

macy Program. The cost sharing schedules established by this section would end December 31, 2007.

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

OVERVIEW

Simply put, the Department of Defense (DOD) acquisition process is broken. The ability of the Department to conduct the large scale acquisitions required to ensure our future national security is a concern of the committee. The rising costs and lengthening schedules of major defense acquisition programs lead to more expensive platforms fielded in fewer numbers. The committee's concerns extend to all three key components of the Acquisition process including requirements generation, acquisition and contracting, and financial management.

The Joint Capabilities Integration and Development System (JCIDS) and Joint Requirements Oversight Council (JROC) are not operating as envisioned. The Under Secretary of Defense for Acquisition, Technology & Logistics (USD(AT&L)) is failing to control spiraling costs of major defense acquisition programs. As a result, programs to replace key weapons systems are attempting to place all necessary and imagined capabilities onto developing platforms. The JCIDS/JROC process is under intense pressure to ensure that a follow-on system meets all the military departments' current, future and anticipated needs. Consequently, by relying on one system to meet all the necessary requirements, the Department is increasing the costs and development time to field new systems. Ultimately, this process results in low quantities of higher priced systems delivered on a longer schedule.

The unintended consequence of these pressures is a JCIDS/JROC process reflecting a culture of forced cooperation, where the members must approve other military department's programs in order to have their programs approved. The "jointness" required in the JROC process creates a culture where each member faces pressure to accept the criticality of approving a new system for their sister service. The process also encourages military departments to request expensive added capabilities on systems, paid for by other departments in the name of jointness.

In the wake of a ten-year decrease in the acquisition workforce, the Department is facing a critical shortage of certain acquisition professionals with technical skills related to systems engineering, program management and cost estimation. While Congress has directed this decrease in the acquisition workforce over the past decade, the committee is dissatisfied with the Department's approach to these statutory decreases. Instead of cutting overhead and minimizing bureaucracy related to the acquisition workforce, the Department cut critical resources such as production and systems engineers, opting to outsource these functions to contractors. As a result of these workforce-structure decisions, there is a potential conflict of interest developing between contractors acting as "lead-system integrators" on projects for which they have oversight. In addition, the Department has outsourced too many processes closely related to "inherently governmental functions," ceding de facto

project responsibility and decision-making to industry. The reductions of the past decade were an effort to create a streamline corps of acquisition professionals utilizing best practices to obtain the best value for all DOD-related acquisitions. Instead, there is a critical shortage of individuals necessary to ensure systems with the best technology on the fastest schedule at the most competitive price are available to the Department. The committee believes that the Department lacks a coherent strategic human capital plan for the future of the acquisition workforce. A strategy is necessary to define and shape the DOD's future workforce. One essential focus of this strategy should be the continuity of program managers. The committee recommends that the tenure of program managers be extended to ensure program stability. In addition, the committee believes the strategy should focus on the value of systems engineers in ensuring affordability and producibility of future systems.

Furthermore, training programs at the Defense Acquisition University need to expand their focus beyond just the contracting side of acquisition. The Department should create training programs that will ensure requirements personnel and financial managers are adequately trained. The Department should also seek to integrate acquisition and financial management information technology systems to ensure interoperability.

The Deputy Secretary of Defense recently commissioned a comprehensive overview of the acquisition process. The Defense Acquisition Performance Assessment (DAPA) consisted of a panel of leading acquisition experts from both the government and industry. Their review provided a series of recommendations related to defense acquisition reform. Of note is a recommendation to have the JROC presided over by an objective civilian—possibly the USD(AT&L). The DAPA report also found the JCIDS/JROC process does not adequately prioritize requirements provided by the combatant commanders, whom DAPA believes should have a greater say in determining requirements for future programs. Additionally, the committee recommends that the Department consider a prompt transition to a capabilities based acquisition system where combatant commanders are considered the major stakeholders and the military services act primarily as implementers.

