

Clinger - Cohen Act

On February 10, 1996, the President signed the Information Technology Management Reform Act (ITMRA) into law; ITMRA together with the Federal Acquisition Reform Act became known as the Clinger-Cohen Act.

110 STAT. 186 PUBLIC LAW 104-106—FEB. 10, 1996

Public Law 104-106
104th Congress

An Act

To authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to reform acquisition laws and information technology management of the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Defense Authorization Act for Fiscal Year 1996”.

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into five divisions as follows:

- (1) Division A—Department of Defense Authorizations.
- (2) Division B—Military Construction Authorizations.
- (3) Division C—Department of Energy National Security Authorizations and Other Authorizations.
- (4) Division D—Federal Acquisition Reform.
- (5) Division E—Information Technology Management Reform.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Organization of Act into divisions; table of contents.
- Sec. 3. Congressional defense committees defined.
- Sec. 4. Extension of time for submission of reports.

**DIVISION A—DEPARTMENT OF DEFENSE
AUTHORIZATIONS
TITLE I—PROCUREMENT**

Subtitle A—Authorization of Appropriations

- Sec. 101. Army.
- Sec. 102. Navy and Marine Corps.
- Sec. 103. Air Force.
- Sec. 104. Defense-wide activities.
- Sec. 105. Reserve components.
- Sec. 106. Defense Inspector General.
- Sec. 107. Chemical demilitarization program.
- Sec. 108. Defense health programs.

Subtitle B—Army Programs

- Sec. 111. Procurement of OH-58D Armed Kiowa Warrior helicopters.
- Sec. 112. Repeal of requirements for armored vehicle upgrades.
- Sec. 113. Multiyear procurement of helicopters.
- Sec. 114. Report on AH-64D engine upgrades.
- Sec. 115. Requirement for use of previously authorized multiyear procurement authority for Army small arms procurement.

Subtitle C—Navy Programs

- Sec. 131. Nuclear attack submarines.
- Sec. 132. Research for advanced submarine technology.
- Sec. 133. Cost limitation for Seawolf submarine program.
- Sec. 134. Repeal of prohibition on backfit of Trident submarines.
- Sec. 135. Arleigh Burke class destroyer program.
- Sec. 136. Acquisition program for crash attenuating seats.
- Sec. 137. T-39N trainer aircraft.
- Sec. 138. Pioneer unmanned aerial vehicle program.

Subtitle D—Air Force Programs

- Sec. 141. B-2 aircraft program.
- Sec. 142. Procurement of B-2 bombers.
- Sec. 143. MC-130H aircraft program.

Subtitle E—Chemical Demilitarization Program

- Sec. 151. Repeal of requirement to proceed expeditiously with development of chemical demilitarization cryofracture facility at Tooele Army Depot, Utah.
- Sec. 152. Destruction of existing stockpile of lethal chemical agents and munitions.
- Sec. 153. Administration of chemical demilitarization program.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

- Sec. 201. Authorization of appropriations.
- Sec. 202. Amount for basic research and exploratory development.
- Sec. 203. Modifications to Strategic Environmental Research and Development Program.
- Sec. 204. Defense dual use technology initiative.

Subtitle B—Program Requirements, Restrictions, and Limitations

- Sec. 211. Space launch modernization.
- Sec. 212. Tactical manned reconnaissance.
- Sec. 213. Joint Advanced Strike Technology (JAST) program.
- Sec. 214. Development of laser program.
- Sec. 215. Navy mine countermeasures program.
- Sec. 216. Space-based infrared system.
- Sec. 217. Defense Nuclear Agency programs.
- Sec. 218. Counterproliferation support program.
- Sec. 219. Nonlethal weapons study.
- Sec. 220. Federally funded research and development centers and university-affiliated research centers.
- Sec. 221. Joint seismic program and global seismic network.
- Sec. 222. Hydra-70 rocket product improvement program.
- Sec. 223. Limitation on obligation of funds until receipt of electronic combat consolidation master plan.
- Sec. 224. Report on reductions in research, development, test, and evaluation.
- Sec. 225. Advanced Field Artillery System (Crusader).
- Sec. 226. Demilitarization of conventional munitions, rockets, and explosives.
- Sec. 227. Defense Airborne Reconnaissance program.

Subtitle C—Ballistic Missile Defense Act of 1995

- Sec. 231. Short title.
- Sec. 232. Findings.
- Sec. 233. Ballistic Missile Defense policy.
- Sec. 234. Theater Missile Defense architecture.
- Sec. 235. Prohibition on use of funds to implement an international agreement concerning Theater Missile Defense systems.
- Sec. 236. Ballistic Missile Defense cooperation with allies.
- Sec. 237. ABM Treaty defined.
- Sec. 238. Repeal of Missile Defense Act of 1991.

Subtitle D—Other Ballistic Missile Defense Provisions

- Sec. 251. Ballistic Missile Defense program elements.
- Sec. 252. Testing of Theater Missile Defense interceptors.
- Sec. 253. Repeal of missile defense provisions.

Subtitle E—Miscellaneous Reviews, Studies, and Reports

- Sec. 261. Precision-guided munitions.
- Sec. 262. Review of C4I by National Research Council.
- Sec. 263. Analysis of consolidation of basic research accounts of military departments.
- Sec. 264. Change in reporting period from calendar year to fiscal year for annual report on certain contracts to colleges and universities.
- Sec. 265. Aeronautical research and test capabilities assessment.

Subtitle F—Other Matters

- Sec. 271. Advanced lithography program.
- Sec. 272. Enhanced fiber optic guided missile (EFOG–M) system.
- Sec. 273. States eligible for assistance under Defense Experimental Program To Stimulate Competitive Research.
- Sec. 274. Cruise missile defense initiative.
- Sec. 275. Modification to university research initiative support program.
- Sec. 276. Manufacturing technology program.
- Sec. 277. Five-year plan for consolidation of defense laboratories and test and evaluation centers.
- Sec. 278. Limitation on T–38 avionics upgrade program.
- Sec. 279. Global Positioning System.
- Sec. 280. Revision of authority for providing Army support for the National Science Center for Communications and Electronics.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

- Sec. 301. Operation and maintenance funding.
- Sec. 302. Working capital funds.
- Sec. 303. Armed Forces Retirement Home.
- Sec. 304. Transfer from National Defense Stockpile Transaction Fund.
- Sec. 305. Civil Air Patrol.

Subtitle B—Depot-Level Activities

- Sec. 311. Policy regarding performance of depot-level maintenance and repair for the Department of Defense.
- Sec. 312. Management of depot employees.
- Sec. 313. Extension of authority for aviation depots and naval shipyards to engage in defense-related production and services.
- Sec. 314. Modification of notification requirement regarding use of core logistics functions waiver.

Subtitle C—Environmental Provisions

- Sec. 321. Revision of requirements for agreements for services under environmental restoration program.
- Sec. 322. Addition of amounts creditable to Defense Environmental Restoration Account.
- Sec. 323. Use of Defense Environmental Restoration Account.
- Sec. 324. Revision of authorities relating to restoration advisory boards.
- Sec. 325. Discharges from vessels of the Armed Forces.

Subtitle D—Commissaries and Nonappropriated Fund Instrumentalities

Sec. 331. Operation of commissary system.

Sec. 332. Limited release of commissary stores sales information to manufacturers, distributors, and other vendors doing business with Defense Commissary Agency.

Sec. 333. Economical distribution of distilled spirits by nonappropriated fund instrumentalities.

Sec. 334. Transportation by commissaries and exchanges to overseas locations.

Sec. 335. Demonstration project for uniform funding of morale, welfare, and recreation activities at certain military installations.

Sec. 336. Operation of combined exchange and commissary stores.

Sec. 337. Deferred payment programs of military exchanges.

Sec. 338. Availability of funds to offset expenses incurred by Army and Air Force Exchange Service on account of troop reductions in Europe.

Sec. 339. Study regarding improving efficiencies in operation of military exchanges and other morale, welfare, and recreation activities and commissary stores.

Sec. 340. Repeal of requirement to convert ships' stores to nonappropriated fund instrumentalities.

Sec. 341. Disposition of excess morale, welfare, and recreation funds.

Sec. 342. Clarification of entitlement to use of morale, welfare, and recreation facilities by members of reserve components and dependents.

Subtitle E—Performance of Functions by Private-Sector Sources

Sec. 351. Competitive procurement of printing and duplication services.

Sec. 352. Direct vendor delivery system for consumable inventory items of Department of Defense.

Sec. 353. Payroll, finance, and accounting functions of the Department of Defense.

Sec. 354. Demonstration program to identify overpayments made to vendors.

Sec. 355. Pilot program on private operation of defense dependents' schools.

Sec. 356. Program for improved travel process for the Department of Defense.

Sec. 357. Increased reliance on private-sector sources for commercial products and services.

Subtitle F—Miscellaneous Reviews, Studies, and Reports

Sec. 361. Quarterly readiness reports.

Sec. 362. Restatement of requirement for semiannual reports to Congress on transfers from high-priority readiness appropriations.

Sec. 363. Report regarding reduction of costs associated with contract management oversight.

Sec. 364. Reviews of management of inventory control points and Material Management Standard System.

Sec. 365. Report on private performance of certain functions performed by military aircraft.

Sec. 366. Strategy and report on automated information systems of Department of Defense.

Subtitle G—Other Matters

Sec. 371. Codification of Defense Business Operations Fund.

Sec. 372. Clarification of services and property that may be exchanged to benefit the historical collection of the Armed Forces.

Sec. 373. Financial management training.

Sec. 374. Permanent authority for use of proceeds from the sale of certain lost, abandoned, or unclaimed property.

Sec. 375. Sale of military clothing and subsistence and other supplies of the Navy and Marine Corps.

Sec. 376. Personnel services and logistical support for certain activities held on military installations.

Sec. 377. Retention of monetary awards.

Sec. 378. Provision of equipment and facilities to assist in emergency response actions.

Sec. 379. Report on Department of Defense military and civil defense preparedness to respond to emergencies resulting from a chemical, biological, radiological, or nuclear attack.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Sec. 401. End strengths for active forces.

Sec. 402. Temporary variation in DOPMA authorized end strength limitations for active duty Air Force and Navy officers in certain grades.

Sec. 403. Certain general and flag officers awaiting retirement not to be counted.

Subtitle B—Reserve Forces

Sec. 411. End strengths for Selected Reserve.

Sec. 412. End strengths for Reserves on active duty in support of the Reserves.

Sec. 413. Counting of certain active component personnel assigned in support of reserve component training.

Sec. 414. Increase in number of members in certain grades authorized to serve on active duty in support of the Reserves.

Sec. 415. Reserves on active duty in support of cooperative threat reduction programs not to be counted.

Sec. 416. Reserves on active duty for military-to-military contacts and comparable activities not to be counted.

Subtitle C—Military Training Student Loads

Sec. 421. Authorization of training student loads.

Subtitle D—Authorization of Appropriations

Sec. 431. Authorization of appropriations for military personnel.

Sec. 432. Authorization for increase in active-duty end strengths.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

Sec. 501. Joint officer management.

Sec. 502. Retired grade for officers in grades above major general and rear admiral.

Sec. 503. Wearing of insignia for higher grade before promotion.

Sec. 504. Authority to extend transition period for officers selected for early retirement.

Sec. 505. Army officer manning levels.

Sec. 506. Authority for medical department officers other than physicians to be appointed as Surgeon General.

Sec. 507. Deputy Judge Advocate General of the Air Force.

Sec. 508. Authority for temporary promotions for certain Navy lieutenants with critical skills.

Sec. 509. Retirement for years of service of Directors of Admissions of Military and Air Force academies.

Subtitle B—Matters Relating to Reserve Components

Sec. 511. Extension of certain Reserve officer management authorities.

Sec. 512. Mobilization income insurance program for members of Ready Reserve.

Sec. 513. Military technician full-time support program for Army and Air Force reserve components.

Sec. 514. Revisions to Army Guard Combat Reform Initiative to include Army Reserve under certain provisions and make certain revisions.

Sec. 515. Active duty associate unit responsibility.

Sec. 516. Leave for members of reserve components performing public safety duty.

Sec. 517. Department of Defense funding for National Guard participation in joint disaster and emergency assistance exercises.

Subtitle C—Decorations and Awards

Sec. 521. Award of Purple Heart to persons wounded while held as prisoners of war before April 25, 1962.

Sec. 522. Authority to award decorations recognizing acts of valor performed in combat during the Vietnam conflict.

Sec. 523. Military intelligence personnel prevented by secrecy from being considered for decorations and awards.

Sec. 524. Review regarding upgrading of Distinguished-Service Crosses and Navy Crosses awarded to Asian-Americans and Native American Pacific Islanders for World War II service.

Sec. 525. Eligibility for Armed Forces Expeditionary Medal based upon service in El Salvador.

Sec. 526. Procedure for consideration of military decorations not previously submitted in timely fashion.

Subtitle D—Officer Education Programs

PART I—SERVICE ACADEMIES

Sec. 531. Revision of service obligation for graduates of the service academies.

Sec. 532. Nominations to service academies from Commonwealth of the Northern Marianas Islands.

Sec. 533. Repeal of requirement for athletic director and nonappropriated fund account for the athletics programs at the service academies.

Sec. 534. Repeal of requirement for program to test privatization of service academy preparatory schools.

PART II—RESERVE OFFICER TRAINING CORPS

Sec. 541. ROTC access to campuses.

Sec. 542. ROTC scholarships for the National Guard.

Sec. 543. Delay in reorganization of Army ROTC regional headquarters structure.

Sec. 544. Duration of field training or practice cruise required under the Senior Reserve Officers' Training Corps program.

Sec. 545. Active duty officers detailed to ROTC duty at senior military colleges to serve as Commandant and Assistant Commandant of Cadets and as tactical officers.

Subtitle E—Miscellaneous Reviews, Studies, and Reports

Sec. 551. Report concerning appropriate forum for judicial review of Department of Defense personnel actions.

