegated three Milestone I reviews (DDG-51, AHIP, and Singars radio) and one Milestone II (Next Generation Trainer).
- o Informal program reviews rather than DSARC milestones have been used 16 times (AIM-7M, F-18 (twice), Space Defense, SOTAS, ALWT, CX, M-1, LAMPS, DSCSIII, Patriot, GLCM, ASPJ, IR Maverick, Seek Talk, JVX).

RECOMMENDED ACTION

- o DAE should identify any difficulties associated with the new Milestone II or any other aspects of DoDD 5000.1 and DoDI 5000.2.

Initiative No. 25: Mission Element Needs Statement

This initiative links the acquisition and PPBS processes by requiring the MENS to be submitted with the Service POM.

STATUS

Administratively, this initiative has been completed; however, the new starts review process is a vital part of Initiative No. 4, Program Stability.

- o New starts are now approved as a part of the PPBS process. This integrates Milestone "O" of the acquisition process with the PPBS process. Fifteen FY83 major system new starts were approved and four disapproved using the new process.
- o Ten programs were reviewed in the FY 84 budget submission process (Anti-Tactical Missile, SHORAD Command and Control, RATTLER missile, Follow-on Fighter (VFMX), Vertical Launch ASROC, CV helicopter (SH-60F), Modular Integrated Radar System, Space Surveillance, Advanced Tactical Reconnaissance Systems, Higher Energy Upper Stage).

RECOMMENDED ACTION

- o Integration of the Major System New Starts review process into the PPBS has been completed, however, the following actions are recommended as part of the DEPSECDEF emphasis on program stability.
 - USDRE, with appropriate DSARC staff, should prepare estimates of total program cost for all FY 1985 major system new starts based on POM 85 (see Initiative #4, Program Stability).
 - A special DSARC or DRB should be convened in July 1983 to review all POM 85 major system new starts and to make recommendations to the DRB on these new starts.

Initiative No. 26: DSARC Membership

This initiative adds the appropriate Service Secretary or Service Chief to DSARC membership.

STATUS

Implementation has been completed.

- o Service Secretaries of the Service sponsoring the program are now DSARC members. Services have participated as full DSARC members in 22 DSARC meetings since April 1981 decision.

RECOMMENDED ACTION

- o No further action is needed.

Initiative No. 27: Acquisition Executive

This initiative retains USDRS as the Defense Acquisition Executive

STATUS

Implementation has been completed.

RECOMMENDED ACTION

- o **The DAE should monitor the major systems that are subject to the DSARC process to ensure continued compliance with the spirit of this initiative.**

Initiative No. 28: DSARC System Criteria

This initiative increases the criterion for DSARC review to \$200M RDT&E and \$1B procurement in FY 1980 dollars.

STATUS

Implementation has been completed.

- o The threshold has been increased to \$200M R&D and \$1B production (in FY80 dollars). Ten DSARC programs were delegated to the Services in June 81 because of this new threshold: LVTX, PLSS, CNCE, RATTLER, FLMC, AIM-7M, SURTASS, LCAC, IWD MINES, AND VCK. The new threshold is used to determine those new systems requiring review by the DSARC.

RECOMMENDED ACTION

- o The DAE should monitor the major systems that are subject to the DSARC process to ensure continued compliance with the spirit of this initiative.

Initiative No. 29: DSARC/PPBS Integration

This initiative links the DSARC and the PPBS processes.

STATUS

Administratively, this initiative has been completed; however, the new starts review process is a vital part of Initiative No. 4, Program Stability.

- o Initiative 25 has successfully integrated DSARC and PPBS at Milestone "0".
- o Any affordability issues at subsequent milestones are brought to the attention of the DSARC by considering what is funded in the latest POM or budget (five year defense plan).
- o POM and budget reviews consider whether the planned programming or budget actions are consistent with DSARC guidance for program in question.
- o The decision makers in the DSARC and PPBS are essentially the same, thereby assuring better integration between the acquisition process and the budget process.

RECOMMENDED ACTION

- o As part of the ongoing emphasis on the program stability, the Services and OSD must continue to insure that:
 - DSARC reviews consider affordability in the budget.
 - POM and budget reviews consider latest DSARC guidance.

