

APPENDIX C--EXCERPTS FROM TITLE 10, UNITED STATES CODE

10 UNITED STATES CODE 2201 APPORTIONMENT OF FUNDS; AUTHORITY FOR EXEMPTION; EXCEPTED EXPENSES

§ 2201. Apportionment of funds; authority for exemption; excepted expenses

“(a) Exemption from apportionment requirement. If the President determines such action to be necessary in the interest of national defense, the President may exempt from the provisions of section 1512 of title 31 appropriations, funds, and contract authorizations available for military functions of the Department of Defense.

(b) Airborne alerts. Upon a determination by the President that such action is necessary, the Secretary of Defense may provide for the cost of an airborne alert as an excepted expense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

(c) Members on Active Duty. Upon a determination by the President that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty beyond the number for which funds are provided in appropriation Acts for the Department of Defense, the Secretary of Defense may provide for the cost of such additional members as an excepted expense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

(d) Notification to Congress. The Secretary of Defense--

(1) shall immediately notify Congress of the use of any authority under this section; and

(2) shall submit monthly reports to Congress on the estimated obligations incurred pursuant to subsection (b) and (c).”

10 UNITED STATES CODE 2204 OBLIGATION OF APPROPRIATIONS

§ 2204. Obligation of appropriations

“To prevent overdrafts and deficiencies in the fiscal year for which appropriations are made, appropriations made to the Department of Defense or to a military department, and reimbursements thereto, are available for obligation and expenditure only under scheduled rates of obligation, or changes thereto, that have been approved by the Secretary of Defense. This section does not prohibit the Department of Defense from incurring a deficiency that it has been authorized by law to incur.”

10 UNITED STATES CODE 2208 WORKING-CAPITAL FUNDS

§ 2208. Working-capital funds

“(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working capital funds in the Department of Defense to--

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of--

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used; and

(2) services or work performed; including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working-capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) Reports annually shall be made to the President and to Congress on the condition and operation of working-capital funds established under this section.

(1) Regulations under subsection (h) shall authorize a working-capital funded Army industrial facility (including a Department of the Army Arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof to sell manufactured articles or services to a person outside the Department of Defense if--

(A) in the case of an article, the article is sold to a United States manufacturer, assembler, developer, or other concern--

(i) for use in developing new products;

(ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States;

(iii) for incorporation into items to be sold to, or to be used in a contract with, or to be used for purposes of soliciting a contract with a friendly foreign government; or

(iv) for use in commercial products;

(B) in the case of an article, the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

(C) the article or service is not readily available to the purchaser from a commercial source in the United States in a timely manner that meets the requirements of the purchaser;

(D) the sale is to be made on a basis that does not interfere with performance of work by the facility for the Department of Defense or for a contractor of the Department of Defense; and

(E) in the case of services, the services are related to an article authorized to be sold under this subsection and are to be performed in the United States for the purchaser.

(2) Nothing in this subsection shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this subsection.

(j) The Secretary of the Army may authorize a working-capital funded Army industrial facility to manufacture or remanufacture articles and sell these articles, as well as manufacturing or remanufacturing services provided by such facilities, to persons outside the Department of Defense if--

(1) the person purchasing the article or service is fulfilling a Department of Defense contract; and

(2) the Department of Defense solicitation for such contract is open to competition between Department of Defense activities and private firms.

(k) the Secretary of Defense shall provide that of the total amount of payments received in a fiscal year by funds established under this section for industrial-type activities, not less than 3 percent during fiscal year 1985, not less than 4 percent during fiscal year 1986, and not less than 5 percent during fiscal year 1987 shall be used for the acquisition of capital equipment for such activities.”

10 UNITED STATES CODE 2410(a) APPROPRIATED FUNDS; AVAILABILITY FOR CERTAIN CONTRACTS FOR 12 MONTHS

§ 2410(a). Appropriated funds; availability for certain contracts for 12 months

Funds appropriated to the Department of Defense for a fiscal year shall be available for payments under contracts for any of the following purposes for 12 months beginning at any time during the fiscal year:

(1) The maintenance of tools, equipment, and facilities.

(2) The lease of real or personal property, including the maintenance of such property when contracted for as part of a lease agreement.

(3) Depot maintenance.

(4) The operation of equipment.

10 UNITED STATES CODE 2805 UNSPECIFIED MINOR CONSTRUCTION

§ 2805. Unspecified minor construction

“(a)(1) Except as provided in paragraph (2), within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out minor military construction projects not otherwise authorized by law. A minor military construction project is a military construction project (1) that is for a single undertaking at a military installation, and (2) that has an approved cost equal to or less than \$1,500,000.

(2) A Secretary may not use more than \$5,000,000 for exercise-related unspecified minor military construction projects coordinated or directed by the Joint Chief of Staff outside the United States during any fiscal year.

(b)(1) A minor military construction project costing more than \$500,000 may not be carried out under this section unless approved in advance by the Secretary concerned.

(2) When a decision is made to carry out a minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees in Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees.

[(3) Repealed. Pub. L. 101-510, Div. A, Title XIII, § 1301(16), November 5, 1990, 104 Stat. 1668]

(c)(1) Except as provided in paragraph (2), the Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified military construction project costing not more than \$300,000.

(2) The authority provided in paragraph (1) may not be used with respect to any exercise-related unspecified military construction project coordinated or directed by the Joint Chiefs of Staff outside the United States.

(d) Military family housing projects for construction of new housing units may not be carried out under the authority of this section.”