

§ 112. Drug interdiction and counter-drug activities

(a) **FUNDING ASSISTANCE.**—The Secretary of Defense may provide funds to the Governor of a State who submits to the Secretary a State drug interdiction and counter-drug activities plan satisfying the requirements of subsection (c). Such funds shall be used for the following:

(1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses, as authorized by State law, of personnel of the National Guard of that State used, while not in Federal service, for the purpose of drug interdiction and counter-drug activities.

(2) The operation and maintenance of the equipment and facilities of the National Guard of that State used for the purpose of drug interdiction and counter-drug activities.

(3) The procurement of services and equipment, and the leasing of equipment, for the National Guard of that State used for the purpose of drug interdiction and counter-drug activities. However, the use of such funds for the procurement of equipment may not exceed \$5,000 per item, unless approval for procurement of equipment in excess of that amount is granted in advance by the Secretary of Defense.

(b) **USE OF PERSONNEL PERFORMING FULL-TIME NATIONAL GUARD DUTY.**—(1) Under regulations prescribed by the Secretary of Defense, personnel of the National Guard of a State may, in accordance with the State drug interdiction and counter-drug activities plan referred to in subsection (c), be ordered to perform full-time National Guard duty under section 502(f) of this title for the purpose of carrying out drug interdiction and counter-drug activities.

(2)(A) A member of the National Guard serving on full-time National Guard duty under orders authorized under paragraph (1) shall participate in the training required under section 502(a) of this title in addition to the duty performed for the purpose authorized under that paragraph. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out drug interdiction and counter-drug activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

(B) Appropriations available for the Department of Defense for drug interdiction and counter-drug activities may be used for paying costs associated with a member's participation in training described in subparagraph (A). The appropriation shall be reimbursed in full, out of appropriations available for paying those costs, for the amounts paid. Appropriations available for paying those costs shall be available for making the reimbursements.

(C) To ensure that the use of units and personnel of the National Guard of a State pursuant to a State drug interdiction and counter-drug activities plan does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the drug interdiction and counter-drug activities

that units and personnel of the National Guard of a State may perform:

(i) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

(ii) National Guard personnel will not degrade their military skills as a result of performing the activities.

(iii) The performance of the activities will not result in a significant increase in the cost of training.

(iv) In the case of drug interdiction and counter-drug activities performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

(3) A unit or member of the National Guard of a State may be used, pursuant to a State drug interdiction and counter-drug activities plan approved by the Secretary of Defense under this section, to provide services or other assistance (other than air transportation) to an organization eligible to receive services under section 508 of this title if—

(A) the State drug interdiction and counter-drug activities plan specifically recognizes the organization as being eligible to receive the services or assistance;

(B) in the case of services, the performance of the services meets the requirements of paragraphs (1) and (2) of subsection (a) of section 508 of this title; and

(C) the services or assistance is authorized under subsection (b) or (c) of such section or in the State drug interdiction and counter-drug activities plan.

(c) **PLAN REQUIREMENTS.**—A State drug interdiction and counter-drug activities plan shall—

(1) specify how personnel of the National Guard of that State are to be used in drug interdiction and counter-drug activities;

(2) certify that those operations are to be conducted at a time when the personnel involved are not in Federal service;

(3) certify that participation by National Guard personnel in those operations is service in addition to training required under section 502 of this title;

(4) certify that any engineer-type activities (as defined by the Secretary of Defense) under the plan will be performed only by units and members of the National Guard;

(5) include a certification by the Attorney General of the State (or, in the case of a State with no position of Attorney General, a civilian official of the State equivalent to a State attorney general) that the use of the National Guard of the State for the activities proposed under the plan is authorized by, and is consistent with, State law; and

(6) certify that the Governor of the State or a civilian law enforcement official of the State designated by the Governor has determined that any activities included in the plan that are carried out in conjunction with Federal law enforcement agencies serve a State law enforcement purpose.

(d) **EXAMINATION OF PLAN.**—(1) Before funds are provided to the Governor of a State under this

section and before members of the National Guard of that State are ordered to full-time National Guard duty as authorized in subsection (b), the Secretary of Defense shall examine the adequacy of the plan submitted by the Governor under subsection (c). The plan as approved by the Secretary may provide for the use of personnel and equipment of the National Guard of that State to assist the Immigration and Naturalization Service in the transportation of aliens who have violated a Federal or State law prohibiting or regulating the possession, use, or distribution of a controlled substance.

(2) Except as provided in paragraph (3), the Secretary shall carry out paragraph (1) in consultation with the Director of National Drug Control Policy.

(3) Paragraph (2) shall not apply if—

(A) the Governor of a State submits a plan under subsection (c) that is substantially the same as a plan submitted for that State for a previous fiscal year; and

(B) pursuant to the plan submitted for a previous fiscal year, funds were provided to the State in accordance with subsection (a) or personnel of the National Guard of the State were ordered to perform full-time National Guard duty in accordance with subsection (b).