Initiative No. 30: Program Manager Control Over Logistics and Support Funds

This initiative requires that logistics and support resources be shown in the Service POM by weapon system, and program managers be given more control of support resources.

STATUS

Further high-level effort under the Readiness and Support area is required to assure full implementation.

- o PPBS procedures were developed and implemented on a trial basis to identify more clearly the support funds budgeted in 1982 for 3 systems per Service (M-1, UH-60, MLRS, F/A-18, Aegis Weapon System, Tomahawk, GLCM, NGT, and European Distribution System).
- o Improvements to Service data systems were identified and are being pursued.
- o This initiative on budget visibility of requirements and funding for support of major systems in early production will be applied to an expanded number of systems in the FY85-89 budget review and has been incorporated in POM preparation instructions.
- o Implementation is hampered by procedures, responsibilities, and data systems that are geared toward management of support funding by functional category rather than by weapon system.

RECOMMENDED ACTION

- o This initiative should be included with the Readiness and Support area for DEPSECDEF emphasis.
- o The Services should complete implementation of Initiative 30 on all systems, with particular attention to giving program managers more of a coordinating role.
- o The Services should fully fund support and readiness requirements for new weapon systems.
- o The ASD(MRA&L) should review the adequacy of initial support funding for weapon systems in POM 85 and summarize the results for the DRB.
- o The joint OSD-Service Support Acquisition Requirements and Cost Methodology Improvement Group should identify (by December 1983) high-leverage approaches to improve initial support data bases and estimating techniques.
- o The Services should take the lead in studying ways to implement these approaches, and should report their findings to MRA&L and PA&E by June 1984.
- o A high-level examination of accounting procedures is required to deal with the need to manage support funding by weapon system rather than by functional category.

Initiative No. 31: Improved Reliability and Support

This initiative involves improving reliability and support for shortened acquisition cycle programs.

STATUS

Further high-level effort under the Readiness and Support area is required to assure full implementation.

- o Implementation is being reviewed in the DSARC process. Recent changes were made in the following DSARC major programs: Divad, AH-64, GLCM, ASPJ, AHIP, and ANRAAM.
- o Applicable Directives and Instructions (5000.1 and 5000.2) have either been revised or are in final coordination (5000.39).

RECOMMENDED ACTION

This initiative should be included with the Readiness and Support area for DEPSECDEF emphasis.

Initiative No. 32: Competition

This initiative is designed to enhance competition in the acquisition process in order to reduce cost.

STATUS

Further high-level effort is required to assure full implementation.

- o DOD policy (stemming from the Armed Services Procurement Act) is that all procurements shall be made on a competitive basis to the maximum practicable extent (DAR 1-300). SECDEF in his recent letter of 9 Sept 1982 further reinforced this initiative and requested a commitment to increase competition by all personnel involved in the acquisition process.
- o To enhance competition, the Services and DLA have been directed to: 1) designate advocates for competition, 2) ensure commanders understand their responsibility, 3) establish goals for competition, 4) place special emphasis on planning for competition, and 5) publicize significant achievements.
- o We are currently emphasizing early planning to introduce competition in the development and production phases when appropriate (high front-end investment). New techniques are being employed in this area, such as leader/follower and various teaming arrangements. Examples of second sourcing are the AIM-7M and HELLFIRE missile programs, and planning is underway on the F-15/F-16 engine and AMRAAM program.
- o Second sourcing can be introduced at the subcontractor level in addition to the prime level. Current examples are rocket motors for Pershing II, TOW, Chaparral, and AIM-9M missile programs, F-16 canopy, ACES II ejection seat, and GAU-8 gun and ammo. Planned examples are Bradley Fighting Vehicle ammo, and target detecting device for Phoenix, Maverick, and MX.
- o The requirement for near-term resources at the Service-Defense Agency level to develop additional qualified sources for supplies and services continues to be a problem.
- o There remains the perception in some segments of industry and the DoD technical community that this initiative may result in our competing contracts without properly weighing the risk to successful program completion.
- o The DAR Council review of DAR Case 79-42 on development of additional sources has been delayed due to FAR implementation.
- o The availability of adequate technical data packages for the reprourement of spares, components, and parts continues to be a problem. The apparent conflict between DAR policy on patent and data rights and the use of technical data for competition needs to be resolved.
- o OSD has requested a legislative change to establish a negotiation exception for developing a second source.

