TITLE 50—WAR AND NATIONAL DEFENSE

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RATIFICATION OF JAPANESE TREATY

The Treaty of Peace with Japan, signed at San Francisco on Sept. 8, 1951, was ratified by the United States Senate on Mar. 20, 1952. For Resolution of Ratification, see Congressional Record, Vol. 98, No. 46, Thursday, Mar. 20, 1952, p. 2694. According to Proc. No. 2974, eff. Apr. 29, 1952, 17 F.R. 3813, 66 Stat. c31, terminating the national emergencies proclaimed on September 8, 1939, and May 27, 1941, and set out as a note preceding section 1 of the Appendix to this title, such treaty came into force on Apr. 28, 1952.

CHAPTER 1—COUNCIL OF NATIONAL DEFENSE

Sec. 1. Creation, purpose, and composition of council. 
2. Advisory commission. 
3. Duties of council. 
4. Rule and regulations; subordinate bodies and committees. 
5. Reports of subordinate bodies and committees; unvouchedered expenditures. 
6. Repealed.
§ 1. Creation, purpose, and composition of council

A Council of National Defense is established, for the coordination of industries and resources for the national security and welfare, to consist of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Labor.


Codification

Sections 1 to 5 of this title are from section 2 of act Aug. 29, 1916, popularly known as the Army Appropriation Act for the fiscal year 1917.

Change of Name

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

Transfer of Functions

For transfer of certain membership functions, insofar as they pertain to Air Force, which functions were not previously transferred from Secretary of the Army and Department of the Army to Secretary of the Air Force and Department of the Air Force, see Secretary of Defense Transfer Order No. 40 [App. C(11)], July 22, 1949.

§ 2. Advisory commission

The Council of National Defense shall nominate to the President, and the President shall appoint, an advisory commission, consisting of not more than seven persons, each of whom shall have special knowledge of some industry, public utility, or the development of some natural resource, or be otherwise specially qualified, in the opinion of the council, for the performance of the duties hereinafter provided. The members of the advisory commission shall serve without compensation, but shall be allowed actual expenses of travel and subsistence when attending meetings of the commission or engaged in investigations pertaining to its activities. The advisory commission shall hold such meetings as shall be called by the council or be provided by the rules and regulations adopted by the council for the conduct of its work.


Termination of Advisory Commissions

Advisory commissions in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3. Duties of council

It shall be the duty of the Council of National Defense to supervise and direct investigations and make recommendations to the President and the heads of executive departments as to the location of railroads with reference to the frontier of the United States so as to render possible expeditious concentration of troops and supplies to points of defense; the coordination of military, industrial, and commercial purposes in the location of branch lines of railroad; the utilization of waterways; the mobilization of military and naval resources for defense; the increase of domestic production of articles and materials essential to the support of armies and of the people during the interruption of foreign commerce; the development of seagoing transportation; data as to amounts, location, method and means of production, and availability of military supplies; the giving of information to producers and manufacturers as to the class of supplies needed by the military and other services of the Government, the requirements relating thereto, and the creation of relations which will render possible in time of need the immediate concentration and utilization of the resources of the Nation.


Codification

The words "extensive highways and" which preceded "branch lines of railroad" omitted on authority of act Nov. 9, 1921, which transferred powers and duties of Council relating to highways to Secretary of Commerce.

§ 4. Rules and regulations; subordinate bodies and committees

The Council of National Defense shall adopt rules and regulations for the conduct of its work, which rules and regulations shall be subject to the approval of the President, and shall provide for the work of the advisory commission to the end that the special knowledge of such commission may be developed by suitable investigation, research, and inquiry and made available in conference and report for the use of the council; and the council may organize subordinate bodies for its assistance in special investigations, either by the employment of experts or by the creation of committees of specially qualified persons to serve without compensation, but to direct the investigations of experts so employed.


Termination of Advisory Commissions

Advisory commissions in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission es-
established by the Congress, its duration is otherwise provided by law. Advisory commissions established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§5. Reports of subordinate bodies and committees; unvouchered expenditures

Reports shall be submitted by all subordinate bodies and by the advisory commission to the council, and from time to time the council shall report to the President or to the heads of executive departments upon special inquiries or subjects appropriate thereto. When deemed proper the President may authorize, in amounts stipulated by him, unvouchered expenditures.


CODIFICATION

Second sentence was from a proviso to the first sentence, which was affected by act Aug. 7, 1946.

AMENDMENTS

1966—Act Aug. 7, 1946, repealed all provisions requiring annual reports to Congress of the Council’s activities and expenditures.

TERMINATION OF ADVISORY COMMISSIONS

Advisory commissions in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided by law. Advisory commissions established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.


CHAPTER 2—BOARD OF ORDNANCE AND FORTIFICATION


Section, act Sept. 22, 1888, ch. 1028, §1, 25 Stat. 489, related to composition and duties of Board of Ordnance and Fortification.

Section, act Feb. 24, 1891, ch. 283, 26 Stat. 769, provided for a civilian member of Board.

Section, act Mar. 2, 1901, ch. 803, 31 Stat. 910, provided for additional members of Board.

Section 14, act Feb. 18, 1893, ch. 136, 27 Stat. 461, related to qualifications of Board Members.


CHAPTER 3—ALIEN ENEMIES

Sec. 21.

Restraint, regulation, and removal.

22. Time allowed to settle affairs and depart.

23. Jurisdiction of United States courts and judges.

24. Duties of marshals.

§21. Restraint, regulation, and removal

Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed on the part of the United States toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety.

(R.S. §4067; Apr. 16, 1918, ch. 55, 40 Stat. 531.)

CODIFICATION

R.S. §4067 derived from act July 6, 1798, ch. 66, §1, 1 Stat. 577.

AMENDMENTS

1918—Act Apr. 16, 1918, struck out provision restricting this section to males.

WORLD WAR II PROCLAMATIONS

The following proclamations under this section were issued during World War II:


§ 22. Time allowed to settle affairs and depart

When an alien who becomes liable as an enemy, in the manner prescribed in section 21 of this title, is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

(R.S. § 4068.)

 Codification
R.S. § 4068 derived from acts July 6, 1796, ch. 66, § 1, 1 Stat. 577; July 6, 1812, ch. 130, 2 Stat. 781.

§ 23. Jurisdiction of United States courts and judges

After any such proclamation has been made, the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appearing, to order such alien to be removed out of the territory of the United States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison, or otherwise secure such alien, until the order which may be so made shall be performed.

(R.S. § 4069.)

 Codification
R.S. § 4069 derived from act July 6, 1796, ch. 66, § 2, 1 Stat. 577.

§ 24. Duties of marshals

When an alien enemy is required by the President, or by order of any court, judge, or justice, to depart and to be removed, it shall be the duty of the marshal of the district in which he shall be apprehended to provide therefor and to execute such order in person, or by his deputy or other discreet person to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President, or of the court, judge, or justice ordering the same, as the case may be.

(R.S. § 4070.)

 Codification
R.S. § 4070 derived from act July 6, 1796, ch. 66, § 3, 1 Stat. 578.

CHAPTER 4—ESPIONAGE


Section 31, acts June 15, 1917, ch. 30, title I, § 1, 40 Stat. 217; Mar. 28, 1940, ch. 72, title I, § 1, 54 Stat. 79, related to unlawful obtaining or permitting to be obtained information affecting national defense. See section 793 of Title 18, Crimes and Criminal Procedure.


Section 33, act June 15, 1917, ch. 30, title I, § 3, 40 Stat. 219, related to sedition or disloyal acts or words in time of war. See section 2388 of Title 18. Section 33 was amended by act May 16, 1918, ch. 75, § 1, 40 Stat. 553, which was repealed and the original section reenacted by act Mar. 3, 1921, ch. 136, 41 Stat. 1359.

Section 34, act June 15, 1917, ch. 30, title I, § 4, 40 Stat. 219, related to conspiracy to violate sections 32 and 33 of this title. See sections 792 and 2388 of Title 18.

Section 35, acts June 15, 1917, ch. 30, title I, §§ 5, 40 Stat. 219; Mar. 28, 1940, ch. 72, § 2, 54 Stat. 79, related to the harboring or concealing of violators of the law. See sections 792 and 2388 of Title 18.

Section 36, act June 15, 1917, ch. 30, title I, § 6, 40 Stat. 219, related to designation by proclamation of prohibited areas. See section 793 of Title 18.

Section 37, act June 15, 1917, ch. 30, title I, § 7, 40 Stat. 219, related to places subject to provisions of sections 31 to 42 of this title. See section 2388 of Title 18.


Effective Date of Repeal
Repeal of sections 31 to 39 effective Sept. 1, 1948, see section 38 of act June 25, 1948, set out as an Effective Date note preceding section 1 of Title 28, Judiciary and Judicial Procedure.

§ 40. Transferred

Codification
Section, act June 15, 1917, ch. 30, title XIII, § 1, 40 Stat. 231, defined “United States” as used in act June 15, 1917, and was transferred to section 198 of this title.


Effective Date of Repeal
Repeal effective Sept. 1, 1948, see section 38 of act June 25, 1948, set out as an Effective Date note preceding section 1 of Title 28, Judiciary and Judicial Procedure.

§ 42. Transferred

Codification
Section, act June 15, 1917, ch. 30, title XIII, § 4, 40 Stat. 231, related to savings provisions and is set out as a Separability note under section 198 of this title.
Section was formerly classified to section 536 of Title 18 prior to the general revision and enactment of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683.

CHAPTER 4A—PHOTOGRAPHING, SKETCHING, MAPPING, ETC., DEFENSIVE INSTALLATIONS


Section 45, act Jan. 12, 1938, ch. 2, § 1, 52 Stat. 3, related to photographing of defensive installations. See sections 795 to 797 of Title 18, Crimes and Criminal Procedure.

Section 45a, act Jan. 12, 1938, ch. 2, § 2, 52 Stat. 3, related to photographing, etc., from aircraft. See section 796 of Title 18.

Section 45b, act Jan. 12, 1938, ch. 2, § 3, 52 Stat. 3, related to reproducing, publishing, selling uncensored copies. See section 797 of Title 18.

Section 45c, act Jan. 12, 1938, ch. 2, § 4, 52 Stat. 4, related to definitions of “aircraft”, “post”, “camp”, and “station”. See sections 795 and 796 of Title 18.

Section 45d, act Jan. 12, 1938, ch. 2, § 5, 52 Stat. 4, related to geographical application of law.

EFFECTIVE DATE OF REPEAL
Repeal of sections 45 to 45d effective Sept. 1, 1948, see section 38 of act June 25, 1948, set out as an Effective Date note preceding section 1 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 4B—DISCLOSURE OF CLASSIFIED INFORMATION


Section 46, act May 13, 1950, ch. 185, § 2, 64 Stat. 159, related to unlawful disclosure of classified information. See section 796 of Title 18, Crimes and Criminal Procedure.

Section 46a, act May 13, 1950, ch. 185, § 1, 64 Stat. 159, defined terms for use in this chapter.

Section 46b, act May 13, 1950, ch. 185, § 3, 64 Stat. 160, related to penalties for improper disclosure.

SAVINGS PROVISION
Section 56(f) of act Oct. 31, 1951, provided that the repeal of sections 46 to 46b shall not affect any rights or liabilities existing hereunder on Oct. 31, 1951.

CHAPTER 4C—ATOMIC WEAPONS AND SPECIAL NUCLEAR MATERIALS INFORMATION REWARDS

Sec. 47a. Information concerning illegal introduction, manufacture, acquisition or export of special nuclear material or atomic weapons or conspiracies relating thereto; reward.

47b. Determination by Attorney General of entitlement and amount of reward; consultation; Presidential approval.

47c. Aliens; waiver of admission requirements.

47d. Hearings; rules and regulations; conclusiveness of determinations of Attorney General.

47e. Certification of award; approval; payment.

47f. Definitions.

§ 47a. Information concerning illegal introduction, manufacture, acquisition or export of special nuclear material or atomic weapons or conspiracies relating thereto; reward

Any person who furnishes original information to the United States—

(a) leading to the finding or other acquisition by the United States of special nuclear material or an atomic weapon which has been introduced into the United States or manufactured or acquired therein contrary to the laws of the United States, or

(b) with respect to the introduction or attempted introduction into the United States or the manufacture or acquisition or attempted manufacture or acquisition of, or a conspiracy to introduce into the United States or to manufacture or acquire, special nuclear material or an atomic weapon contrary to the laws of the United States, or

(c) with respect to the export or attempted export, or a conspiracy to export, special nuclear material or an atomic weapon from the United States contrary to the laws of the United States, shall be rewarded by the payment of an amount not to exceed $500,000.


AMENDMENTS

1974—Pub. L. 93–377 in part (a) made minor changes in phraseology, in part (b) included information relating to the actual introduction, manufacture and acquisition, or conspiring to introduce into the United States or to manufacture or acquire special nuclear material or an atomic weapon as within the information for which a reward would be given, and added par. (c).

SHORT TITLE

Section 1 of act July 15, 1955, as amended by section 1(a) of Pub. L. 93–377, provided: “That this Act [enacting this chapter] may be cited as the ‘Atomic Weapons and Special Nuclear Materials Rewards Act’.”

§ 47b. Determination by Attorney General of entitlement and amount of reward; consultation; Presidential approval

The Attorney General shall determine whether a person furnishing information to the United States is entitled to a reward and the amount to be paid pursuant to section 47a of this title. Before making a reward under this section the Attorney General shall advise and consult with the Atomic Energy Commission. A reward of $50,000 or more may not be made without the approval of the President.


AMENDMENTS

1974—Pub. L. 93–377 substituted provisions authorizing the Attorney General, with the advice of the Atomic Energy Commission, to determine entitlement and the amount of reward for a person furnishing information to the United States, for provisions authorizing an Awards Board to determine entitlement and amount of such reward, setting forth the composition of the Board and criteria for reward.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See also Transfer of Functions notes set out under those sections.

§ 47c. Aliens; waiver of admission requirements

If the information leading to an award under section 47b of this title is furnished by an alien,
the Secretary of State, the Attorney General, and the Director of Central Intelligence, acting jointly, may determine that the admission of such alien into the United States is in the public interest and, in that event, such alien and the members of his immediate family may receive immigrant visas and may be admitted to the United States for permanent residence, notwithstanding the requirements of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].


REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in text, is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

AMENDMENTS

1996—Pub. L. 104–208 substituted “admission” for “entry”.

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 Central 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 101(a), (b) of Pub. L. 104–458, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8 and Tables.

§ 47d. Hearings; rules and regulations; conclusiveness of determinations of Attorney General

(a) The Attorney General is authorized to hold such hearings and make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this chapter.

(b) A determination made by the Attorney General under section 47b of this title shall be final and conclusive and no court shall have power or jurisdiction to review it.


AMENDMENTS


§ 47e. Certification of award; approval; payment

Any awards granted under subsection 47b of this title shall be certified by the Attorney General and, together with the approval of the President in those cases where such approval is required, transmitted to the Director of Central Intelligence for payment out of funds appropriated or available for the administration of the National Security Act of 1947, as amended.


REFERENCES IN TEXT


AMENDMENTS


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 Central 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. 104–458, set out as a note under section 401 of this title.

§ 47f. Definitions

As used in this chapter—

(a) The term “atomic energy” means all forms of energy released in the course of nuclear fission or nuclear transformation.

(b) The term “atomic weapon” means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

(c) The term “special nuclear material” means plutonium, or uranium enriched in the isotope 233 or in the isotope 235, or any other material which is found to be special nuclear material pursuant to the provisions of the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.].

(d) The term “United States,” when used in a geographical sense, includes Puerto Rico, all Territories and possessions of the United States and the Canal Zone; except that in section 47c of this title, the term “United States” when so used shall have the meaning given to it in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].


REFERENCES IN TEXT


The Immigration and Nationality Act, referred to in subsec. (d), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.
CHAPTER 5—ARSENALS, ARMORIES, AND WAR MATERIAL GENERALLY

SUBCHAPTER I—ARSENALS, ARMORIES, AND WAR MATERIALS

Sec. 51 to 81. Repealed or Transferred.

82. Procurement of ships and material during war.

SUBCHAPTER II—EDUCATION AND EXPERIMENTATION IN DEVELOPMENT OF MUNITIONS AND MATERIALS FOR NATIONAL DEFENSE

91 to 96. Repealed or Omitted.

SUBCHAPTER III—ACQUISITION AND DEVELOPMENT OF STRATEGIC RAW MATERIALS

98. Short title.

98a. Congressional findings and declaration of purpose.


98c. Materials constituting the National Defense Stockpile.

98d. Authority for stockpile operations.

98e. Stockpile management.

98e–1. Transferred.

98f. Special Presidential disposal authority.

98g. Materials development and research.


98h–1. Advisory committees.

98h–2. Reports to Congress.


98h–4. Importation of strategic and critical materials.

98h–5. Biennial report on stockpile requirements.


98i. Repealed or Transferred.

100. Nitrate plants.

100a. Omitted.

SUBCHAPTER I—ARSENALS, ARMORIES, ARMS, AND WAR MATERIALS


§ 60. Section, act July 8, 1918, ch. 137, 40 Stat. 817, authorized transfer of naval ordnance and ordnance material from Navy Department to Department of War.


§ 62a. Section, June 30, 1906, ch. 3938, 34 Stat. 817, authorized loan of ordnance to schools and State homes for veterans’ orphans. See sections 4685 and 9685 of Title 10.

§ 62b. Section, Dec. 15, 1928, ch. 10, 44 Stat. 922, authorized Secretary of War to relieve posts or camps or organizations composed of honorably discharged soldiers, sailors, or marines, and sureties on bonds, from liability on account of loss or destruction of rifles, slings, and cartridge belts loaned to such organizations. See section 4683 of Title 10.


§ 63. Section, May 11, 1908, ch. 163, 35 Stat. 125, authorized sales of ordnance property to schools and State homes for veterans’ orphans. See sections 4625 and 9625 of Title 10, Armed Forces.


§ 64a. Section, Mar. 3, 1875, ch. 130, 18 Stat. 388, provided for sale of useless ordnance materials, appropriated an amount equal to net proceeds of sale for purpose of procuring a supply of material, and limited expenditures to not more than $75,000 in any one year.


§ 67. Repealed. CODIFICATION


soldiers’ monuments purposes. See sections 4684 and 9684 of Title 10, Armed Forces.

Section 69, act Mar. 2, 1905, ch. 322, 33 Stat. 541, authorized sale of individual pieces of armament. See section 2574 of Title 10.


Section 71, act Mar. 3, 1909, ch. 232, 35 Stat. 750, authorized sale of ordnance stores to civilian employees of the Army and to American National Red Cross. See sections 4625 and 9625 of Title 10.

§ 72. Repealed. May 1, 1937, ch. 146, § 5(i), 50 Stat. 126


Section, act Apr. 23, 1904, ch. 1485, 33 Stat. 276, related to disposition of proceeds from sales of serviceable ordnance and stores. See sections 2208 and 2210 of Title 10, Armed Forces.


Section, act Feb. 12, 1925, ch. 225, title I, 43 Stat. 911, related to nitrate plants.