Based on the recommendations of the DAPA report, the committee believes that the model for the future DOD acquisition system should be considered by determining requirements based primarily on capabilities needed by combatant commanders. A revised JCIDS/JROC process could objectively validate programs and these validated "joint" capability requirements could be executed by the military services, which would conduct acquisition and program management functions to deliver the combatant commanders identified "joint" capability rather than focusing on service specific solutions. In addition, the Department should further consider "competing" missions among the services. This does not mean that one service will only conduct one mission with one platform. Instead, the services should compete at the design and concept level to encourage a creative means of accomplishing missions with new and innovative solutions.

Ultimately, the Department must carefully consider its ability to cost effectively put metal on targets. Some missions do not require cutting-edge technology to accomplish their objectives. The

USD(AT&L), in collaboration with the JROC should reemphasize the need to focus on “best value” as it relates to accomplishing current and future DOD missions.

ITEMS OF SPECIAL INTEREST

Major Defense Acquisition Program Reform

The committee enacted major reform of the acquisition process for Major Defense Acquisition Programs (MDAPs) through two sections of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163). In particular, section 801 required the certification of numerous requirements related to technological maturity, affordability, alternative acquisition strategies and compliance with relevant Department of Defense policies, regulations and directives, prior to approval of Milestone B for a MDAP. Section 802 rewrote the “Nunn-McCurdy” amendment (10 U.S.C. 2433), to prevent rebaselining of original baseline estimates for MDAPs. It also redefined the thresholds at which Congress requires notification. In particular, section 802 defined a “significant cost growth threshold” as programs that exceed 15 percent over the current baseline estimate or 30 percent over the original baseline estimate and a “critical cost growth threshold” as programs that exceed 25 percent over the current baseline estimate or 50 percent over the original baseline estimate. Notably, after enactment of section 802, in the first submission of the Selected Acquisition Report, the Department reported 36 programs in breach of either the “significant” or “critical” cost growth thresholds. The committee directs the Under Secretary of Defense for Acquisition, Technology and Logistics to submit a consolidated report describing efforts taken to implement major defense acquisition reform, as implemented by sections 801 and 802 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163). The report shall be delivered to the Senate Committee on Armed Services and the House Committee on Armed Services by March 1, 2007.

Prime Vendor Program

The committee understands that the overall purpose of the Prime Vendor Program is to streamline supply chain management, lower overall costs to the government, and improve services to military customers by allowing them to buy commercial products directly from a list of pre-established commercial distributors. Concerns about the prices of products being procured through the Defense Logistics Agency’s (DLA) Prime Vendor Program were raised at a hearing before the House Committee on Armed Services on November 9, 2005. As a result of this hearing, DLA officials recognized the need to improve management oversight and internal controls over the program and proposed a series of corrective actions. In order to allow time for DLA to implement these actions and ensure effective results, the committee directs the Comptroller General to review the actions taken by the Department of Defense to improve the Prime Vendor Program and submit a report to the Senate Committee on Armed Services and the House Committee on Armed Services by March 1, 2007.

Special Operations Command Requirements

The committee recognizes that title 10, United States Code, grants U.S. Special Operations Command (USSOCOM) specific acquisition authority for special operations peculiar equipment, material, supplies and services. The committee is concerned that USSOCOM is not fully capable of executing this Department-like authority under current Department of Defense policies and practices, which is particularly troubling because of the key role USSOCOM plays in current combat operations in Iraq and Afghanistan and in the global war on terrorism. The committee strongly urges the Secretary of Defense to consider the unique role and authorities of USSOCOM as the Department makes needed reforms to its acquisitions and logistics processes, to ensure USSOCOM can efficiently, responsively, and effectively execute authorities granted in title 10.

Unfinitized Contract Actions

Unfinitized Contract Actions (UCAs), also known as “unpriced” contracts or “letter” contracts, authorize contractors to start work and incur costs before reaching a final agreement on terms and conditions, including price. The committee recognizes UCAs can be helpful to support urgent operational needs, but such contracts are not a desirable form of contracting because they place the Department of Defense in an unfavorable negotiating position and do not provide incentives to achieve cost controls, since the contractor operates in a cost-plus mode until negotiations are complete. The committee directs the Comptroller General to undertake a study to determine if the Department is properly using such contracts and pricing them on time. At a minimum, the committee directs the Comptroller General determine: (1) Why the Department is using UCAs; and (2) whether certain sufficient management controls restrict the use of such contracts in urgent situations, ensure limited scope modifications and appropriate profits. The committee directs the Comptroller General to submit a report on the finding of this study to the Senate Committee on Armed Services and the House Committee on Armed Services by March 1, 2007.