Sec. 552. Comptroller General review of proposed Army end strength allocations.

Sec. 553. Report on manning status of highly deployable support units.

Sec. 554. Review of system for correction of military records.

Sec. 555. Report on the consistency of reporting of fingerprint cards and final disposition forms to the Federal Bureau of Investigation.

Subtitle F—Other Matters

Sec. 561. Equalization of accrual of service credit for officers and enlisted members.

Sec. 562. Army Ranger training.

Sec. 563. Separation in cases involving extended confinement.

Sec. 564. Limitations on reductions in medical personnel.

Sec. 565. Sense of Congress concerning personnel tempo rates.

Sec. 566. Separation benefits during force reduction for officers of commissioned corps of National Oceanic and Atmospheric Administration.

Sec. 567. Discharge of members of the Armed Forces who have the HIV-1 virus.

Sec. 568. Revision and codification of Military Family Act and Military Child Care Act.

Sec. 569. Determination of whereabouts and status of missing persons.

Sec. 570. Associate Director of Central Intelligence for Military Support.

Subtitle G—Support for Non-Department of Defense Activities

Sec. 571. Repeal of certain civil-military programs.

Sec. 572. Training activities resulting in incidental support and services for eligible organizations and activities outside the Department of Defense.

Sec. 573. National Guard civilian youth opportunities pilot program.

Sec. 574. Termination of funding for Office of Civil-Military Programs in Office of the Secretary of Defense.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Sec. 601. Military pay raise for fiscal year 1996.

Sec. 602. Limitation on basic allowance for subsistence for members residing without dependents in Government quarters.

Sec. 603. Election of basic allowance for quarters instead of assignment to inadequate quarters.

Sec. 604. Payment of basic allowance for quarters to members in pay grade E-6 who are assigned to sea duty.

Sec. 605. Limitation on reduction of variable housing allowance for certain members.

Sec. 606. Clarification of limitation on eligibility for family separation allowance.

Subtitle B—Bonuses and Special and Incentive Pays

Sec. 611. Extension of certain bonuses for reserve forces.

Sec. 612. Extension of certain bonuses and special pay for nurse officer candidates, registered nurses, and nurse anesthetists.

Sec. 613. Extension of authority relating to payment of other bonuses and special pays.

Sec. 614. Codification and extension of special pay for critically short wartime health specialists in the Selected Reserves.

Sec. 615. Hazardous duty incentive pay for warrant officers and enlisted members serving as air weapons controllers.

Sec. 616. Aviation career incentive pay.

Sec. 617. Clarification of authority to provide special pay for nurses.

Sec. 618. Continuous entitlement to career sea pay for crew members of ships designated as tenders.

Sec. 619. Increase in maximum rate of special duty assignment pay for enlisted members serving as recruiters.

Subtitle C—Travel and Transportation Allowances

Sec. 621. Repeal of requirement regarding calculation of allowances on basis of mileage tables.

Sec. 622. Departure allowances.

Sec. 623. Transportation of nondependent child from member's station overseas after loss of dependent status while overseas.

Sec. 624. Authorization of dislocation allowance for moves in connection with base realignments and closures.

Subtitle D—Retired Pay, Survivor Benefits, and Related Matters

Sec. 631. Effective date for military retiree cost-of-living adjustments for fiscal years 1996, 1997, and 1998.

Sec. 632. Denial of non-regular service retired pay for Reserves receiving certain court-martial sentences.

Sec. 633. Report on payment of annuities for certain military surviving spouses.

Sec. 634. Payment of back quarters and subsistence allowances to World War II veterans who served as guerilla fighters in the Philippines.

Sec. 635. Authority for relief from previous overpayments under minimum income widows program.

Sec. 636. Transitional compensation for dependents of members of the Armed Forces separated for dependent abuse.

Subtitle E—Other Matters

Sec. 641. Payment to survivors of deceased members for all leave accrued.

Sec. 642. Repeal of reporting requirements regarding compensation matters.

Sec. 643. Recoupment of administrative expenses in garnishment actions.

Sec. 644. Report on extending to junior noncommissioned officers privileges provided for senior noncommissioned officers.

Sec. 645. Study regarding joint process for determining location of recruiting stations.

Sec. 646. Automatic maximum coverage under Servicemen's Group Life Insurance.
Sec. 647. Termination of Servicemen's Group Life Insurance for members of the Ready Reserve who fail to pay premiums.

TITLE VII—HEALTH CARE PROVISIONS

Subtitle A—Health Care Services

Sec. 701. Modification of requirements regarding routine physical examinations and immunizations under CHAMPUS.
Sec. 702. Correction of inequities in medical and dental care and death and disability benefits for certain Reserves.
Sec. 703. Medical care for surviving dependents of retired Reserves who die before age 60.
Sec. 704. Medical and dental care for members of the Selected Reserve assigned to early deploying units of the Army Selected Reserve.
Sec. 705. Dental insurance for members of the Selected Reserve.
Sec. 706. Permanent authority to carry out specialized treatment facility program.

Subtitle B—TRICARE Program

Sec. 711. Definition of TRICARE program.
Sec. 712. Priority use of military treatment facilities for persons enrolled in managed care initiatives.
Sec. 713. Staggered payment of enrollment fees for TRICARE program.
Sec. 714. Requirement of budget neutrality for TRICARE program to be based on entire program.
Sec. 715. Training in health care management and administration for TRICARE lead agents.
Sec. 716. Pilot program of individualized residential mental health services.
Sec. 717. Evaluation and report on TRICARE program effectiveness.
Sec. 718. Sense of Congress regarding access to health care under TRICARE program for covered beneficiaries who are medicare eligible.

Subtitle C—Uniformed Services Treatment Facilities

Sec. 721. Delay of termination of status of certain facilities as Uniformed Services Treatment Facilities.
Sec. 722. Limitation on expenditures to support Uniformed Services Treatment Facilities.
Sec. 723. Application of CHAMPUS payment rules in certain cases.
Sec. 724. Application of Federal Acquisition Regulation to participation agreements with Uniformed Services Treatment Facilities.
Sec. 725. Development of plan for integrating Uniformed Services Treatment Facilities in managed care programs of Department of Defense.
Sec. 726. Equitable implementation of uniform cost sharing requirements for Uniformed Services Treatment Facilities.
Sec. 727. Elimination of unnecessary annual reporting requirement regarding Uniformed Services Treatment Facilities.

Subtitle D—Other Changes to Existing Laws Regarding Health Care Management

Sec. 731. Maximum allowable payments to individual health-care providers under CHAMPUS.

Sec. 732. Notification of certain CHAMPUS covered beneficiaries of loss of CHAMPUS eligibility.

Sec. 733. Personal services contracts for medical treatment facilities of the Coast Guard.

Sec. 734. Identification of third-party payer situations.

Sec. 735. Redesignation of Military Health Care Account as Defense Health Program Account and two-year availability of certain account funds.

Sec. 736. Expansion of financial assistance program for health-care professionals in reserve components to include dental specialties.

Sec. 737. Applicability of limitation on prices of pharmaceuticals procured for Coast Guard.

Sec. 738. Restriction on use of Department of Defense facilities for abortions.

Subtitle E—Other Matters

Sec. 741. Triservice nursing research.

Sec. 742. Termination of program to train military psychologists to prescribe psychotropic medications.

Sec. 743. Waiver of collection of payments due from certain persons unaware of loss of CHAMPUS eligibility.

Sec. 744. Demonstration program to train military medical personnel in civilian shock trauma units.

Sec. 745. Study regarding Department of Defense efforts to determine appropriate force levels of wartime medical personnel.

Sec. 746. Report on improved access to military health care for covered beneficiaries entitled to medicare.

Sec. 747. Report on effect of closure of Fitzsimons Army Medical Center, Colorado, on provision of care to military personnel, retired military personnel, and their dependents.

Sec. 748. Sense of Congress on continuity of health care services for covered beneficiaries adversely affected by closures of military medical treatment facilities.

Sec. 749. State recognition of military advance medical directives.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Reform

Sec. 801. Inapplicability of limitation on expenditure of appropriations to contracts at or below simplified acquisition threshold.

Sec. 802. Authority to delegate contracting authority.

Sec. 803. Control in procurements of critical aircraft and ship spare parts.

Sec. 804. Fees for certain testing services.

Sec. 805. Coordination and communication of defense research activities.

Sec. 806. Addition of certain items to domestic source limitation.

Sec. 807. Encouragement of use of leasing authority.

Sec. 808. Cost reimbursement rules for indirect costs attributable to private sector

work of defense contractors.

Sec. 809. Subcontracts for ocean transportation services.

Sec. 810. Prompt resolution of audit recommendations.

Sec. 811. Test program for negotiation of comprehensive subcontracting plans.

Sec. 812. Procurement of items for experimental or test purposes.

Sec. 813. Use of funds for acquisition of designs, processes, technical data, and computer software.

Sec. 814. Independent cost estimates for major defense acquisition programs.

Sec. 815. Construction, repair, alteration, furnishing, and equipping of naval vessels.

Subtitle B—Other Matters

Sec. 821. Procurement technical assistance programs.

Sec. 822. Defense facility-wide pilot program.

Sec. 823. Treatment of Department of Defense cable television franchise agreements.

Sec. 824. Extension of pilot mentor-protege program.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—General Matters

Sec. 901. Organization of the Office of the Secretary of Defense.

Sec. 902. Reduction in number of Assistant Secretary of Defense positions.

Sec. 903. Deferred repeal of various statutory positions and offices in Office of the Secretary of Defense.

Sec. 904. Redesignation of the position of Assistant to the Secretary of Defense for Atomic Energy.

110 STAT. 194 PUBLIC LAW 104–106—FEB. 10, 1996

Sec. 905. Joint Requirements Oversight Council.

Sec. 906. Restructuring of Department of Defense acquisition organization and workforce.

Sec. 907. Report on Nuclear Posture Review and on plans for nuclear weapons management in event of abolition of Department of Energy.

Sec. 908. Redesignation of Advanced Research Projects Agency.

Subtitle B—Financial Management

Sec. 911. Transfer authority regarding funds available for foreign currency fluctuations.

Sec. 912. Defense Modernization Account.

Sec. 913. Designation and liability of disbursing and certifying officials.

Sec. 914. Fisher House trust funds.

Sec. 915. Limitation on use of authority to pay for emergency and extraordinary expenses.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Sec. 1001. Transfer authority.

Sec. 1002. Incorporation of classified annex.

- Sec. 1003. Improved funding mechanisms for unbudgeted operations.
- Sec. 1004. Operation Provide Comfort.
- Sec. 1005. Operation Enhanced Southern Watch.
- Sec. 1006. Authority for obligation of certain unauthorized fiscal year 1995 defense appropriations.
- Sec. 1007. Authorization of prior emergency supplemental appropriations for fiscal year 1995.
- Sec. 1008. Authorization reductions to reflect savings from revised economic assumptions.

Subtitle B—Naval Vessels and Shipyards

- Sec. 1011. Iowa class battleships.
- Sec. 1012. Transfer of naval vessels to certain foreign countries.
- Sec. 1013. Contract options for LMSR vessels.
- Sec. 1014. National Defense Reserve Fleet.
- Sec. 1015. Naval salvage facilities.
- Sec. 1016. Vessels subject to repair under phased maintenance contracts.
- Sec. 1017. Clarification of requirements relating to repairs of vessels.
- Sec. 1018. Sense of Congress concerning naming of amphibious ships.
- Sec. 1019. Sense of Congress concerning naming of naval vessel.
- Sec. 1020. Transfer of riverine patrol craft.

Subtitle C—Counter-Drug Activities

- Sec. 1021. Revision and clarification of authority for Federal support of drug interdiction and counter-drug activities of the National Guard.

Subtitle D—Civilian Personnel

- Sec. 1031. Management of Department of Defense civilian personnel.
- Sec. 1032. Conversion of military positions to civilian positions.
- Sec. 1033. Elimination of 120-day limitation on details of certain employees.
- Sec. 1034. Authority for civilian employees of Department of Defense to participate voluntarily in reductions in force.
- Sec. 1035. Authority to pay severance payments in lump sums.
- Sec. 1036. Continued health insurance coverage.
- Sec. 1037. Revision of authority for appointments of involuntarily separated military reserve technicians.
- Sec. 1038. Wearing of uniform by National Guard technicians.
- Sec. 1039. Military leave for military reserve technicians for certain duty overseas.
- Sec. 1040. Personnel actions involving employees of nonappropriated fund instrumentalities.
- Sec. 1041. Coverage of nonappropriated fund employees under authority for flexible and compressed work schedules.
- Sec. 1042. Limitation on provision of overseas living quarters allowances for nonappropriated fund instrumentality employees.
- Sec. 1043. Elections relating to retirement coverage.
- Sec. 1044. Extension of temporary authority to pay civilian employees with respect to the evacuation from Guantanamo, Cuba.

Subtitle E—Miscellaneous Reporting Requirements

- Sec. 1051. Report on fiscal year 1997 budget submission regarding Guard and Reserve components.

- Sec. 1052. Report on desirability and feasibility of providing authority for use of funds derived from recovered losses resulting from contractor fraud.
- Sec. 1053. Report of national policy on protecting the national information infrastructure against strategic attacks.
- Sec. 1054. Report on Department of Defense boards and commissions.
- Sec. 1055. Date for submission of annual report on special access programs.

Subtitle F—Repeal of Certain Reporting and Other Requirements and Authorities

- Sec. 1061. Repeal of miscellaneous provisions of law.
- Sec. 1062. Reports required by title 10, United States Code.
- Sec. 1063. Reports required by defense authorization and appropriations Acts.
- Sec. 1064. Reports required by other provisions of law.