§ 82. Procurement of ships and material during war

(a) Definitions

The word “person” as used in subsections (b) and (c) of this section shall include any individual, trustee, firm, association, company, or corporation. The word “ship” shall include any boat, vessel, submarine, or any form of aircraft, and the parts thereof. The words “war material” shall include arms, armament, ammunition, stores, supplies, and equipment for ships and airplanes, and everything required for or in connection with the production thereof. The word “factory” shall include any factory, workshop, engine works, building used for manufacture, assembling, construction, or any process, and any shipyard or dockyard. The words “United States” shall include the Canal Zone and all territory and waters, continental and insular, subject to the jurisdiction of the United States.

(b) Presidential powers

In time of war the President is authorized and empowered, in addition to all other existing provisions of law:

First. Within the limits of the amounts appropriated therefor, to place an order with any person for such ships or war material as the necessities of the Government, to be determined by the President, may require and which are of the nature, kind, and quantity usually produced or capable of being produced by such person. Compliance with all such orders shall be obligatory on any person to whom such order is given, and such order shall take precedence over all other orders and contracts theretofore placed with such person. If any person owning, leasing, or operating any factory equipped for the building or production of ships or war material for the Navy shall refuse or fail to give to the United States such preference in the execution of such an order, or shall refuse to build, supply, furnish, or manufacture the kind, quantity, or quality of ships or war material so ordered at such reasonable price as shall be determined by the President, the President may take immediate possession of any factory of such person, or of any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Second. Within the limit of the amounts appropriated therefor, to modify or cancel any existing contract for the building, production, or purchase of ships or war material; and if any contractor shall refuse or fail to comply with the contract as so modified the President may take immediate possession of any factory of such contractor, or any part thereof without taking possession of the entire factory, and may use the same at such times and in such manner as he may consider necessary or expedient.

Third. To require the owner or occupier of any factory in which ships or war material are built or produced to place at the disposal of the United States the whole or any part of the output of such factory, and, within the limit of the amounts appropriated therefor, to deliver such output or parts thereof in such quantities and at such times as may be specified in the order at such reasonable price as shall be determined by the President.

Fourth. To requisition and take over for use or operation by the Government any factory, or any part thereof without taking possession of the entire factory, whether the United States has or has not any contract or agreement with the owner or occupier of such factory.
(d) \(^1\) Compensation for commandeered material

Whenever the United States shall cancel or modify any contract, make use of, assume, occupy, requisition, or take over any factory or part thereof, or any ships or war material, in accordance with the provisions of subsection (b) of this section, it shall make just compensation therefore, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid fifty per centum of the amount so determined by the President and shall be entitled to such sum as added to said fifty per centum shall make up such amount as will be just compensation therefor, in the manner provided for by section 1346 or section 1491 of title 28.

(Mar. 4, 1917, ch. 180, 39 Stat. 1192.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CONSIDERATION

In subsec. (d), “section 1346 or section 1491 of title 28” substituted for “section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code” (those sections classified to sections 41(20) and 250 of former Title 28, Judicial Code and Judiciary) on authority of act June 25, 1948, ch. 646, 62 Stat. 869, section 1 of which enacted Title 28, Judiciary and Judicial Procedure. Section 1346 of Title 28 sets forth the basic jurisdiction of the United States district courts in cases in which the United States is defendant. Section 1491 of Title 28 sets forth the basic jurisdiction of the United States Court of Claims. Sections 24(20) and 145 of the Judicial Code were also classified to sections 1496, 1501, 1503, 2401, 2402, and 2501 of Title 28.

SIMILAR PROVISIONS

Provisions similar to those in this section were contained in the Naval Appropriation Act, 1918, act July 1, 1918, ch. 114, 40 Stat. 719, which terminated six months after the treaty of peace between the United States and Germany (Oct. 18, 1919).

TERMINATION OF WAR AND EMERGENCIES

Act July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of the provisions of this section, which authorized the President to acquire, through construction or conversion, ships, landing craft, and other vessels, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

EX. ORD. No. 12742. NATIONAL SECURITY INDUSTRIAL RESPONSIVENESS


By the authority vested in me as President by the Constitution and the laws of the United States of America, including 50 U.S.C. App. 468, 10 U.S.C. 4501 and 9501 (former sections 4501 and 9501 of Title 10, Armed Forces), and 50 U.S.C. 82, it is hereby ordered as follows:

SECTION 101. Policy. The United States must have the capability to rapidly mobilize its resources in the interest of national security. Therefore, to achieve prompt delivery of articles, products, and materials to meet national security requirements, the Government may place orders and require priority performance of these orders.

SIC. 102. Delegation of Authority under.

(a) Subject to paragraph (b) of this section, the authorities vested in the President, under, with respect to the placing of orders for prompt delivery of articles or materials, except for the taking authority under (c), are hereby delegated to:

(1) the Secretary of Agriculture with respect to all food resources;

(2) the Secretary of Energy with respect to all forms of energy;

(3) the Secretary of Transportation with respect to all forms of civil transportation; and

(4) the Secretary of Commerce with respect to all other articles and materials, including construction materials.

(b) The authorities delegated by paragraph (a) of this section shall be exercised only after:

(1) a determination by the Secretary of Defense that prompt delivery of the articles or materials for the exclusive use of the armed forces of the United States is in the interest of national security, or

(2) a determination by the Secretary of Energy that the prompt delivery of the articles or materials for the Department of Energy’s atomic energy programs is in the interest of national security.

(c) All determinations of the type described in paragraph (b) of this section and all delegations—made prior to the effective date of this order under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and under its implementing rules and regulations—shall be continued in effect, including but not limited to approved programs listed under the Defense Priorities and Allocations System (15 CFR Part 700).


(a) Subject to paragraph (b) of this section, the authorities vested in the President under 10 U.S.C. 4501 and 9501 (former sections 4501 and 9501 of Title 10) with respect to the placing of orders for necessary products or materials, and under 50 U.S.C. 82 with respect to the placing of orders for ships or war materials, except for the taking authority vested in the President by these acts, are hereby delegated to:

(1) the Secretary of Agriculture with respect to all food resources;

(2) the Secretary of Energy with respect to all forms of energy;

(3) the Secretary of Transportation with respect to all forms of civil transportation; and

(4) the Secretary of Commerce with respect to all other products and materials, including construction materials.

(b) The authorities delegated in paragraph (a) of this section may be exercised only after the President has made the statutorily required determination.

SIC. 104. Implementation. (a) The authorities delegated under sections 102 and 103 of this order shall include the power to redelegate such authorities, and the power of successive redelegation of such authorities, to departments and agencies, officers, and employees of the Government. The authorities delegated in this order may be implemented by regulations promulgated and administered by the Secretary of Agriculture, Defense, Energy, Transportation, Homeland Security, and Commerce, and the Director of the Federal Emergency Management Agency, as appropriate.

(b) All departments and agencies delegated authority under this order are hereby directed to amend their rules and regulations as necessary to reflect the new authorities delegated herein that are to be relied upon to carry out their functions. To the extent authorized by law, including 50 U.S.C. App. 468 (406), 10 U.S.C. 4501 and 9501 (former sections 4501 and 9501 of Title 10), 50 U.S.C. 82, all rules and regulations issued under the Defense Production Act of 1950, as amended, with re-
spect to the placing of priority orders for articles, products, ships, and materials, including war materials, shall be deemed, where appropriate, to implement the authorities delegated by sections 102 and 103 of this order, and shall remain in effect until amended or revoked by the respective Secretary. All orders, regulations, and other forms of administrative actions purported to have been issued, taken, or continued in effect pursuant to the Defense Production Act of 1950, as amended, shall, until amended or revoked by the respective Secretaries or the Director of the Federal Emergency Management Agency, as appropriate, remain in full force and effect, to the extent supported by any law or any authority delegated to the respective Secretary or the Director pursuant to this order.

(c) Upon the request of the Secretary of Defense with respect to particular articles, products, or materials that are determined to be needed to meet national security requirements, any other official receiving a delegation of authority under this Executive order to place orders or to enforce precedence of such orders, shall exercise such authority within 10 calendar days of the receipt of the request; provided, that if the head of any department or agency hereunder disagrees with a request of the Secretary of Defense, such department or agency head shall, within 10 calendar days from the receipt of the request, refer the issue to the Assistant to the President for National Security Affairs, who shall ensure expeditious resolution of the issue.

(d) Proposed department and agency regulations and procedures to implement the delegated authority under this order, and any new determinations made under sections 102(b)(1) or (2), shall be coordinated by the Secretary of Homeland Security with all appropriate departments and agencies.

Sect. 105. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.


Section 83, act May 29, 1928, ch. 853, § 1, 45 Stat. 928, related to ammunition for use of Army and Navy, storage and disposal, control by a joint board of officers. See section 172 of Title 10, Armed Forces.

Section 84, act Mar. 3, 1937, ch. 133, § 1, 18 Stat. 455, related to expenditure at armories for perfection of patentable inventions.

Section 85, act Mar. 12, 1921, ch. 128, § 6, 41 Stat. 1352, authorized Secretary of War to proceed with installation of guns and howitzers.

§§ 86 to 88. Omitted

CODIFICATION

Sections 86 to 88, act Feb. 15, 1936, ch. 74, §§1–3, 49 Stat. 1140, related to conservation of domestic sources of tin, and were superseded by the Export Control Act of 1949 (former sections 2021 to 2032 of the Appendix to this title) pursuant to section 10 of that Act (former section 2000 of the Appendix to this title). The act of Feb. 15, 1936 was subsequently superseded by the Export Administration Act of 1969 (former sections 2401 to 2413 of the Appendix to this title) pursuant to section 12 of that Act (former section 2411 of the Appendix to this title). See, also, the Export Administration Act of 1979, which is classified to section 2401 of the Appendix to this title.

Section 86, act Feb. 15, 1936, ch. 74, § 1, 49 Stat. 1140, related to conservation of domestic resources of tin.

Section 87, act Feb. 15, 1936, ch. 74, § 2, 49 Stat. 1140, related to prohibition of exportation except on license.

Section 88, act Feb. 15, 1936, ch. 74, § 3, 49 Stat. 1140, related to penalties for violations of sections 86 and 87 of this title.

SUBCHAPTER II—EDUCATION AND EXPERIMENTATION IN DEVELOPMENT OF MUNITIONS AND MATERIALS FOR NATIONAL DEFENSE


Section 91, act June 16, 1938, ch. 458, § 1, 52 Stat. 707, authorized Secretary of War to place educational orders for munitions of special or technical design.

Section 92, act June 16, 1938, ch. 458, § 2, 52 Stat. 708, related to production equipment.

Section 93, act June 16, 1938, ch. 458, § 3, 52 Stat. 708, placed certain limitations on number of orders.


§ 95. Omitted

CODIFICATION

Section, act June 30, 1938, ch. 852; 52 Stat. 1255, authorized an appropriation of $2,000,000 to remain until expended for purpose of rotary-wing and other aircraft research, development, procurement, experimentation, and operation for service testing.


Section, act July 15, 1939, ch. 283, 53 Stat. 1042, related to purchase by Secretary of War of equipment for experimental and test purposes. See section 2373 of Title 10, Armed Forces.

SUBCHAPTER III—ACQUISITION AND DEVELOPMENT OF STRATEGIC RAW MATERIALS

§ 98. Short title

This subchapter may be cited as the “Strategic and Critical Materials Stock Piling Act”.

(June 7, 1939, ch. 190, § 1, as added Pub. L. 96–41, §2(a), July 30, 1979, 93 Stat. 319.)

PRIOR PROVISIONS

A prior section 98, acts June 7, 1939, ch. 190, § 1, 53 Stat. 311; July 23, 1946, ch. 596, 60 Stat. 596, related to declaration of Congressional policy in enacting this subchapter, prior to repeal by section 2(a) of Pub. L. 96–41.

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–180, div. C, title II, §3201, Dec. 4, 1987, 101 Stat. 1245, provided that: “This title [enacting section 98h–5 of this title, amending sections 98a, 98b, 98d, 98e–1, 98h, 98h–2, and 98h–4 of this title, enacting provisions set out as a note under section 98e–1 of this title, and repealing provisions set out as a note under this section] may be cited as the ‘National Defense Stockpile Amendments of 1987’.”

SHORT TITLE OF 1979 AMENDMENT

Section 1 of Pub. L. 96–41 provided: ‘That this Act [enacting this section and sections 98a to 98h–3 of this title, redesignating former section 98h–1 of this title as 98h–3 of this title, amending section 2093 of the Appendix to this title, sections 1743 and 1745 of Title 7, Agriculture, section 741b of Title 15, Commerce and Trade, and section 485 of former Title 40, Public Buildings, Property, and Works, enacting a provision set out as a note under this section, and repealing a provision set out as a note under this section] may be cited as the ‘Strategic and Critical Materials Stock Piling Revision Act of 1979’.”
SHORT TITLE

NEW BUDGET AUTHORITY
Section 4 of Pub. L. 96–41 provided that: "Any provision authorizing the enactment of new budget authority contained in the amendments made by this Act [see Short Title of 1979 Amendment note above] shall be effective on October 1, 1979."

EXECUTIVE ORDER No. 12155

PRIORITY PROVISIONS

Provisions similar to those in this section were contained in former section 98 of this title prior to repeal by Pub. L. 96–41.

AMENDMENTS
1996—Subsec. (c). Pub. L. 104–201 added subsec. (c) and struck out former subsec. (c) which read as follows: "In providing for the National Defense Stockpile under this subchapter, Congress establishes the following principles:

(a) The purpose of the National Defense Stockpile is to serve the interest of national defense only. The National Defense Stockpile is not to be used for economic or budgetary purposes.

(b) Before October 1, 1994, the quantities of materials stockpiled under this subchapter should be sufficient to sustain the United States for a period of not less than three years during a national emergency situation that would necessitate total mobilization of the economy of the United States for a sustained conventional global war of indefinite duration.

(c) On and after October 1, 1994, the quantities of materials stockpiled under this subchapter should be sufficient to meet the needs of the United States during a period of a national emergency that would necessitate an expansion of the Armed Forces together with a significant mobilization of the economy of the United States under planning guidance issued by the Secretary of Defense."

1993—Subsec. (c)(2). Pub. L. 103–160, § 3311(1), substituted "Before October 1, 1994, the quantities for the quantities" for "The quantities"


EFFECTIVE DATE OF 1996 AMENDMENT
Section 3311(c) of Pub. L. 104–201 provided that: "The amendments made by this section [amending this section and section 98b–5 of this title] shall take effect on October 1, 1996."

§ 98b. National Defense Stockpile

(a) Determination of materials; quantities

Subject to subsection (c) of this section, the President shall determine from time to time (1)
which materials are strategic and critical materials for the purposes of this subchapter, and (2) the quality and quantity of each such material to be acquired for the purposes of this subchapter and the form in which each such material shall be acquired and stored. Such materials, when acquired, together with the other materials described in section 98c of this title, shall constitute and be collectively known as the National Defense Stockpile (hereinafter in this subchapter referred to as the “stockpile”).

(b) Guidelines for exercise of Presidential authority

The President shall make the determinations required to be made under subsection (a) of this section on the basis of the principles stated in section 98a(c) of this title.

(c) Quantity change; notification to Congress

(1) The quantity of any material to be stockpiled under this subchapter, as in effect on September 30, 1987, may be changed only as provided in this subsection or as otherwise provided by law enacted after December 4, 1987.

(2) The President shall notify Congress in writing of any change proposed to be made in the quantity of any material to be stockpiled. The President may make the change after the end of the 45-day period beginning on the date of the notification. The President shall include a full explanation and justification for the proposed change with the notification.

(june 7, 1939, ch. 190, §3, as added pub. l. 96–41, §2(a), july 30, 1979, 93 stat. 319; amended pub. l. 100–180, div. c, title ii, §3202(a), dec. 4, 1987, 101 stat. 1245; pub. l. 100–456, div. a, title xii, §1233(b)(2), sept. 29, 1988, 102 stat. 2057; pub. l. 102–484, div. c, title xxxiii, §3311, oct. 23, 1992, 106 stat. 2653; pub. l. 104–201, div. c, title xxxiii, §3312(a), sept. 23, 1996, 110 stat. 2857.)

Prior provisions

a prior section 98b, acts june 7, 1939, ch. 190, §3, 53 stat. 811; july 23, 1946, ch. 590, 60 stat. 597; aug. 2, 1946, ch. 753, title i, §§102, 121, 60 stat. 615, 822, june 30, 1949, ch. 388, title i, §102(a), 63 stat. 390; 1953 reorg. plan no. 3, §2(b), eff. june 12, 1953, 18 f.r. 3375, 67 stat. 634; 1958 reorg. plan no. 1, §2, eff. july 1, 1958, 23 f.r. 4991, 72 stat. 1799; oct. 21, 1968, pub. l. 90–600, §402, 82 stat. 1194; ex. ord. no. 11725, §3, eff. june 29, 1973, 38 f.r. 17175, related to purchase, storage, refinement, rotation, and disposal of materials, prior to repeal by section 2(a) of pub. l. 96–41. see section 98e of this title.

Provisions similar to those in this section were contained in former section 98a of this title prior to repeal by pub. l. 96–41.

Amendments

1996—subsec. (c)(2). pub. l. 104–201 substituted “after the end of the 45-day period beginning on” for “effective on or after the 30th legislative day following” and struck out at end “For purposes of this paragraph, a legislative day is a day on which both Houses of Congress are in session.”

1992—subsec. (c)(2) to (5). pub. l. 102–484 added par. (2) and struck out former pars. (2) to (5) which read as follows:

“(2) If the President proposes to change the quantity of any material to be stockpiled under this subchapter, the President shall include a full explanation and justification for the change in the next annual material plan submitted to Congress under section 98h–2(b) of this title.

“(3) If the proposed change in the case of any material would result in a new requirement for the quantity of such material different from the requirement for that material in effect on September 30, 1987, by less than 10 percent, the change may be made by the President effective on or after the first day of the first fiscal year beginning after the explanation and justification for the proposed change is submitted pursuant to paragraph (2).

“(4) In the case of a proposed change not covered by paragraph (3), the proposed change may be made only to the extent expressly authorized by law.

“(5) If in any year the reports required by sections 98h–2(b) and 98h–5 of this title are not submitted to Congress as required by law (including the time for such submission), then during the next fiscal year no change under paragraph (3) may be made in the quantity of any material to be stockpiled under this subchapter.”


1987—subsec. (a). pub. l. 100–180, §3202(a)(1), substituted “Subject to subsection (c) of this section, the” for “The”. subsec. (b). pub. l. 100–180, §3202(a)(2), substituted “the principles stated in section 98a(c) of this title.” for “the following principles:” and struck out clis. (1) and (2) which related to purpose of National Defense Stockpile and quantities of materials stockpiled. subsec. (c). pub. l. 100–180, §3202(a)(3), added subsec. (c) and struck out former subsec. (c) which read as follows: “The quantity of any material to be stockpiled under this subchapter, as determined under subsection (a) of this section, may not be revised unless the Committees on Armed Services of the Senate and House of Representatives are notified in writing of the proposed revision and the reasons for such revision at least thirty days before the effective date of such revision.”

Deligation of functions

functions of the President under this section were delegated to the Secretary of Defense by section 1 of Ex. ord. no. 12836, Feb. 25, 1988, 53 f.r. 6114, set out under section 98 of this title.

