Order of President of the United States, dated Feb. 26, 1997, 62 F.R. 9349, formerly set out as a note under this section.

Order of President of the United States, dated Dec. 10, 2001, 66 F.R. 64347, formerly set out as a note under this section.

Order of President of the United States, dated May 6, 2002, 67 F.R. 31109, formerly set out as a note under this section.

Order of President of the United States, dated Sept. 26, 2002, 67 F.R. 61465, formerly set out as a note under this section.

Order of President of the United States, dated Sept. 17, 2003, 68 F.R. 55257, formerly set out as a note under this section.

Order of President of the United States, dated Apr. 21, 2005, 70 F.R. 21609, formerly set out as a note under this section.

§ 435a. Limitation on handling, retention, and storage of certain classified materials by the Department of State

(a) Certification regarding full compliance with requirements

The Director of Central Intelligence shall certify to the appropriate committees of Congress whether or not each covered element of the Department of State is in full compliance with all applicable directives of the Director of Central Intelligence relating to the handling, retention, or storage of covered classified material.

(b) Limitation on certification

The Director of Central Intelligence may not certify a covered element of the Department of State as being in full compliance with the directives referred to in subsection (a) of this section if the covered element is currently subject to a waiver of compliance with respect to any such directive.

(c) Report on noncompliance

Whenever the Director of Central Intelligence determines that a covered element of the Department of State is not in full compliance with any directive referred to in subsection (a) of this section, the Director shall promptly notify the appropriate committees of Congress of such determination.

(d) Effects of certification of non-full compliance

(1) Subject to subsection (e) of this section, effective as of January 1, 2001, a covered element of the Department of State may not retain or store covered classified material unless the Director has certified under subsection (a) of this section as of such date that the covered element is in full compliance with the directives referred to in subsection (a) of this section.

(2) If the prohibition in paragraph (1) takes effect in accordance with that paragraph, the prohibition shall remain in effect until the date on which the Director certifies under subsection (a) of this section that the covered element involved is in full compliance with the directives referred to in that subsection.

(e) Waiver by Director of Central Intelligence

(1) The Director of Central Intelligence may waive the applicability of the prohibition in subsection (d) of this section to an element of the Department of State otherwise covered by such prohibition if the Director determines that the waiver is in the national security interests of the United States.

(2) The Director shall submit to appropriate committees of Congress a report on each exercise of the waiver authority in paragraph (1).

(3) Each report under paragraph (2) with respect to the exercise of authority under paragraph (1) shall set forth the following:

(A) The covered element of the Department of State addressed by the waiver.

(B) The reasons for the waiver.

(C) The actions that will be taken to bring such element into full compliance with the directives referred to in subsection (a) of this section, including a schedule for completion of such actions.

(D) The actions taken by the Director to protect any covered classified material to be handled, retained, or stored by such element pending achievement of full compliance of such element with such directives.

(f) Definitions

In this section:

(1) The term ''appropriate committees of Congress'' means the following:

(A) The Select Committee on Intelligence and the Committee on Foreign Relations of the Senate.

(B) The Permanent Select Committee on Intelligence and the Committee on International Relations of the House of Representatives.

(2) The term ''covered classified material'' means any material classified at the Sensitive Compartmented Information (SCI) level.

(3) The term ''covered element of the Department of State'' means each element of the Department of State that handles, retains, or stores covered classified material.

(4) The term ''material'' means any data, regardless of physical form or characteristic, including written or printed matter, automated information systems storage media, maps, charts, paintings, drawings, films, photographs, engravings, sketches, working notes, papers, reproductions of any such things by any means or process, and sound, voice, magnetic, or electronic recordings.

(5) The term ''Sensitive Compartmented Information (SCI) level'', in the case of classified material, means a level of classification for information in such material concerning or derived from intelligence sources, methods, or analytical processes that requires such information to be handled within formal access control systems established by the Director of Central Intelligence.

(Pub. L. 106–567, title III, § 309, Dec. 27, 2000, 114 Stat. 2840.)

CODIFICATION

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 2001, and not as part of the National Security Act of 1947 which comprises this chapter.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Cen-

tral Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of this title.

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 435b. Security clearances

(a) Definitions

In this section:

(1) The term ''agency'' means—

(A) an executive agency (as that term is defined in section 105 of title 5);

(B) a military department (as that term is defined in section 102 of title 5); and

(C) an element of the intelligence community.

(2) The term ''authorized investigative agency'' means an agency designated by the head of the agency selected pursuant to subsection (b) of this section to conduct a counterintelligence investigation or investigation of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(3) The term ''authorized adjudicative agency'' means an agency authorized by law, regulation, or direction of the Director of National Intelligence to determine eligibility for access to classified information in accordance with Executive Order 12968.

(4) The term ''highly sensitive program'' means—

(A) a government program designated as a Special Access Program (as that term is defined in section 4.1(h) of Executive Order 12958 or any successor Executive order); or

(B) a government program that applies restrictions required for—

(i) restricted data (as that term is defined in section 2014(y) of title 42;[1] or

(ii) other information commonly referred to as ''sensitive compartmented information''.

(5) The term ''current investigation file'' means, with respect to a security clearance, a file on an investigation or adjudication that has been conducted during—

(A) the 5-year period beginning on the date the security clearance was granted, in the case of a Top Secret Clearance, or the date access was granted to a highly sensitive program;

(B) the 10-year period beginning on the date the security clearance was granted in the case of a Secret Clearance; and

(C) the 15-year period beginning on the date the security clearance was granted in the case of a Confidential Clearance.

(6) The term ''personnel security investigation'' means any investigation required for the purpose of determining the eligibility of any military, civilian, or government contractor personnel to access classified information.

(7) The term ''periodic reinvestigations'' means investigations conducted for the purpose of updating a previously completed background investigation—

(A) every 5 years in the case of a top secret clearance or access to a highly sensitive program;

(B) every 10 years in the case of a secret clearance; or

(C) every 15 years in the case of a Confidential Clearance.

(8) The term ''appropriate committees of Congress'' means—

(A) the Permanent Select Committee on Intelligence and the Committees on Armed Services, Homeland Security, Government Reform, and the Judiciary of the House of Representatives; and

(B) the Select Committee on Intelligence and the Committees on Armed Services, Homeland Security and Governmental Affairs, and the Judiciary of the Senate.

(b) Selection of entity

Not later than 90 days after December 17, 2004, the President shall select a single department, agency, or element of the executive branch to be responsible for—

(1) directing day-to-day oversight of investigations and adjudications for personnel security clearances, including for highly sensitive programs, throughout the United States Government;

(2) developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of security clearances and determinations for access to highly sensitive programs, including the standardization of security questionnaires, financial disclosure requirements for security clearance applicants, and polygraph policies and procedures;

(3) serving as the final authority to designate an authorized investigative agency or authorized adjudicative agency;

(4) ensuring reciprocal recognition of access to classified information among the agencies of the United States Government, including acting as the final authority to arbitrate and resolve disputes involving the reciprocity of security clearances and access to highly sensitive programs pursuant to subsection (d) of this section;

(5) ensuring, to the maximum extent practicable, that sufficient resources are available in each agency to achieve clearance and investigative program goals; and

(6) reviewing and coordinating the development of tools and techniques for enhancing the conduct of investigations and granting of clearances.

(c) Performance of security clearance investigations

(1) Notwithstanding any other provision of law, not later than 180 days after December 17, 2004, the President shall, in consultation with the head of the entity selected pursuant to subsection (b) of this section, select a single agency

[1] So in original. There probably should be a closing parenthesis before the semicolon.