Subtitle G—Department of Defense Education Programs

- Sec. 1071. Continuation of Uniformed Services University of the Health Sciences.
- Sec. 1072. Additional graduate schools and programs at Uniformed Services University of the Health Sciences.
- Sec. 1073. Funding for adult education programs for military personnel and dependents outside the United States.
- Sec. 1074. Assistance to local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees.
- Sec. 1075. Sharing of personnel of Department of Defense domestic dependent schools and defense dependents' education system.
- Sec. 1076. Increase in reserve component Montgomery GI Bill educational assistance allowance with respect to skills or specialties for which there is a critical shortage of personnel.
- Sec. 1077. Date for annual report on reserve component Montgomery GI Bill educational assistance program.
- Sec. 1078. Scope of education programs of Community College of the Air Force.
- Sec. 1079. Amendments to education loan repayment programs.

Subtitle H—Other Matters

- Sec. 1081. National defense technology and industrial base, defense reinvestment, and defense conversion programs.
- Sec. 1082. Ammunition industrial base.
- Sec. 1083. Policy concerning excess defense industrial capacity.
- Sec. 1084. Sense of Congress concerning access to secondary school student information for recruiting purposes.
- Sec. 1085. Disclosure of information concerning unaccounted for United States personnel from the Korean Conflict, the Vietnam era, and the Cold War.
- Sec. 1086. Operational support airlift aircraft fleet.
- Sec. 1087. Civil Reserve Air Fleet.
- Sec. 1088. Damage or loss to personal property due to emergency evacuation or extraordinary circumstances.

Sec. 1089. Authority to suspend or terminate collection actions against deceased members.

Sec. 1090. Check cashing and exchange transactions for dependents of United States Government personnel.

Sec. 1091. Designation of National Maritime Center.

Sec. 1092. Sense of Congress regarding historic preservation of Midway Islands.

Sec. 1093. Sense of Senate regarding Federal spending.

Sec. 1094. Extension of authority for vessel war risk insurance.

TITLE XI—UNIFORM CODE OF MILITARY JUSTICE

Sec. 1101. Short title.

Sec. 1102. References to Uniform Code of Military Justice.

Subtitle A—Offenses

Sec. 1111. Refusal to testify before court-martial.

Sec. 1112. Flight from apprehension.

Sec. 1113. Carnal knowledge.

Subtitle B—Sentences

Sec. 1121. Effective date for forfeitures of pay and allowances and reductions in grade by sentence of court-martial.

Sec. 1122. Required forfeiture of pay and allowances during confinement.

Sec. 1123. Deferment of confinement.

Subtitle C—Pretrial and Post-Trial Actions

110 STAT. 196 PUBLIC LAW 104–106—FEB. 10, 1996

Sec. 1131. Article 32 investigations.

Sec. 1132. Submission of matters to the convening authority for consideration.

Sec. 1133. Commitment of accused to treatment facility by reason of lack of mental capacity or mental responsibility.

Subtitle D—Appellate Matters

Sec. 1141. Appeals by the United States.

Sec. 1142. Repeal of termination of authority for Chief Justice of the United States to designate Article III judges for temporary service on Court of Appeals for the Armed Forces.

Subtitle E—Other Matters

Sec. 1151. Advisory committee on criminal law jurisdiction over civilians accompanying the Armed Forces in time of armed conflict.

Sec. 1152. Time after accession for initial instruction in the Uniform Code of Military Justice.

Sec. 1153. Technical amendment.

TITLE XII—COOPERATIVE THREAT REDUCTION WITH STATES OF FORMER SOVIET UNION

Sec. 1201. Specification of Cooperative Threat Reduction programs.

Sec. 1202. Fiscal year 1996 funding allocations.

Sec. 1203. Prohibition on use of funds for peacekeeping exercises and related activities with Russia.

Sec. 1204. Revision to authority for assistance for weapons destruction.

- Sec. 1205. Prior notice to Congress of obligation of funds.
Sec. 1206. Report on accounting for United States assistance.
Sec. 1207. Limitation on assistance to nuclear weapons scientists of former Soviet Union.
Sec. 1208. Limitations relating to offensive biological warfare program of Russia.
Sec. 1209. Limitation on use of funds for chemical weapons destruction facility.

TITLE XIII—MATTERS RELATING TO OTHER NATIONS

Subtitle A—Peacekeeping Provisions

- Sec. 1301. Limitation on use of Department of Defense funds for United States share of costs of United Nations peacekeeping activities.

Subtitle B—Humanitarian Assistance Programs

- Sec. 1311. Overseas humanitarian, disaster, and civic aid programs.
Sec. 1312. Humanitarian assistance.
Sec. 1313. Landmine clearance program.

Subtitle C—Arms Exports and Military Assistance

- Sec. 1321. Defense export loan guarantees.
Sec. 1322. National security implications of United States export control policy.
Sec. 1323. Department of Defense review of export licenses for certain biological pathogens.
Sec. 1324. Annual reports on improving export control mechanisms and on military assistance.
Sec. 1325. Report on personnel requirements for control of transfer of certain weapons.

Subtitle D—Burdensharing and Other Cooperative Activities Involving Allies and NATO

- Sec. 1331. Accounting for burdensharing contributions.
Sec. 1332. Authority to accept contributions for expenses of relocation within host nation of United States Armed Forces overseas.
Sec. 1333. Revised goal for allied share of costs for United States installations in Europe.
Sec. 1334. Exclusion of certain forces from European end strength limitation.
Sec. 1335. Cooperative research and development agreements with NATO organizations.
Sec. 1336. Support services for the Navy at the port of Haifa, Israel.

Subtitle E—Other Matters

- Sec. 1341. Prohibition on financial assistance to terrorist countries.
Sec. 1342. Judicial assistance to the International Tribunal for Yugoslavia and to the International Tribunal for Rwanda.
Sec. 1343. Semiannual reports concerning United States-People's Republic of China Joint Defense Conversion Commission.

TITLE XIV—ARMS CONTROL MATTERS

- Sec. 1401. Revision of definition of landmine for purposes of landmine export moratorium.
Sec. 1402. Reports on moratorium on use by Armed Forces of antipersonnel landmines.
Sec. 1403. Extension and amendment of counter-proliferation authorities.
Sec. 1404. Limitation on retirement or dismantlement of strategic nuclear delivery systems.

- Sec. 1405. Congressional findings and sense of Congress concerning treaty violations.
Sec. 1406. Sense of Congress on ratification of Chemical Weapons Convention and START II Treaty.
Sec. 1407. Implementation of arms control agreements.
Sec. 1408. Iran and Iraq arms nonproliferation.

TITLE XV—TECHNICAL AND CLERICAL AMENDMENTS

- Sec. 1501. Amendments related to Reserve Officer Personnel Management Act.
Sec. 1502. Amendments to reflect name change of Committee on Armed Services of the House of Representatives.
Sec. 1503. Miscellaneous amendments to title 10, United States Code.
Sec. 1504. Miscellaneous amendments to annual defense authorization Acts.
Sec. 1505. Miscellaneous amendments to other laws.
Sec. 1506. Coordination with other amendments.

TITLE XVI—CORPORATION FOR THE PROMOTION OF RIFLE PRACTICE AND FIREARMS SAFETY

- Sec. 1601. Short title.

Subtitle A—Establishment and Operation of Corporation

- Sec. 1611. Establishment of the Corporation.
Sec. 1612. Conduct of Civilian Marksmanship Program.
Sec. 1613. Eligibility for participation in Civilian Marksmanship Program.
Sec. 1614. Issuance, loan, and sale of firearms and ammunition by the Corporation.
Sec. 1615. Transfer of firearms and ammunition from the Army to the Corporation.
Sec. 1616. Reservation by the Army of firearms and ammunition for the Corporation.
Sec. 1617. Army logistical support for the program.
Sec. 1618. General authorities of the Corporation.
Sec. 1619. Distribution of Corporate assets in event of dissolution.

Subtitle B—Transitional Provisions

- Sec. 1621. Transfer of funds and property to the Corporation.
Sec. 1622. Continuation of eligibility for certain civil service benefits for former Federal employees of Civilian Marksmanship Program.
Sec. 1623. Certification of completion of transition.
Sec. 1624. Repeal of authority for conduct of Civilian Marksmanship Program by the Army.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

- Sec. 2001. Short title.

TITLE XXI—ARMY

- Sec. 2101. Authorized Army construction and land acquisition projects.
Sec. 2102. Family housing.
Sec. 2103. Improvements to military family housing units.
Sec. 2104. Authorization of appropriations, Army.

TITLE XXII—NAVY

Sec. 2201. Authorized Navy construction and land acquisition projects.

Sec. 2202. Family housing.

Sec. 2203. Improvements to military family housing units.

Sec. 2204. Authorization of appropriations, Navy.

Sec. 2205. Revision of fiscal year 1995 authorization of appropriations to clarify availability of funds for large anechoic chamber facility, Patuxent River Naval Warfare Center, Maryland.

Sec. 2206. Authority to carry out land acquisition project, Hampton Roads, Virginia.

Sec. 2207. Acquisition of land, Henderson Hall, Arlington, Virginia.

Sec. 2208. Acquisition or construction of military family housing in vicinity of San Diego, California.

TITLE XXIII—AIR FORCE

Sec. 2301. Authorized Air Force construction and land acquisition projects.

Sec. 2302. Family housing.

Sec. 2303. Improvements to military family housing units.

Sec. 2304. Authorization of appropriations, Air Force.

Sec. 2305. Retention of accrued interest on funds deposited for construction of family housing, Scott Air Force Base, Illinois.

TITLE XXIV—DEFENSE AGENCIES

Sec. 2401. Authorized Defense Agencies construction and land acquisition projects.

Sec. 2402. Military family housing private investment.

Sec. 2403. Improvements to military family housing units.

Sec. 2404. Energy conservation projects.

Sec. 2405. Authorization of appropriations, Defense Agencies.

Sec. 2406. Limitations on use of Department of Defense Base Closure Account 1990.

Sec. 2407. Modification of authority to carry out fiscal year 1995 projects.

Sec. 2408. Reduction in amounts authorized to be appropriated for fiscal year 1994 contingency construction projects.

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

Sec. 2501. Authorized NATO construction and land acquisition projects.

Sec. 2502. Authorization of appropriations, NATO.

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

Sec. 2601. Authorized Guard and Reserve construction and land acquisition projects.

Sec. 2602. Reduction in amount authorized to be appropriated for fiscal year 1994 Air National Guard Projects.

Sec. 2603. Correction in authorized uses of funds for Army National Guard projects in Mississippi.

TITLE XXVII—EXPIRATION AND EXTENSION OF AUTHORIZATIONS

Sec. 2701. Expiration of authorizations and amounts required to be specified by law.

Sec. 2702. Extension of authorizations of certain fiscal year 1993 projects.

Sec. 2703. Extension of authorizations of certain fiscal year 1992 projects.

TITLE XXVIII—GENERAL PROVISIONS

Subtitle A—Military Housing Privatization Initiative

Sec. 2801. Alternative authority for construction and improvement of military housing.
Sec. 2802. Expansion of authority for limited partnerships for development of military family housing.

Subtitle B—Other Military Construction Program and Military Family Housing Changes

Sec. 2811. Special threshold for unspecified minor construction projects to correct life, health, or safety deficiencies.
Sec. 2812. Clarification of scope of unspecified minor construction authority.
Sec. 2813. Temporary authority to waive net floor area limitation for family housing acquired in lieu of construction.
Sec. 2814. Reestablishment of authority to waive net floor area limitation on acquisition by purchase of certain military family housing.
Sec. 2815. Temporary authority to waive limitations on space by pay grade for military family housing units.
Sec. 2816. Rental of family housing in foreign countries.
Sec. 2817. Clarification of scope of report requirement on cost increases under contracts for military family housing construction.
Sec. 2818. Authority to convey damaged or deteriorated military family housing.
Sec. 2819. Energy and water conservation savings for the Department of Defense.
Sec. 2820. Extension of authority to enter into leases of land for special operations activities.

PUBLIC LAW 104–106—FEB. 10, 1996 110 STAT. 199

Sec. 2821. Disposition of amounts recovered as a result of damage to real property.
Sec. 2822. Pilot program to provide interest rate buy down authority on loans for housing within housing shortage areas at military installations.

Subtitle C—Defense Base Closure and Realignment

Sec. 2831. Deposit of proceeds from leases of property located at installations being closed or realigned.
Sec. 2832. In-kind consideration for leases at installations to be closed or realigned.
Sec. 2833. Interim leases of property approved for closure or realignment.
Sec. 2834. Authority to lease property requiring environmental remediation at installations approved for closure or realignment.
Sec. 2835. Final funding for Defense Base Closure and Realignment Commission.
Sec. 2836. Exercise of authority delegated by the Administrator of General Services.
Sec. 2837. Lease back of property disposed from installations approved for closure or realignment.
Sec. 2838. Improvement of base closure and realignment process regarding disposal of property.
Sec. 2839. Agreements for certain services at installations being closed.
Sec. 2840. Authority to transfer property at military installations to be closed to persons who construct or provide military family housing.
Sec. 2841. Use of single base closure authorities for disposal of property and facilities at Fort Holabird, Maryland.

Subtitle D—Land Conveyances Generally

PART I—ARMY CONVEYANCES

- Sec. 2851. Transfer of jurisdiction, Fort Sam Houston, Texas.
- Sec. 2852. Transfer of jurisdiction, Fort Bliss, Texas.
- Sec. 2853. Transfer of jurisdiction and land conveyance, Fort Devens Military Reservation, Massachusetts.
- Sec. 2854. Modification of land conveyance, Fort Belvoir, Virginia.
- Sec. 2855. Land exchange, Fort Lewis, Washington.
- Sec. 2856. Land exchange, Army Reserve Center, Gainesville, Georgia.
- Sec. 2857. Land conveyance, Holston Army Ammunition Plant, Mount Carmel, Tennessee.
- Sec. 2858. Land conveyance, Indiana Army Ammunition Plant, Charlestown, Indiana.
- Sec. 2859. Land conveyance, Fort Ord, California.
- Sec. 2860. Land conveyance, Parks Reserve Forces Training Area, Dublin, California.
- Sec. 2861. Land conveyance, Army Reserve Center, Youngstown, Ohio.
- Sec. 2862. Land conveyance, Army Reserve Property, Fort Sheridan, Illinois.
- Sec. 2863. Land conveyance, property underlying Cummins Apartment Complex, Fort Holabird, Maryland.
- Sec. 2864. Modification of existing land conveyance, Army property, Hamilton Air Force Base, California.

