

★ CHAPTER 26 ★
DEFENSE MODERNIZATION ACCOUNT

2601 GENERAL

260101. Purpose

This chapter implements section 2216 of Title 10, United States Code, which establishes the Defense Modernization Account.

260102. Overview

A. The Defense Modernization Account is a transfer account which provides the Military Departments and Defense Agencies (hereafter referred to as the DoD Components), flexibility in addressing acquisition funding issues.

B. The Defense Modernization Account is a transfer account against which no obligations may be incurred.

C. The Defense Modernization Account allows savings, earned through the efficient management of production and procurement programs, to be applied against programs and projects funded with appropriated funds.

D. Funds transferred into, and from, the Defense Modernization Account shall retain their fiscal year identity for expenditure purposes, and the period they are available for expenditure shall not be extended as a result of transfer into, or from, the Defense Modernization Account. Accordingly, funds transferred into the Defense Modernization Account shall not be available for expenditure beyond the end of the 5th fiscal year following the date that the appropriation, from which they were transferred, expires for new obligation.

E. Funds transferred into (credited to) the Defense Modernization Account only remain available for transfer until the end of the third fiscal year that follows the fiscal year in which the amounts are credited to the Defense Modernization Account.

2602 RESPONSIBILITIES

260201. The Secretary of Defense (SECDEF) has overall responsibility for the management of the Account. In this role, the SECDEF may transfer funds into or out of the Account upon notification of the Congressional Defense Committees.

260202. Secretaries of the Military Departments and Directors of Defense Agencies shall:

A. Determine the availability of funds for transfer to the Account.

- B. Propose the transfer of funds into the Account.
- C. Propose the transfer of funds from the Account.
- D. Prepare and submit required congressional notifications.

*Note: Congressional notifications must be approved by USD(C) prior to submission to the Congressional Defense Committees.

260203. The Under Secretary of Defense (Comptroller) (USD(C)) shall:

- A. Exercise a fiduciary responsibility for the Account, as delegated by the Secretary of Defense.
- B. In consultation with the General Counsel and the Inspector General of the Department of Defense, implement regulations, policies, and procedures for the administrative control of funds transferred into, and out of, the Account.

260204. The Director, Defense Finance and Accounting Service shall:

- A. Ensure the preparation of such reports, on the status of the Account, specified in Section 2608 of this chapter, and such other reports as may be requested by the Under Secretary of Defense (Comptroller).
- B. Aggregate amounts in the Account in such a manner that they maintain the identity of the DoD Component that transferred the funds into, or out of, the Account.
- C. Provide for the applicable Defense Finance and Accounting Service (DFAS) activities to be designated as being responsible for accounting for, reporting on and promoting such other financial services as may be required to support the Account.
- D. Ensure that funds transferred into the Account, as well as amounts transferred from the Account, retain the identity of both the appropriation from which the funds were transferred, as well as the cancellation date of the original appropriation (in accordance with sections 1551 and 1552 of Title 31).

2603 DEFINITIONS The following definitions apply with respect to the Defense Modernization Account:

260301. The term “unexpired funds” means funds appropriated for a definite period that remains available for new obligation.

260302. The term “Congressional Defense Committees” means the Senate Committee on Armed Services, the Senate Committee on Appropriations, the House of

Representatives Committee on National Security, and the House of Representatives Committee on Appropriations, and their successor committees, if any.

260303. The term “modernization” means:

A. Improving operational capability or technical performance or procuring an upgrade of an existing system for either procurement or research, development, test, or evaluation purposes;

B. Reducing life-cycle costs of new or existing systems; or

C. Achieving a more efficient production or delivery rate, by increasing quantities through a procurement action.

260304. The term “savings” means funds that are excess to program requirements in a particular fiscal year.

260305. The term “Secretary concerned” means the Secretary of Defense, with respect to defense-wide appropriations, and the Secretary of a Military Department; “Director” means the head of a Defense agency.