§98c. Materials constituting the National Defense Stockpile

(a) Contents

The stockpile consists of the following materials:

(1) Materials acquired under this subchapter and contained in the national stockpile on July 29, 1979.

(2) Materials acquired under this subchapter after July 29, 1979.

(3) Materials in the supplemental stockpile established by section 1704(b) of title 7 (as in effect from September 21, 1959, through December 31, 1966) on July 29, 1979.

(4) Materials acquired by the United States under the provisions of section 2423 of title 22 that have been determined to be strategic and critical materials for the purposes of this subchapter and that are allocated by the President under subsection (b) of such section for stockpiling in the stockpile.

(6) Materials acquired by the Commodity Credit Corporation and transferred to the stockpile under section 714(h) of title 15.
(7) Materials acquired by the Commodity Credit Corporation under paragraph (2) of section 1743(a) of title 7, and transferred to the stockpile under the third sentence of such section.

(8) Materials transferred to the stockpile by the President under paragraph (4) of section 1743(a) of title 7.

(9) Materials transferred to the stockpile under subsection (b) of this section.

(10) Materials transferred to the stockpile under subsection (c) of this section.

(b) Transfer and reimbursement

Notwithstanding any other provision of law, any material that (1) is under the control of any department or agency of the United States, (2) is determined by the head of such department or agency to be excess to its needs and responsibilities, and (3) is required for the stockpile shall be transferred to the stockpile. Any such transfer shall be made without reimbursement to such department or agency, but all costs required to effect such transfer shall be paid or reimbursed from funds appropriated to carry out this subchapter.

(c) Transfer and disposal

(1) The Secretary of Energy, in consultation with the Secretary of Defense, shall transfer to the stockpile for disposal in accordance with this subchapter uncontaminated materials that are in the Department of Energy inventory of materials for the production of defense-related items, are excess to the requirements of the Department for that purpose, and are suitable for transfer to the stockpile and disposal through the stockpile.

(2) The Secretary of Defense shall determine whether materials are suitable for transfer to the stockpile under this subchapter, are suitable for disposal through the stockpile, and are uncontaminated.

(3) (A) The Secretary of Defense shall determine whether materials are excess to the requirements of the Department for that purpose, and are suitable for transfer to the stockpile and disposal through the stockpile.

(4) Materials transferred to the stockpile under this subsection, are suitable for disposal through the stockpile, and are uncontaminated.

(5) Except for disposals made under the authority of paragraph (3) or (4) of section 98e(a) of this title, no funds may be obligated or appropriated for acquisition of any material under this subchapter unless funds for such acquisition have been authorized by law. Funds appropriated for such acquisition (and for transportation and other incidental expenses related to such acquisition) shall remain available until expended, unless otherwise provided in appropriation Acts.

(6) If for any fiscal year the President proposes certain stockpile transactions, the annual materials plan submitted to Congress for that year shall be included in such plan, no amount may be obligated or expended for such transaction during such year until the President has submitted a full statement of the proposed transaction to the appropriate committee of Congress and a period of 45 days has passed from the date of the receipt of such statement by such committees.

(c) Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to provide for the

§ 98d. Authority for stockpile operations

(a) Funds appropriated for acquisitions; proposed stockpile transactions; significant changes therein

(1) Except for acquisitions made under the authority of paragraph (3) or (4) of section 98e(a) of this title, no funds may be obligated or appropriated for acquisition of any material under this subchapter unless funds for such acquisition have been authorized by law. Funds appropriated for such acquisition (and for transportation and other incidental expenses related to such acquisition) shall remain available until expended, unless otherwise provided in appropriation Acts.

(2) If for any fiscal year the President proposes certain stockpile transactions, the annual materials plan submitted to Congress for that year shall be included in such plan, no amount may be obligated or expended for such transaction during such year until the President has submitted a full statement of the proposed transaction to the appropriate committee of Congress and a period of 45 days has passed from the date of the receipt of such statement by such committees.

(b) Disposal

Except for disposals made under the authority of paragraph (3), (4), or (5) of section 98d(a) of this title or under section 98e(a) of this title, no disposal may be made from the stockpile unless such disposal, including the quantity of the material to be disposed of, has been specifically authorized by law.

(c) Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to provide for the
transportation, processing, refining, storage, security, maintenance, rotation, and disposal of materials contained in or acquired for the stockpile. Funds appropriated for such purposes shall remain available to carry out the purposes for which appropriated for a period of two fiscal years, if so provided in appropriation Acts.


PRIOR PROVISIONS


PROVISIONS similar to those in this section were contained in former sections 98b and 98g of this title prior to repeal by Pub. L. 96–41.

AMENDMENTS

1993—Subsec. (a)(2), Pub. L. 103–160 substituted “and a period of 30 days has passed from the date of the receipt of such statement by such committees.” for “and a period of 30 days has passed from the date of the receipt of such statement by such committees.”

1987—Subsec. (b), Pub. L. 100–180 struck out “(1)” after “the stockpile” and “(4) if the disposal would result in there being an unobligated balance in the National Defense Stockpile Transaction Fund in excess of $100,000,000” after “authorized by law”.

1986—Subsec. (a)(2), Pub. L. 99–661 substituted “$100,000,000” for “$250,000,000”.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense by section 1 of Ex. Ord. No. 12636, Feb. 25, 1988, 53 F.R. 6114, set out under section 98 of this title.

PROHIBITION OF REDUCTIONS IN STOCKPILE GOALS


MATERIALS IN THE NATIONAL DEFENSE STOCKPILE

Provisions relating to certain materials in the National Defense Stockpile were contained in the following acts:


1592.

the authorization of subsection (a) shall be carried out

Critical Materials Stock Piling Act (50 U.S.C. 98 et

Stat. 2573.

tion in regard to sale or lease, established a Tin Advi-

sory Committee to consult with Corporation, estab-

and other assets of Government’s

6(a) of the Strategic and Critical Materials Stock Pil-

to be appropriated the sum of $535,000,000 for the acqui-


1986, 100 Stat. 4068.


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§ 98e. Stockpile management

(a) Presidential powers

The President shall—

(1) acquire the materials determined under section 98b(a) of this title to be strategic and critical materials;

(2) provide for the proper storage, security, and maintenance of materials in the stockpile;

(3) provide for the upgrading, refining, or processing of any material in the stockpile (notwithstanding any intermediate stockpile quantity established for such material) when necessary to convert such material into a form more suitable for storage, subsequent disposition, and immediate use in a national emergency;

(4) provide for the rotation of any material in the stockpile when necessary to prevent deterioration or technological obsolescence of such material by replacement of such material with an equivalent quantity of substantially the same material or better material;

(5) subject to the notification required by subsection (d)(2) of this section, provide for the timely disposal of materials in the stockpile that (A) are excess to stockpile requirements, and (B) may cause a loss to the Government if allowed to deteriorate; and

(6) subject to the provisions of section 98d(b) of this title, dispose of materials in the stockpile the disposal of which is specifically authorized by law.

(b) Federal procurement practices

Except as provided in subsections (c) and (d) of this section, acquisition of strategic and critical materials under this subchapter shall be made in accordance with established Federal procurement practices, and, except as provided in subsections (c) and (d) of this section and in section 98f(a) of this title, disposal of strategic and critical materials from the stockpile shall be made in accordance with the next sentence. To the maximum extent feasible—
writing of the proposed disposal at least 45 days and to protect the United States against avoidance of materials in the stockpile.

(c) Barter; use of stockpile materials as payment for expenses of acquiring, refining, processing, or rotating materials

(1) The President shall encourage the use of barter in the acquisition under subsection (a)(1) of this section of strategic and critical material for, and the disposal under subsection (a)(5) or (a)(6) of this section of materials from, the stockpile when acquisition or disposal by barter is authorized by law and is practical and in the best interest of the United States.

(2) Materials in the stockpile (the disposition of which is authorized by paragraph (3) to finance the upgrading, refining, or processing of a material in the stockpile, or is otherwise authorized by law) shall be available for transfer at fair market value as payment for expenses (including transportation and other incidental expenses) of acquisition of materials, or of upgrading, refining, processing, or rotating materials, under this subchapter.

(3) Notwithstanding section 98b(c) of this title or any other provision of law, whenever the President provides under subsection (a)(3) of this section for the upgrading, refining, or processing of a material in the stockpile to convert that material into a form more suitable for storage, subsequent disposition, and immediate use in a national emergency, the President may barter a portion of the same material (or any other material in the stockpile that is authorized for disposal) to finance that upgrading, refining, or processing.

(4) To the extent otherwise authorized by law, property owned by the United States may be bartered for materials needed for the stockpile.

(d) Waiver; notification of proposed disposal of materials

(1) The President may waive the applicability of any provision of the first sentence of subsection (b) of this section to any acquisition of material for, or disposal of material from, the stockpile. Whenever the President waives any such provision with respect to any such acquisition or disposal, or whenever the President determines that the application of paragraph (1) or (2) of such subsection to a particular acquisition or disposal is not feasible, the President shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in writing of the proposed acquisition or disposal at least 45 days before any obligation of the United States is incurred in connection with such acquisition or disposal and shall include in such notification the reasons for not complying with any provision of such subsection.

(2) Materials in the stockpile may be disposed of under subsection (a)(5) of this section only if such congressional committees are notified in writing of the proposed disposal at least 45 days before any obligation of the United States is incurred in connection with such disposal.

(e) Leasehold interests in property

The President may acquire leasehold interests in property, for periods not in excess of twenty years, for storage, security, and maintenance of materials in the stockpile.

(1) The President shall encourage the use of barter in the acquisition under subsection (a)(1) of this section of strategic and critical material for, and the disposal under subsection (a)(5) or (a)(6) of this section of materials from, the stockpile when acquisition or disposal by barter is authorized by law and is practical and in the best interest of the United States.

(2) Materials in the stockpile (the disposition of which is authorized by paragraph (3) to finance the upgrading, refining, or processing of a material in the stockpile, or is otherwise authorized by law) shall be available for transfer at fair market value as payment for expenses (including transportation and other incidental expenses) of acquisition of materials, or of upgrading, refining, processing, or rotating materials, under this subchapter.

(3) Notwithstanding section 98b(c) of this title or any other provision of law, whenever the President provides under subsection (a)(3) of this section for the upgrading, refining, or processing of a material in the stockpile to convert that material into a form more suitable for storage, subsequent disposition, and immediate use in a national emergency, the President may barter a portion of the same material (or any other material in the stockpile that is authorized for disposal) to finance that upgrading, refining, or processing.

(4) To the extent otherwise authorized by law, property owned by the United States may be bartered for materials needed for the stockpile.

(5) The President may waive the applicability of any provision of the first sentence of subsection (b) of this section to any acquisition of material for, or disposal of material from, the stockpile. Whenever the President waives any such provision with respect to any such acquisition or disposal, or whenever the President determines that the application of paragraph (1) or (2) of such subsection to a particular acquisition or disposal is not feasible, the President shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in writing of the proposed acquisition or disposal at least 45 days before any obligation of the United States is incurred in connection with such acquisition or disposal and shall include in such notification the reasons for not complying with any provision of such subsection.

(6) Materials in the stockpile may be disposed of under subsection (a)(5) of this section only if such congressional committees are notified in writing of the proposed disposal at least 45 days before any obligation of the United States is incurred in connection with such disposal.

The President may acquire leasehold interests in property, for periods not in excess of twenty years, for storage, security, and maintenance of materials in the stockpile.
§ 98g. Materials development and research

(a) Development, mining, preparation, treatment, and utilization of ores and other mineral substances

(1) The President shall make scientific, technologic, and economic investigations concerning the development, mining, preparation, treatment, and utilization of ores and other mineral substances that (A) are found in the United States, or in its territories or possessions, (B) are essential to the national defense, industrial, and essential civilian needs of the United States, and (C) are found in known domestic sources in inadequate quantities or grades.

(2) Such investigations shall be carried out in order to—

(A) determine and develop new domestic sources of supply of such ores and mineral substances; (B) devise new methods for the treatment and utilization of lower grade reserves of such ores and mineral substances; and (C) develop substitutes for such essential ores and mineral products.

(3) Investigations under paragraph (1) may be carried out on public lands and, with the consent of the owner, on privately owned lands for the purpose of exploring and determining the extent and quality of deposits of such minerals, the most suitable methods of mining and beneficiating such minerals, and the cost at which the minerals or metals may be produced.

(b) Development of sources of supplies of agricultural materials; use of agricultural commodities for manufacture of materials

The President shall make scientific, technologic, and economic investigations of the feasibility of developing domestic sources of supplies of any agricultural material or for using agricultural commodities for the manufacture of any material determined pursuant to section 98b(a) of this title to be a strategic and critical material or substitutes therefor.
§ 98h

TITLE 50—WAR AND NATIONAL DEFENSE

(c) Development of sources of supply of other materials; development or use of alternative methods for refining or processing materials in stockpile

The President shall make scientific, technologic, and economic investigations concerning the feasibility of—

(1) developing domestic sources of supply of materials (other than materials referred to in subsections (a) and (b) of this section) determined pursuant to section 98b(a) of this title to be strategic and critical materials; and

(2) developing or using alternative methods for the refining or processing of a material in the stockpile so as to convert such material into a form more suitable for use during an emergency or for storage.

d) Grants and contracts to encourage conservation of strategic and critical materials

The President shall encourage the conservation of domestic sources of any material determined pursuant to section 98b(a) of this title to be a strategic and critical material by making grants or awarding contracts for research regarding the development of—

(1) substitutes for such material; or

(2) more efficient methods of production or use of such material.

(6) of section 98e(a) of this title shall be covered into the fund.

(2) Subject to section 98d(a)(1) of this title, moneys covered into the fund under paragraph (1) are hereby made available (subject to such limitations as may be provided in appropriation Acts) for the following purposes:

(A) The acquisition, maintenance, and disposal of strategic and critical materials under section 98e(a) of this title.

(B) Transportation, storage, and other incidental expenses related to such acquisition, maintenance, and disposal.

(C) Development of current specifications of stockpile materials and the upgrading of existing stockpile materials to meet current specifications (including transportation, when economical, related to such upgrading).

(D) Testing and quality studies of stockpile materials.

(E) Studying future material and mobilization requirements for the stockpile.

(F) Activities authorized under section 98h–6 of this title.

(G) Contracting under competitive procedures for materials development and research to—

(i) improve the quality and availability of materials stockpiled from time to time in the stockpile; and

(ii) develop new materials for the stockpile.

(H) Improvement or rehabilitation of facilities, structures, and infrastructure needed to maintain the integrity of stockpile materials.

(I) Disposal of hazardous materials that are stored in the stockpile and authorized for disposal by law.

(J) Performance of environmental remediation, restoration, waste management, or compliance activities at locations of the stockpile that are required under a Federal law or are undertaken by the Government under an administrative decision or negotiated agreement.

(K) Pay of employees of the National Defense Stockpile program.

(L) Other expenses of the National Defense Stockpile program.

(3) Moneys in the fund shall remain available until expended.

c) Moneys received from sale of materials being rotated or disposed of

All moneys received from the sale of materials being rotated under the provisions of section 98e(a)(4) of this title or disposed of under section 98f(a) of this title shall be covered into the fund and shall be available only for the acquisition of replacement materials.

d) Effect of bartering

If, during a fiscal year, the National Defense Stockpile Manager barters materials in the stockpile for the purpose of acquiring, upgrading, refining, or processing other materials (or for services directly related to that purpose), the contract value of the materials so bartered shall—

(1) be applied toward the total value of materials that are authorized to be disposed of from the stockpile during that fiscal year;
(2) be treated as an acquisition for purposes of satisfying any requirement imposed on the National Defense Stockpile Manager to enter into obligations during that fiscal year under subsection (b)(2) of this section; and (3) not increase or decrease the balance in the fund.


PRIOR PROVISIONS

A prior section 98h, act June 7, 1939, ch. 190, § 9, as added July 23, 1946, ch. 590, 60 Stat. 600, related to disposition of receipts, prior to repeal by section 2(a) of Pub. L. 96-41. See section 98h(b)(1) of this title.

AMENDMENTS

1998—Subsec. (b)(2)(J) to (L). Pub. L. 102-484 added subpar. (J) and redesignated former subpars. (J) and (K) as (K) and (L), respectively.


1991—Subsec. (b)(4). Pub. L. 103-185, § 3313(b), struck out par. (4) which read as follows: "Notwithstanding paragraph (2), moneys in the fund may not be used to pay salaries and expenses of stockpile employees."

1990—Subsec. (b)(2)(A). Pub. L. 102-484, § 3312(a)(1), inserted "maintenance, and disposal" after "acquisition" and substituted "section 98a(a)" for "section 98(a)(1)".

1989—Subsec. (b)(2)(B). Pub. L. 102-484, § 3312(a)(2), substituted "such acquisition, maintenance, and disposal" for "such acquisition".


1982—Subsec. (b)(3). Pub. L. 97-35 struck out subpar. (F) which related to other reasonable requirements for management of stockpile.


1980—Subsec. (b)(2). Pub. L. 99-661, § 3203(a)(2), added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows: "(2) Moneys covered into the fund under paragraph (1) shall be available, when appropriated therefor, only for the acquisition of strategic and critical materials under section 98a(a)(1) of this title (and for transportation related to such acquisition)." "(3) Moneys in the fund, when appropriated, shall remain available until expended, unless otherwise provided in appropriation Acts."
(2) The Committee shall advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile that are proposed to be included in the annual materials plan submitted to Congress under section 98h–2(b) of this title, or in any revision of such plan, and shall submit to the manager the Committee's recommendations regarding those acquisitions and disposals.

(3) The annual materials plan or the revision of such plan, as the case may be, shall contain—

(A) the views of the Committee on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile;

(B) the recommendations submitted by the Committee under paragraph (2); and

(C) for each acquisition or disposal provided for in the plan or revision that is inconsistent with a recommendation of the Committee, a justification for the acquisition or disposal.

(4) In developing recommendations for the National Defense Stockpile Manager under paragraph (2), the Committee shall consult from time to time with representatives of producers, processors, and consumers of the types of materials stored in the stockpile.

(5) The annual materials plan or the revision that is inconsistent with a recommendation of the Committee, or the annual written report detailing operations under this subchapter. Each such report shall include—

(a) information with respect to foreign and domestic purchases of materials during the preceding fiscal year;

(b) information with respect to the acquisition and disposal of materials under this subchapter by barter, as provided for in section 98e(c) of this title, during such fiscal year;

(c) information with respect to the activities conducted under sections 98a and 98g of this title; and

(d) a statement and explanation of the financial status of the National Defense Stockpile Transaction Fund and the anticipated appropriations to be made to the fund, and obligations to be made from the fund, during the current fiscal year; and

(e) such other pertinent information on the administration of this subchapter as will enable the Congress to evaluate the effectiveness of the program provided for under this subchapter and to determine the need for additional legislation.

(b)(1) Not later than February 15 of each year, the President shall submit to the appropriate committees of the Congress a report containing an annual materials plan for the operation of the stockpile during the next fiscal year and the succeeding four fiscal years.
(2) Each such report shall include details of all planned expenditures from the National Defense Stockpile Transaction Fund during such period (including expenditures to be made from appropriations from the general fund of the Treasury) and anticipated receipts from proposed disposals of stockpile materials during such period. Each such report shall also contain details regarding the materials development and research projects to be conducted under section 98h(b)(2)(G) of this title during the fiscal years covered by the report. With respect to each development and research project, the report shall specify the amount planned to be expended from the fund, the material intended to be developed, the potential military or defense industrial applications for that material, and the development and research methodologies to be used.