PART II—NAVY CONVEYANCES

- Sec. 2865. Transfer of jurisdiction, Naval Weapons Industrial Reserve Plant, Calverton, New York.
- Sec. 2866. Modification of land conveyance, Naval Weapons Industrial Reserve Plant, Calverton, New York.
- Sec. 2867. Land conveyance alternative to existing lease authority, Naval Supply Center, Oakland, California.
- Sec. 2868. Land conveyance, Naval Weapons Industrial Reserve Plant, McGregor, Texas.
- Sec. 2869. Land conveyance, Naval Surface Warfare Center, Memphis, Tennessee.
- Sec. 2870. Land conveyance, Navy property, Fort Sheridan, Illinois.
- Sec. 2871. Land conveyance, Naval Communications Station, Stockton, California.
- Sec. 2872. Lease of property, Naval Air Station and Marine Corps Air Station, Miramar, California.

PART III—AIR FORCE CONVEYANCES

- Sec. 2874. Land acquisition or exchange, Shaw Air Force Base, South Carolina.
- Sec. 2875. Land conveyance, Elmendorf Air Force Base, Alaska.
- Sec. 2876. Land conveyance, Radar Bomb Scoring Site, Forsyth, Montana.
- Sec. 2877. Land conveyance, Radar Bomb Scoring Site, Powell, Wyoming.
- Sec. 2878. Land conveyance, Avon Park Air Force Range, Florida.

Subtitle E—Land Conveyances Involving Utilities

110 STAT. 200 PUBLIC LAW 104–106—FEB. 10, 1996

- Sec. 2881. Conveyance of resource recovery facility, Fort Dix, New Jersey.
- Sec. 2882. Conveyance of water and wastewater treatment plants, Fort Gordon, Georgia.
- Sec. 2883. Conveyance of electricity distribution system, Fort Irwin, California.

Sec. 2884. Conveyance of water treatment plant, Fort Pickett, Virginia.

Subtitle F—Other Matters

Sec. 2891. Authority to use funds for certain educational purposes.

Sec. 2892. Department of Defense Laboratory Revitalization Demonstration Program.

Sec. 2893. Authority for Port Authority of State of Mississippi to use Navy property at Naval Construction Battalion Center, Gulfport, Mississippi.

Sec. 2894. Prohibition on joint use of Naval Air Station and Marine Corps Air Station, Miramar, California.

Sec. 2895. Report regarding Army water craft support facilities and activities.

Sec. 2896. Residual value reports.

Sec. 2897. Sense of Congress and report regarding Fitzsimons Army Medical Center, Colorado.

**TITLE XXIX—LAND CONVEYANCES INVOLVING JOLIET ARMY
AMMUNITION PLANT, ILLINOIS**

Sec. 2901. Short title.

Sec. 2902. Definitions.

**Subtitle A—Conversion of Joliet Army Ammunition Plant to Midewin
National Tallgrass Prairie**

Sec. 2911. Principles of transfer.

Sec. 2912. Transfer of management responsibilities and jurisdiction over Arsenal.

Sec. 2913. Responsibility and liability.

Sec. 2914. Establishment and administration of Midewin National Tallgrass Prairie.

Sec. 2915. Special management requirements for Midewin National Tallgrass Prairie.

Sec. 2916. Special transfer rules for certain Arsenal parcels intended for MNP.

**Subtitle B—Other Land Conveyances Involving Joliet Army Ammunition
Plant**

Sec. 2921. Conveyance of certain real property at Arsenal for a national cemetery.

Sec. 2922. Conveyance of certain real property at Arsenal for a county landfill.

Sec. 2923. Conveyance of certain real property at Arsenal for industrial parks.

Subtitle C—Miscellaneous Provisions

Sec. 2931. Degree of environmental cleanup.

Sec. 2932. Retention of property used for environmental cleanup.

**DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY
AUTHORIZATIONS AND OTHER AUTHORIZATIONS**

**TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY
PROGRAMS**

Subtitle A—National Security Programs Authorizations

Sec. 3101. Weapons activities.

Sec. 3102. Environmental restoration and waste management.

Sec. 3103. Other defense activities.

Sec. 3104. Defense nuclear waste disposal.

Subtitle B—Recurring General Provisions

Sec. 3121. Reprogramming.

Sec. 3122. Limits on general plant projects.

- Sec. 3123. Limits on construction projects.
- Sec. 3124. Fund transfer authority.
- Sec. 3125. Authority for conceptual and construction design.
- Sec. 3126. Authority for emergency planning, design, and construction activities.
- Sec. 3127. Funds available for all national security programs of the Department of Energy.
- Sec. 3128. Availability of funds.

Subtitle C—Program Authorizations, Restrictions, and Limitations

- Sec. 3131. Authority to conduct program relating to fissile materials.
- Sec. 3132. National Ignition Facility.
- Sec. 3133. Tritium production program.
- Sec. 3134. Payment of penalties.
- Sec. 3135. Fissile materials disposition.
- Sec. 3136. Tritium recycling.
- Sec. 3137. Manufacturing infrastructure for refabrication and certification of nuclear weapons stockpile.
- Sec. 3138. Hydronuclear experiments.
- Sec. 3139. Limitation on authority to conduct hydronuclear tests.
- Sec. 3140. Fellowship program for development of skills critical to the Department of Energy nuclear weapons complex.
- Sec. 3141. Limitation on use of funds for certain research and development purposes.
- Sec. 3142. Processing and treatment of high-level nuclear waste and spent nuclear fuel rods.
- Sec. 3143. Protection of workers at nuclear weapons facilities.
- Sec. 3144. Department of Energy Declassification Productivity Initiative.

Subtitle D—Other Matters

- Sec. 3151. Report on foreign tritium purchases.
- Sec. 3152. Study on nuclear test readiness postures.
- Sec. 3153. Master plan for the certification, stewardship, and management of warheads in the nuclear weapons stockpile.
- Sec. 3154. Prohibition on international inspections of Department of Energy facilities unless protection of restricted data is certified.
- Sec. 3155. Review of certain documents before declassification and release.
- Sec. 3156. Accelerated schedule for environmental restoration and waste management activities.
- Sec. 3157. Sense of Congress regarding certain environmental restoration requirements.
- Sec. 3158. Responsibility for Defense Programs Emergency Response Program.
- Sec. 3159. Requirements for Department of Energy weapons activities budgets for fiscal years after fiscal year 1996.
- Sec. 3160. Report on hydronuclear testing.
- Sec. 3161. Applicability of Atomic Energy Community Act of 1955 to Los Alamos, New Mexico.
- Sec. 3162. Sense of Congress regarding shipments of spent nuclear fuel.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sec. 3201. Authorization.

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

Subtitle A—Authorization of Disposals and Use of Funds

Sec. 3301. Definitions.

Sec. 3302. Authorized uses of stockpile funds.

Sec. 3303. Disposal of chromite and manganese ores and chromium ferro and manganese metal electrolytic.

Sec. 3304. Restrictions on disposal of manganese ferro.

Sec. 3305. Titanium initiative to support battle tank upgrade program.

Subtitle B—Programmatic Change

Sec. 3311. Transfer of excess defense-related materials to stockpile for disposal.

TITLE XXXIV—NAVAL PETROLEUM RESERVES

Subtitle A—Administration of Naval Petroleum Reserves

Sec. 3401. Authorization of appropriations.

Sec. 3402. Price requirement on sale of certain petroleum during fiscal year 1996.

Sec. 3403. Extension of operating contract for Naval Petroleum Reserve Numbered 1.

Subtitle B—Sale of Naval Petroleum Reserve

Sec. 3411. Definitions.

Sec. 3412. Sale of Naval Petroleum Reserve Numbered 1.

Sec. 3413. Effect of sale of reserve.

110 STAT. 202 PUBLIC LAW 104-106—FEB. 10, 1996

Sec. 3414. Conditions on sale process.

Sec. 3415. Treatment of State of California claim regarding reserve.

Sec. 3416. Study of future of other naval petroleum reserves.

TITLE XXXV—PANAMA CANAL COMMISSION

Subtitle A—Authorization of Appropriations

Sec. 3501. Short title.

Sec. 3502. Authorization of expenditures.

Sec. 3503. Expenditures in accordance with other laws.

Subtitle B—Reconstitution of Commission as Government Corporation

Sec. 3521. Short title.

Sec. 3522. Reconstitution of Commission as Government corporation.

Sec. 3523. Supervisory Board.

Sec. 3524. General and specific powers of Commission.

Sec. 3525. Congressional review of budget.

Sec. 3526. Audits.

Sec. 3527. Prescription of measurement rules and rates of tolls.

Sec. 3528. Procedures for changes in rules of measurement and rates of tolls.

Sec. 3529. Miscellaneous technical amendments.

Sec. 3530. Conforming amendment to title 31, United States Code.

DIVISION D—FEDERAL ACQUISITION REFORM

Sec. 4001. Short title.

TITLE XLI—COMPETITION

Sec. 4101. Efficient competition.

Sec. 4102. Efficient approval procedures.

Sec. 4103. Efficient competitive range determinations.

Sec. 4104. Preaward debriefings.

Sec. 4105. Design-build selection procedures.

TITLE XLII—COMMERCIAL ITEMS

Sec. 4201. Commercial item exception to requirement for certified cost or pricing data.

Sec. 4202. Application of simplified procedures to certain commercial items.

Sec. 4203. Inapplicability of certain procurement laws to commercially available off-the-shelf items.

Sec. 4204. Amendment of commercial items definition.

Sec. 4205. Inapplicability of cost accounting standards to contracts and subcontracts for commercial items.

TITLE XLIII—ADDITIONAL REFORM PROVISIONS

Subtitle A—Additional Acquisition Reform Provisions

Sec. 4301. Elimination of certain certification requirements.

Sec. 4302. Authorities conditioned on FACNET capability.

Sec. 4303. International competitiveness.

Sec. 4304. Procurement integrity.

Sec. 4305. Further acquisition streamlining provisions.

Sec. 4306. Value engineering for Federal agencies.

Sec. 4307. Acquisition workforce.

Sec. 4308. Demonstration project relating to certain personnel management policies and procedures.

Sec. 4309. Cooperative purchasing.

Sec. 4310. Procurement notice technical amendment.

Sec. 4311. Micro-purchases without competitive quotations.

Subtitle B—Technical Amendments

Sec. 4321. Amendments related to Federal Acquisition Streamlining Act of 1994.

Sec. 4322. Miscellaneous amendments to Federal acquisition laws.

TITLE XLIV—EFFECTIVE DATES AND IMPLEMENTATION

Sec. 4401. Effective date and applicability.

Sec. 4402. Implementing regulations.

DIVISION E—INFORMATION TECHNOLOGY MANAGEMENT REFORM

Sec. 5001. Short title.

PUBLIC LAW 104–106—FEB. 10, 1996 110 STAT. 203
Sec. 5002. Definitions.

TITLE LI—RESPONSIBILITY FOR ACQUISITIONS OF INFORMATION TECHNOLOGY

Subtitle A—General Authority

Sec. 5101. Repeal of central authority of the Administrator of General Services.

Subtitle B—Director of the Office of Management and Budget

Sec. 5111. Responsibility of Director.

Sec. 5112. Capital planning and investment control.

Sec. 5113. Performance-based and results-based management.

Subtitle C—Executive Agencies

Sec. 5121. Responsibilities.

Sec. 5122. Capital planning and investment control.

Sec. 5123. Performance and results-based management.

Sec. 5124. Acquisitions of information technology.

Sec. 5125. **Agency Chief Information Officer.**

Sec. 5126. Accountability.

Sec. 5127. Significant deviations.

Sec. 5128. Interagency support.

Subtitle D—Other Responsibilities

Sec. 5131. Responsibilities regarding efficiency, security, and privacy of Federal computer systems.

Sec. 5132. Sense of Congress.

Subtitle E—National Security Systems

Sec. 5141. Applicability to national security systems.

Sec. 5142. National security system defined.

TITLE LII—PROCESS FOR ACQUISITIONS OF INFORMATION TECHNOLOGY

Sec. 5201. Procurement procedures.

Sec. 5202. Incremental acquisition of information technology.

TITLE LIII—INFORMATION TECHNOLOGY ACQUISITION PILOT PROGRAMS

Subtitle A—Conduct of Pilot Programs

Sec. 5301. Authority to conduct pilot programs.

Sec. 5302. Evaluation criteria and plans.

Sec. 5303. Report.

Sec. 5304. Recommended legislation.

Sec. 5305. Rule of construction.

Subtitle B—Specific Pilot Programs

Sec. 5311. Share-in-savings pilot program.

Sec. 5312. Solutions-based contracting pilot program.

TITLE LIV—ADDITIONAL INFORMATION RESOURCES MANAGEMENT MATTERS

Sec. 5401. On-line multiple award schedule contracting.

Sec. 5402. Identification of excess and surplus computer equipment.

Sec. 5403. Access of certain information in information systems to the directory established under section 4101 of title 44, United States Code.

TITLE LV—PROCUREMENT PROTEST AUTHORITY OF THE COMPTROLLER GENERAL

Sec. 5501. Period for processing protests.

Sec. 5502. Availability of funds following GAO resolution of challenge to contracting action.

TITLE LVI—CONFORMING AND CLERICAL AMENDMENTS

Sec. 5601. Amendments to title 10, United States Code.

Sec. 5602. Amendments to title 28, United States Code.

Sec. 5603. Amendment to title 31, United States Code.

Sec. 5604. Amendments to title 38, United States Code.

Sec. 5605. Provisions of title 44, United States Code, relating to paperwork reduction.

Sec. 5606. Amendment to title 49, United States Code.

Sec. 5607. Other laws.