260306. The term “Account” means the Defense Modernization Account.

2604 TRANSFERS INTO THE DEFENSE MODERNIZATION ACCOUNT

260401. General: Unexpired funds which, as a result of economies, efficiencies or other savings, are excess to the requirements for which initially appropriated, and which otherwise meet the criteria for transfer to the Account, may be transferred to the Account from:

A. Appropriations available for Procurement, to the extent that the amounts are excess to applicable procurement requirements; and

B. Appropriations available for the support of installations and facilities when, during the final 30 days of a fiscal year, such funds are excess to the requirements for the support of such installations and facilities.

260402. Restrictions

A. Transfers into the Account may be made only from appropriations provided by the Congress after fiscal year 1995.

B. Transfers into the Account may not be made after September 30, 2003. (The authority to transfer funds into the Account expires on September 30, 2003.)

C. Funds may not be transferred to the Account if:

1. The funds have expired for purposes of incurring new obligations.
2. The funds are necessary for programs, projects, or activities that, as determined by the Secretary or Director concerned, or the Secretary of Defense, have a higher priority than the purposes for which the funds would be used if transferred to the Account.
3. The funds, once transferred, would result in a balance in the Account that would be in excess of \$1,000,000,000. (The Defense Finance and Accounting Service will notify the Secretaries and Directors concerned if the balance is approaching the funding ceiling. Additionally, the Office of the Under Secretary of Defense (Comptroller) (OUSD(C)) will make a determination as to the appropriateness of subsequent transfers to the account, until such time as the balance of funds within the Account no longer represent a risk with respect to balance limitations.)
4. For expenditure purposes, funds transferred into the Account shall retain the fiscal year identity of the original appropriation from which they are being transferred, and the period that they are available for expenditure shall not be extended as a result of transfer into the Account. Accordingly, funds transferred into the Account shall not be available for expenditure beyond the end of the 5th fiscal year following the date that the original appropriation from which they were transferred expires for new obligation.

2605 PROCEDURES CONCERNING TRANSFERS INTO THE DEFENSE MODERNIZATION ACCOUNT

260501. Notification Actions

A. Upon a determination, by the Secretary or Director concerned, that funds are available, and meet the criteria, for transfer to the Account, the Secretary or Director concerned shall prepare a written notification, for submission to the Congressional Defense Committees, of the proposed transfer.

B. Proposed notification letters to the Congressional Defense Committees must be coordinated with, and approved by, the OUSD(C) prior to being submitted to the Congressional Defense Committees. Such notification letters must identify both the amount and the source of the proposed transfer.

260502. Actions to Effect Transfers

A. Funds transferred into the Account may be transferred only after the Secretary or Director concerned has received prior approval from the USD(C) and has notified the Congressional Defense Committees in writing as to the amount and source of funds being transferred into the Account.

B. Upon receiving notification from the Secretary that the Congressional Defense Committees have been notified in writing of the amount and source, followed by a 30-day waiting period, the OUSD(C) shall prepare appropriate documentation necessary to accomplish a transfer of funds to the Account and provide documentation, of such transfers, to the DoD Component concerned.

260503. Retention of Source Fund Identity Following Transfers

A. Funds transferred into the Account retain the identity of the DoD Component that transferred the funds into the Account.

B. Funds transferred into the Account also must retain the identity of both the appropriation from which the funds were transferred, as well as the cancellation date of that appropriation (in accordance with sections 1551 and 1552 of title 31).

2606 TRANSFERS FROM THE DEFENSE MODERNIZATION ACCOUNT AND USE OF AMOUNTS TRANSFERRED

260601. Funds Available for Transfer from the Account. Except as provided for elsewhere in this chapter, amounts transferred into the Account shall remain available for transfer from the Account until the end of the third fiscal year following the fiscal year in which the amounts are transferred into the Account.

260602. Purposes for Which Transfers May be Used. Funds may be transferred from the Account for:

A. The purpose of increasing the quantity of items and services in order to achieve a more efficient production or delivery rate for a program funded in a DoD procurement program.

B. Research, development, test, evaluation or procurement efforts necessary for the modernization (as defined in paragraph 260303) of an existing system, or a system being procured under an ongoing program funded from a DoD procurement program.