(3) Any proposed expenditure or disposal detailed in the annual materials plan for any such fiscal year, and any expenditure or disposal proposed in connection with any transaction submitted for such fiscal year to the appropriate committees of Congress pursuant to section 98h(a)(2) of this title, that is not obligated or executed in that fiscal year may not be obligated or executed until such proposed expenditure or disposal is resubmitted in a subsequent annual materials plan or is resubmitted to the appropriate committees of Congress in accordance with section 98d(a)(2) of this title, as appropriate.


PRIOR PROVISIONS

A prior section 11 of act June 7, 1939, ch. 190, formerly § 10, as added July 23, 1946, ch. 596, 80 Stat. 596; renumbered § 11, Pub. L. 92–156, title V, § 603(a), Nov. 17, 1971, 85 Stat. 247, was set out as a Short Title note under section 98 of this title, prior to repeal by section 2(b)(2) of Pub. L. 96–41.

Provisions similar to those in this section were contained in former section 98c of this title prior to repeal by Pub. L. 96–41.

AMENDMENTS


1981—Subsec. (a). Pub. L. 102–190, § 3313(a)(1), substituted “Not later than January 15 of each year, the President” for “The President” and “an annual” for “every six months a”.

Subsec. (a)(1). Pub. L. 102–190, § 3313(a)(2), which directed the substitution of “fiscal year” for “6-month period”, could not be executed because the words “6-month period” did not appear in text.


Subsec. (a)(5). Pub. L. 102–190, § 3313(a)(4), substituted “current fiscal year” for “next fiscal year”.

§ 98h–4. Importation of strategic and critical materials

The President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this subchapter, if such material is the product of any foreign country or area not listed in general note 3(b) of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for so long as the importation into the United States of material of that kind which is the product of a country or area listed in such general note is not prohibited by any provision of law.


REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in text, is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

CODIFICATION

Section was formerly classified to section 98h–1 of this title.

AMENDMENTS

1996—Pub. L. 104–201 substituted “not listed in general note” for “not listed as a Communist-dominated country or area in general note” and “product of a country or area listed in such general note” for “product of such Communist-dominated countries or areas”. 1988—Pub. L. 100–418 substituted “general note 3(b) of the Harmonized Tariff Schedule of the United States” for “general headnote 3(d) of the Tariff Schedules of the United States”. 1987—Pub. L. 100–180 inserted section catchline and, in text, substituted “The President” for “Notwithstanding any other provision of law, on and after January 1, 1972, the President”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3301 of Title 19, Customs Duties.

§ 98h–5. Biennial report on stockpile requirements

(a) In general

Not later than January 15 of every other year, the Secretary of Defense shall submit to Congress a report on stockpile requirements. Each such report shall include—

(1) the Secretary’s recommendations with respect to stockpile requirements; and

(2) the matters required under subsection (b) of this section.

(b) National emergency planning assumptions

Each report under this section shall set forth the national emergency planning assumptions used by the Secretary in making the Secretary’s recommendations under subsection (a)(1) of this section with respect to stockpile requirements. The Secretary shall base the national emergency planning assumptions on a military conflict scenario consistent with the scenario used by the Secretary in budgeting and defense planning purposes. The assumptions to be set forth include assumptions relating to each of the following:

(1) The length and intensity of the assumed military conflict.

(2) The military force structure to be mobilized.

(3) The losses anticipated from enemy action.

(4) The military, industrial, and essential civilian requirements to support the national emergency.

(5) The availability of supplies of strategic and critical materials from foreign sources during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.

(6) The domestic production of strategic and critical materials during the mobilization period, the military conflict, and the subsequent period of replenishment, taking into consideration possible shipping losses.

(7) Civilian austerity measures required during the mobilization period and military conflict.

(c) Period within which to replace or replenish materials

The stockpile requirements shall be based on those strategic and critical materials necessary for the United States to replenish or replace, within three years of the end of the military conflict scenario required under subsection (b) of this section, all munitions, combat support items, and weapons systems that would be required after such a military conflict.

(d) Effect of alternative mobilization periods

The Secretary shall also include in each report under this section an examination of the effect that alternative mobilization periods under the military conflict scenario required under subsection (b) of this section, as well as a range of other military conflict scenarios addressing potentially more serious threats to national security, would have on the Secretary’s recommendations under subsection (a)(1) of this section with respect to stockpile requirements.

(e) Plans of President

The President shall submit with each report under this section a statement of the plans of the President for meeting the recommendations of the Secretary set forth in the report.


AMENDMENTS

1996—Subsecs. (b) to (e). Pub. L. 104–201 added subsecs. (b) to (d), redesignated former subsec. (c) as (e), and
§ 98h–6. Development of domestic sources

(a) Purchase of materials of domestic origin; processing of materials in domestic facilities

Subject to subsection (c) of this section and to the extent the President determines such action is required for the national defense, the President shall encourage the development of domestic sources for materials determined pursuant to section 98b(a) of this title to be strategic and critical materials—

(1) by purchasing, or making a commitment to purchase, strategic and critical materials of domestic origin when such materials are needed for the stockpile; and

(2) by contracting with domestic facilities, or making a commitment to contract with domestic facilities, for the processing or refining of strategic and critical materials in the stockpile when processing or refining is necessary to convert such materials into a form more suitable for storage and subsequent disposition.

(b) Terms and conditions of contracts and commitments

A contract or commitment made under subsection (a) of this section may not exceed five years from the date of the contract or commitment. Such purchases and commitments to purchase may be made for such quantities and on such terms and conditions, including advance payments, as the President considers to be necessary.

(c) Proposed transactions included in annual materials plan; availability of funds

(1) Descriptions of proposed transactions under subsection (a) of this section shall be included in the appropriate annual materials plan submitted to Congress under section 98h–2(b) of this title. Changes to any such transaction, or the addition of a transaction not included in such plan, shall be made in the manner provided by section 98d(a)(2) of this title.

(2) The authority of the President to enter into obligations under this section is effective for any fiscal year only to the extent that funds in the National Defense Stockpile Transaction Fund are adequate to meet such obligations. Payments required to be as a result of obligations incurred under this section shall be made from amounts in the fund.

(d) Transportation and incidental expenses

The authority of the President under subsection (a) of this section includes the authority to pay—

(1) the expenses of transporting materials; and

(2) other incidental expenses related to carrying out such subsection.

(e) Reports

The President shall include in the reports required under section 98h–2(a) of this title information with respect to activities conducted under this section.

§ 98h–7. National Defense Stockpile Manager

(a) Appointment

The President shall designate a single Federal office to have responsibility for performing the functions of the President under this subchapter, other than under sections 98f and 98h–4 of this title. The office designated shall be one to which appointment is made by the President, by and with the advice and consent of the Senate.

(b) Title of designated officer

The individual holding the office designated by the President under subsection (a) of this section shall be known for purposes of functions under this subchapter as the “National Defense Stockpile Manager”.

(c) Delegation of functions

The President may delegate functions of the President under this subchapter (other than under sections 98f and 98h–4 of this title) only to the National Defense Stockpile Manager. Any such delegation made by the President shall remain in effect until specifically revoked by law or Executive order. The President may not delegate functions of the President under sections 98f and 98h–4 of this title.

§ 98h–8. Payments required

Payments required to be as a result of obligations incurred under this section shall be made from amounts in the National Defense Stockpile Transaction Fund.
1991—Subsec. (d). Pub. L. 102–190 struck out subsec. (d) which read as follows: "During any period during which there is no officer appointed by the President, by and with the advice and consent of the Senate, serving in the position designated by the President under subsection (a) of this section or during which the authority of the President under this subchapter (other than under sections 98f and 98h–4 of this title) has not been delegated to that position, no action may be taken under section 98e(a)(6) of this title."

1989—Subsec. (a). Pub. L. 101–189, § 3313(b)(1), substituted "sections 98f and 98h–4" for "sections 98f, 98g, and 98h–4". Subsec. (c). Pub. L. 101–189, § 3313(b)(1), (2), substituted "sections 98f and 98h–4" for "sections 98f, 98g, and 98h–4" and inserted at end "The President may not delegate functions of the President under sections 98f and 98h–4 of this title." after "Executive order." Subsec. (d). Pub. L. 101–189, § 3313(b)(1), (3), substituted "sections 98f and 98h–4" for "sections 98f, 98g, and 98h–4" and "section 98e(a)(6)" for "section 98e(b) or 98e(d)".

1987—Pub. L. 100–180 amended section generally, revising and restating provisions of subsections (a) and (b) and adding subsections (c) and (d).

Savings Provision
Section 3203(c) of Pub. L. 100–180 provided that: "Unless otherwise directed by the President under section 6A [renumbered § 106 of the Strategic and Critical Materials Stock Piling Act [this section], as amended by section 3313(b)(1) of Pub. L. 101–189], the designation of a National Defense Stockpile Manager in effect on the day before the date of the enactment of this Act [Dec. 4, 1987] shall remain in effect until the individual so designated ceases to hold the office held by the individual at the time of the designation."

Designation of National Defense Stockpile Manager; Delegation of Functions
The Secretary of Defense was designated National Defense Stockpile Manager and functions of the President under this section were delegated to the Secretary of Defense by section 1 of Ex. Ord. No. 12636, Feb. 25, 1988, 53 F.R. 6114, set out under section 98 of this title.

Deadline for Designation of Manager
Section 3203(b) of Pub. L. 99–661 directed President, not later than Feb. 15, 1987, to designate an official as National Defense Stockpile Manager, as required by this section.


Section, act Aug. 3, 1956, ch. 939, title IV, § 416, 70 Stat. 1018, related to contracts for storage, handling, and distribution of liquid fuels. See section 2922 of Title 10, Armed Forces.

Section was not enacted as part of the Strategic and Critical Materials Stock Piling Act which comprises this subchapter.

§ 99. Transferred

Codification
Section, act July 2, 1940, ch. 508, § 6, 54 Stat. 714, was transferred to section 701 of Appendix to this title and subsequently repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.

§ 100. Nitrate plants

(a) Investigations; designation of sites; construction and operation of dams, locks, improvements to navigation, etc.

The President of the United States may make, or cause to be made, such investigation as in his judgment is necessary to determine the best, cheapest, and most available means for the production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers and other useful products by water power or any other power as in his judgment is the best and cheapest to use; and is also authorized to designate for the exclusive use of the United States, if in his judgment such means is best and cheapest, such site or sites, upon any navigable or nonnavigable river or rivers or upon the public lands, as in his opinion will be necessary for national defense; and is further authorized to construct, maintain, and operate, at or on any site or sites so designated, dams, locks, improvements to navigation, power houses, and other plants and equipment or other means than water power as in his judgment is the best and cheapest, necessary or convenient for the generation of electrical or other power and for the production of nitrates or other products needed for munitions of war and useful in the manufacture of fertilizers and other useful products.

(b) Lease, purchase, or acquisition of lands and rights of way; purchase or acquisition of materials, minerals, and processes

The President is authorized to lease, buy, or acquire, by condemnation, gift, grant, or devise, such lands and rights of way as may be necessary for the construction and operation of such plants and to take from any lands of the United States, or to buy or acquire by condemnation materials, minerals, and processes, patented or otherwise, necessary for the construction and operation of such plants and for the manufacture of such products.

(c) Use of products of plants; disposal of surplus

The products of such plants shall be used by the President for military and naval purposes to the extent that he may deem necessary, and any surplus which he shall determine is not required shall be sold and disposed of by him under such regulations as he may prescribe.

(d) Employment of officers, agents, or agencies

The President is authorized to employ such officers, agents, or agencies as may in his discretion be necessary to enable him to carry out the purposes herein specified, and to authorize and require such officers, agents, or agencies to perform any and all of the duties imposed upon him by the provisions hereof.

(e) Government construction and operation

The plant or plants provided for under this section shall be constructed and operated solely by the Government and not in conjunction with any other industry or enterprise carried on by private capital.

(Aug. 10, 1956, ch. 1041, § 37, 70A Stat. 634.)

Codification
Section was not enacted as part of the Strategic and Critical Materials Stock Piling Act which comprises this subchapter.

§ 100a. Omitted

Codification
Section, which was from the Department of Defense Appropriation Act, 1983, Pub. L. 97–377, title I, §101(c)
Chapter 7—Interference with Homing Pigeons Owned by United States


Section 111, act Apr. 19, 1918, ch. 58, §1, 40 Stat. 533, related to prohibited acts affecting homing pigeons owned by United States. See section 45 of Title 18, Crimes and Criminal Procedure.

Section 112, act Apr. 19, 1918, ch. 58, §2, 40 Stat. 533, related to possession of pigeons as evidence of violation of law. See section 45 of Title 18.

Section 113, act Apr. 19, 1918, ch. 58, §3, 40 Stat. 533, related to punishment. See section 45 of Title 18.

Effective Date of Repeal

Repeal of sections 111 to 113 effective Sept. 1, 1948, see section 38 of act June 25, 1948, set out as an Effective Date note preceding section 1 of Title 28, Judiciary and Judicial Procedure.

Chapter 8—Explosives, Manufacture, Distribution, Storage, Use, and Possession Regulated


Section 123, acts Oct. 6, 1917, ch. 83, §§3, 40 Stat. 386; Dec. 26, 1941, ch. 633, §§2, 55 Stat. 864; Nov. 24, 1942, ch. 641, 56 Stat. 1022; Aug. 23, 1958, Pub. L. 85-726, title XIV, §1405, 72 Stat. 808; Oct. 15, 1966, Pub. L. 89-670, §9(f), 80 Stat. 943, excepted from provisions of this chapter purchase or possession of ingredients when purchased or held in small quantities and not used or intended to be used in manufacture of explosives, explosives or ingredients in transit in conformity with applicable law, explosives manufactured under authority of the United States for armed forces or the F.B.I., and arsenals, etc., owned by, or operated by or on behalf of, the United States. See section 845 of Title 18.

Section 124, acts Oct. 6, 1917, ch. 83, §4, 40 Stat. 386; Dec. 26, 1941, ch. 633, §2, 55 Stat. 864; authorized a superintendent, foreman, or other duly authorized employee at a mine, quarry, or other work, when licensed, to sell or issue to any employee under him such amount of explosives or ingredients required by that employee in performance of his duties. See section 845 of Title 18.


§§ 151 to 151f. Omited

Codification

Sections 151 to 151f which related to a National Advisory Committee for Aeronautics were omitted pursuant to section 301(a) of Pub. L. 85–568, title III, July 29, 1958, 72 Stat. 432, formerly set out as a note under former section 2472 of Title 42, The Public Health and Welfare, which terminated the Committee and transferred all its functions, powers, duties, and obligations to the National Aeronautics and Space Administration.


Section 134. Acts July 1, 1918, ch. 113, 40 Stat. 671, related to employment of aliens.


Section 137. Acts Oct. 6, 1917, ch. 83, §§ 15, 40 Stat. 388; Dec. 26, 1941, ch. 633, § 2, 55 Stat. 867, authorized Director to exercise authority conferred upon him by this chapter and regulations issued pursuant to it were to become operative only during war or national emergency.


Section 142. Acts Oct. 6, 1917, ch. 83, §§ 20, 40 Stat. 388; Dec. 26, 1941, ch. 633, § 2, 55 Stat. 868, provided that this chapter and regulations issued pursuant to it were to become operative only during war or national emergency.


Section 144. Acts July 1, 1918, ch. 113, 40 Stat. 671, subjected platinum, iridium, and palladium and compounds thereof to provisions of this chapter.

CHAPTER 9—AIRCRAFT

§§ 151 to 151f. Transferred

Codification

Section 158, acts Aug. 1, 1947, ch. 433, § 10, 61 Stat. 715, related to classification of positions and appointments and was transferred to section 1102 of former Title 5, Executive Departments and Government Officers and Employees, prior to repeal by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378, and reenacted as section 3104(b) of Title 5, Government Organization and Employees.

to Congress and confidential information and was transferred to section 1163 of former Title 5, Executive Departments and Government Officers and Employees, prior to repeal by Pub. L. 86–777, Sept. 6, 1960, 74 Stat. 918, and reenacted as section 3104(c) of Title 5, Government Organization and Employees.

§ 160. Omitted

CODIFICATION


Section 160a, act Apr. 11, 1950, ch. 86, § 1, 64 Stat. 43, related to employees pursuing graduate study or research.

Section 160b, act Apr. 11, 1950, ch. 86, § 2, 64 Stat. 43, related to acceptable types of graduate study and research.

Section 160c, act Apr. 11, 1950, ch. 86, § 3, 64 Stat. 43, related to duration of leaves of absence available.

Section 160d, act Apr. 11, 1950, ch. 86, § 4, 64 Stat. 43, related to payment of tuition and expenses.

Section 160e, act Apr. 11, 1950, ch. 86, § 5, 64 Stat. 43, related to continuation of salary and leave benefits.


EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 21(a) of Pub. L. 85–567.

CHAPTER 10—HELIUM GAS

Sec.
161 to 166. Omitted or Repealed.

167. Definitions.

167a. Authority of Secretary.

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167j. Land conveyance in Potter County, Texas.

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§§ 161 to 164. Omitted

CODIFICATION


Section 164, acts Mar. 3, 1925, ch. 426, §§ 3, 43 Stat. 1111; Mar. 3, 1927, ch. 355, 43 Stat. 1387; Sept. 1, 1937, ch. 895, 50 Stat. 887, related to disposal of helium by sale, upon request of Army or Navy or other Federal Government agencies, or for medicinal, scientific or commercial use, to deposit and use of funds obtained by sale of gas, and to an annual report to Congress by Secretary of the Interior on said funds. See section 6 of act Mar. 3, 1925, as amended by Pub. L. 86–777, which is classified to section 167c of this title.


§ 166. Omitted


§ 167. Definitions

As used in this chapter:
(1) The term “Secretary” means the Secretary of the Interior;
(2) The term “person” means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, or State or political subdivision thereof; and
(3) The terms “helium-bearing natural gas” and “helium-gas mixture” mean, respectively, natural gas and gas mixtures containing three-tenths of 1 per centum or more of helium by volume.


PRIOR PROVISIONS

A prior section 2 of act Mar. 3, 1925, authorized Bureau of Mines to produce helium gas and was classified to section 163 of this title, prior to the general amendment of this chapter by Pub. L. 86–777.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3 of Pub. L. 86–777 provided that: “The amendment made by this Act [enacting this section and sections 167a to 167n of this title] shall become effective on March 1, 1961.”

SHORT TITLE OF 1966 AMENDMENT


SHORT TITLE OF 1969 AMENDMENT

Section 1 of Pub. L. 90–777 provided that: “This Act [enacting this section, sections 167a to 167n of this
title, and provisions set out as notes below) may be cited as the ‘Helium Act Amendments of 1960’.”

SHORT TITLE

Section 1 of act Mar. 3, 1925, as added by Pub. L. 86–777, §2, provided that: “This Act [enacting this section, sections 167a to 167n of this title, and provision set out as a note below] may be cited as the ‘Helium Act’.”