Sec. 5608. Clerical amendments.

TITLE LVII—EFFECTIVE DATE, SAVINGS PROVISIONS, AND RULES OF CONSTRUCTION

Sec. 5701. Effective date.

Sec. 5702. Savings provisions.

Sec. 5703. Rules of construction.

SEC. 3. CONGRESSIONAL DEFENSE COMMITTEES DEFINED.

For purposes of this Act, the term “congressional defense committees” means—

- (1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and
- (2) the Committee on National Security and the Committee on Appropriations of the House of Representatives.

SEC. 4. EXTENSION OF TIME FOR SUBMISSION OF REPORTS.

In the case of any provision of this Act, or any amendment made by a provision of this Act, requiring the submission of a report to Congress (or any committee of Congress), that report shall be submitted not later than the later of—

- (1) the date established for submittal of the report in such provision or amendment; or
- (2) the date that is 45 days after the date of the enactment of this Act.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

SEC. 101. ARMY.

Funds are hereby authorized to be appropriated for fiscal year 1996 for procurement for the Army as follows:

- (1) For aircraft, \$1,558,805,000.
- (2) For missiles, \$865,555,000.
- (3) For weapons and tracked combat vehicles, \$1,652,745,000.
- (4) For ammunition, \$1,093,991,000.
- (5) For other procurement, \$2,763,443,000.

SEC. 102. NAVY AND MARINE CORPS.

(a) NAVY.—Funds are hereby authorized to be appropriated for fiscal year 1996 for procurement for the Navy as follows:

- (1) For aircraft, \$4,572,394,000.
- (2) For weapons, including missiles and torpedoes, \$1,659,827,000.
- (3) For shipbuilding and conversion, \$6,643,958,000.
- (4) For other procurement, \$2,414,771,000.

(2) RENEGOTIATION AND MODIFICATION OF PREEXISTING CONTRACTS.—Except as specifically provided in this division, nothing in this division shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of this Act.

(3) CONTINUED APPLICABILITY OF PREEXISTING LAW.—Except as otherwise provided in this division, a law amended by this division shall continue to be applied according to the provisions thereof as such law was in effect on the day before the date of the enactment of this Act until—

- (A) the date specified in final regulations implementing the amendment of that law (as promulgated pursuant to this section); or
- (B) if no such date is specified in regulations, January 1, 1997.

DIVISION E—INFORMATION TECHNOLOGY MANAGEMENT REFORM

SEC. 5001. SHORT TITLE.

This division may be cited as the “Information Technology Management Reform Act of 1996”.

SEC. 5002. DEFINITIONS.

In this division:

- (1) DIRECTOR.—The term “Director” means the Director of the Office of Management and Budget.
- (2) EXECUTIVE AGENCY.—The term “executive agency” has the meaning given that term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).
- (3) INFORMATION TECHNOLOGY.—(A) The term “information

technology”, with respect to an executive agency means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency. For purposes of the preceding sentence, equipment is used by an executive agency if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency which (i) requires the use of such equipment, or (ii) requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product.

(B) The term “information technology” includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(C) Notwithstanding subparagraphs (A) and (B), the term “information technology” does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract.

(4) INFORMATION RESOURCES.—The term “information resources” has the meaning given such term in section 3502(6) of title 44, United States Code.

40 USC 1401.

40 USC 1401

note.

Information

Technology

Management

Reform Act of

1996.

110 STAT. 680 PUBLIC LAW 104–106—FEB. 10, 1996

(5) INFORMATION RESOURCES MANAGEMENT.—The term “information resources management” has the meaning given such term in section 3502(7) of title 44, United States Code.

(6) INFORMATION SYSTEM.—The term “information system” has the meaning given such term in section 3502(8) of title 44, United States Code.

(7) COMMERCIAL ITEM.—The term “commercial item” has the meaning given that term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

TITLE LI—RESPONSIBILITY FOR ACQUISITIONS OF INFORMATION TECHNOLOGY

Subtitle A—General Authority

SEC. 5101. REPEAL OF CENTRAL AUTHORITY OF THE ADMINISTRATOR

OF GENERAL SERVICES.

Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) is repealed.

Subtitle B—Director of the Office of Management and Budget

SEC. 5111. RESPONSIBILITY OF DIRECTOR.

In fulfilling the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the Director shall comply with this title with respect to the specific matters covered by this title.

SEC. 5112. CAPITAL PLANNING AND INVESTMENT CONTROL.

(a) **FEDERAL INFORMATION TECHNOLOGY.**—The Director shall perform the responsibilities set forth in this section in fulfilling the responsibilities under section 3504(h) of title 44, United States Code.

(b) **USE OF INFORMATION TECHNOLOGY IN FEDERAL PROGRAMS.**—

The Director shall promote and be responsible for improving the acquisition, use, and disposal of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

(c) **USE OF BUDGET PROCESS.**—The Director shall develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments made by an executive agency for information systems. The process shall cover the life of each system and shall include explicit criteria for analyzing the projected and actual costs, benefits, and risks associated with the investments. At the same time that the President submits the budget for a fiscal year to Congress under section 1105(a) of title 31, United States Code, the Director shall submit to Congress a report on the net program performance benefits achieved as a result of major capital investments made by executive agencies in information systems and how the benefits relate to the accomplishment of the goals of the executive agencies.

(d) **INFORMATION TECHNOLOGY STANDARDS.**—The Director shall oversee the development and implementation of standards and guidelines pertaining to Federal computer systems by the Secretary of Commerce through the National Institute of Standards and Technology under section 5131 and section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

(e) **DESIGNATION OF EXECUTIVE AGENTS FOR ACQUISITIONS.**—

The Director shall designate (as the Director considers appropriate) one or more heads of executive agencies as executive agent for Government-wide acquisitions of information technology.

(f) **USE OF BEST PRACTICES IN ACQUISITIONS.**—The Director shall encourage the heads of the executive agencies to develop and use the best practices in the acquisition of information technology.

(g) **ASSESSMENT OF OTHER MODELS FOR MANAGING INFORMATION**

TECHNOLOGY.—The Director shall assess, on a continuing basis, the experiences of executive agencies, State and local governments, international organizations, and the private sector in managing information technology.

(h) COMPARISON OF AGENCY USES OF INFORMATION TECHNOLOGY.—

The Director shall compare the performances of the executive agencies in using information technology and shall disseminate the comparisons to the heads of the executive agencies.

(i) TRAINING.—The Director shall monitor the development and implementation of training in information resources management for executive agency personnel.

(j) INFORMING CONGRESS.—The Director shall keep Congress fully informed on the extent to which the executive agencies are improving the performance of agency programs and the accomplishment of agency missions through the use of the best practices in information resources management.

(k) PROCUREMENT POLICY AND ACQUISITIONS OF INFORMATION TECHNOLOGY.—

The Director shall coordinate the development and review by the Administrator of the Office of Information and Regulatory Affairs of policy associated with Federal acquisition of information technology with the Office of Federal Procurement Policy.

SEC. 5113. PERFORMANCE-BASED AND RESULTS-BASED MANAGEMENT.

(a) IN GENERAL.—The Director shall encourage the use of performance-based and results-based management in fulfilling the responsibilities assigned under section 3504(h), of title 44, United States Code.

(b) EVALUATION OF AGENCY PROGRAMS AND INVESTMENTS.—

(1) REQUIREMENT.—The Director shall evaluate the information resources management practices of the executive agencies with respect to the performance and results of the investments made by the executive agencies in information technology.

(2) DIRECTION FOR EXECUTIVE AGENCY ACTION.—The Director shall issue to the head of each executive agency clear and concise direction that the head of such agency shall—

(A) establish effective and efficient capital planning processes for selecting, managing, and evaluating the results of all of its major investments in information systems;

(B) determine, before making an investment in a new information system—

(i) whether the function to be supported by the system should be performed by the private sector and, if so, whether any component of the executive agency performing that function should be converted from a governmental organization to a private sector organization;

or

(ii) whether the function should be performed by

the executive agency and, if so, whether the function should be performed by a private sector source under contract or by executive agency personnel;

(C) analyze the missions of the executive agency and, based on the analysis, revise the executive agency's mission-related processes and administrative processes, as appropriate, before making significant investments in information technology to be used in support of those missions; and

(D) ensure that the information security policies, procedures, and practices are adequate.

(3) GUIDANCE FOR MULTIAGENCY INVESTMENTS.—The direction issued under paragraph (2) shall include guidance for undertaking efficiently and effectively interagency and Government-wide investments in information technology to improve the accomplishment of missions that are common to the executive agencies.

(4) PERIODIC REVIEWS.—The Director shall implement through the budget process periodic reviews of selected information resources management activities of the executive agencies in order to ascertain the efficiency and effectiveness of information technology in improving the performance of the executive agency and the accomplishment of the missions of the executive agency.

(5) ENFORCEMENT OF ACCOUNTABILITY.—

(A) IN GENERAL.—The Director may take any authorized action that the Director considers appropriate, including an action involving the budgetary process or appropriations management process, to enforce accountability of the head of an executive agency for information resources management and for the investments made by the executive agency in information technology.

(B) SPECIFIC ACTIONS.—Actions taken by the Director in the case of an executive agency may include—

(i) recommending a reduction or an increase in any amount for information resources that the head of the executive agency proposes for the budget submitted to Congress under section 1105(a) of title 31, United States Code;

(ii) reducing or otherwise adjusting apportionments and reapportionments of appropriations for information resources;

(iii) using other authorized administrative controls over appropriations to restrict the availability of funds for information resources; and

(iv) designating for the executive agency an executive agent to contract with private sector sources for the performance of information resources management or the acquisition of information technology.

Subtitle C—Executive Agencies
SEC. 5121. RESPONSIBILITIES.

In fulfilling the responsibilities assigned under chapter 35 of title 44, United States Code, the head of each executive agency shall comply with this subtitle with respect to the specific matters covered by this subtitle.

SEC. 5122. CAPITAL PLANNING AND INVESTMENT CONTROL.

(a) DESIGN OF PROCESS.—In fulfilling the responsibilities assigned under section 3506(h) of title 44, United States Code, the head of each executive agency shall design and implement in the executive agency a process for maximizing the value and assessing and managing the risks of the information technology acquisitions of the executive agency.

(b) CONTENT OF PROCESS.—The process of an executive agency shall—

- (1) provide for the selection of information technology investments to be made by the executive agency, the management of such investments, and the evaluation of the results of such investments;
- (2) be integrated with the processes for making budget, financial, and program management decisions within the executive agency;
- (3) include minimum criteria to be applied in considering whether to undertake a particular investment in information systems, including criteria related to the quantitatively expressed projected net, risk-adjusted return on investment and specific quantitative and qualitative criteria for comparing and prioritizing alternative information systems investment projects;
- (4) provide for identifying information systems investments that would result in shared benefits or costs for other Federal agencies or State or local governments;
- (5) provide for identifying for a proposed investment quantifiable measurements for determining the net benefits and risks of the investment; and
- (6) provide the means for senior management personnel of the executive agency to obtain timely information regarding the progress of an investment in an information system, including a system of milestones for measuring progress, on an independently verifiable basis, in terms of cost, capability of the system to meet specified requirements, timeliness, and quality.

SEC. 5123. PERFORMANCE AND RESULTS-BASED MANAGEMENT.

In fulfilling the responsibilities under section 3506(h) of title 44, United States Code, the head of an executive agency shall—

- (1) establish goals for improving the efficiency and effectiveness of agency operations and, as appropriate, the delivery of services to the public through the effective use of information technology;

40 USC 1423.
40 USC 1422.
40 USC 1421.

110 STAT. 684 PUBLIC LAW 104–106—FEB. 10, 1996

- (2) prepare an annual report, to be included in the executive agency's budget submission to Congress, on the progress in achieving the goals;
- (3) ensure that performance measurements are prescribed for information technology used by or to be acquired for, the executive agency and that the performance measurements measure how well the information technology supports programs of the executive agency;
- (4) where comparable processes and organizations in the public or private sectors exist, quantitatively benchmark agency process performance against such processes in terms of cost, speed, productivity, and quality of outputs and outcomes;
- (5) analyze the missions of the executive agency and, based on the analysis, revise the executive agency's mission-related processes and administrative processes as appropriate before making significant investments in information technology that is to be used in support of the performance of those missions; and
- (6) ensure that the information security policies, procedures, and practices of the executive agency are adequate.

SEC. 5124. ACQUISITIONS OF INFORMATION TECHNOLOGY.

- (a) IN GENERAL.—The authority of the head of an executive agency to conduct an acquisition of information technology includes the following authorities:
- (1) To acquire information technology as authorized by law.
 - (2) To enter into a contract that provides for multiagency acquisitions of information technology in accordance with guidance issued by the Director.
 - (3) If the Director finds that it would be advantageous for the Federal Government to do so, to enter into a multiagency contract for procurement of commercial items of information technology that requires each executive agency covered by the contract, when procuring such items, either to procure the items under that contract or to justify an alternative procurement of the items.

(b) FTS 2000 PROGRAM.—Notwithstanding any other provision of this or any other law, the Administrator of General Services shall continue to manage the FTS 2000 program, and to coordinate the follow-on to that program, on behalf of and with the advice of the heads of executive agencies.

SEC. 5125. AGENCY CHIEF INFORMATION OFFICER.

(a) DESIGNATION OF CHIEF INFORMATION OFFICERS.—Section 3506 of title 44, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(A), by striking out “senior official” and inserting in lieu thereof “Chief Information Officer”;

(B) in paragraph (2)(B)—

(i) by striking out “senior officials” in the first sentence and inserting in lieu thereof “Chief Information Officers”;

(ii) by striking out “official” in the second sentence and inserting in lieu thereof “Chief Information Officer”;

and

(iii) by striking out “officials” in the second sentence and inserting in lieu thereof “Chief Information Officers”; and

(C) in paragraphs (3) and (4), by striking out “senior official” each place it appears and inserting in lieu thereof “Chief Information Officer”; and

(2) in subsection (c)(1), by striking out “official” in the matter preceding subparagraph (A) and inserting in lieu thereof “Chief Information Officer”.