(e) **EXCLUSION FROM END-STRENGTH COMPUTATION.**—Members of the National Guard on active duty or full-time National Guard duty for the purposes of administering (or during fiscal year 1993 otherwise implementing) this section shall not be counted toward the annual end strength authorized for reserves on active duty in support of the reserve components of the armed forces or toward the strengths authorized in sections 12011 and 12012 of title 10.

(f) **END STRENGTH LIMITATION.**—(1) Except as provided in paragraph (2), at the end of a fiscal year there may not be more than 4000 members of the National Guard—

(A) on full-time National Guard duty under section 502(f) of this title to perform drug interdiction or counter-drug activities pursuant to an order to duty for a period of more than 180 days; or

(B) on duty under State authority to perform drug interdiction or counter-drug activities pursuant to an order to duty for a period of more than 180 days with State pay and allowances being reimbursed with funds provided under subsection (a)(1).

(2) The Secretary of Defense may increase the end strength authorized under paragraph (1) by not more than 20 percent for any fiscal year if the Secretary determines that such an increase is necessary in the national security interests of the United States.

(g) **ANNUAL REPORT.**—The Secretary of Defense shall submit to Congress an annual report regarding assistance provided and activities carried out under this section during the preceding fiscal year. The report shall include the following:

(1) The number of members of the National Guard excluded under subsection (e) from the computation of end strengths.

(2) A description of the drug interdiction and counter-drug activities conducted under State

drug interdiction and counter-drug activities plans referred to in subsection (c) with funds provided under this section.

(3) An accounting of the amount of funds provided to each State.

(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform activities under the State drug interdiction and counter-drug activities plans.

(h) **STATUTORY CONSTRUCTION.**—Nothing in this section shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform law enforcement functions authorized to be performed by the National Guard by the laws of the State concerned.

(i) **DEFINITIONS.**—For purposes of this section:

(1) The term “drug interdiction and counter-drug activities”, with respect to the National Guard of a State, means the use of National Guard personnel in drug interdiction and counter-drug law enforcement activities, including drug demand reduction activities, authorized by the law of the State and requested by the Governor of the State.

(2) The term “Governor of a State” means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(3) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(Added Pub. L. 101-189, div. A, title XII, §1207(a)(1), Nov. 29, 1989, 103 Stat. 1564; amended Pub. L. 102-25, title VII, §703, Apr. 6, 1991, 105 Stat. 118; Pub. L. 102-396, title IX, §9099A, Oct. 6, 1992, 106 Stat. 1926; Pub. L. 104-106, div. A, title X, §1021, Feb. 10, 1996, 110 Stat. 426; Pub. L. 104-208, div. C, title VI, §660, Sept. 30, 1996, 110 Stat. 3009-720; Pub. L. 105-85, div. A, title X, §1031, Nov. 18, 1997, 111 Stat. 1880; Pub. L. 105-261, div. A, title X, §1022, Oct. 17, 1998, 112 Stat. 2120; Pub. L. 106-65, div. A, title X, §1021, Oct. 5, 1999, 113 Stat. 746.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 100-456, div. A, title XI, §1105, Sept. 29, 1988, 102 Stat. 2047, which was set out as a note under section 374 of Title 10, Armed Forces, prior to repeal by Pub. L. 101-189, §1207(b).

AMENDMENTS

1999—Subsec. (a)(3). Pub. L. 106-65 substituted “per item” for “per purchase order” in second sentence.

1998—Subsec. (a). Pub. L. 105-261, §1022(e)(1), substituted “for the following:” for “for—” in introductory provisions.

Subsec. (a)(1). Pub. L. 105-261, §1022(e)(2), (3), substituted “The pay” for “the pay” and “activities.” for “activities;”.

Subsec. (a)(2). Pub. L. 105-261, §1022(e)(2), (4), substituted “The operation” for “the operation” and “activities.” for “activities; and”.

Subsec. (a)(3). Pub. L. 105-261, §1022(a), (e)(2), substituted “The procurement” for “the procurement” and “and equipment, and the leasing of equipment,” for “and leasing of equipment” and inserted at end “However, the use of such funds for the procurement of equipment may not exceed \$5,000 per purchase order, unless approval for procurement of equipment in excess

of that amount is granted in advance by the Secretary of Defense.”

Subsec. (b)(2). Pub. L. 105-261, § 1022(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “To ensure that the use of units and personnel of the National Guard of a State pursuant to a State drug interdiction and counter-drug activities plan is not detrimental to the training and readiness of such units and personnel, the requirements of section 2012(d) of title 10 shall apply in determining the drug interdiction and counter-drug activities that units and personnel of the National Guard of a State may perform.”

Subsec. (b)(3). Pub. L. 105-261, § 1022(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “Section 508 of this title, regarding the provision of assistance to certain specified youth and charitable organizations, shall apply in any case in which a unit or member of the National Guard of a State is proposed to be used pursuant to a State drug interdiction and counter-drug activities plan to provide to an organization specified in subsection (d) of such section any of the services described in subsection (b) of such section or services regarding counter-drug education.”