SEPARABILITY

Section 17 of act Mar. 3, 1925, as added by Pub. L. 86–777, §2, provided that: “If any provision of this Act [enacting this section, sections 167a to 167n of this title, and provisions set out as a note above], or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.”

SEVERANCE PACKAGE FOR HELIUM OPERATIONS EMPLOYEES


“(a) Employees of Helium Operations, Bureau of Land Management, entitled to severance pay under 5 U.S.C. 5595, may apply for, and the Secretary of the Interior may pay, the total amount of the severance pay to the employee in a lump sum. Employees paid severance pay in a lump sum and subsequently reemployed by the Federal Government shall be subject to the repayment provisions of 5 U.S.C. 5595(c)(2) and (3), except that any repayment shall be made to the Helium Fund.

“(b) Helium Operations employees who elect to continue health benefits after separation shall be liable for not more than the required employee contribution under 5 U.S.C. 8905a(d)(1)(A). The Helium Fund shall pay for 18 months the remaining portion of required contributions.

“(c) The Secretary of the Interior may provide for training to assist Helium Operations employees in the transition to other Federal or private sector jobs during the facility shut-down and disposition process and for up to 12 months following separation from Federal employment, including retraining and relocation incentives on the same terms and conditions as authorized for employees of the Department of Defense in section 348 of the National Defense Authorization Act for Fiscal Year 1995 [Pub. L. 103–337, 10 U.S.C. 1597 note].

“(d) For purposes of the annual leave restoration provisions of 5 U.S.C. 6304(d)(1)(B), the cessation of helium production and sales, and other related Helium Program activities shall be deemed to create an exigency of public business under, and annual leave that is lost during leave years 1997 through 2001 because of 5 U.S.C. 6304 (regardless of whether such leave was scheduled in advance) shall be restored to the employee and shall be credited and available in accordance with 5 U.S.C. 6304(d)(2). Annual leave so restored and remaining unused upon the transfer of a Helium Program employee to a position of the executive branch outside of the Helium Program shall be liquidated by payment to the employee of a lump sum from the Helium Fund for such leave.

“(e) Benefits under this section shall be paid from the Helium Fund in accordance with section 4(c)(4) of the Helium Privatization Act of 1996 [probably means the Helium Act, which is classified to section 167b(c)(4) of this title]. Funds may be made available to Helium Program employees who are or will be separated before October 1, 2002 because of the cessation of helium production and sales and other related activities. Retraining benefits, including retraining and relocation incentives, may be paid for retraining commencing on or before September 30, 2002.

“(f) This section shall remain in effect through fiscal year 2002.

Similar provisions were contained in the following prior appropriation acts:


§167a. Authority of Secretary

(a) Extraction and disposal of helium on Federal lands

(1) In general

The Secretary may enter into agreements with private parties for the recovery and disposal of helium on Federal lands upon such terms and conditions as the Secretary deems fair, reasonable, and necessary.

(2) Leasehold rights

The Secretary may grant leasehold rights to any such helium.

(3) Limitation

The Secretary may not enter into any agreement by which the Secretary sells such helium other than to a private party with whom the Secretary has an agreement for recovery and disposal of helium.

(b) Regulations

Agreements under paragraph (1) may be subject to such regulations as may be prescribed by the Secretary.

(5) Existing rights

An agreement under paragraph (1) shall be subject to any rights of any affected Federal oil and gas lessee that may be in existence prior to the date of the agreement.

(6) Terms and conditions

An agreement under paragraph (1) (and any extension or renewal of an agreement) shall contain such terms and conditions as the Secretary may consider appropriate.

(7) Prior agreements

This subsection shall not in any manner affect or diminish the rights and obligations of the Secretary and private parties under agreements to dispose of helium produced from Federal lands in existence on October 9, 1996, except to the extent that such agreements are renewed or extended after October 9, 1996.

(b) Storage, transportation, and sale

The Secretary may store, transport, and sell helium only in accordance with this chapter.

Prior Provisions

A prior section 3 of act Mar. 3, 1925, related to disposal of helium by sale, use of funds so obtained, and reports to Congress on such uses and was classified to section 164 of this title, prior to the general amendment of this chapter by Pub. L. 86–777.

Amendments

1996—Pub. L. 104–273 amended section generally. Prior to amendment, section enumerated various aspects of Secretary’s authority, including provisions in subsec. (a) relating to conserving, producing, buying, and selling helium, in subsec. (b) relating to helium on public domain, and in subsec. (c) relating to contract price for helium.
§ 167b. Storage, transportation, and withdrawal of crude helium

(a) Storage, transportation, and withdrawal

The Secretary may store, transport, and withdraw crude helium and maintain and operate crude helium storage facilities, in existence on October 9, 1996, at the Bureau of Mines Cliffside Field, and related helium transportation and withdrawal facilities.

(b) Cessation of production, refining, and marketing

Not later than 18 months after October 9, 1996, the Secretary shall cease producing, refining, and marketing refined helium and shall cease carrying out all other activities relating to helium which the Secretary was authorized to carry out under this chapter before October 9, 1996, except activities described in subsection (a) of this section.

(c) Disposal of facilities

(1) In general

Subject to paragraph (5), not later than 24 months after the cessation of activities referred to in subsection (b) of this section, the Secretary shall designate as excess property and dispose of all facilities, equipment, and other real and personal property, and all interests therein, held by the United States for the purpose of producing, refining and marketing refined helium.

(2) Applicable law

The disposal of such property shall be in accordance with chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(3) Proceeds

All proceeds accruing to the United States by reason of the sale or other disposal of such property shall be treated as moneys received under this chapter for purposes of section 167d(f) of this title.

(4) Costs

All costs associated with such sale and disposal (including costs associated with termination of personnel) and with the cessation of activities under subsection (b) of this section shall be paid from amounts available in the helium production fund established under section 167d(f) of this title.

(5) Exception

Paragraph (1) shall not apply to any facilities, equipment, or other real or personal property, or any interest therein, necessary for the storage, transportation, and withdrawal of crude helium or any equipment, facilities, or other real or personal property, required to maintain the purity, quality control, and quality assurance of crude helium in the Bureau of Mines Cliffside Field.

(d) Existing contracts

(1) In general

All contracts that were entered into by any person with the Secretary for the purchase by the person from the Secretary of refined helium and that are in effect on October 9, 1996, shall remain in force and effect until the date on which the refining operations cease, as described in subsection (b) of this section.

(2) Costs

Any costs associated with the termination of contracts described in paragraph (1) shall be paid from the helium production fund established under section 167d(f) of this title.


§ 167c. Fees for storage, transportation, and withdrawal

(a) In general

Whenever the Secretary provides helium storage, withdrawal or transportation services to any person, the Secretary shall impose a fee on the person to reimburse the Secretary for the full costs of providing such storage, transportation, and withdrawal.

(b) Treatment

All fees received by the Secretary under subsection (a) of this section shall be treated as moneys received under this chapter for purposes of section 167d(f) of this title.


Prior Provisions


Amendments

1996—Pub. L. 104–273 amended section generally. Prior to amendment, section consisted of single par. authorizing Secretary to maintain and operate helium production and purification plants and to conduct or contract for research as to helium production, purification, transportation, liquefaction, storage, and utilization.

§ 167d. Financing

(1) In general

The Secretary may store, transport, and withdraw crude helium and maintain and operate crude helium storage facilities, in existence on October 9, 1996, at the Bureau of Mines Cliffside Field, and related helium transportation and withdrawal facilities.

(b) Cessation of production, refining, and marketing

Not later than 18 months after October 9, 1996, the Secretary shall cease producing, refining, and marketing refined helium and shall cease carrying out all other activities relating to helium which the Secretary was authorized to carry out under this chapter before October 9, 1996, except activities described in subsection (a) of this section.

(c) Disposal of facilities

(1) In general

Subject to paragraph (5), not later than 24 months after the cessation of activities referred to in subsection (b) of this section, the Secretary shall designate as excess property and dispose of all facilities, equipment, and other real and personal property, and all interests therein, held by the United States for the purpose of producing, refining and marketing refined helium.

(2) Applicable law

The disposal of such property shall be in accordance with chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(3) Proceeds

All proceeds accruing to the United States by reason of the sale or other disposal of such property shall be treated as moneys received under this chapter for purposes of section 167d(f) of this title.

(4) Costs

All costs associated with such sale and disposal (including costs associated with termination of personnel) and with the cessation of activities under subsection (b) of this section shall be paid from amounts available in the helium production fund established under section 167d(f) of this title.

(5) Exception

Paragraph (1) shall not apply to any facilities, equipment, or other real or personal property, or any interest therein, necessary for the storage, transportation, and withdrawal of crude helium or any equipment, facilities, or other real or personal property, required to maintain the purity, quality control, and quality assurance of crude helium in the Bureau of Mines Cliffside Field.

(d) Existing contracts

(1) In general

All contracts that were entered into by any person with the Secretary for the purchase by the person from the Secretary of refined helium and that are in effect on October 9, 1996, shall remain in force and effect until the date on which the refining operations cease, as described in subsection (b) of this section.

2 Costs

Any costs associated with the termination of contracts described in paragraph (1) shall be paid from the helium production fund established under section 167d(f) of this title.


Codification


Prior Provisions


Amendments

1996—Pub. L. 104–273 amended section generally. Prior to amendment, section consisted of single par. authorizing Secretary to maintain and operate helium production and purification plants and to conduct or contract for research as to helium production, purification, transportation, liquefaction, storage, and utilization.

§ 167e. Fees for storage, transportation, and withdrawal

(a) In general

Whenever the Secretary provides helium storage, withdrawal or transportation services to any person, the Secretary shall impose a fee on the person to reimburse the Secretary for the full costs of providing such storage, transportation, and withdrawal.

(b) Treatment

All fees received by the Secretary under subsection (a) of this section shall be treated as moneys received under this chapter for purposes of section 167d(f) of this title.


Prior Provisions

A prior section 5 of act Mar. 3, 1925, authorized governmental cooperation with Department of the Interior to effectuate the purposes of this chapter and was classified to section 166 of this title, prior to the general amendment of this chapter by Pub. L. 86–777.

Amendments

1996—Pub. L. 104–273 amended section generally. Prior to amendment, section related to licensing for extraction, transportation, and sale of helium under Federal helium refining program, including provisions in subsec. (a) relating to rules and regulations, in subsec. (b) relating to terms, assignments, and revocations of licenses, in subsec. (c) relating to purpose of licenses, and in subsec. (d) relating to suspension of licenses and
requisition of helium supplies in times of war or national emergency.

§ 167d. Sale of helium

(a) Purchase by Government agencies

The Department of Defense, the Atomic Energy Commission, and other agencies of the Federal Government, to the extent that supplies are readily available, shall purchase all major requirements of helium from persons who have entered into enforceable contracts to purchase an equivalent amount of crude helium from the Secretary.

(b) Sales by Secretary

The Secretary is authorized to sell crude helium for Federal, medical, scientific, and commercial uses in such quantities and under such terms and conditions as he determines. Except as may be required by reason of subsection (a) of this section, sales of crude helium under this section shall be in amounts as the Secretary determines, in consultation with the helium industry, necessary to carry out this subsection with minimum market disruption.

(c) Prices and determinations; repayable amounts

Sales of crude helium by the Secretary shall be at prices established by him which shall be adequate to cover all costs incurred in carrying out the provisions of this chapter and to repay to the United States by deposit in the Treasury, all funds required to be repaid to the United States as of October 1, 1995 under this section (referred to in this subsection as "repayable amounts"). The price at which crude helium is sold by the Secretary shall not be less than the amount determined by the Secretary by—

(1) dividing the outstanding amount of such repayable amounts by the volume (in million cubic feet) of crude helium owned by the United States and stored in the Bureau of Mines Cliffside Field at the time of the sale concerned, and

(2) adjusting the amount determined under paragraph (1) by the Consumer Price Index for years beginning after December 31, 1985.

(d) Extraction of helium from deposits on Federal lands

All moneys received by the Secretary from the sale or disposition of helium on Federal lands shall be paid to the Treasury and credited against the amounts required to be repaid to the Treasury under subsection (c) of this section.

(e) Helium production fund

(1) All moneys received under this chapter, including moneys from sale of helium or other products resulting from helium operations and from the sale of excess property shall be credited to the helium production fund, which shall be available without fiscal year limitation, for carrying out the provisions of this chapter, including any research relating to helium carried out by the Department of the Interior. Amounts accumulating in said fund in excess of amounts necessary for the Secretary to carry out this chapter and contracts negotiated hereunder shall be paid to the Treasury and credited against the amounts required to be repaid to the Treasury under subsection (c) of this section.

(2)(A) Within 7 days after the commencement of each fiscal year after the disposal of the facilities referred to in section 167b(c) of this title, all amounts in such fund in excess of $2,000,000 (or such lesser sum as the Secretary deems necessary to carry out this chapter during the fiscal year) shall be paid to the Treasury and credited as provided in paragraph (1).

(B) On repayment of all amounts referred to in subsection (c) of this section, the fund established under this section shall be terminated and all moneys received under this chapter shall be deposited in the general fund of the Treasury.


AMENDMENTS

1996—Subsec. (a). Pub. L. 104–273, § 4(a), substituted "from persons who have entered into enforceable contracts to purchase an equivalent amount of crude helium from the Secretary" for "from the Secretary".

Subsec. (b). Pub. L. 104–273, § 4(b), inserted "crude" before "helium" and inserted at end "Except as may be required by reason of subsection (a) of this section, sales of crude helium under this section shall be in amounts as the Secretary determines, in consultation with the helium industry, necessary to carry out this subsection with minimum market disruption.

Subsec. (c). Pub. L. 104–273, §§ 4(c)(2), which directed the amendment of subsec. (c) by substituting "all funds required to be repaid to the United States as of October 1, 1995 under this section (referred to in this subsection as 'repayable amounts'). The price at which crude helium is sold by the Secretary shall not be less than the amount determined by the Secretary by—" and pars. (1) and (2) for "together with interest as provided in this subsection" and all that followed through the end of the subsec., was executed by making the substitution for language which read "together with interest as provided in subsection (d) of this section, the following:

"along with former pars. (1) to (3), to reflect the probable intent of Congress. Prior to amendment, pars. (1) to (3) read as follows:

"(1) Within twenty-five years from September 13, 1960, the net capital and retained earnings of the helium production fund (established under section 164 of this title prior to amendment by the Helium Act Amendments of 1960), determined by the Secretary as of September 13, 1960, plus any moneys expended thereafter by the Department of the Interior from funds provided in the Supplemental Appropriation Act, 1959, for construction of a helium plant at Keyes, Oklahoma;

"(2) Within twenty-five years from the date of borrowing, all funds borrowed, as provided in section 167 of this chapter, to acquire and construct helium plants and facilities; and

"(3) Within twenty-five years from September 13, 1969, unless the Secretary determines that said period should be extended for not more than ten years, all funds borrowed, as provided in section 167 of this title for all purposes other than those specified in clause (2) above."

Pub. L. 104–273, § 4(c)(1), inserted "crude" after "Sales of".

Subsec. (d). Pub. L. 104–273, § 4(d), inserted heading and amended text generally. Prior to amendment, text read as follows: "Compound interest on the amounts specified in clauses (1), (2), and (3) of subsection (c) of this section which have not been paid to the Treasury shall be calculated annually at rates determined by the Secretary of the Treasury taking into consideration the current average market yields of outstanding marketable obligations of the United States having maturities comparable to the investments authorized by this chapter, except that the interest rate on the amounts specified in clause (1) of subsection (c) of this section

"(1) Within twenty-five years from September 13, 1960, the net capital and retained earnings of the helium production fund (established under section 164 of this title prior to amendment by the Helium Act Amendments of 1960), determined by the Secretary as of September 13, 1960, plus any moneys expended thereafter by the Department of the Interior from funds provided in the Supplemental Appropriation Act, 1959, for construction of a helium plant at Keyes, Oklahoma;"

Pub. L. 104–273, § 4(c)(2), which directed the amendment of subsec. (c) by substituting "all funds required to be repaid to the United States as of October 1, 1995 under this section (referred to in this subsection as 'repayable amounts'). The price at which crude helium is sold by the Secretary shall not be less than the amount determined by the Secretary by—" and pars. (1) and (2) for "together with interest as provided in this subsection" and all that followed through the end of the subsec., was executed by making the substitution for language which read "together with interest as provided in subsection (d) of this section, the following:

"along with former pars. (1) to (3), to reflect the probable intent of Congress. Prior to amendment, pars. (1) to (3) read as follows:

"(1) Within twenty-five years from September 13, 1960, the net capital and retained earnings of the helium production fund (established under section 164 of this title prior to amendment by the Helium Act Amendments of 1960), determined by the Secretary as of September 13, 1960, plus any moneys expended thereafter by the Department of the Interior from funds provided in the Supplemental Appropriation Act, 1959, for construction of a helium plant at Keyes, Oklahoma;"

Pub. L. 104–273, § 4(c)(1), inserted "crude" after "Sales of".

Subsec. (d). Pub. L. 104–273, § 4(d), inserted heading and amended text generally. Prior to amendment, text read as follows: "Compound interest on the amounts specified in clauses (1), (2), and (3) of subsection (c) of this section which have not been paid to the Treasury shall be calculated annually at rates determined by the Secretary of the Treasury taking into consideration the current average market yields of outstanding marketable obligations of the United States having maturities comparable to the investments authorized by this chapter, except that the interest rate on the amounts specified in clause (1) of subsection (c) of this section
shall be determined as of Sept. 13, 1960, and the interest rate on the obligations specified in clauses (2) and (3) of subsection (c) of this section as of the time of each borrowing.”

Subsecs. (e), (f). Pub. L. 104–273, §4(e), (f), redesignated subsec. (f) as (e)(1), added par. (2), and struck out former subsec. (e) which read as follows: “Helium shall be sold for medical purposes at prices which will permit its general use therefor; and all sales of helium to non-Federal purchasers shall be upon condition that the Federal Government shall have a right to repurchase helium so sold that has not been lost or dissipated, when needed for Government use, under terms and at prices established by regulations.”

TRANSFER OF FUNCTIONS
Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See also Transfer of Functions notes set out under those sections.

§ 167e. Intragovernmental cooperation

The Secretary of Defense and the Chairman of the Atomic Energy Commission may each designate representatives to cooperate with the Secretary in carrying out the purposes of this chapter, and shall have complete right of access to plants, data, and accounts.


TRANSFER OF FUNCTIONS
Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See also Transfer of Functions notes set out under those sections.

§ 167f. Elimination of stockpile

(a) Stockpile sales

(1) Commencement

Not later than January 1, 2005, the Secretary shall commence offering for sale crude helium from helium reserves owned by the United States in such amounts as would be necessary to dispose of all such helium reserves in excess of 600,000,000 cubic feet on a straight-line basis between such date and January 1, 2015.

(2) Times of sale

The sales shall be at such times during each year and in such lots as the Secretary determines, in consultation with the helium industry, to be necessary to carry out this subsection with minimum market disruption.

(3) Price

The price for all sales under paragraph (1), as determined by the Secretary in consultation with the helium industry, shall be such price as will ensure repayment of the amounts required to be repaid to the Treasury under section 167d(c) of this title.