(b) GENERAL RESPONSIBILITIES.—The Chief Information Officer of an executive agency shall be responsible for—

(1) providing advice and other assistance to the head of the executive agency and other senior management personnel of the executive agency to ensure that information technology is acquired and information resources are managed for the executive agency in a manner that implements the policies and procedures of this division, consistent with chapter 35 of title 44, United States Code, and the priorities established by the head of the executive agency;

(2) developing, maintaining, and facilitating the implementation of a sound and integrated information technology architecture for the executive agency; and

(3) promoting the effective and efficient design and operation of all major information resources management processes for the executive agency, including improvements to work processes of the executive agency.

(c) DUTIES AND QUALIFICATIONS.—The Chief Information Officer of an agency that is listed in section 901(b) of title 31, United States Code, shall—

(1) have information resources management duties as that official's primary duty;

(2) monitor the performance of information technology programs of the agency, evaluate the performance of those programs on the basis of the applicable performance measurements, and advise the head of the agency regarding whether to continue, modify, or terminate a program or project; and

(3) annually, as part of the strategic planning and performance evaluation process required (subject to section 1117 of title 31, United States Code) under section 306 of title 5, United States Code, and sections 1105(a)(29), 1115, 1116, 1117, and 9703 of title 31, United States Code—

(A) assess the requirements established for agency personnel regarding knowledge and skill in information resources management and the adequacy of such requirements for facilitating the achievement of the performance goals established for information resources management;

(B) assess the extent to which the positions and personnel at the executive level of the agency and the positions and personnel at management level of the agency below the executive level meet those requirements;

(C) in order to rectify any deficiency in meeting those requirements, develop strategies and specific plans for hiring, training, and professional development; and

(D) report to the head of the agency on the progress made in improving information resources management capability.

Reports.

110 STAT. 686 PUBLIC LAW 104-106—FEB. 10, 1996

(d) INFORMATION TECHNOLOGY ARCHITECTURE DEFINED.—

In this section, the term “information technology architecture”, with respect to an executive agency, means an integrated framework for evolving or maintaining existing information technology and acquiring new information technology to achieve the agency's strategic goals and information resources management goals.

(e) EXECUTIVE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

“Chief Information Officer, Department of Agriculture.

“Chief Information Officer, Department of Commerce.

“Chief Information Officer, Department of Defense (unless the official designated as the Chief Information Officer of the Department of Defense is an official listed under section 5312, 5313, or 5314 of this title).

“Chief Information Officer, Department of Education.

“Chief Information Officer, Department of Energy.

“Chief Information Officer, Department of Health and Human Services.

“Chief Information Officer, Department of Housing and Urban Development.
“Chief Information Officer, Department of Interior.
“Chief Information Officer, Department of Justice.
“Chief Information Officer, Department of Labor.
“Chief Information Officer, Department of State.
“Chief Information Officer, Department of Transportation.
“Chief Information Officer, Department of Treasury.
“Chief Information Officer, Department of Veterans Affairs.
“Chief Information Officer, Environmental Protection Agency.
“Chief Information Officer, National Aeronautics and Space Administration.
“Chief Information Officer, Agency for International Development.
“Chief Information Officer, Federal Emergency Management Agency.
“Chief Information Officer, General Services Administration.
“Chief Information Officer, National Science Foundation.
“Chief Information Officer, Nuclear Regulatory Agency.
“Chief Information Officer, Office of Personnel Management.
“Chief Information Officer, Small Business Administration.”

SEC. 5126. ACCOUNTABILITY.

The head of each executive agency, **in consultation with the Chief Information Officer** and the Chief Financial Officer of that executive agency (or, in the case of an executive agency without a Chief Financial Officer, any comparable official), **shall establish policies and procedures that—**

- (1) ensure that the accounting, financial, and asset management systems and other information systems of the executive agency are designed, developed, maintained, and used effectively to provide financial or program performance data for financial statements of the executive agency;
- (2) ensure that financial and related program performance data are provided on a reliable, consistent, and timely basis to executive agency financial management systems; and
- (3) **ensure that financial statements support—**
 - (A) assessments and revisions of mission-related processes and administrative processes of the executive agency; and
 - (B) **performance measurement of the performance in the case of investments made by the agency in information systems.**

SEC. 5127. SIGNIFICANT DEVIATIONS.

The head of an executive agency shall identify in the strategic information resources management plan required under section 3506(b)(2) of title 44, United States Code, any major information technology acquisition program, or any phase or increment of such a program, that has significantly deviated from the cost, performance, or schedule goals established for the program.

SEC. 5128. INTERAGENCY SUPPORT.

Funds available for an executive agency for oversight, acquisition, and procurement of information technology may be used by the head of the executive agency to support jointly with other executive agencies the activities of interagency groups that are

established to advise the Director in carrying out the Director's responsibilities under this title. The use of such funds for that purpose shall be subject to such requirements and limitations on uses and amounts as the Director may prescribe. The Director shall prescribe any such requirements and limitations during the Director's review of the executive agency's proposed budget submitted to the Director by the head of the executive agency for purposes of section 1105 of title 31, United States Code.

Subtitle D—Other Responsibilities

SEC. 5131. RESPONSIBILITIES REGARDING EFFICIENCY, SECURITY, AND PRIVACY OF FEDERAL COMPUTER SYSTEMS.

(a) STANDARDS AND GUIDELINES.—

(1) AUTHORITY.—The Secretary of Commerce shall, on the basis of standards and guidelines developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3(a)), promulgate standards and guidelines pertaining to Federal computer systems.

The Secretary shall make such standards compulsory and binding to the extent to which the Secretary determines necessary to improve the efficiency of operation or security and privacy of Federal computer systems. The President may disapprove or modify such standards and guidelines if the President determines such action to be in the public interest. The President's authority to disapprove or modify such standards and guidelines may not be delegated. Notice of such disapproval or modification shall be published promptly in the Federal Register. Upon receiving notice of such disapproval or modification, the Secretary of Commerce shall immediately rescind or modify such standards or guidelines as directed by the President. Federal Register, publication.

(2) EXERCISE OF AUTHORITY.—The authority conferred upon the Secretary of Commerce by this section shall be exercised subject to direction by the President and in coordination with the Director to ensure fiscal and policy consistency.

(b) APPLICATION OF MORE STRINGENT STANDARDS.—The head of a Federal agency may employ standards for the cost-effective security and privacy of sensitive information in a Federal computer system within or under the supervision of that agency that are more stringent than the standards promulgated by the Secretary of Commerce under this section, if such standards contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Secretary of Commerce.

(c) WAIVER OF STANDARDS.—The standards determined under subsection (a) to be compulsory and binding may be waived by the Secretary of Commerce in writing upon a determination that compliance would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or cause a major adverse financial impact on the operator which is not offset by Government-wide savings. The Secretary may delegate to the

head of one or more Federal agencies authority to waive such standards to the extent to which the Secretary determines such action to be necessary and desirable to allow for timely and effective implementation of Federal computer system standards. **The head of such agency may redelegate such authority only to a Chief Information Officer** designated pursuant to section 3506 of title 44, United States Code. Notice of each such waiver and delegation shall be transmitted promptly to Congress and shall be published promptly in the Federal Register.

(d) DEFINITIONS.—In this section, the terms “Federal computer system” and “operator of a Federal computer system” have the meanings given such terms in section 20(d) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(d)).

(e) TECHNICAL AMENDMENTS.—Chapter 35 of title 44, United States Code, is amended—

(1) in section 3504(g)—

(A) in paragraph (2), by striking out “the Computer Security Act of 1987 (40 U.S.C. 759 note)” and inserting in lieu thereof “sections 20 and 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3 and 278g–4), section 5131 of the Information Technology Management Reform Act of 1996, and sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note)”; and

(B) in paragraph (3), by striking out “the Computer Security Act of 1987 (40 U.S.C. 759 note)” and inserting in lieu thereof “the standards and guidelines promulgated under section 5131 of the Information Technology Management Reform Act of 1996 and sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note)”; and

(2) in section 3518(d), by striking out “Public Law 89–306 on the Administrator of the General Services Administration, the Secretary of Commerce, or” and inserting in lieu thereof “section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987 (40 U.S.C. 759 note) on the Secretary of Commerce or”.

Federal Register,
publication.

PUBLIC LAW 104–106—FEB. 10, 1996 110 STAT. 689

SEC. 5132. SENSE OF CONGRESS.

It is the sense of Congress that, during the next five-year period beginning with 1996, executive agencies should achieve each year at least a 5 percent decrease in the cost (in constant fiscal year 1996 dollars) that is incurred by the agency for operating and maintaining information technology, and each year a 5 percent increase in the efficiency of the agency operations, by reason of improvements in information resources management by the agency.

Subtitle E—National Security Systems

SEC. 5141. APPLICABILITY TO NATIONAL SECURITY SYSTEMS.

(a) IN GENERAL.—Except as provided in subsection (b), this title does not apply to national security systems.

(b) EXCEPTIONS.—

(1) IN GENERAL.—Sections 5123, 5125, and 5126 apply to national security systems.

(2) CAPITAL PLANNING AND INVESTMENT CONTROL.—The heads of executive agencies shall apply sections 5112 and 5122 to national security systems to the extent practicable.

(3) PERFORMANCE AND RESULTS OF INFORMATION TECHNOLOGY INVESTMENTS.—(A) Subject to subparagraph (B), the heads of executive agencies shall apply section 5113 to national security systems to the extent practicable.

(B) National security systems shall be subject to section 5113(b)(5) except for subparagraph (B)(iv) of that section.

SEC. 5142. NATIONAL SECURITY SYSTEM DEFINED.

(a) DEFINITION.—In this subtitle, the term “national security system” means any telecommunications or information system operated by the United States Government, the function, operation, or use of which—

(1) involves intelligence activities;

(2) involves cryptologic activities related to national security;

(3) involves command and control of military forces;

(4) involves equipment that is an integral part of a weapon or weapons system; or

(5) subject to subsection (b), is critical to the direct fulfillment of military or intelligence missions.

(b) LIMITATION.—Subsection (a)(5) does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

TITLE LII—PROCESS FOR ACQUISITIONS OF INFORMATION TECHNOLOGY

SEC. 5201. PROCUREMENT PROCEDURES.

The Federal Acquisition Regulatory Council shall ensure that, to the maximum extent practicable, the process for acquisition of information technology is a simplified, clear, and understandable process that specifically addresses the management of risk,

incremental acquisitions, and the need to incorporate commercial information technology in a timely manner.

SEC. 5202. INCREMENTAL ACQUISITION OF INFORMATION TECHNOLOGY.

(a) POLICY.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end the following new section:

“SEC. 35. MODULAR CONTRACTING FOR INFORMATION TECHNOLOGY.

“(a) IN GENERAL.—The head of an executive agency should, to the maximum extent practicable, use modular contracting for an acquisition of a major system of information technology.

“(b) MODULAR CONTRACTING DESCRIBED.—Under modular contracting, an executive agency’s need for a system is satisfied in successive acquisitions of interoperable increments. Each increment complies with common or commercially accepted standards applicable to information technology so that the increments are compatible with other increments of information technology comprising the system.

“(c) IMPLEMENTATION.—The Federal Acquisition Regulation shall provide that—

“(1) under the modular contracting process, an acquisition of a major system of information technology may be divided into several smaller acquisition increments that—

“(A) are easier to manage individually than would be one comprehensive acquisition;

“(B) address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable solutions for attainment of those objectives;

“(C) provide for delivery, implementation, and testing of workable systems or solutions in discrete increments each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions; and

“(D) provide an opportunity for subsequent increments of the acquisition to take advantage of any evolution in technology or needs that occur during conduct of the earlier increments;

“(2) a contract for an increment of an information technology acquisition should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued and, if the contract for that increment cannot be awarded within such period, the increment should be considered for cancellation; and

“(3) the information technology provided for in a contract for acquisition of information technology should be delivered within 18 months after the date on which the solicitation resulting in award of the contract was issued.”

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 34 the following new item:

“Sec. 35. Modular contracting for information technology.”

TITLE LIII—INFORMATION TECHNOLOGY ACQUISITION PILOT PROGRAMS

Subtitle A—Conduct of Pilot Programs

SEC. 5301. AUTHORITY TO CONDUCT PILOT PROGRAMS.

(a) **IN GENERAL.**—

(1) **PURPOSE.**—The Administrator for Federal Procurement Policy (hereinafter referred to as the “Administrator”), in consultation with the Administrator for the Office of Information and Regulatory Affairs, may conduct pilot programs in order to test alternative approaches for acquisition of information technology by executive agencies.

(2) **MULTIAGENCY, MULTI-ACTIVITY CONDUCT OF EACH PROGRAM.**—

Except as otherwise provided in this title, each pilot program conducted under this title shall be carried out in not more than two procuring activities in each of the executive agencies that are designated by the Administrator in accordance with this title to carry out the pilot program. The head of each designated executive agency shall, with the approval of the Administrator, select the procuring activities of the executive agency that are to participate in the test and shall designate a procurement testing official who shall be responsible for the conduct and evaluation of the pilot program within the executive agency.

(b) **LIMITATIONS.**—

(1) **NUMBER.**—Not more than two pilot programs may be conducted under the authority of this title, including one pilot program each pursuant to the requirements of sections 5311 and 5312.

(2) **AMOUNT.**—The total amount obligated for contracts entered into under the pilot programs conducted under the authority of this title may not exceed \$750,000,000. The Administrator shall monitor such contracts and ensure that contracts are not entered into in violation of the limitation in the preceding sentence.

(c) **PERIOD OF PROGRAMS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), any pilot program may be carried out under this title for the period, not in excess of five years, that is determined by the Administrator as being sufficient to establish reliable results.

(2) **CONTINUING VALIDITY OF CONTRACTS.**—A contract entered into under the pilot program before the expiration of that program shall remain in effect according to the terms of the contract after the expiration of the program.