RECOMMENDED ACTION

- o This initiative requires continuing DEPSECDEF emphasis.
- o DUSDRE(AM) should continue to work with the Services to set challenging goals for competition and emphasize the role of competition advocates to meet those goals.
- o DUSDRE(AM) should assist in identifying and eliminating barriers to effective competition.
- o DUSDRE(AM) should insure competition is considered in the acquisition strategy of all programs reviewed by DSARC.

PART II: IMPLEMENTATION OBJECTIVES

Initiatives Essentially Completed

The following initiatives are either completed, working well or essentially completed such that only some monitorship is required. They are well on their way to becoming institutionalized, only periodic review should be necessary in the future to see that the intended objectives are accomplished, and that they remain an integral part of the way DoD does business.

1. Management Principles
8. Contract Type
10. Reduced Administrative Costs
11. Technological Risk Funding
17. Decreased DSARC Data
18. Budgeting for Inflation
19. Forecasting the Business Base
24. Decision Milestones
25. MENS in the POM (administratively complete but part of No. 4, Program Stability)
26. DSARC Membership
27. Acquisition Executive
28. DSARC System Criteria
29. DSARC/PPBS Integration (administratively complete but part of No. 4, Program Stability)

Further Action Required

The following initiatives still require specific future action before they become institutionalized. In many cases significant progress has been made already, but there remain definitive milestones not yet met to insure proper implementation.

	<u>Service Action*</u>	<u>OSD Action*</u>
2. Pre-Planned Product Improvement (P ³ I)	x	x
5. Capital Investment	x	x
13. Acquisition Legislation		x
14. Reduced Number of Directives		x
15. Funding Flexibility	x	
20. Improved Source Selection Process		x
21. Standard Operational and Support Systems	x	x
22. Design to Cost Contract Incentives	x	x
23. Implementation		x

*Specific actions are addressed below and in the body of the year-end report.

Initiatives Requiring Special DEPSECDEF Emphasis

The last group of initiatives includes those for which special DEPSECDEF attention and emphasis is required. The six major areas listed below promise significant cost savings but are also the most challenging of the Acquisition Improvement Program Initiatives. Primary implementation responsibility for the consolidated initiatives remains with the Services and with selected OSD staff offices having normal functional responsibilities in these areas. For example, in the area of realistic budgeting, the Services take primary action to insure realism in POM and budget submittals. The cognizant OSD offices (OSD (Comptroller) and the Cost Analysis Improvement Group in this case) provide review during the normal PPBS sequence. For purposes of providing DEPSECDEF review and oversight, implementation working groups with high-level representatives from the Services and appropriate OSD offices will report to the Council on Integrity and Management Improvement periodically (or quarterly) for each of the six areas selected for DEPSECDEF emphasis.

Organizational Responsibility for Implementing Areas Requiring DEPSECDEF Emphasis

<u>Working Group</u>	<u>Chairman</u>	<u>Other OSD</u>	<u>Service Member(s)</u>		
			<u>Army</u>	<u>Navy</u>	<u>Air Force</u>
Program Stability	D,PA&E	USDRE	_____	_____	_____
Multiyear Procurement	ASD(C)	USDRE	_____	_____	_____
Economic Prod. Rates	USDRE	D,PA&E	_____	_____	_____
Realistic Budgeting	ASD(C)	CAIG	_____	_____	_____
Readiness & Support	ASD(MRA&L)	USDRE	_____	_____	_____
Encouraging Competition	USDRE	DLA	_____	_____	_____

Each of these six areas requires Service and OSD action (current actions are addressed below and in the body of the report) as well as DEPSECDEF emphasis for implementation. These areas have proven to be the most intractable in the past and for this reason, are the ones to receive the greatest attention from this point. Each working group is required to identify detailed action plans and milestone dates (in addition to those current actions listed below).