260603. Restrictions

A. Funds may not be transferred from the Account for:

1. A purpose or program for which the Congress has not authorized appropriations; or

2. The purpose of making an expenditure for which there is no corresponding obligation; or

3. The purpose of making an expenditure which would result in an obligation adjustment, in excess of statutory limitations or an unliquidated or unrecorded obligation arising in a prior fiscal year.

B. In the case of funds transferred for the purpose of increasing the quantity of items or services for a program funded in a DoD procurement appropriation, funds may not be transferred if the transfer would result either in:

1. An obligation or expenditure of funds in excess of a specific limitation provided by law on the amount that may be obligated or expended, respectively, for the applicable procurement program; or

2. The procurement of a total quantity of items or services in excess of:

a. A specific limitation provided by law on the quantity of items or services that may be procured; or

b. The requirement for the items or services as approved by the Joint Requirements Oversight Council and reported to the Congress by the Secretary of Defense.

C. Funds may not be transferred to a DoD Component different from that which originally transferred such funds into the Account.

D. Funds may not be transferred to a DoD Component in an amount in excess of amounts originally transferred into the Account by the DoD Component, less such amounts previously transferred out of the Account to that same DoD Component.

E. Except as provided for below, funds retained in the Account, as well as those transferred from the Account, retain their original statutory limitations with respect to the life of the original appropriation for purposes of making expenditures.

1. Funds may be transferred from the Account, and obligated in the appropriation to which the funds are transferred, even though the period of availability for new obligations has expired for the original appropriation from which the funds were transferred.

2. Funds transferred from the Account may neither be obligated nor expended (disbursed) after the period of availability, as specified in sections 1551 and 1552 of Title 31, U.S.C, has elapsed for making expenditures from the original appropriation from which the funds were transferred into the Account.

F. The total amount of funds transferred from the Account during any fiscal year may not exceed \$500,000,000.

2607 PROCEDURES CONCERNING TRANSFERS FROM THE DEFENSE MODERNIZATION ACCOUNT

260701. Notification Actions

A. Upon a determination, by the Secretary or Director concerned, that funds are available, and meet the criteria, for transfer from the Account; the Secretary or Director concerned shall prepare a written notification, for submission to the Congressional Defense Committees, of the proposed transfer.

B. Notification letters to the Congressional Defense Committees must be coordinated with, and approved by, the OUSD(C) prior to being submitted to the Congressional Defense Committees. Notification letters must identify the amount of the proposed transfer, the appropriation to which the amount is proposed to be transferred, the purpose for which the funds will be used, and the total costs of the effort/program to which the amounts are proposed to be transferred.

260702. Actions to Effect Transfers

A. Funds may not be transferred from the Account until 30 days has elapsed following the date on which the Secretary concerned notifies the Congressional Defense Committees, in writing, of the proposed transfer.

B. Following the expiration of the 30 day period addressed in paragraph 260702 A., above, and absence a specific objection from the Congress, the OUSD(C) shall prepare appropriate documentation necessary to accomplish the proposed transfer of funds from the Account.

2608 REPORTING REQUIREMENTS

A. Requirement to Report to Congressional Committees. Not later than 15 days after the end of each calendar quarter, the USD(C) shall submit a report on the status of the Account to the Congressional Defense Committees, as well as to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, or successor committees.

B. Contents of Reports to Congressional Committees. Each quarterly report to the congressional Committees shall include:

1. The balance of funds in the Account at the beginning of the quarter;
2. The amount and source of each transfer into the Account during the quarter;
3. The amount and purpose of each transfer from the Account during the quarter; and

4. The balance in the Account at the end of the quarter.

C. Amounts reported in response to paragraph B. above shall be shown by DoD Component, and in total for the Account.

2609 CLOSING OF THE DEFENSE MODERNIZATION ACCOUNT

A. The Account shall be closed on September 30, 2006.

B. Any balance in the account on the date that the Account is closed shall be canceled; and the funds shall not be available for any purpose after that date.