Subsec. (i)(1). Pub. L. 105-261, § 1022(d), inserted “, including drug demand reduction activities,” after “drug interdiction and counter-drug law enforcement activities”.

1997—Subsec. (b). Pub. L. 105-85, § 1031(a), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (c)(4) to (6). Pub. L. 105-85, § 1031(b)(1), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (e). Pub. L. 105-85, § 1031(d), designated par. (1) as subsec. (e) and struck out par. (2) which read as follows: “The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives an annual report specifying for the period covered by the report the number of members of the National Guard excluded under paragraph (1) from the computation of end strengths.”

Subsecs. (g) to (i). Pub. L. 105-85, § 1031(c), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

1996—Subsec. (a). Pub. L. 104-106, § 1021(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Secretary of Defense may provide to the Governor of a State who submits a plan to the Secretary under subsection (b) sufficient funds for—

“(1) the pay, allowances, clothing, subsistence, gratuities, travel, and related expenses of personnel of the National Guard of that State used for—

“(A) the purpose of drug interdiction and counter-drug activities; and

“(B) the operation and maintenance of the equipment and facilities of the National Guard of that State used for that purpose; and

“(2) the procurement of services and leasing of equipment for the National Guard of that State used for the purpose of drug interdiction and counter-drug activities.”

Subsec. (b). Pub. L. 104-106, § 1021(e), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104-106, § 1021(c), substituted “A State drug interdiction and counter-drug activities plan” for “A plan referred to in subsection (a)” in introductory provisions and “training” for “annual training” in par. (3) and added pars. (4) and (5).

Pub. L. 104-106, § 1021(b)(3), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104-106, § 1021(b)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (g).

Subsec. (d)(1). Pub. L. 104-208 inserted at end “The plan as approved by the Secretary may provide for the use of personnel and equipment of the National Guard of that State to assist the Immigration and Naturalization Service in the transportation of aliens who have violated a Federal or State law prohibiting or regulating the possession, use, or distribution of a controlled substance.”

Pub. L. 104-106, § 1021(d)(1), inserted “and before members of the National Guard of that State are ordered to full-time National Guard duty as authorized in subsection (b)” after “under this section” and substituted “under subsection (c)” for “under subsection (b)”.

Subsec. (d)(3)(A). Pub. L. 104-106, § 1021(d)(2)(A), substituted “subsection (c)” for “subsection (b)”.

Subsec. (d)(3)(B). Pub. L. 104-106, § 1021(d)(2)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: “funds were provided to the State pursuant to such plan.”

Subsec. (e)(1). Pub. L. 104-106, § 1021(h)(1), substituted “sections 12011 and 12012” for “sections 517 and 524”.

Subsec. (e)(2). Pub. L. 104-106, § 1021(h)(2), substituted “the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “the Committees on Armed Services of the Senate and House of Representatives”.

Subsec. (f). Pub. L. 104-106, § 1021(f), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 104-106, § 1021(b)(2), redesignated subsec. (d) as (g) and transferred it to appear before subsec. (h), as redesignated.

Subsec. (h). Pub. L. 104-106, § 1021(b)(1), redesignated subsec. (f) as (h).

Subsec. (h)(1). Pub. L. 104-106, § 1021(g), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘counter-drug activities’ includes the use of National Guard personnel, while not in Federal service, in any law enforcement activities authorized by State and local law and requested by the Governor.”

1992—Subsec. (e)(1). Pub. L. 102-396 inserted “(or during fiscal year 1993 otherwise implementing)” after “administering”.

1991—Subsec. (c)(2). Pub. L. 102-25 substituted “in consultation with the Director of National Drug Control Policy.” for “in consultation with—

“(A) the Attorney General of the United States in the case of a plan submitted for fiscal year 1990; and

“(B) the Director of National Drug Control Policy in the case of a plan submitted for subsequent fiscal years.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 101.

§ 113. Federal financial assistance for support of additional duties assigned to the Army National Guard

(a) **AUTHORITY.**—The Secretary of the Army may provide financial assistance to a State to support activities carried out by the Army National Guard of the State in the performance of duties that the Secretary has assigned, with the consent of the Chief of the National Guard Bureau, to the Army National Guard of the State. The Secretary shall determine the amount of the assistance that is appropriate for the purpose.

(b) **COVERED ACTIVITIES.**—(1) Except as provided in paragraph (2), financial assistance may be provided for the performance of an activity by the Army National Guard under subsection (a) only if—

(A) the activity is carried out in the performance of a responsibility of the Secretary of the Army under paragraph (6), (10), or (11) of section 3013(b) of title 10; and

(B) the Army National Guard was selected to perform the activity under competitive procedures that permit all qualified public-sector and private-sector sources to submit offers and be considered for selection to perform the activity on the basis of the offers.

(2) Paragraph (1)(B) does not apply to an activity that, on October 17, 1998, was performed for