Implementation Actions

The body of the year-end report recommends the following specific actions:

<u>Initiative</u>	<u>Responsible Office</u>	<u>Deadline Date</u>
2. <u>Pre-Planned Product Improvement (P³I)</u>		
- Review P ³ I content in FY83 and FY84 major system new starts.	USDRE/Services	July 1983
- Continue DoD review of P ³ I in FY 85-89 POM process, focusing on FY 85 new starts.	USDRE/Services	July 1983
- Ensure adequate front-end funding for P ³ I	Services/ASD(C)	Near-Term (6 months)

<u>Initiative</u>	<u>Responsible Office</u>	<u>Deadline Date</u>
3. <u>Multivyear Procurement (MYP)</u>		
- Work to convince Congress to alter restrictions on MYP in the FY 83 Appropriations Act	USDRE/ASD(C)	Intermediate (6-12 mos.)
- Continuing emphasis to identify multiyear candidates during FY85 POM Budget cycle and future.	ASD(C)/ USDRE*/ Services	Intermediate (6-12 mos.) and Long-Term (12 mos.)
- Collect data on actual savings.	Services/OSD	N/A
4. <u>Program Stability</u>		
- Continuing emphasis during PPBS process, including the termination of lower-priority programs in order to fund and keep stable higher-priority programs.	D,PA&E*	Continuing
- Prepare "ballpark" cost estimates for all FY 85 major system new starts	Services/OSD	Near-Term (6 months)
- Convene special DSARC or DRB to review FY85 major system new starts	DSARC or DRB	Near-Term (6 months)
- In response to Defense Guidance undertake a study on improved planning for program stability which will identify procurement bow wave problems and offer alternative courses of action for dealing with them.	USDRE/Services	Intermediate (6-12 mos.)
5. <u>Capital Investment</u>		
- Publish interim acceptance standards for Milestone Billings	DAR Council	60 days after receipt from contract finance committee
- Publish DAR coverage on the expedited paying cycle	DAR Council	60 days after receipt from subcommittee
- Review and implement revised Economic Price Adjustment coverage	DAR Council	60 days after receipt from subcommittee
- Establish tri-Service manufacturing technology data base	USDRE(AM)	June 1984
- Revise and publish DoDI #200.15, "Manufacturing Technology."	USDRE(AM)	December 1983

<u>Initiative</u>	<u>Responsible Office</u>	<u>Deadline Date</u>
- Support technical data rights coverage in the FAR	DoD	31 December 1983
- Analyze progress in the OSD/tri-Service Industrial Modernization Incentives Program and identify for further emphasis those incentives proving most successful.	Services/DLA/ USDRE	Intermediate (6-12 mos.)
- Emphasize in testimony to Congress, the need for greater program stability and the penalties for stretchouts.	USDRE/ Services	Intermediate (6-12 mos.)
6. <u>Budget to Most Likely Cost</u>		
- Continuing emphasis during PPBS and acquisition processes.	ASD(C)*	N/A
- Continue the requirement to submit independent cost estimates with Service POMs for selected programs.	Services/CAIG	N/A
7. <u>Economic Production Rates</u>		
- Continuing emphasis during PPBS and acquisition process reviews.	USDRE*	N/A
- Facilitate the transition to production by concentrating on Producibility Engineering and Planning at all DSARC reviews.	USDRE/ Services	N/A
9. <u>System Support and Readiness</u>		
- Continuing emphasis during PPBS and acquisition process reviews.	ASD(MRA&L)*	N/A
- Assess R&M successes and projected readiness over contemporary systems.	ASD(MRA&L)	N/A
- Implement improved PPBS capability to better estimate logistic support requirements, track resources for specific weapons, and monitor execution.	ASD(MRA&L)	Intermediate (6-12 mos.)
- Address readiness objectives and management approach, contractor incentives, test	ASD(MRA&L)/ USDRE	N/A