LEGISLATIVE PROVISIONS

SUBTITLE A—PROVISIONS RELATING TO MAJOR DEFENSE ACQUISITION PROGRAMS

Section 801—Requirements Management Certification Training Program

This section would require the Under Secretary of Defense for Acquisition, Technology and Logistics, in consultation with the Defense Acquisition University, to establish competency requirements and a certification training program to improve the ability of civilian and military personnel of the Department of Defense to generate requirements that are added to Major Defense Acquisition Programs (MDAPs). This section would require instruction on the interdependence and interfaces between the requirements generation system; the planning, programming, budgeting and execution system; and the defense acquisition system that collectively con-

tribute to the outcomes of MDAPs. This section would require the Under Secretary of Defense for Acquisition, Technology and Logistics to ensure compliance with the training program.

Section 802—Additional Requirements Relating to Technical Data Rights

This section would require the Secretary of Defense to establish regulations to ensure that a major system developed with federal or private funds acquires sufficient technical data to allow competition for contracts required for sustainment of the system. This section would also require any contract for a major system to include price and delivery options for acquiring, at any point during the lifecycle of the system, major elements of technical data not acquired at the time of initial contract award. The regulations would establish a standard for acquiring rights in technical data to enable the lowest possible lifecycle cost for the item or process acquired.

The committee notes, in recent years, acquisition program managers have minimized their purchases of technical data rights for new weapons systems. The committee understands that guidance issued in the 1990s intentionally sought to reverse the previous policy on technical data rights, which may have inappropriately assumed that all rights to technical data should be purchased, even in unnecessary situations. This section would require program managers to negotiate price options for acquiring additional data rights, at the time of award, when the government has maximum leverage in negotiations. The committee believes that this balanced approach will require program managers to buy those data rights necessary to minimize lifecycle cost without requiring the purchase of unneeded technical data rights.

Section 803—Study and Report on Revisions to Selected Acquisition Report Requirements

This section would require the Under Secretary of Defense for Acquisition, Technology and Logistics, in coordination with the service acquisition executives of each military department, to conduct a study on revisions to requirements related to Selected Acquisition Reports (SARs), as set forth in section 2432 of title 10, United States Code.

The SAR provides the committee with a critical tool for providing oversight of major defense acquisition programs. The SAR gives the committee access to clear and regular information on program progress, including information of a classified nature. The committee understands that the elements currently required to be included in the SAR have not been updated for a number of years. Some important elements of program progress are not included in the current SAR, and in some cases, information which may have previously been a good measure of program progress may no longer be as relevant to program oversight.

The committee recognizes that in order for the SAR to be useful to both the Department of Defense (DOD) and the committee, it should focus on those measures of program progress for major defense acquisition programs that are the most useful for oversight across a broad range of programs, without placing an undue reporting burden. One element in the current SAR that is clearly critical

to congressional oversight is the unit cost information which provides the basis for reporting of cost growth under the Nunn-McCurdy Act (10 U.S.C. 2433). However, many elements of program progress beyond unit cost are essential to both departmental and congressional oversight. The committee believes that a revised SAR should be based upon the normal, internal-working documents utilized by the program manager on a day-to-day basis and not created exclusively in response to a congressional reporting requirement. The SAR should be a tool that provides both appropriate congressional oversight, validates the health of a program, and demonstrates that the program management techniques being employed are appropriate. DOD's recommendations shall be submitted to the committee by March 1, 2007.

Section 804—Quarterly Updates on Implementation of Acquisition Reform in the Department of Defense

This section would require the Secretary of Defense to provide quarterly reports to the Senate Committee on Armed Services and the House Committee on Armed Services on the implementation of plans to reform the defense acquisition system. The updates would cover implementation of reforms of the processes for Acquisition, including generation of requirements, award of contracts, and financial management. The quarterly updates would include, at a minimum, consideration of recommendations made by:

- (1) The Defense Acquisition Performance Assessment Panel;
- (2) The Defense Science Board Summer Study on Transformation;
- (3) The Center for Strategic and International Studies: Beyond-Goldwater-Nichols Study;
- (4) The Quadrennial Defense Review; and
- (5) The Committee Defense Review of the House Committee on Armed Services.