SEC. 5302. EVALUATION CRITERIA AND PLANS.

(a) **MEASURABLE TEST CRITERIA.**—The head of each executive agency conducting a pilot program under section 5301 shall establish, to the maximum extent practicable, measurable criteria for

evaluating the effects of the procedures or techniques to be tested under the program.

(b) **TEST PLAN.**—Before a pilot program may be conducted under section 5301, the Administrator shall submit to Congress a detailed test plan for the program, including a detailed description of the procedures to be used and a list of any regulations that are to be waived.

SEC. 5303. REPORT.

(a) **REQUIREMENT.**—Not later than 180 days after the completion of a pilot program under this title, the Administrator shall—

(1) submit to the Director a report on the results and findings under the program; and

(2) provide a copy of the report to Congress.

(b) **CONTENT.**—The report shall include the following:

(1) A detailed description of the results of the program, as measured by the criteria established for the program.

(2) A discussion of any legislation that the Administrator recommends, or changes in regulations that the Administrator considers necessary, in order to improve overall information resources management within the Federal Government.

SEC. 5304. RECOMMENDED LEGISLATION.

If the Director determines that the results and findings under a pilot program under this title indicate that legislation is necessary or desirable in order to improve the process for acquisition of information technology, the Director shall transmit the Director's recommendations for such legislation to Congress.

SEC. 5305. RULE OF CONSTRUCTION.

Nothing in this title shall be construed as authorizing the appropriation or obligation of funds for the pilot programs authorized under this title.

Subtitle B—Specific Pilot Programs

SEC. 5311. SHARE-IN-SAVINGS PILOT PROGRAM.

(a) **REQUIREMENT.**—The Administrator may authorize the heads of two executive agencies to carry out a pilot program to test the feasibility of—

(1) contracting on a competitive basis with a private sector source to provide the Federal Government with an information technology solution for improving mission-related or administrative processes of the Federal Government; and

(2) paying the private sector source an amount equal to a portion of the savings derived by the Federal Government from any improvements in mission-related processes and administrative processes that result from implementation of the solution.

(b) **LIMITATIONS.**—The head of an executive agency authorized to carry out the pilot program may, under the pilot program, carry out one project and enter into not more than five contracts for the project.

(c) **SELECTION OF PROJECTS.**—The projects shall be selected

by the Administrator, in consultation with the Administrator for the Office of Information and Regulatory Affairs.

SEC. 5312. SOLUTIONS-BASED CONTRACTING PILOT PROGRAM.

(a) **IN GENERAL.**—The Administrator may authorize the heads of any of the executive agencies, in accordance with subsection (d)(2), to carry out a pilot program to test the feasibility of using solutions-based contracting for acquisition of information technology.

(b) **SOLUTIONS-BASED CONTRACTING DESCRIBED.**—For purposes of this section, solutions-based contracting is an acquisition method under which the acquisition objectives are defined by the Federal Government user of the technology to be acquired, a streamlined contractor selection process is used, and industry sources are allowed to provide solutions that attain the objectives effectively.

(c) **PROCESS REQUIREMENTS.**—The Administrator shall require use of a process with the following aspects for acquisitions under the pilot program:

(1) **ACQUISITION PLAN EMPHASIZING DESIRED RESULT.**—Preparation of an acquisition plan that defines the functional requirements of the intended users of the information technology to be acquired, identifies the operational improvements to be achieved, and defines the performance measurements to be applied in determining whether the information technology acquired satisfies the defined requirements and attains the identified results.

(2) **RESULTS-ORIENTED STATEMENT OF WORK.**—Use of a statement of work that is limited to an expression of the end results or performance capabilities desired under the acquisition plan.

(3) **SMALL ACQUISITION ORGANIZATION.**—Assembly of a small acquisition organization consisting of the following:

(A) An acquisition management team, the members of which are to be evaluated and rewarded under the pilot program for contributions toward attainment of the desired results identified in the acquisition plan.

(B) A small source selection team composed of representatives of the specific mission or administrative area to be supported by the information technology to be acquired, together with a contracting officer and persons with relevant expertise.

(4) **USE OF SOURCE SELECTION FACTORS EMPHASIZING SOURCE QUALIFICATIONS AND COSTS.**—Use of source selection factors that emphasize—

(A) the qualifications of the offeror, including such factors as personnel skills, previous experience in providing other private or public sector organizations with solutions for attaining objectives similar to the objectives of the acquisition, past contract performance, qualifications of the

proposed program manager, and the proposed management plan; and

(B) the costs likely to be associated with the conceptual approach proposed by the offeror.

(5) OPEN COMMUNICATIONS WITH CONTRACTOR COMMUNITY.—

Open availability of the following information to potential offerors:

(A) The agency mission to be served by the acquisition.

(B) The functional process to be performed by use of information technology.

(C) The process improvements to be attained.

(6) **SIMPLE SOLICITATION.—**Use of a simple solicitation that sets forth only the functional work description, the source selection factors to be used in accordance with paragraph (4), the required terms and conditions, instructions regarding submission of offers, and the estimate of the Federal Government's budget for the desired work.

(7) **SIMPLE PROPOSALS.—**Submission of oral presentations and written proposals that are limited in size and scope and contain information on—

(A) the offeror's qualifications to perform the desired work;

(B) past contract performance;

(C) the proposed conceptual approach; and

(D) the costs likely to be associated with the proposed conceptual approach.

(8) **SIMPLE EVALUATION.—**Use of a simplified evaluation process, to be completed within 45 days after receipt of proposals, which consists of the following:

(A) Identification of the most qualified offerors that are within the competitive range.

(B) Issuance of invitations for at least three and not more than five of the identified offerors to make oral

presentations to, and engage in discussions with, the evaluating personnel regarding, for each offeror—

(i) the qualifications of the offeror, including how the qualifications of the offeror relate to the approach proposed to be taken by the offeror in the acquisition; and

(ii) the costs likely to be associated with the approach.

(C) Evaluation of the qualifications of the identified offerors and the costs likely to be associated with the offerors' proposals on the basis of submissions required under the process and any oral presentations made by, and any discussions with, the offerors.

(9) **SELECTION OF MOST QUALIFIED OFFEROR.—**A selection process consisting of the following:

(A) Identification of the most qualified source, and ranking of alternative sources, primarily on the basis of the oral proposals, presentations, and discussions, and written proposals submitted in accordance with paragraph (7).

(B) Conduct for 30 to 60 days of a program definition phase (funded, in the case of the source ultimately awarded the contract, by the Federal Government)—

(i) during which the selected source, in consultation with one or more intended users, develops a conceptual system design and technical approach, defines logical phases for the project, and estimates the total cost and the cost for each phase; and
(ii) after which a contract for performance of the work may be awarded to that source on the basis of cost, the responsiveness, reasonableness, and quality of the proposed performance, and a sharing of risk and benefits between the source and the Government.

(C) Conduct of as many successive program definition phases with alternative sources (in the order ranked) as is necessary in order to award a contract in accordance with subparagraph (B).

(10) SYSTEM IMPLEMENTATION PHASING.—System implementation to be executed in phases that are tailored to the solution, with various contract arrangements being used, as appropriate, for various phases and activities.

(11) MUTUAL AUTHORITY TO TERMINATE.—Authority for the Federal Government or the contractor to terminate the contract without penalty at the end of any phase defined for the project.

(12) TIME MANAGEMENT DISCIPLINE.—Application of a standard for awarding a contract within 105 to 120 days after issuance of the solicitation.

(d) PILOT PROGRAM DESIGN.—

(1) JOINT PUBLIC-PRIVATE WORKING GROUP.—The Administrator, in consultation with the Administrator for the Office of Information and Regulatory Affairs, shall establish a joint working group of Federal Government personnel and representatives of the information technology industry to design a plan for conduct of any pilot program carried out under this section.

(2) CONTENT OF PLAN.—The plan shall provide for use of solutions-based contracting in the Department of Defense and not more than two other executive agencies for a total of—

(A) not more than 10 projects, each of which has an estimated cost of between \$25,000,000 and \$100,000,000; and

(B) not more than 10 projects, each of which has an estimated cost of between \$1,000,000 and \$5,000,000, to be set aside for small business concerns.

(3) COMPLEXITY OF PROJECTS.—(A) Subject to subparagraph (C), each acquisition project under the pilot program shall be sufficiently complex to provide for meaningful evaluation of the use of solutions-based contracting for acquisition of

information technology for executive agencies.

(B) In order for an acquisition project to satisfy the requirement in subparagraph (A), the solution for attainment of the executive agency's objectives under the project should not be obvious, but rather shall involve a need for some innovative development and systems integration.

(C) An acquisition project should not be so extensive or lengthy as to result in undue delay in the evaluation of the use of solutions-based contracting.

(e) **MONITORING BY GAO.**—The Comptroller General of the United States shall—

(1) monitor the conduct, and review the results, of acquisitions under the pilot program; and

(2) submit to Congress periodic reports containing the views of the Comptroller General on the activities, results, and findings under the pilot program.

TITLE LIV—ADDITIONAL INFORMATION RESOURCES MANAGEMENT MATTERS

SEC. 5401. ON-LINE MULTIPLE AWARD SCHEDULE CONTRACTING.

(a) **AUTOMATION OF MULTIPLE AWARD SCHEDULE CONTRACTING.**—

In order to provide for the economic and efficient procurement of information technology and other commercial items, the Administrator of General Services shall provide through the Federal Acquisition Computer Network (in this section referred to as “FACNET”), not later than January 1, 1998, Government-wide on-line computer access to information on products and services that are available for ordering under the multiple award schedules. If the Administrator determines it is not practicable to provide such access through FACNET, the Administrator shall provide such access through another automated system that has the capability to perform the functions listed in subsection (b)(1) and meets the requirement of subsection (b)(2).

(b) **ADDITIONAL FACNET FUNCTIONS.**—(1) In addition to the functions specified in section 30(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 426(b)), the FACNET architecture shall have the capability to perform the following functions:

(A) Provide basic information on prices, features, and performance of all products and services available for ordering through the multiple award schedules.

(B) Provide for updating that information to reflect changes in prices, features, and performance as soon as information on the changes becomes available.

(C) Enable users to make on-line computer comparisons of the prices, features, and performance of similar products and services offered by various vendors.

(2) The FACNET architecture shall be used to place orders under the multiple award schedules in a fiscal year for an amount equal to at least 60 percent of the total amount spent for all

orders under the multiple award schedules in that fiscal year.

(c) STREAMLINED PROCEDURES.—

(1) PILOT PROGRAM.—Upon certification by the Administrator of General Services that the FACNET architecture meets the requirements of subsection (b)(1) and was used as required by subsection (b)(2) in the fiscal year preceding the fiscal year in which the certification is made, the Administrator for Federal Procurement Policy may establish a pilot program to test streamlined procedures for the procurement of information technology products and services available for ordering through the multiple award schedules.

(2) APPLICABILITY TO MULTIPLE AWARD SCHEDULE CONTRACTS.—

Except as provided in paragraph (4), the pilot program shall be applicable to all multiple award schedule contracts for the purchase of information technology and shall test the following procedures:

(A) A procedure under which negotiation of the terms and conditions for a covered multiple award schedule contract is limited to terms and conditions other than price.

(B) A procedure under which the vendor establishes the prices under a covered multiple award schedule contract and may adjust those prices at any time in the discretion of the vendor.

(C) A procedure under which a covered multiple award schedule contract is awarded to any responsible offeror that—

(i) has a suitable record of past performance, which may include past performance on multiple award schedule contracts;

(ii) agrees to terms and conditions that the Administrator determines as being required by law or as being appropriate for the purchase of commercial items; and

(iii) agrees to establish and update prices, features, and performance and to accept orders electronically through the automated system established pursuant to subsection (a).

(3) COMPTROLLER GENERAL REVIEW AND REPORT.—(A) Not later than three years after the date on which the pilot program is established, the Comptroller General of the United States shall review the pilot program and report to the Congress on the results of the pilot program.

(B) The report shall include the following:

(i) An evaluation of the extent to which there is competition for the orders placed under the pilot program.

(ii) The effect that the streamlined procedures under the pilot program have on prices charged under multiple award schedule contracts.

(iii) The effect that such procedures have on paperwork

requirements for multiple award schedule contracts and orders.

(iv) The impact of the pilot program on small businesses and socially and economically disadvantaged small businesses.

(4) WITHDRAWAL OF SCHEDULE OR PORTION OF SCHEDULE FROM PILOT PROGRAM.—The Administrator may withdraw a multiple award schedule or portion of a schedule from the pilot program if the Administrator determines that (A) price competition is not available under such schedule or portion thereof, or (B) the cost to the Government for that schedule or portion thereof for the previous year was higher than it would have been if the contracts for such schedule or portion thereof had been awarded using procedures that would apply if the pilot program were not in effect. The Administrator shall notify Congress at least 30 days before the date on which the Administrator withdraws a schedule or portion thereof under this paragraph. The authority under this paragraph may not be delegated.

(5) TERMINATION OF PILOT PROGRAM.—Unless reauthorized by law, the authority of the Administrator to award contracts under the pilot program shall expire four years after the date on which the pilot program is established. Contracts entered into before the authority expires shall remain in effect in accordance with their terms notwithstanding the expiration of the authority to award new contracts under the pilot program.

(d) DEFINITION.—In this section, the term “FACNET” means the Federal Acquisition Computer Network established under section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426).

SEC. 5402. IDENTIFICATION OF EXCESS AND SURPLUS COMPUTER EQUIPMENT.

Not later than six months after the date of the enactment of this Act, the head of an executive agency shall inventory all computer equipment under the control of that official. After completion of the inventory, the head of the executive agency shall maintain, in accordance with title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.), an inventory of any such equipment that is excess or surplus property. 40 USC 1502.

Notification.

SEC. 5403. ACCESS OF CERTAIN INFORMATION IN INFORMATION SYSTEMS TO THE DIRECTORY ESTABLISHED UNDER SECTION 4101 OF TITLE 44, UNITED STATES CODE.