<u>Initiative</u>	<u>Responsible Office</u>	<u>Deadline Date</u>
articles and funding, and adequacy of planned support at all DSARC reviews. - Increased front-end attention and funding.	Services	N/A
11. <u>Technical Risk Funding</u>		
- Continuing high-level emphasis as part of "Realistic Budgeting."	ASD(C)*	N/A
- Monitor status of TRACE during PPBS and report to DRB when appropriate.	ASD(C)/ Services	N/A
- Agree on procedures for justifying risk dollars in budget submission.	ASD(C)/ Services	N/A
- Work with Congressional Committees to improve Congressional acceptance of risk budget requests.	ASD(C)/ Services	N/A
12. <u>Test Hardware Funding</u>		
- Continuing high-level emphasis as part of "Readiness and Support."	ASD(MRA&L)*	N/A
- Revise DODD 5000.3 to require that adequate test hardware is obtained to reduce overall schedule time and risk.	D,DT&E	December 1983
13. <u>Acquisition Legislation</u>		
- Review overall DoD acquisition process to determine if additional legislative changes are required to reduce unnecessary burden on DoD.	DUSD(AM)/OGC	Long-Term (12 months)
14. <u>Reduced Number of Directives</u>		
- Prepare report to DepSecDef on status of directives recommended for cancellation and efforts to reduce non cost effective contract requirements.	DUSD(AM)	30 June 1983

<u>Initiative</u>	<u>Responsible Office</u>	<u>Deadline Date</u>
- Report to DUSD(AM) on the JLC-Contractor study of contract data requirements.	DSMC	31 July 1983
- Develop an action plan for implementing DSMC recommendations.	DUSD(AM)	30 September 1983
- Present progress report on implementing plans to reduce contract documentation and other non-cost-effective requirements to DepSecDef.	DUSD(AM)	31 December 1983
15. <u>Funding Flexibility</u>		
- Develop specific examples of program efficiencies that might be achieved through additional funds transfer authority.	Services	30 June 1983
- Obtain Congressional approval for funds transfer authority between the R&D and procurement accounts of weapon systems.	ASD(C)/ Services	Near-Term (6 months)
16. <u>Contractor Incentives for R&S</u>		
- Continuing emphasis as part of improving Readiness & Support.	ASD(MRA&L)*	N/A
- Review Air Force's experience with the Product Performance Agreement Center and consider expanding it to a joint-Service center.	MRA&L/USDRE	April 1984
18. <u>Budgeting for Inflation</u>		
- Continuing high-level emphasis on more realistic budgeting by using special inflation indices for defense commodities.	ASD(C)*	N/A
20. <u>Source Selection</u>		
- Revise DODD 4105.62 to reflect contractor past performance and realism/credibility of cost estimates as source selection criteria.	USDRE	December 1983

<u>Initiative</u>	<u>Responsible Office</u>	<u>Deadline Date</u>
21. <u>Standardization</u>		
- Examine Service organization structure and its influence on standardization.	USDRE	December 1983
- Convene panel on support and test equipment to review progress on standard support systems.	USDRE/MRA&L/ Services	N/A
- Develop action plan to address issues raised at Nov 1981 DoD standardization seminar.	USDRE/ Services	N/A
22. <u>Design to Cost (DTC) Contract Incentives</u>		
- Revise DODD 5000.28 to provide a better relationship between DTC goals, award fees paid, and actual cost of production.	USDRE	December 1983
30. <u>Program Manager Control Over Logistics and Support Funds</u>		
- Continuing high-level emphasis	ASD(MRA&L)*	N/A
- Review adequacy of initial support funding for weapon systems in POM 85 and summarize results for DRB.	ASD(MRA&L)	Intermediate (6-12 months)
- Identify high leverage approaches to improve data bases and estimating techniques.	OSD/Services	December 1983
- Report on ways to implement these high leverage approaches.	Services	June 1984
32. <u>Competition</u>		
- Continuing high-level emphasis	USDRE*	N/A
- Establish challenging goals for competition and emphasize the role of competition advocate to meet those goals.	DUSD(AM)	N/A
- Identify and eliminate barriers to competition.	DUSD(AM)	N/A

*Because of the nature and importance of the action, the lead OSD office should provide recommended actions or decision packages (supported by data/analyses) coordinated with Sol Love to DepSecDef to accomplish the stated actions.

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