(b) Discovery of additional reserves

The discovery of additional helium reserves shall not affect the duty of the Secretary to make sales of helium under subsection (a) of this section.


AMENDMENTS

§ 167g. Promulgation of rules and regulations

The Secretary is authorized to establish and promulgate such rules and regulations, as are consistent with the directions of this chapter and are necessary to carry out the provisions hereof.


§ 167h. Administrative procedure

(a) The provisions of subchapter II of chapter 5 of title 5 shall apply to any agency proceeding and any agency action taken under this chapter, including the issuance of rules and regulations, and the terms “agency proceeding” and “agency action” shall have the meaning specified in subchapter II of chapter 5 of title 5.

(b) In any proceeding under this chapter for the granting, suspending, revoking, or amending of any license, or application for transfer control thereof, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, the Secretary shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. Any final order entered in any such proceeding shall be subject to judicial review in the manner prescribed in chapter 15 of title 28, and to the provisions of chapter 7 of title 5.


CODIFICATION
In subsecs. (a) and (b), “subchapter II of chapter 5 of title 5” and “chapter 7 of title 5” substituted for “the Administrative Procedure Act of June 11, 1946 (60 Stat. 637; 5 U.S.C. 1001–1011), as amended”, “‘the Administrative Procedure Act’”, and “‘section 10 of the Administrative Procedure Act’”, respectively, on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.


§ 167i. Exclusion from Natural Gas Act provisions

The provisions of the Natural Gas Act of June 21, 1938, as amended [15 U.S.C. 717 et seq.], shall not be applicable to the sale, extraction, processing, transportation, or storage of helium either prior to or subsequent to the separation of such helium from the natural gas with which it is commingled, whether or not the provisions of such Act apply to such natural gas, and in determining the rates of a natural gas company under sections 4 and 5 of the Natural Gas Act, as amended [15 U.S.C. 717c, 717d], whenever helium is extracted from helium-bearing natural gas, there shall be excluded (1) all income received from the sale of helium; (2) all direct costs in-
curred in the extraction, processing, compression, transportation or storage of helium; and (3) that portion of joint costs of exploration, production, gathering, extraction, processing, compression, transportation or storage divided and allocated to helium on a volumetric basis.


REFERENCES IN TEXT
The Natural Gas Act of June 21, 1938, as amended, referred to in text, means act June 21, 1938, ch. 556, 52 Stat. 821, as amended, known as the Natural Gas Act, which is classified generally to chapter 15B (§717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

§ 167j. Land conveyance in Potter County, Texas

(a) In general
The Secretary of the Interior shall transfer all right, title, and interest of the United States in and to the parcel of land described in subsection (b) of this section to the Texas Plains Girl Scout Council for consideration of $1, reserving to the United States such easements as may be necessary for pipeline rights-of-way.

(b) Land description
The parcel of land referred to in subsection (a) of this section is all those certain lots, tracts or parcels of land lying and being situated in the County of Potter and State of Texas, and being the East Three Hundred Thirty-One (E331) acres out of Section Seventy-eight (78) in Block Nine (9), B.S. & F. Survey, (sometimes known as the G.D. Landis pasture) Potter County, Texas, located by certificate No. 1/39 and evidenced by letters patent Nos. 411 and 412 issued by the State of Texas under date of November 23, 1937, and of record in Vol. 66A of the Patent Records of the State of Texas. The metes and bounds description of such lands is as follows:

(1) First tract
One Hundred Seventy-one (171) acres of land known as the North part of the East part of said survey Seventy-eight (78) aforesaid, described by metes and bounds as follows:

Beginning at a stone 20 x 12 x 3 inches marked X, set by W.D. Twichell in 1905, for the Northeast corner of this survey and the Northwest corner of Section 59;

Thence, South 89 degrees 47 minutes East with the East line of Section 78, 966.5 varas to the Southeast corner of the West half of Section 78;

Thence, South 90 degrees 47 minutes East 965.8 varas to a point to the place of beginning.

(2) Second tract
One Hundred Sixty (160) acres of land known as the South part of the East part of said survey No. Seventy-eight (78) described by metes and bounds as follows:

Beginning at the Southwest corner of Section 59, a stone marked X and a pile of stones; Thence, North 89 degrees 47 minutes West with the North line of Section 77, 966.5 varas to the Southeast corner of the West half of Section 78;

Thence, North 0 degrees 10 minutes West with the East line of the West half of Section 78;

Thence, South 0 degrees 12 minutes East 934.6 varas to the place of beginning.

Containing an area of 331 acres, more or less.


AMENDMENTS
1996—Pub. L. 104–273 amended section generally. Prior to amendment, section related to Secretary’s authority under Federal helium refining program to obtain loans and issue obligations to carry out program.

§ 167k. Violations; penalties
Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this chapter or any regulation or order issued or any term of a license granted thereunder shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall upon conviction thereof, be punished by a fine of not more than $20,000 or imprisonment for not more than twenty years, or both.


§ 167l. Injunctions
Whenever in the judgment of the Secretary any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this chapter, or any regulation or order issued or any term of a license granted thereunder, any such act or practice may be enjoined by any district court having jurisdiction of such person, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States.


§ 167m. Report on helium

(a) NAS study and report
Not later than three years before the date on which the Secretary commences offering for sale crude helium under section 167f of this title, the Secretary shall enter into appropriate arrangements with the National Academy of Sciences to study and report on whether such disposal of helium reserves will have a substantial adverse effect on United States scientific, technical, biomedical, or national security interests.

(b) Transmission to Congress
Not later than 18 months before the date on which the Secretary commences offering for sale
crude helium under section 167f of this title, the Secretary shall transmit to the Congress—
(1) the report of the National Academy under subsection (a) of this section;
(2) the findings of the Secretary, after consideration of the conclusions of the National Academy under subsection (a) of this section and after consultation with the United States helium industry and with heads of affected Federal agencies, as to whether the disposal of the helium reserve under section 167f of this title will have a substantial adverse effect on the United States helium industry, United States,1 helium market or United States,1 scientific, technological, biomedical, or national security interests; and
(3) if the Secretary determines that selling the crude helium reserves under the formula established in section 167f of this title will have a substantial adverse effect on the United States helium industry, the United States helium market or United States scientific, technological, biomedical, or national security interest, the Secretary shall make recommendations, including recommendations for proposed legislation, as may be necessary to avoid such adverse effects.


AMENDMENTS


CHAPTER 11—ACQUISITION OF AND EXPENDITURES ON LAND FOR NATIONAL-DEFENSE PURPOSES


Section 171, acts Aug. 18, 1890, ch. 797, §1, 26 Stat. 316; July 2, 1917, ch. 35, 40 Stat. 241; Apr. 11, 1918, ch. 51, 40 Stat. 518, authorized Secretary of War to institute condemnation proceedings for acquisition of land, to purchase land, and to accept donations of land. See section 2683 of Title 40, Armed Forces.


§171a. Omitted


§175. Transferred

Section, act Mar. 28, 1918, ch. 28, §1, 40 Stat. 460, authorized acquisition of property on Hudson River owned by North German Lloyd Dock Company and Hamburg-American Line Terminal & Navigation Company and provided that section 175 of this title did not apply to expenditures authorized in connection with such property. The President, by proclamation dated June 28, 1918, took possession of such property.

§176. Omitted

Section, act Mar. 28, 1918, ch. 28, §1, 40 Stat. 460, authorized acquisition of property on Hudson River owned by North German Lloyd Dock Company and Hamburg-American Line Terminal & Navigation Company and provided that section 175 of this title did not apply to expenditures authorized in connection with such property. The President, by proclamation dated June 28, 1918, took possession of such property.


Section 177, act June 25, 1906, ch. 3540, 34 Stat. 463, related to contracts for construction of fortifications and other works of defense.

Section 178, act Apr. 11, 1888, No. 21, 30 Stat. 737, provided for erection of forts in emergency. See sections 4776 and 9776 of Title 10, Armed Forces.

Section 179, act June 30, 1921, ch. 33, §1, 42 Stat. 81, related to chargeability of appropriations with respect to transportation cost incident to construction and maintenance of seacoast fortifications.

CHAPTER 12—VESSELS IN TERRITORIAL WATERS OF UNITED STATES

Sec. 191. Regulation of anchorage and movement of vessels during national emergency.

191a. Transfer of Secretary of Transportation’s powers to Secretary of Navy when Coast Guard operates as part of Navy.

191b. Repealed.

192. Seizure and forfeiture of vessel; fine and imprisonment.
§ 191. Regulation of anchorage and movement of vessels during national emergency

Whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, or whenever the Attorney General determines that an actual or anticipated mass migration of aliens en route to, or arriving off the coast of, the United States, or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not especially authorized by him to go or remain on board thereof.

Whenever the President finds that the security of the United States is endangered by reason of actual or threatened war, or invasion, or insurrection, or subversive activity, or of disturbances or threatened disturbances of the international relations of the United States, the President is authorized to institute such measures and issue such rules and regulations—

(a) to govern the anchorage and movement of any foreign-flag vessels in the territorial waters of the United States, to inspect such vessels at any time, to place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not especially authorized by him to go or remain on board thereof;

(b) to safeguard against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature, vessels, harbors, ports, and waterfront facilities in the United States and all territory and water, continental or insular, subject to the jurisdiction of the United States.

The President may delegate the authority to issue such rules and regulations to the Secretary of the department in which the Coast Guard is operating. Any appropriation available to any of the Executive Departments shall be available to carry out the provisions of this title.


References in Text

This title, referred to in text, means title II of act June 15, 1917, ch. 30, 40 Stat. 220, as amended, which enacted sections 191 and 192 to 194 of this title. For complete classification of title II to the Code, see Tables.

Amendments

2004—Pub. L. 108–293 inserted “The President may delegate the authority to issue such rules and regulations to the Secretary of the department in which the Coast Guard is operating.” at beginning of concluding provisions.

1996—Pub. L. 104–208, in first par., inserted “or whenever the Attorney General determines that an actual or anticipated mass migration of aliens en route to, or arriving off the coast of, the United States presents urgent circumstances requiring an immediate Federal response,” after “international relations of the United States,”.

1979—Pub. L. 96–70 struck out second par., providing that within the territory and waters of the Canal Zone the Governor of the Canal Zone, with the approval of the President, shall exercise all the powers conferred by this section on the Secretary of the Treasury, and in cl. (b) of third par., struck out “the Canal Zone,” after “facilities in the United States,”.

1950—Act Sept. 26, 1950, substituted “Governor of the Canal Zone” for “Governor of the Panama Canal” in second par.

Act Aug. 9, 1950, authorized the President to institute such rules and regulations to control anchorage and movement of foreign-flag vessels in United States waters when the national security is endangered.

Effective Date of 1979 Amendment

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

Termination Date of 1950 Amendment

Section 4 of act Aug. 9, 1950, provided that: “The provisions of this Act (amending this section and sections 192 and 194 of this title) shall expire on such date as may be specified by concurrent resolution of the two Houses of Congress.”

Termination of War and Emergencies

Act July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

Regulations—Post-War Generally

For regulations relating to safeguarding of vessels, harbors, ports, and waterfront facilities, under a finding that the security of the United States is endangered by reason of subversive activity, see Ex. Ord. No. 10173, Oct. 14, 1969, 15 F.R. 7005.

1 See References in Text note below.
REGULATIONS—World War I

PROC. No. 2732, June 2, 1947, 12 F.R. 3583, 61 Stat. 1069, revoked Proc. No. 2412, June 27, 1940, 5 F.R. 2419, 54 Stat. 2711, which granted consent of President to the exercise of certain powers under this section by the Secretary of the Treasury and the Governor of the Canal Zone.

REGULATIONS—World War I

A proclamation was issued under this section on December 3, 1917.

SEPARABILITY

Section 4 of title XIII of act June 15, 1917, provided: "If any clause, sentence, paragraph, or part of this Act [see Tables for classification] shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered."

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

"Secretary of Transportation" substituted for "Secretary of the Treasury" in text pursuant to section 6(b)(1) of Pub. L. 89-670, which transferred Coast Guard to Department of Transportation and transferred to and vested in Secretary of Transportation functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of other officers and offices of Department of the Treasury. See section 108 of Title 49, Transportation.

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Treasury of authority vested in President by this section, see section 2(e) of Ex. Ord. No. 10269, Sept. 17, 1951, 16 F.R. 4948, as amended, set out as a note under section 301 of Title 3, The President.

PROC. No. 6867. DECLARATION OF NATIONAL EMERGENCY AND INVOCATION OF EMERGENCY AUTHORITY RELATING TO REGULATION OF ANCHORAGE AND MOVEMENT OF VESSELS

Proc. No. 6867, Mar. 1, 1996, 61 F.R. 8418, provided:

WHEREAS, on February 24, 1996, Cuban military aircraft intercepted and destroyed two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba;

WHEREAS the Government of Cuba has demonstrated a ready and reckless willingness to use excessive force, including deadly force, in the ostensible enforcement of its sovereignty;

WHEREAS, on July 13, 1995, persons in U.S.-registered vessels who entered into Cuban territorial waters suffered injury as a result of the reckless use of force against them by the Cuban military; and

WHEREAS the entry of U.S.-registered vessels into Cuban territorial waters could again result in injury to, or loss of life of, persons engaged in that conduct, due to the potential use of excessive force, including deadly force, against them by the Cuban military, and could threaten a disturbance in international relations;

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution of the United States of America, including section 1 of title II of Public Law 85-24, ch. 30, June 15, 1917, as amended (50 U.S.C. 191), sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.) [50 U.S.C. 1621, 1631], and section 301 of title 3, United States Code, find and do hereby proclaim that a national emergency exists by reason of a disturbance or threatened disturbance of international relations. In order to address this national emergency and to secure the observance of the rights and obligations of the United States, I hereby authorize and direct the Secretary of Transportation (the "Secretary") to make and issue such rules and regulations as the Secretary may find appropriate to regulate the anchorage and movement of vessels, and delegate to the Secretary my authority to approve such rules and regulations, as authorized by the Act of June 15, 1917 [see Tables for classification].

SECTION 1. The Secretary may make such rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions and threaten a disturbance of international relations. Any rule or regulation issued pursuant to this proclamation may be effective immediately upon issuance as such rule or regulation shall involve a foreign affairs function of the United States.

Sic. 2. The Secretary is authorized to inspect any vessel, foreign or domestic, in the territorial waters of the United States, at any time; to place guards on any such vessel; and, with my consent expressly hereby granted, take full possession and control of any such vessel and remove the officers and crew, and all other persons not specifically authorized by the Secretary to go or remain on board the vessel when necessary to secure the rights and obligations of the United States.

Sic. 3. The Secretary may request assistance from such departments, agencies, officers, or instrumentalities of the United States as the Secretary deems necessary to carry out the purposes of this proclamation. Such departments, agencies, officers, or instrumentalities shall, consistent with other provisions of law and to the extent practicable, provide requested assistance.

Sic. 4. The Secretary may seek assistance from State and local authorities in carrying out the purposes of this proclamation. Because State and local assistance may be essential for an effective response to this emergency, I urge all State and local officials to cooperate with Federal authorities and to take all actions within their lawful authority necessary to prevent the unauthorized departure of vessels intending to enter Cuban territorial waters.

Sic. 5. All powers and authorities delegated by this proclamation to the Secretary may be delegated by the Secretary to other officers and agents of the United States Government unless otherwise prohibited by law.

Sic. 6. This proclamation shall be immediately transmitted to the Congress and published in the Federal Register.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

WILLIAM J. CLINTON.

CONTINUATION OF NATIONAL EMERGENCY DECLARED BY

PROC. No. 6867

Notice of President of the United States, dated Feb. 23, 2010, 75 F.R. 8793, provided:

On March 1, 1996, by Proclamation 6867 [set out above], a national emergency was declared to address the disturbance or threatened disturbance of international relations, again caused by the February 24, 1996, destruction by the Cuban government of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. On February 26, 2004, by Proclamation 7757 [set out below], the national emergency was extended and its scope was expanded to deny monetary and material support to the Cuban government.
Cuban government has not demonstrated that it will refrain from the use of excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. And the unauthorized entry of any U.S.-registered vessel into Cuban territorial waters continues to be detrimental to the foreign policy of the United States. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 2462(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867 as amended by Proclamation 7757.

This notice shall be published in the Federal Register and transmitted to the Congress.

Barack Obama.

Prior continuations of national emergency declared by Proclamation No. 7757 were contained in the following:

Notice of President of the United States, dated Feb. 6, 2008, 73 F.R. 7459.
Notice of President of the United States, dated Feb. 18, 2005, 70 F.R. 8919.
Notice of President of the United States, dated Feb. 24, 1999, 64 F.R. 9605.

Pro. No. 7757. Expanding the Scope of the National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels into Cuban Territorial Waters

Pro. No. 7757, Feb. 26, 2004, 69 F.R. 9515, provided:

By the authority vested in me by the Constitution and the laws of the United States of America, in order to expand the scope of the national emergency declared in Proclamation 6867 of March 1, 1996 [set out above], based on the disturbance or threatened disturbance of the international relations of the United States caused by actions taken by the Cuban government, and in light of steps taken over the past year by the Cuban government to worsen the threat to United States international relations, and WHEREAS the United States has determined that Cuba is a state-sponsor of terrorism and it is subject to the restrictions of section 6(j)(1)(A) of the Export Administration Act of 1979 [50 U.S.C. App. 2406(j)(1)(A)], section 620A of the Foreign Assistance Act of 1961 [22 U.S.C. 2371], and section 40 of the Arms Export Control Act [22 U.S.C. 2780];

WHEREAS the Cuban government has demonstrated a ready and reckless willingness to use excessive force, including deadly force, against U.S. citizens, in the ostensible enforcement of its sovereignty, including the February 1996 shoot-down of two unarmed U.S.-registered civilian aircraft in international airspace, resulting in the deaths of three American citizens and oil from a pipeline accident;

WHEREAS the Cuban government has demonstrated a ready and reckless willingness to use excessive force, including deadly force, against U.S. citizens and its own citizens, including on July 13, 1995, when persons in U.S.-registered vessels that entered into Cuban territorial waters suffered injury as a result of the reckless use of force against them by the Cuban military and including the July 1994 sinking of an unarmed Cuban-registered vessel, resulting in the deaths of 41 Cuban citizens;

WHEREAS the Cuban government has impounded U.S.-registered vessels in Cuban ports and forced the owners, as a condition of release, to violate U.S. law by requiring payments to be made to the Cuban government;

WHEREAS the entry of any U.S.-registered vessels into Cuban territorial waters could result in injury to, or loss of life of, persons engaged in that conduct, due to the potential use of excessive force, including deadly force, against them by the Cuban military, and could threaten a disturbance of international relations;

WHEREAS the unauthorized entry of vessels subject to the jurisdiction of the United States into Cuban territorial waters is in violation of U.S. law and contrary to U.S. policy;

WHEREAS the objectives of U.S. policy regarding Cuba are the end of the dictatorship and a rapid, peaceful transition to a representative democracy respectful of human rights and characterized by an open market economic system;

WHEREAS a critical initiative by the United States to advance these U.S. objectives is to deny resources to the repressive Cuban government, resources that may be used by that government to support terrorist activities and carry out excessive use of force against innocent victims, including U.S. citizens;

WHEREAS the unauthorized entry of U.S.-registered vessels into Cuban territorial waters is detrimental to the foreign policy of the United States, which is to deny monetary and material support to the repressive Cuban government, and, therefore, such unauthorized entries threaten to disturb the international relations of the United States by facilitating the Cuban government’s support of terrorism, use of excessive force, and continued existence;

WHEREAS the Cuban government has over the course of its 45-year existence repeatedly used violence and the threat of violence to undermine U.S. policy interests. This same regime continues in power today, and has since 1999 maintained a pattern of hostile actions contrary to U.S. policy interests. Among other things, the Cuban government established a military alliance with the Soviet Union, and invited Soviet forces to install nuclear missiles in Cuba capable of attacking the United States, and encouraged Soviet authorities to use those weapons against the United States; it engaged in military adventurism in Africa; and it helped to form and provide material and political support to terrorist organizations that sought the violent overthrow of democratically elected governments in Central America and elsewhere in the hemisphere allied with the United States, thereby causing repeated disturbances of U.S. international relations;

WHEREAS the Cuban government has recently and over the last year taken a series of steps to destabilize relations with the United States, including threatening to abrogate the Migration Accords with the United States and to close the U.S. Interests Section, and Cuba’s most senior officials repeatedly asserting that the United States intended to invade Cuba, despite explicit denials from the U.S. Secretaries of State and Defense that such action is planned, thereby causing a sudden and worsening disturbance of U.S. international relations;

WHEREAS U.S. concerns about these unforeseen Cuban government actions that threaten to disturb international relations were sufficiently grave that on May 8, 2003, the United States warned the Cuban government that political manipulations that resulted in a mass migration would be viewed as a “hostile act.”