The first quarterly update would be required no later than 45 days after the enactment of this Act and the first day of each successive quarter. The requirement would terminate on the first day of the quarter in which the Selected Acquisition Reports indicate that no new programs have breached either the significant cost growth threshold or the critical cost growth threshold.

The ability of the Department of Defense to analyze and synthesize these reform recommendations into a series of meaningful and actionable implementation plans concerns the committee. In the past, bureaucratic impediments, changing senior leadership, and numerous other factors prevented implementation of major acquisition reform despite comprehensive studies on the subject. In particular, the committee notes that the President's Blue Ribbon Commission on Defense (1986), commonly known as the "Packard Commission," recommended numerous reforms to the acquisition system that, despite the efforts of Congress and the Department, have not been fully realized. Nearly twenty years later, the four major acquisition reform studies of 2005 identify the same challenges identified by the "Packard Commission" including rampant cost growth, unreliable cost estimates, and requirements relying on immature technology increasing overall program cost. The committee is concerned about the ability of the Department to solve these decades' old problems.

Section 805—Establishment of Defense Challenge Process for Critical Cost Growth Threshold Breaches in Major Defense Acquisition Programs

This section would amend section 2359b of title 10, United States Code, to establish requirements for Defense Acquisition Challenge Program proposals (referred to as “challenge proposals”) solicited in response to a critical cost growth threshold breach for a major defense acquisition program (MDAP). A critical cost growth threshold breach occurs when an MDAP has exceeded the critical cost growth threshold established by section 2433 of title 10, United States Code. This section would require the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) to issue a solicitation for challenge proposals that may result in near-term improvements in affordability for an MDAP that has experienced a critical cost growth breach, in addition to the current Defense Acquisition Challenge Program (DACP) annual broad agency announcement and unsolicited proposal processes. The committee believes that challenge proposals for critical cost growth breaches warrant expeditious procedures for both preliminary and full review and evaluation. Therefore, this section would require critical cost growth breach DACP solicitations to be issued within 14 days following the date that the Selected Acquisition Report on the MDAP is submitted to Congress, as described in sections 2433(g) and 2432(f) of title 10, United States Code. Such a solicitation should provide sufficient detail on the cost and schedule variances and the design, engineering, manufacturing, and technology integration issues contributing to the MDAP cost growth, to allow responders to prepare responsive proposals for consideration in no less than 30 days. This section would require a panel established by USD(AT&L) to complete a preliminary evaluation of such challenge proposals within 60 days following the date that the Selected Acquisition Report on the MDAP is submitted to Congress. The panel would also be required to share the results of its preliminary evaluation with the Secretary of Defense to aid in the completion of the Secretary’s written certification required by section 2433(e)(2)(B) of title 10, United States Code.

In the event a critical cost breach challenge proposal is found to have merit during the full review and evaluation process, this section would require the MDAP to fund such a challenge proposal following contract award. In the event a critical cost breach challenge proposal is found to have merit upon preliminary review, but later receives an unfavorable evaluation during full review by the office carrying out the MDAP, this section would require the MDAP program manager to provide a narrative explaining the rationale for the unfavorable evaluation to the panel that conducted the preliminary evaluation. If the panel does not agree with the MDAP program manager’s rationale, the panel may request that the MDAP program manager reconsider. If after further consideration, the MDAP program manager still evaluates the challenge proposal unfavorably, the full review and evaluation is complete. Upon the conclusion of full review and evaluation, USD(AT&L) shall provide a report to the congressional defense committees detailing the rationale for each unfavorable evaluation and documenting the dissenting opinion of the panel, as applicable. This section would re-

quire full review and evaluation and the report to the congressional defense committees, as necessary, to be completed within 60 days following the preliminary evaluation by the panel.

In addition, this section would amend section 2433 of title 10, United States Code, to require the Secretary of Defense to carry out an additional assessment under the requirements of paragraph (e)(2) of such section, to assess the availability of alternative components, subsystems, or systems that may result in near-term improvements in affordability for any MDAP that has exceeded the critical cost growth threshold. The Secretary shall carry out this assessment through DACP.