Notwithstanding any other provision of this division, if in designing an information technology system pursuant to this division, the head of an executive agency determines that a purpose of the system is to disseminate information to the public, then the head of such executive agency shall reasonably ensure that an index of information disseminated by such system is included in the directory created pursuant to section 4101 of title 44, United States Code. Nothing in this section authorizes the dissemination of information to the public unless otherwise authorized.

**TITLE LV—PROCUREMENT PROTEST
AUTHORITY OF THE COMPTROLLER
GENERAL**

SEC. 5501. PERIOD FOR PROCESSING PROTESTS.

Title 31, United States Code, is amended as follows:

(1) Section 3553(b)(2)(A) is amended by striking out “35” and inserting in lieu thereof “30”.

(2) Section 3554 is amended—

(A) in subsection (a)(1), by striking out “125” and inserting in lieu thereof “100”; and

(B) in subsection (e)—

(i) in paragraph (1), by striking out “Government Operations” and inserting in lieu thereof “Government Reform and Oversight”; and

(ii) in paragraph (2), by striking out “125” and inserting in lieu thereof “100”.

SEC. 5502. AVAILABILITY OF FUNDS FOLLOWING GAO RESOLUTION OF CHALLENGE TO CONTRACTING ACTION.

(a) IN GENERAL.—Section 1558 of title 31, United States Code, is amended—

(1) in the first sentence of subsection (a)—

(A) by inserting “or other action referred to in subsection

(b)” after “protest” the first place it appears;

(B) by striking out “90 working days” and inserting in lieu thereof “100 days”; and

(C) by inserting “or other action” after “protest” the second place it appears; and

(2) by striking out subsection (b) and inserting in lieu thereof the following:

“(b) Subsection (a) applies with respect to—

“(1) any protest filed under subchapter V of chapter 35 of this title; or

“(2) an action commenced under administrative procedures or for a judicial remedy if—

“(A) the action involves a challenge to—

“(i) a solicitation for a contract;

“(ii) a proposed award of a contract;
“(iii) an award of a contract; or
40 USC 1503.

PUBLIC LAW 104–106—FEB. 10, 1996 110 STAT. 699

“(iv) the eligibility of an offeror or potential offeror
for a contract or of the contractor awarded the contract;
and

“(B) commencement of the action delays or prevents
an executive agency from making an award of a contract
or proceeding with a procurement.”.

(b) CONFORMING AMENDMENT.—The heading of such section
is amended to read as follows:

**“§ 1558. Availability of funds following resolution of a formal
protest or other challenge”.**

(c) CLERICAL AMENDMENT.—The item relating to such section
in the table of sections at the beginning of chapter 15 of title
31, United States Code, is amended to read as follows:

“1558. Availability of funds following resolution of a formal protest or other
challenge.”.

TITLE LVI—CONFORMING AND CLERICAL AMENDMENTS

SEC. 5601. AMENDMENTS TO TITLE 10, UNITED STATES CODE.

(a) PROTEST FILE.—Section 2305(e) is amended by striking out
paragraph (3).

(b) MULTIYEAR CONTRACTS.—Section 2306b of such title is
amended—

(1) by striking out subsection (k); and

(2) by redesignating subsection (l) as subsection (k).

(c) LAW INAPPLICABLE TO PROCUREMENT OF INFORMATION TECHNOLOGY.—

Section 2315 of title 10, United States Code, is amended
by striking out “Section 111” and all that follows through “use
of equipment or services if,” and inserting in lieu thereof the following:

“For the purposes of the Information Technology Management
Reform Act of 1996, the term ‘national security systems’ means
those telecommunications and information systems operated by the
Department of Defense, the functions, operation or use of which”.

SEC. 5602. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) REFERENCES TO BROOKS AUTOMATIC DATA PROCESSING
ACT.—Section 612 of title 28, United States Code, is amended—

(1) in subsection (f), by striking out “section 111 of the
Federal Property and Administrative Services Act of 1949 (40
U.S.C. 759)” and inserting in lieu thereof “the provisions of
law, policies, and regulations applicable to executive agencies
under the Information Technology Management Reform Act
of 1996”;

(2) in subsection (g), by striking out “sections 111 and
201 of the Federal Property and Administrative Services Act

of 1949 (40 U.S.C. 481 and 759)’’ and inserting in lieu thereof ‘‘section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481)’’;

(3) by striking out subsection (l); and

(4) by redesignating subsection (m) as subsection (l).

(b) REFERENCES TO AUTOMATIC DATA PROCESSING.—Section 612 of title 28, United States Code, is further amended—

(1) in the heading, by striking out the second word and inserting in lieu thereof ‘‘**Information Technology**’’;

110 STAT. 700 PUBLIC LAW 104–106—FEB. 10, 1996

(2) in subsection (a), by striking out ‘‘Judiciary Automation Fund’’ and inserting in lieu thereof ‘‘Judiciary Information Technology Fund’’; and

(3) by striking out ‘‘automatic data processing’’ and inserting in lieu thereof ‘‘information technology’’ each place it appears in subsections (a), (b), (c)(2), (e), (f), and (h)(1).

SEC. 5603. AMENDMENT TO TITLE 31, UNITED STATES CODE.

Section 3552 of title 31, United States Code, is amended by striking out the second sentence.

SEC. 5604. AMENDMENTS TO TITLE 38, UNITED STATES CODE.

Section 310 of title 38, United States Code, is amended to read as follows:

‘‘§ 310. Chief Information Officer

‘‘(a) The Chief Information Officer for the Department is designated pursuant to section 3506(a)(2) of title 44.

‘‘(b) The Chief Information Officer performs the duties provided for chief information officers of executive agencies under chapter 35 of title 44 and the Information Technology Management Reform Act of 1996.’’.

SEC. 5605. PROVISIONS OF TITLE 44, UNITED STATES CODE, RELATING TO PAPERWORK REDUCTION.

(a) DEFINITION.—Section 3502 of title 44, United States Code, is amended by striking out paragraph (9) and inserting in lieu thereof the following:

‘‘(9) the term ‘information technology’ has the meaning given that term in section 5002 of the Information Technology Management Reform Act of 1996 but does not include national security systems as defined in section 5142 of that Act;’’.

(b) DEVELOPMENT OF STANDARDS AND GUIDELINES BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—Section 3504(h)(1)(B) of such title is amended by striking out ‘‘section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d))’’ and inserting in lieu thereof ‘‘section 5131 of the Information Technology Management Reform Act of 1996’’.

(c) COMPLIANCE WITH DIRECTIVES.—Section 3504(h)(2) of such title is amended by striking out ‘‘sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C.

757 and 759)’’ and inserting in lieu thereof ‘‘the Information Technology Management Reform Act of 1996 and directives issued under section 110 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757)’’.

(d) COLLECTION OF INFORMATION.—Section 3507(j)(2) of such title is amended by striking out ‘‘90 days’’ in the second sentence and inserting in lieu thereof ‘‘180 days’’.

SEC. 5606. AMENDMENT TO TITLE 49, UNITED STATES CODE.

Section 40112(a) of title 49, United States Code, is amended by striking out ‘‘or a contract to purchase property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies’’.

PUBLIC LAW 104–106—FEB. 10, 1996 110 STAT. 701

SEC. 5607. OTHER LAWS.

(a) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ACT.—Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) is amended—

(1) in subsection (a)—

(A) by striking out ‘‘section 3502(2) of title 44’’ each place it appears in paragraphs (2) and (3)(A) and inserting in lieu thereof ‘‘section 3502(9) of title 44’’; and

(B) in paragraph (4), by striking out ‘‘section 111(d) of the Federal Property and Administrative Services Act of 1949’’ and inserting in lieu thereof ‘‘section 5131 of the Information Technology Management Reform Act of 1996’’;

(2) in subsection (b)—

(A) by striking out paragraph (2);

(B) in paragraph (3), by striking out ‘‘section 111(d) of the Federal Property and Administrative Services Act of 1949’’ and inserting in lieu thereof ‘‘section 5131 of the Information Technology Management Reform Act of 1996’’; and

(C) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5); and

(3) in subsection (d)—

(A) in paragraph (1)(B)(v), by striking out ‘‘as defined’’ and all that follows and inserting in lieu thereof a semicolon; and

(B) in paragraph (2)—

(i) by striking out ‘‘system’—’’ and all that follows through ‘‘means’’ in subparagraph (A) and inserting in lieu thereof ‘‘system’ means’’; and

(ii) by striking out ‘‘; and’’ at the end of subparagraph

(A) and all that follows through the end of subparagraph (B) and inserting in lieu thereof a semicolon.

(b) COMPUTER SECURITY ACT OF 1987.—

(1) **PURPOSES.**—Section 2(b)(2) of the Computer Security Act of 1987 (Public Law 100–235; 101 Stat. 1724) is amended by striking out “by amending section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d))”.

(2) **SECURITY PLAN.**—Section 6(b) of such Act (101 Stat. 1729; 40 U.S.C. 759 note) is amended—

(A) by striking out “Within one year after the date of enactment of this Act, each such agency shall, consistent with the standards, guidelines, policies, and regulations prescribed pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949,” and inserting in lieu thereof “Each such agency shall, consistent with the standards, guidelines, policies, and regulations prescribed pursuant to section 5131 of the Information Technology Management Reform Act of 1996,”; and

(B) by striking out “Copies” and all that follows through “Code.”.

(c) **FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.**—Section 303B(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(h)) is amended by striking out paragraph (3).
40 USC 759 note.

110 STAT. 702 PUBLIC LAW 104–106—FEB. 10, 1996

(d) **OFFICE OF FEDERAL PROCUREMENT POLICY ACT.**—Section 6(h)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(h)(1)) is amended by striking out “of automatic data processing and telecommunications equipment and services or”.

(e) **NATIONAL ENERGY CONSERVATION POLICY ACT.**—Section 801(b)(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287(b)(3)) is amended by striking out the second sentence.

(f) **CENTRAL INTELLIGENCE AGENCY ACT OF 1949.**—Section 3 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c) is amended by striking out subsection (e).

SEC. 5608. CLERICAL AMENDMENTS.

(a) **FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.**—The table of contents in section 1(b) of the Federal Property and Administrative Services Act of 1949 is amended by striking out the item relating to section 111.

(b) **TITLE 38, UNITED STATES CODE.**—The table of sections at the beginning of chapter 3 of title 38, United States Code, is amended by striking out the item relating to section 310 and inserting in lieu thereof the following:
“310. Chief Information Officer.”.

TITLE LVII—EFFECTIVE DATE, SAVINGS PROVISIONS, AND RULES OF CONSTRUCTION

SEC. 5701. EFFECTIVE DATE.

This division and the amendments made by this division shall take effect 180 days after the date of the enactment of this Act.

SEC. 5702. SAVINGS PROVISIONS.

(a) REGULATIONS, INSTRUMENTS, RIGHTS, AND PRIVILEGES.—

All rules, regulations, contracts, orders, determinations, permits, certificates, licenses, grants, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the Administrator of General Services or the General Services Board of Contract Appeals, or by a court of competent jurisdiction, in connection with an acquisition activity carried out under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759), and

(2) which are in effect on the effective date of this division, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Director or any other authorized official, by a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS.—

(1) **PROCEEDINGS GENERALLY.**—This division and the amendments made by this division shall not affect any proceeding, including any proceeding involving a claim, application, or protest in connection with an acquisition activity carried out under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) that is pending before the Administrator of General Services or the General Services Board of Contract Appeals on the effective date of this division.

40 USC 1401

note.

PUBLIC LAW 104–106—FEB. 10, 1996 110 STAT. 703

LEGISLATIVE HISTORY—S. 1124 (H.R. 1530) (S. 1026):

HOUSE REPORTS: Nos. 104–131 (Comm. on National Security) and 104–406 (Comm. of Conference), both accompanying H.R. 1530, and 104–450 (Comm. of Conference).

SENATE REPORTS: No. 104–112 accompanying S. 1026 (Comm. on Armed Services).

CONGRESSIONAL RECORD:

Vol. 141 (1995): Sept. 6, considered and passed Senate.

Vol. 142 (1996): Jan. 5, considered and passed House, amended, in lieu of H.R. 1530.

Jan. 24, House agreed to conference report.

Jan. 26, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):

Feb. 10, Presidential statement.

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(2) **ORDERS.**—Orders may be issued in any such proceeding, appeals may be taken therefrom, and payments may be made pursuant to such orders, as if this division had not been

enacted. An order issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked in accordance with law by the Director or any other authorized official, by a court of competent jurisdiction, or by operation of law.

(3) **DISCONTINUANCE OR MODIFICATION OF PROCEEDINGS NOT PROHIBITED.**—Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(4) **OTHER AUTHORITY AND PROHIBITION.**—Section 1558(a) of title 31, United States Code, and the second sentence of section 3552 of such title shall continue to apply with respect to a protest process in accordance with this subsection.

(5) **REGULATIONS FOR TRANSFER OF PROCEEDINGS.**—The Director may prescribe regulations providing for the orderly transfer of proceedings continued under paragraph (1).

(c) **STANDARDS AND GUIDELINES FOR FEDERAL COMPUTER SYSTEMS.**—Standards and guidelines that are in effect for Federal computer systems under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)) on the day before the effective date of this division shall remain in effect until modified, terminated, superseded, revoked, or disapproved under the authority of section 5131 of this Act.

SEC. 5703. RULES OF CONSTRUCTION.

(a) **RELATIONSHIP TO TITLE 44, UNITED STATES CODE.**—Nothing in this division shall be construed to amend, modify, or supersede any provision of title 44, United States Code, other than chapter 35 of such title.

(b) **RELATIONSHIP TO COMPUTER SECURITY ACT OF 1987.**—Nothing in this division shall affect the limitations on authority that is provided for in the administration of the Computer Security Act of 1987 (Public Law 100–235) and the amendments made by such Act.

Approved February 10, 1996.