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States.
States of America, including section 1 of title II of Public Law 65–24, ch. 30, June 15, 1917, as amended (50 U.S.C. 191), sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), section 91 of title 14, United States Code, and section 301 of title 3, United States Code, in order to expand the scope of the national emergency declared in Proclamation 6867 of March 1, 1996 [set out above], and to secure the observance of the rights and obligations of the United States, hereby authorize and direct the Secretary of Homeland Security (the "Secretary") to make and issue such rules and regulations as the Secretary may find appropriate to regulate the anchorage and movement of vessels, and authorize and approve the Secretary's issuance of such rules and regulations, as authorized by the Act of June 15, 1917 [see Title 28, section 506, for classification].

SECTION 1. The Secretary may make rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions, or result in unauthorized transactions, and thereby threaten a disturbance of international relations. Any rule or regulation issued pursuant to this proclamation may be effective immediately upon issuance as such rule or regulation shall involve a foreign affairs function of the United States.

Sic. 2. The Secretary is authorized to inspect any vessel, foreign or domestic, in the territorial waters of the United States, at any time, to place guards on any such vessel; and, with my consent expressly hereby granted, take full possession and control of any such vessel and remove the officers and crew and all other persons not specifically authorized by the Secretary to go or remain on board the vessel when necessary to secure the rights and obligations of the United States.

Sic. 3. The Secretary may request assistance from such departments, agencies, officers, or instrumentalities of the United States as the Secretary deems necessary to carry out the purposes of this proclamation. Such departments, agencies, officers, or instrumentalities shall, consistent with other provisions of law and to the extent practicable, provide requested assistance.

Sic. 4. The Secretary may seek assistance from State and local authorities in carrying out the purposes of this proclamation. Because State and local assistance may be essential for an effective response to this emergency, I urge all State and local officials to cooperate with Federal authorities and to take all actions within their lawful authority necessary to prevent the unauthorized departure of vessels intending to enter Cuban territorial waters.

Sic. 5. All powers and authorities delegated by this proclamation to the Secretary may be delegated by the Secretary to other officers and agents of the United States Government unless otherwise prohibited by law.

Sic. 6. Any provisions of Proclamation 6867 [set out above] that are inconsistent with the provisions of this proclamation are superseded to the extent of such inconsistency.

Sic. 7. This proclamation shall be immediately transmitted to the Congress and published in the Federal Register.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of February, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.

GEORGE W. BUSH.

§ 191a. Transfer of Secretary of Transportation's powers to Secretary of Navy when Coast Guard operates as part of Navy

When the Coast Guard operates as a part of the Navy pursuant to section 3 of title 14, the powers conferred on the Secretary of Transportation by section 191 of this title, shall vest in and be exercised by the Secretary of the Navy.


AMENDMENTS

1962—Pub. L. 87–845 substituted "section 3 of title 14" for "section 1 of title 14".

EFFECTIVE DATE OF 1962 AMENDMENT


TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 407(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

"Secretary of Transportation" substituted in text for "Secretary of the Treasury" pursuant to section 6(b)(1) of Pub. L. 89–670, which transferred Coast Guard to Department of Transportation and transferred to and vested in Secretary of Transportation functions, powers, duties, and powers relating to Coast Guard, of Secretary of the Treasury and of other officers and offices of Department of the Treasury. See section 108 of Title 49, Transportation.


Section, acts Nov. 15, 1941, ch. 471, §4, 55 Stat. 763; Sept. 26, 1950, ch. 1049, §2(b), 64 Stat. 1038; Oct. 18, 1962, Pub. L. 87–845, §12, 76A Stat. 699, provided that this section, section 191a of this title, and section 91 of title 14 not affect the authority of the Governor of the Canal Zone conferred by section 191 of this title or section 34 of Title 2, Canal Zone Code.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.


Section, act Nov. 15, 1941, ch. 471, §1, 55 Stat. 763, related to control of anchorage and movement of vessels to insuresafety of naval vessels. See section 91 of Title 14, Coast Guard.

§ 192. Seizure and forfeiture of vessel; fine and imprisonment

(a) In general

If any owner, agent, master, officer, or person in charge, or any member of the crew of any such vessel fails to comply with any regulation or rule issued or order given under the provisions of this title, or obstructs or interferes with the exercise of any power conferred by this title, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws; and the person guilty of such failure, obstruction, or interference shall be punished by imprisonment

1See References in Text note below.
for not more than ten years and may, in the discretion of the court, be fined not more than $10,000.

(b) Application to others
If any other person knowingly fails to comply with any regulation or rule issued or order given under the provisions of this title, or knowingly obstructs or interferes with the exercise of any power conferred by this title, he shall be punished by imprisonment for not more than ten years and may, at the discretion of the court, be fined not more than $10,000.

(c) Civil penalty
A person violating this title, or a regulation prescribed under this title, shall be liable to the United States Government for a civil penalty of not more than $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation.

(d) In rem liability
Any vessel that is used in violation of this title, or of any regulation issued under this title, shall be liable in rem for any civil penalty assessed pursuant to subsection (c) of this section and may be proceeded against in the United States district court for any district in which such vessel may be found.

(e) Withholding of clearance
(1) In general
If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under subsection (c) of this section, or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty or fine under this section, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 60105 of title 46.

(2) Clearance upon filing of bond or other surety
The Secretary may require the filing of a bond or other surety as a condition of granting clearance refused or revoked under this subsection.

(e) Withholding of clearance
(1) In general
If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under subsection (c) of this section, or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty or fine under this section, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 60105 of title 46.

(2) Clearance upon filing of bond or other surety
The Secretary may require the filing of a bond or other surety as a condition of granting clearance refused or revoked under this subsection.

For termination of amendment by act Aug. 9, 1950, see section 4 of act Aug. 9, 1950, set out as a note under section 191 of this title.

Section, acts June 15, 1917, ch. 30, title II, § 3, 40 Stat. 220; Mar. 28, 1940, ch. 72, § 3(b), 54 Stat. 79, related to destruction of, injury to, or improper use of vessels. See section 2274 of Title 18, Crimes and Criminal Procedure.

Effective Date of Repeal
Repeal effective Sept. 1, 1948, see section 38 of act June 25, 1948, set out as an Effective Date note preceding section 1 of Title 28, Judiciary and Judicial Procedure.

§ 194. Enforcement provisions
The President may employ such departments, agencies, officers, or instrumentalities of the United States as he may deem necessary to carry out the purpose of this title.

(1) U.S. Const. art. II, § 2, 4 Stat. 428, related to destruction of, injury to, or improper use of vessels. See section 2274 of Title 18, Crimes and Criminal Procedure.

References in Text
This title, referred to in text, means title II of act June 15, 1917, ch. 30, 40 Stat. 220, as amended, which enacted sections 191 and 192 to 194 of this title. For complete classification of this Act to the Code, see Tables.

Amendments
1950—Act Aug. 9, 1950, authorized President to employ such departments, agencies, etc., as he may deem necessary to carry out title II of act June 15, 1917.

Termination Date of 1950 Amendment
For termination of amendment by act Aug. 9, 1950, see section 4 of act Aug. 9, 1950, set out as a note under section 191 of this title.

§ 195. Definitions
In this Act:
(1) UNITED STATES.—The term “United States” includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(2) TERRITORIAL WATERS.—The term “territorial waters of the United States” includes all waters of the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988.

References in Text
This Act, referred to in text, means act June 15, 1917, ch. 30, 40 Stat. 220, as amended. For complete classification of this Act to the Code, see Tables.

1 See References in Text note below.
Presidential Proclamation 5928 of December 27, 1988, referred to in par. (2), is set out as a note under section 1331 of Title 43, Public Lands.

**Codification**

Section was formerly classified to section 40 of this title. In the original this section defined “United States” as used in act June 15, 1917. Other provisions of that act were contained in sections 91 to 92 of this title and certain sections of former Title 18, Criminal Code and Criminal Procedure. The definition of “United States” as used in present provisions derived from those former sections is covered by section 5 of Title 18, Crimes and Criminal Procedure.

**Amendments**

2002—Pub. L. 107–295 added introductory provisions, designated existing provisions as par. (1), inserted heading, struck out “as used in this Act” before “includes”, and added par. (2).

1979—Pub. L. 96–70 struck out “the Canal Zone and” after “this Act includes”.

**Effective Date of 1979 Amendment**

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

§ 196. Emergency foreign vessel acquisition; purchase or requisition of vessels lying idle in United States waters

During any period in which vessels may be requisitioned under chapter 563 of title 46, the President is authorized and empowered through the Secretary of Transportation to purchase, or to requisition, or for any part of such period to charter or requisition the use of, or to take over the title to or possession of, for such use or disposition as he shall direct, any merchant vessel not owned by citizens of the United States which is lying idle in waters within the jurisdiction of the United States and which the President finds to be necessary to the national defense. Just compensation shall be determined and made to the owner or owners of any such vessel in accordance with the applicable provisions of chapter 563 of title 46. Such compensation or advances on account thereof shall be deposited with the Treasurer of the United States in a separate deposit fund. Payments for such compensation and also for payment of any valid claim upon such vessel in accordance with the provisions of section 56305 of title 46 shall be made from such fund upon the certificate of the Secretary of Transportation.


**Codification**


**Amendments**

1981—Pub. L. 97–31 substituted “Secretary of Transportation” for “Secretary of Commerce”.

§ 198. Requisitioned vessels

(a) Documentation of vessels

Any vessel not documented under the laws of the United States, acquired by or made available to the Secretary of Transportation under sections 196 to 198 of this title, or otherwise, may, notwithstanding any other provision of law, in the discretion of the Secretary of the department in which the Coast Guard is operating be documented as a vessel of the United States, acquired by or made available to the Secretary of Transportation under such rules and regulations or orders, and with such limitations, as the Secretary of the department in which the Coast Guard is operating may prescribe or issue as necessary or appropriate to carry out the purposes and provisions of sections 196 to 198 of this title, and in accordance with the provisions of subsection (c) of this section, engage in the coastwise trade when so documented. Any document issued to a vessel under the provisions of this subsection shall be surrendered at any time that such surrender may be ordered by the Secretary of the department in which the Coast Guard is operating. No vessel, the surrender of the documents of which has been so ordered, shall, after the effective date of such order, have the status of a vessel of the United States unless documented anew.

(b) Waiver of compliance

The President may, notwithstanding any other provisions of law, by rules and regulations or orders, waive compliance with any provision of law relating to masters, officers, members of the crew, or crew accommodations on any vessel documented under authority of this section to such extent and upon such terms as he finds necessary because of the lack of physical facilities on such vessels, and because of the need to employ aliens for their operation. No vessel shall
cease to enjoy the benefits and privileges of a vessel of the United States by reason of the employment of any person in accordance with the provisions of this subsection.

(c) Coastwise trade; inspection

Any vessel while documented under the provisions of this section, when chartered under sections 196 to 198 of this title by the Secretary of Transportation to Government agencies or departments or to private operators, may engage in the coastwise trade under permits issued by the Secretary of Transportation, who is authorized to issue permits for such purpose pursuant to such rules and regulations as he may prescribe. The Secretary of Transportation is authorized to prescribe such rules and regulations as he may deem necessary or appropriate to carry out the purposes and provisions of this section. Section 57109 of title 46 shall not apply with respect to vessels chartered to Government agencies or departments or to private operators or otherwise used or disposed of under sections 196 to 198 of this title. Existing laws covering the inspection of steam vessels are made applicable to vessels documented under this section only to such extent and upon such conditions as may be required by regulations of the Secretary of the department in which the Coast Guard is operating: Provided, That in determining to what extent those laws should be made applicable, due consideration shall be given to the primary purpose of transporting commodities essential to the national defense.

(d) Reconditioning of vessels

The Secretary of Transportation without regard to the provisions of section 6101 of title 41 may repair, reconstruct, or recondition any vessels to be utilized under sections 196 to 198 of this title. The Secretary of Transportation and any other Government department or agency by which any vessel is acquired or chartered, or to which any vessel is transferred or made available under sections 196 to 198 of this title may, with the aid of any funds available and without regard to the provisions of said section 6101, repair, reconstruct, or recondition any such vessels to meet the needs of the services intended, or provide facilities for such repair, reconstruction, or reconditioning. The Secretary of Transportation may operate or charter for operation any vessel to be utilized under sections 196 to 198 of this title to private operators, citizens of the United States, or to any department or agency of the United States Government, without regard to the provisions of chapter 575 of title 46, and any department or agency of the United States Government is authorized to enter into such charters.

(e) Effective period

In case of any voyage of a vessel documented under the provisions of this section begun before the date of termination of an effective period of section 196 of this title, but is completed after such date, the provisions of this section shall continue in effect with respect to such vessel until such voyage is completed.

(f) “Documented” defined

When used in sections 196 to 198 of this title, the term “documented” means “registered”, “enrolled and licensed”, or “licensed”.


CODIFICATION


In subsec. (d), “provisions of section 6101 of title 41” substituted for “provisions of section 3709 of the Revised Statutes” and “said section 6101” substituted for “said section 3709” on authority of Pub. L. 111–350, §1(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1981—Subsecs. (a), (c), (d). Pub. L. 97–31 substituted references to Secretary of Transportation for references to Secretary of Commerce wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. “Secretary of the department in which the Coast Guard is operating” substituted in subsec. (a) for “Secretary of the Treasury” pursuant to section 6(b)(1), (2) of Pub. L. 89–670, which transferred Coast Guard to Department of Transportation and transferred to and vested in Secretary of Transportation powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of all other officers and officers of Department of the Treasury, and which provided that notwithstanding such transfer Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Treasury of authority vested in President by subsec. (a) of this section, see Ex. Ord. No. 10289, eff. Sept. 17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

CHAPTER 13—INSURRECTION

Sec. 201 to 204. Repealed.

205. Suspension of commercial intercourse with State in insurrection.

206. Suspension of commercial intercourse with part of State in insurrection.

207. Persons affected by suspension of commercial intercourse.

208. Licensing or permitting commercial intercourse with State or region in insurrection.

209. Repealed.

210. Penalties for unauthorized trading, etc.: jurisdiction of prosecutions.

211. Investigations to detect and prevent frauds and abuses.

212. Confiscation of property employed to aid insurrection.

213. Jurisdiction of confiscation proceedings.

214. Repealed.

215. Institution of confiscation proceedings.

216. Preventing transportation of goods to aid insurrection.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. “Secretary of the department in which the Coast Guard is operating” substituted in subsec. (a) for “Secretary of the Treasury” pursuant to section 6(b)(1), (2) of Pub. L. 89–670, which transferred Coast Guard to Department of Transportation and transferred to and vested in Secretary of Transportation powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of all other officers and officers of Department of the Treasury, and which provided that notwithstanding such transfer Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

For delegation to Secretary of the Treasury of authority vested in President by subsec. (a) of this section, see Ex. Ord. No. 10289, eff. Sept. 17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

CHAPTER 13—INSURRECTION

Sec. 201 to 204. Repealed.
§ 206. Suspension of commercial intercourse with part of State in insurrection

Whenever any part of a State not declared to be in insurrection is under the control of insurgents, or is in dangerous proximity to places under their control, all commercial intercourse therein and therewith shall be subject to the prohibitions and conditions of section 205 of this title for such time and to such extent as may be necessary to protect the public interests, and be directed by the Secretary of the Treasury, with the approval of the President.

(R.S. § 5302.)

CODIFICATION

§ 207. Persons affected by suspension of commercial intercourse

The provisions of this chapter in relation to commercial intercourse shall apply to all commercial intercourse by and between persons residing or being within districts or parts of States declared in insurrection, whether with each other or with persons residing or being within districts declared in insurrection and not within those lines; and all persons within the United States, not native or naturalized citizens thereof, shall be subject to the same prohibitions, in all commercial intercourse with inhabitants of States or parts of States declared in insurrection, as citizens of States not declared to be in insurrection.

(R.S. § 5303.)

CODIFICATION

§ 208. Licensing or permitting commercial intercourse with State or region in insurrection

The President may, in his discretion, license and permit commercial intercourse with any part of such State or section, the inhabitants of which are so declared in a state of insurrection, so far as may be necessary to authorize supplying the necessities of loyal persons residing in insurrectionary States, within the lines of actual occupation by the military forces of the United States, as indicated by published order of the commanding general of the department or district so occupied; and, also, so far as may be necessary to authorize persons residing within such lines to bring or send to market in the loyal States any products which they shall have produced with their own labor or the labor of freedmen, or others employed and paid by them, pursuant to rules relating thereto, which may be established under proper authority. And no goods, wares, or merchandise shall be taken into a State declared in insurrection, or transported therein, except to and from such places and to such monthly amounts as shall have been previously agreed upon, in writing, by the commanding general of the department in which such places are situated, and an officer designated by the Secretary of the Treasury for...
that purpose. Such commercial intercourse shall be in such articles and for such time and by such persons as the President, in his discretion, may think most conducive to the public interest; and, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury.

(R.S. § 5304.)

CODIFICATION

Section, R.S. §5305, related to appointment of officers to carry into effect licenses to trade in State or region in an insurrection.

§ 210. Penalties for unauthorized trading, etc.; jurisdiction of prosecutions
Every officer of the United States, civil, military, or naval, and every sutler, soldier, marine, or other person, who takes, or causes to be taken into a State declared to be in insurrection, or to any other point to be thence taken into such State, or who transports or sells, or otherwise disposes of therein, any goods, wares, or merchandise whatsoever, except in pursuance of license and authority of the President, as provided in this chapter, or who makes any false statement or representation upon which license and authority is granted for such transportation, sale, or other disposition, or who, under any license or authority obtained, willfully and knowingly transports, sells, or otherwise disposes of any other goods, wares, or merchandise than such as are in good faith so licensed and authorized, or who willfully and knowingly transports, sells, or disposes of the same, or any portion thereof, in violation of the terms of such license or authority, or of any rule or regulation prescribed by the Secretary of the Treasury concerning the same, or who is guilty of any act of embezzlement, of willful misappropriation of public or private money or property, of keeping false accounts, or of willfully making any false returns, shall be deemed guilty of a misdemeanor, and shall be fined not more than $5,000, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same.