This section would further amend section 2433 of title 10, United States Code, to require the Secretary to include an additional statement in the written certification required by paragraph (e)(2) of such section, stating that DACP, having issued a competitive solicitation for critical cost breach challenge proposals and having completed a preliminary review of proposals received, found no promising proposals meriting full review and evaluation.

Finally, this section would also amend section 2433(g) of title 10, United States Code, to require the Secretary to include a description of design, engineering, manufacturing, and technology integration issues in the narrative of significant occurrences contributing to critical cost growth, which is a component of the Selected Acquisition Report required in section 2433(e) of title 10, United States Code.

Section 806—Market Research Required for Major Defense Acquisition Programs Before Proceeding to Milestone B

This section would require certification that market research has been conducted prior to technology development to reduce duplication of existing technology and products. The committee believes that conducting market research before issuing a technology development contract will prevent duplication of existing technology and reduce program costs before a major defense acquisition program receives Milestone B approval. The committee urges the Department to consider new and creative means of ensuring that appropriate market research is conducted to advance technological development of unique capabilities and eliminate reinvention by using proven technologies available in the marketplace.

The committee is concerned that the Department of Defense (DOD) may not comply with the requirements of part 10 of the Federal Acquisition Regulation related to market research, which results in the lack of reasonable inclusion of large and small businesses with cost-effective and superior technologies in defense contracting. The committee is concerned that current DOD acquisition practices might limit the use of innovative solutions from both large and small businesses and fail to create incentives for DOD prime contractors to embrace innovative technologies from large and small businesses that are commercially available. Traditional cost-reimbursable labor contracts under the cost-plus-fixed-fee or cost-plus-award-fee structure may increase the difficulty of offering proven capabilities to the Department by inadvertently rewarding higher expenditures and reducing incentives to cut costs. The committee notes that cost-plus-percentage-of-cost contracts are prohib-

ited by statute and encourages the Department to take action to ensure that the intent of this prohibition is followed.

SUBTITLE B—ACQUISITION POLICY AND MANAGEMENT

Section 811—Applicability of Statutory Executive Compensation Cap Made Prospective

This section would amend section 808(e)(2) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) to clarify that the underlying provision is prospective from the date of enactment. Currently, compensation of certain executives in excess of a “benchmark” set by regulations is unallowable. As a result, in *General Dynamics Corporation v. United States*, 47 Fed.Cl. 514 (Fed. Cl. 2000), the court held that application of the statutory cap to a contract awarded prior to the enactment section 808(e)(2) constituted a breach of contract, and that the U.S. Government was liable for breach damages due to the retroactive application of the cap. This section would still subject executive compensation to a test of reasonableness.

Section 812—Prohibition on Procurement From Beneficiaries of Foreign Subsidies

This section would prohibit the Secretary of Defense from entering into a contract with a foreign person (including a joint venture, cooperative organization, partnership or contracting team), who has received a subsidy from the government of a foreign country that is a member of the World Trade Organization, if the United States has requested a consultation with that foreign country on the basis that the subsidy is prohibited under the Agreement on Subsidies and Countervailing Measures.

Section 813—Time-Certain Development for Department of Defense Information Technology Business Systems

This section would require that Department of Defense information technology business systems be fielded within five years of the system entering the technology development phase of the acquisition process, known as Milestone A approval. The committee is concerned that many large information technology acquisition programs begin with great promise, yet linger in the development phase for many years without delivering any useful products to the Department. This section would limit the time allowed for development of such systems.

Section 814—Establishment of Panel on Contracting Integrity

This section would establish a panel on contracting integrity to eliminate areas of vulnerability of the defense contracting system to fraud, waste and abuse. The panel would be chaired by the Deputy Secretary of Defense and include the service acquisition executive of each military department, the Inspector General of the Department of Defense, the Director of the Defense Logistics Agency, the Director of the Defense Contract Management Agency and the Director of the Defense Contract Audit Agency. This section would require the panel to submit an annual report on its activities to the congressional defense committees.

SUBTITLE C—AMENDMENTS TO GENERAL CONTRACTING
AUTHORITIES, PROCEDURES, AND LIMITATIONS

Section 821—Extension of Special Temporary Contract Closeout
Authority

This section would allow the Department of Defense to maximize its efforts to close contracts by extending the authority. Section 804 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) as amended, permits the Department to close contracts entered prior to October 1, 1996, provided the contracts are administratively complete and the financial account has an unreconciled balance, either positive or negative, that is less than \$0.1 million.

Section 822—Limitation on Contracts for the Acquisition of Certain
Services

This section would prohibit the Secretary of Defense from entering into a contract for covered services if the amount of the contract exceeds 75 percent of the estimated value of the asset required for the provision of services under the contract or exceeds \$150.0 million in payments over the life of the contract.

Section 823—Use of Federal Supply Schedules by State and Local
Governments for Goods and Services for Recovery from Natural
Disasters, Terrorism, or Nuclear, Biological, Chemical, or Radio-
logical Attack

This section would provide the Administrator of General Services the authority to allow State or local governments to use General Services Administration's (GSA) federal supply schedules for goods and services to facilitate recovery from natural disasters, terrorism or nuclear, biological, chemical, or radiological attack. This section would build on the successful cooperative purchasing program authorized in section 211 of the E-Government Act of 2002 (Public Law 107–347) which opened GSA's schedules for information technology for use by State and local governments.

Section 824—Waivers To Extend Task Order Contracts for
Advisory and Assistance Services

This section would amend section 2304b(b) of title 10, United States Code, and section 253i(b) of title 41, United States Code, to allow the head of an agency to issue a waiver to extend an Advisory and Assistance Services (AAS) contract up to ten years maximum through five one-year options, if he determines in writing that the contract provides engineering or technical services of such a unique and substantial technical nature that recompetition is harmful to the continuity of the program; that recompetition would create a large disruption in ongoing support due to prime contract recompetition when the Department of Defense has a successfully performing prime contractor; and the Department would endure program risk during critical program stages due to loss of program corporate knowledge of ongoing program activities.

The committee is concerned about the Department's growing reliance on AAS contracts. This section would require the Secretary of

Defense to submit a report to the Senate Committee on Armed Services and the House Committee on Armed Services by April 1, 2007. The report would include the following information:

- (1) Methods used by the Department to identify a contract as an AAS contract;
- (2) Number of AAS contracts awarded by the Department in the five years prior to the enactment of this Act;
- (3) Average annual expenditures by the Department for AAS contracts;
- (4) Average length of AAS contracts;
- (5) Number of AAS contracts recompeted and awarded to the previous award winner;
- (6) Number of AAS contractors who previously qualified as a small business but no longer qualify as a small business for a recompetition;
- (7) Number of AAS contracts required for a period of greater than five years and a justification as to why those services are required for greater than five years, including rationale for not performing the service inside the Department;
- (8) Percentage of AAS contracts awarded by the Department in the five years prior to the enactment of this Act for assistance in the introduction and transfer of engineering and technical knowledge for fielded systems, equipment, and components; and
- (9) Steps taken by the Department to prevent organizational conflicts of interest in the use of AAS contracts.

This waiver authority would be ineffective if the Secretary of Defense fails to issue the required report by April 1, 2007.

Section 825—Enhanced Access for Small Business

This section would amend section 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 608) to provide that the Armed Services Board of Contract Appeals and the Civilian Board of Contract Appeals shall provide for expedited disposition of appeals of small businesses where the amount in dispute is \$150,000 or less.

Section 826—Procurement Goal for Hispanic-Serving Institutions

This section would amend section 2323 of title 10, United States Code to extend the contract goals for small disadvantaged businesses and certain institutions of higher education to include Hispanic-serving institutions.

Section 827—Prohibition on Defense Contractors Requiring Licenses or Fees for Use of Military Likenesses and Designations

This section would require that any contract entered into by the Department of Defense include a provision prohibiting the contractor from requiring toy and hobby manufacturers, distributors, or merchants to obtain licenses from or pay fees to the contractor for the use of military likenesses or designations on items provided under the contract.

SUBTITLE D—UNITED STATES DEFENSE INDUSTRIAL BASE
PROVISIONSSection 831—Protection of Strategic Materials Critical to National
Security

This section would amend title 10, United States Code, by inserting section 2533b, “Requirement to buy strategic materials critical to national security from American sources; exceptions.” This section would prohibit the use of appropriated funds for the procurement of a specialty metal or an item critical to national security, as determined by the Strategic Materials Protection Board, unless the item is reprocessed, reused, or produced in the United States.

The committee believes this section will build on the strong tradition of section 2533a of title 10, United States Code, known as the “Berry Amendment,” while simultaneously addressing certain issues related to the procurement of specialty metals. In particular, the committee is concerned by claims that confusion exists over the applicability of the Berry Amendment to all tiers of the supply chain. This section would clarify the original intent of the Berry Amendment by noting that the section applies to subcontracts at any tier under a prime contract, as well as the prime contract. This section would maintain all current exceptions and waivers to the current Berry Amendment. The committee notes that application of this section would allow foreign governments to purchase only specialty metals or items critical to national security from the United States or from their own domestic suppliers. The committee believes that allowing foreign governments to purchase specialty metals from any source not only defeats the intent of the Berry Amendment but also creates a grave risk to national security. This section would prohibit the practice of delivering non-compliant components to the federal government without charge in order to be considered compliant with the Berry Amendment.

The committee is aware that certain suppliers currently claim that they are inadvertently non-compliant with the Berry Amendment as it relates to specialty metals. This section would allow a 12-month “get well” period for suppliers at all levels of the supply chain to become compliant with section 2533b of title 10, United States Code. This section would require public notice of non-compliant suppliers on Fedbizoops.gov, a website that allows the commercial vendors to seek federal markets for their products, written notification of non-compliance to the supplier and prime contractor, and receipt of a compliance plan from the non-compliant supplier and prime contractor. This section would allow a waiver for inadvertent non-compliance to be granted only after public posting of non-compliance and the opportunity for a challenger to offer the federal government the opportunity to substitute the non-compliant components with compliant components. This inadvertent non-compliance waiver would require approval from the secretary of the military department concerned.

Section 832—Strategic Materials Protection Board

This section would establish a Strategic Material Protection Board. The board would be established by the Secretary of Defense and include the Under Secretary of Defense for Acquisition, Tech-

nology and Logistics, the Under Secretary of Defense for Intelligence, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force. The committee believes that the Department of Defense should create a process to identify items that are critical to national security. In particular, the committee notes that certain materials, should they be unavailable domestically would severely impair our national security. This section would require the board to publish a list of items determined to be critical to national security. Additionally, this section would prohibit the removal of specialty metals listed in section 2533b of title 10, United States Code, from the list of items critical to national security.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

ITEMS OF SPECIAL INTEREST

Importance of Placing Foreign Area Officers in Combat Units

The committee notes the contribution made by Foreign Area Officers (FAOs) to the military services, in terms of their knowledge of the language, culture, and personalities of their regions of expertise. While this contribution is routinely limited to strategic levels of operations, the committee believes that this contribution proves valuable at every level of military operations. To encourage that end, the military services should provide sufficient numbers of FAOs so that each regional combatant commander can provide at least one FAO to each subordinate combat units commanded by a two-star general or flag officer. The committee recommends that these FAOs be assigned to the policy and plans staff of the subordinate commands to allow the command to benefit from their regional expertise in its exercise of command and control functions.

Increased Budgetary Confidence Level Implementation in Space Acquisition

Historically, space acquisitions have been budgeted to a 50 percent certainty that the final cost will be at or below the estimate. The committee believes that cost estimating at a 50 percent confidence level leaves little management reserve, reduces probability of program execution, and increases total program costs by requiring budget and schedule adjustments during execution. Furthermore, the committee believes that budgeting to an 80 percent confidence level mitigates problems caused by inaccurate cost estimating and therefore, encourages the Secretary of Defense to raise the required budgetary confidence level of all new and restructured space programs from 50 percent to 80 percent.

National Security Space Management

The committee recognizes efforts within the national security space community to enhance relationships and coordinate activities that span acquisition, research and development, and operations in order to create more responsive and agile space capabilities to support critical intelligence and defense missions. In particular, the