(R.S. §5306.)

CODIFICATION

§ 211. Investigations to detect and prevent frauds and abuses
It shall be the duty of the Secretary of the Treasury, from time to time, to institute such investigations as may be necessary to detect and prevent frauds and abuses in any trade or transactions which may be licensed between inhabitants of loyal States and of States in insurrection. And the agents making such investigations shall have power to compel the attendance of witnesses, and to make examinations on oath.

(R.S. §5307.)

CODIFICATION

§ 212. Confiscation of property employed to aid insurrection
Whenever during any insurrection against the Government of the United States, after the President shall have declared by proclamation that the laws of the United States are opposed, and the execution thereof obstructed, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person, or his agent, attorney, or employee, purchases or acquires, sells or gives, any property of whatsoever kind or description, with intent to use or employ the same, or suffers the same to be used or employed in aiding, abetting, or promoting such insurrection or resistance to the laws, or any person engaged therein; or being the owner of any such property, knowingly uses or employs, or consents to such use or employment of the same, all such property shall be lawful subject of prize and capture wherever found; and it shall be the duty of the President to cause the same to be seized, confiscated, and condemned.

(R.S. §5308.)

CODIFICATION
R.S. §5308 derived from act Aug. 6, 1861, ch. 60, §1, 12 Stat. 319.

§ 213. Jurisdiction of confiscation proceedings
Such prizes and capture shall be condemned in the district court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same may be seized, or into which they may be taken and proceedings first instituted.

(R.S. §5309; Feb. 27, 1877, ch. 69, §1, 19 Stat. 253; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167.)

CODIFICATION
R.S. §5309 derived from act Aug. 6, 1861, ch. 60, §2, 12 Stat. 319.
Act Mar. 3, 1911, conferred the powers and duties of the former circuit courts upon the district courts.

AMENDMENTS
1877—Act Feb. 27, 1877, inserted “may” after “any district in which the same”.

Section, R.S. §5310, provided that property taken on inland waters of the United States was not a maritime prize. See section 7651 of Title 10, Armed Forces.

§ 215. Institution of confiscation proceedings
The Attorney General, or the United States attorney for any judicial district in which such property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the
§ 216. Preventing transportation of goods to aid insurrection

The Secretary of the Treasury is authorized to prohibit and prevent the transportation in any vessel, or upon any railroad, turnpike, or other road or means of transportation within the United States, of any property, whatever may be the ostensible destination of the same, in all cases where there are satisfactory reasons to believe that such property is intended for any use, purpose, or effect, in law declared to be criminal; or that property shall not be transported to any place under insurrectionary control, and shall cease to be the property of such insurgents; and he is further authorized, in all cases where he deems it expedient so to do, to require reasonable security to be given in all cases where he deems it expedient so to do, to require reasonable security to be given that property shall not be transported to any place under insurrectionary control, and shall not, in any way, be used to give aid or comfort to such insurgents; and he may establish all such general or special regulations as may be necessary or proper to carry into effect the purposes of this section; and if any property is transported in violation of this chapter, or if any regulation of the Secretary of the Treasury, established in pursuance thereof, or if any attempt shall be made so to transport any, it shall be forfeited.

(R.S. §5312.)

CODIFICATION
R.S. §5312 derived from act May 20, 1862, ch. 81, §3, 12 Stat. 404.

§ 217. Trading in captured or abandoned property

All persons in the military or naval service of the United States are prohibited from buying or selling, trading, or in any way dealing in captured or abandoned property, whereby they shall receive or expect any profit, benefit, or advantage to themselves, or any other person, directly or indirectly connected with them; and it shall be the duty of such person whenever such property comes into his possession or custody, or within his control, to give notice thereof to some agent, appointed by virtue of this chapter, and to turn the same over to such agent without delay. Any officer of the United States, civil, military, or naval, or any sutler, soldier, or marine, or other person who shall violate any provision of this section, shall be deemed guilty of a misdemeanor, and shall be fined not more than $5,000, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same.

(R.S. §5313.)

CODIFICATION


Section, R.S. §5314; act Mar. 2, 1929, ch. 510, §1, 45 Stat. 1496, related to authority of President in collection of duties to change ports of entry in case of insurrection.

§ 219. Removal of customhouse and detention of vessels thereat

Whenever, at any port of entry, the duties on imports cannot, in the judgment of the President, be collected in the ordinary way, or by the course provided in section 218 of this title, by reason of the cause mentioned in said section, he may direct that the customhouse for the district be established in any secure place within the district, either on land or on board any vessel in the district, or at sea near the coast; and in such case the collector shall reside at such place, or on shipboard, as the case may be, and there detain all vessels and cargoes arriving within or approaching the district, until the duties imposed by law on such vessels and their cargoes are paid in cash. But if the owner or consignee of the cargo on board any vessel thus detained, or the master of the vessel, desires to enter a port of entry in any other district where no such obstructions to the execution of the laws exist, the master may be permitted so to change the destination of the vessel and cargo in his manifest; whereupon the collector shall deliver him a written permit to proceed to the port so designated. And the Secretary of the Treasury, with the approval of the President, shall make proper regulations for the enforcement on shipboard of such provisions of the laws regulating the assessment and collection of duties as in his judgment may be necessary and practicable.

(R.S. §5315.)

REFERENCES IN TEXT

Section 218 of this title, referred to in text, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 632.

CODIFICATION

TRANSFER OF FUNCTIONS

All offices of controller of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of the Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1337, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were

1 See References in Text note below.
§ 220. Enforcement of section 219

It shall be unlawful to take any vessel or cargo detained under section 219 of this title from the custody of the proper officers of the customs, unless by process of some court of the United States; and in case of any attempt otherwise to take such vessel or cargo by any force, or combination, or assemblage of persons, too great to be overcome by the officers of the customs, the President, or such person as he shall have empowered for that purpose, may employ such part of the Army or Navy or militia of the United States, or such force of citizen volunteers as may be necessary, to prevent the removal of such vessel or cargo, and to protect the officers of the customs in retaining the custody thereof.

(R.S. § 5316.)

Codification

R.S. § 5316 derived from act July 12, 1861, ch. 3, § 3, 12 Stat. 256.

§ 221. Closing ports of entry; forfeiture of vessels seeking to enter closed port

Whenever, in any collection district, the duties on imports can not, in the judgment of the President, be collected in the ordinary way, nor in the manner provided by sections 218 to 220 of this title, by reason of the cause mentioned in section 218 of this title, the President may close the port of entry in that district; and shall in such case give notice thereof by proclamation.

And thereupon all right of importation, warehousing, and other privileges incident to ports of entry shall cease and be discontinued at such port so closed until it is opened by the order of the President on the cessation of such obstructions. Every vessel from beyond the United States, or having on board any merchandise liable to duty, which attempts to enter any port which has been closed under this section, shall, with her tackle, apparel, furniture, and cargo, be forfeited.

(R.S. § 5317.)

References in Text

Section 218 of this title, referred to in text, was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632.

Codification

R.S. § 5317 derived from act July 12, 1861, ch. 3, § 4, 12 Stat. 256.

See References in Text note below.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1, of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

Codification

Section, R.S. § 5318; act Jan. 28, 1915, ch. 20, § 1, 38 Stat. 800, related to use of auxiliary vessels to enforce this chapter and was transferred to section 540 of Title 19, Customs Duties.

Codification


§ 223. Forfeiture of vessels owned by citizens of insurrectionary States

From and after fifteen days after the issuing of the proclamation, as provided in section 205 of this title, any vessel belonging in whole or in part to any citizen or inhabitant of such State or part of a State whose inhabitants are so declared in a state of insurrection, found at sea, or in any port of the rest of the United States, shall be forfeited.

(R.S. § 5319.)

Codification


§ 224. Refusing clearance to vessels with suspected cargoes; forfeiture for departing without clearance

The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise, destined for a foreign or domestic port, whenever he shall have satisfactory reason to believe that such merchandise, or any part thereof, whatever may be its ostensible destination, is intended for ports in possession or under control of insurgents against the United States; and if any vessel for which a clearance or permit has been refused by the Secretary of the Treasury, or by his order, shall depart or attempt to depart for a foreign or domestic port without being duly cleared or permitted, such vessel, with her tackle, apparel, furniture, and cargo, shall be forfeited.

(R.S. § 5320.)

Codification

R.S. § 5320 derived from act May 20, 1862, ch. 81, § 1, 12 Stat. 494.

§ 225. Bond to deliver cargo at destination named in clearance

Whenever a permit or clearance is granted for either a foreign or domestic port, it shall be lawful for the collector of the customs granting the same, if he deems it necessary, under the circumstances of the case, to require a bond to be executed by the master or the owner of the ves-
section in a penalty equal to the value of the cargo, and with sureties to the satisfaction of such collector, that the cargo shall be delivered at the destination for which it is cleared or permitted, and that no part thereof shall be used in affording aid or comfort to any person or parties in insurrection against the authority of the United States.

(R.S. § 5321.)

Codification

R.S. § 5321 derived from act May 20, 1862, ch. 81, § 2, 12 Stat. 404.

Transfer of Functions

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1, of eff. May 25, 1965, 30 F.R. 7935, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretaries of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 226. Protection of liens on condemned vessels

In all cases wherein any vessel, or other property, is condemned in any proceeding by virtue of any laws relating to insurrection or rebellion, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment, out of the proceeds of such vessel, or other property, of any bona fide claims which shall be filed before awarding such vessel, or other property, of any bona fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and amity with the United States, intervening in such proceeding, and which shall be duly established by evidence, as a valid claim against such vessel, or other property, under the laws of the United States or of any State thereof not declared to be in insurrection. No such claim shall be allowed in any case where the claimant has knowingly aiding or abetting any person or persons in insurrection. No such claim shall be allowed in any case where the claimant has knowingly aiding or abetting any person or persons in insurrection.

(R.S. § 5322.)

Codification


CHAPTER 14—WARTIME VOTING BY LAND AND NAVAL FORCES


Section 302, act Sept. 16, 1942, ch. 561, title I, § 2, 56 Stat. 753, exempted persons in military service in time of war from paying poll taxes or other taxes as a condition of voting in any election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives.

Section 303, acts Sept. 16, 1942, ch. 561, title I, §§ 3, 56 Stat. 753; Apr. 1, 1944, ch. 150, 58 Stat. 136, provided for voting in accordance with State law.

Additional Repeal

Sections 301 to 303 were also repealed by act Aug. 10, 1956, ch. 1041, §§ 3, 70 Stat. 641.

§§ 304 to 315. Repealed. Apr. 1, 1944, ch. 150, 58 Stat. 136

Section 304, act Sept. 16, 1942, ch. 561, § 4, 56 Stat. 754, related to a public list of applicants.

Section 305, act Sept. 16, 1942, ch. 561, §§ 5, 56 Stat. 754, related to form of ballots and booklets.


Section 308, act Sept. 16, 1942, ch. 561, § 8, 56 Stat. 756, related to return of ballots.


Section 310, act Sept. 16, 1942, ch. 561, § 10, 56 Stat. 756, related to payment of expenses.


Section 312, act Sept. 16, 1942, ch. 561, § 12, 56 Stat. 757, related to voting under State law.


Section 324, act Sept. 16, 1942, ch. 561, title II, § 204, as added Apr. 1, 1944, ch. 150, 58 Stat. 138; amended Apr. 19, 1946, ch. 142, 60 Stat. 97; Sept. 29, 1950, ch. 1122, § 1, 64 Stat. 1082, provided for style and markings of envelopes, protective inserts, return envelopes, and size and weight of ballots and envelopes.


Section 332, act Sept. 16, 1942, ch. 561, title III, §302, as added Apr. 1, 1944, ch. 150, 58 Stat. 140, related to persons subject to this subchapter.


Section 334, act Sept. 16, 1942, ch. 561, title III, §304, as added Apr. 1, 1944, ch. 150, 58 Stat. 142, related to administration of oaths.

Section 335, act Sept. 16, 1942, ch. 561, title III, §305, as added Apr. 1, 1944, ch. 150, 58 Stat. 143, related to administration of this subchapter.


Section 340, act Sept. 16, 1942, ch. 561, title III, §310, as added Apr. 1, 1944, ch. 150, 58 Stat. 145, related to reports on balloting.

§§ 341 to 347. Repealed. Apr. 19, 1946, ch. 142, 60 Stat. 96

Section 341, act Sept. 16, 1942, ch. 561, title III, §311, as added Apr. 1, 1944, ch. 150, 58 Stat. 145, related to validity of ballots and was repealed by act Apr. 19, 1946, ch. 142, 60 Stat. 96.

ADDITIONAL REPEAL

Sections 341 to 347 were also repealed by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641.


Section 351, act Sept. 16, 1942, ch. 561, title IV, §401, as added Apr. 1, 1944, ch. 142, 60 Stat. 102, defined terms for purposes of this chapter.

A prior section 351, act Sept. 16, 1942, ch. 561, title IV, §401, as added Apr. 1, 1944, ch. 150, 58 Stat. 147, related to administration of this chapter.

A prior section 351, act Sept. 16, 1942, ch. 561, title IV, §402, as added Apr. 19, 1946, ch. 142, 60 Stat. 102, defined terms for purposes of this chapter and was repealed by act Apr. 19, 1946, ch. 142, 60 Stat. 96.

A prior section 352, act Sept. 16, 1942, ch. 561, title IV, §403, as added Apr. 19, 1946, ch. 142, 60 Stat. 103, related to administrative provisions.

A prior section 353, act Sept. 16, 1942, ch. 561, title IV, §404, as added Apr. 1, 1944, ch. 142, 60 Stat. 103, related to separability of provisions.

A prior section 354, act Sept. 16, 1942, ch. 561, title IV, §405, as added Apr. 19, 1946, ch. 142, 60 Stat. 103, related to construction of this chapter.

ADDITIONAL REPEAL

Sections 351 to 355 were also repealed by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641.

CHAPTER 15—NATIONAL SECURITY

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In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security; to provide a Department of Defense, including the three military Departments of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force under the direction, authority, and control of the Secretary of Defense; to provide that each military department shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense; to provide for their unified direction under civilian control of the Secretary of Defense but not to merge these departments or services; to provide for the establishment of unified or specified combatant commands, and a clear and direct line of command to such commands; to eliminate unnecessary duplication in the Department of Defense, and particularly in the field of research and engineering by vesting its overall direction and control in the Secretary of Defense; to provide more effective, efficient, and economical administration in the Department of Defense; to provide for the unified strategic direction of the combatant forces, for their operation under unified command, and for their integration into an efficient team of land, naval, and air forces but not to establish a single Chief of Staff over the armed forces nor an overall armed forces general staff.

This legislation, referred to in text, means act July 26, 1947, ch. 343, 61 Stat. 495, as amended, known as the
National Security Act of 1947. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1958—Pub. L. 85–599 amended section generally, and, among other changes, provided that each military department shall be separately organized, instead of separately administered, under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense, and inserted provisions relating to establishment of unified or specified combatant commands and for elimination of unnecessary duplication.

1949—Act Aug. 10, 1949, provided that the military departments shall be separately administered but be under the direction of the Secretary of Defense, and that there shall not be a single Chief of Staff over the armed forces nor an armed forces general staff.

CHANGE OF NAME


(a) Director of Central Intelligence as Head of Intelligence Community.—Any 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 in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Director of National Intelligence.

(b) Director of Central Intelligence as Head of CIA.—Any 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 Central Intelligence Agency in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Director of the Central Intelligence Agency.

(c) Community Management Staff.—Any reference to the Community Management Staff in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the staff of the Office of the Director of National Intelligence.

EFFECTIVE DATE OF 2004 AMENDMENTS; TRANSITION PROVISIONS


Sec. 1091. Transfer of Community Management Staff.

(a) Transfer.—There shall be transferred to the Office of the Director of National Intelligence such staff of the Community Management Staff as of the date of the enactment of this Act [Dec. 17, 2004] as a component of the Director of the Intelligence Community as described in this title.

(b) Administration.—The Director of National Intelligence shall administer the Community Management Staff after the date of the enactment of this Act [Dec. 17, 2004] as a component of the Office of the Director of National Intelligence under section 103 of the National Security Act of 1947 [50 U.S.C. 403–3], as amended by section 101(a) of this Act.

Sec. 1092. Transfer of Terrorist Threat Integration Center.

(a) Transfer.—There shall be transferred to the National Counterterrorism Center the Terrorist Threat Integration Center (TTIC) or its successor entity, including all functions and activities discharged by the TTIC or its successor entity as of the date of the enactment of this Act [Dec. 17, 2004].

(b) Administration.—The Director of the National Counterterrorism Center shall administer the Terrorist Threat Integration Center after the date of the enactment of this Act [Dec. 17, 2004] as a component of the Director of Intelligence of the National Counterterrorism Center under section 119(i) of the National Security Act of 1947 [50 U.S.C. 404(i)(i)], as added by section 1021(a) [1021] of this Act.

SEC. 1093. Termination of Positions of Assistant Directors of Central Intelligence.

(a) Termination.—The positions referred to in subsection (b) are hereby abolished.

(b) Covered Positions.—The positions referred to in this subsection are as follows:

(1) The Assistant Director of Central Intelligence for Collection.

(2) The Assistant Director of Central Intelligence for Analysis and Production.

(3) The Assistant Director of Central Intelligence for Administration.

SEC. 1094. Implementation Plan.

The President shall transmit to Congress a plan for the implementation of this title [see Short Title of 2004 Amendment note below] and the amendments made by this title. The plan shall address, at a minimum, the following:

(1) The transfer of personnel, assets, and obligations to the Director of National Intelligence pursuant to this title.

(2) Any consolidation, reorganization, or streamlining of activities transferred to the Director of National Intelligence pursuant to this title.

(3) The establishment of offices within the Office of the Director of National Intelligence to implement the duties and responsibilities of the Director of National Intelligence as described in this title.

(4) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations to be transferred to the Director of National Intelligence.

(5) Recommendations for additional legislative or administrative action as the President considers appropriate.

SEC. 1095. Director of National Intelligence Report on Implementation of Intelligence Community Reform.

(a) Report.—Not later than one year after the effective date of this Act [probably means the effective date of title I of Pub. L. 108–458, see below], the Director of National Intelligence shall submit to the congressional intelligence committees a report on the progress made in the implementation of this title [see Short Title of 2004 Amendment note below], including the amendments made by this title. The report shall include a comprehensive description of the progress made, and may include such recommendations for additional legislative or administrative action as the Director considers appropriate.

(b) Congressional Intelligence Committees Defined.—In this section, the term ‘congressional intelligence committees’ means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 1096. Transitional Authorities.

(a) In General.—Upon the request of the Director of National Intelligence, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to the Director of National Intelligence.

(b) Transfer of Personnel.—In addition to any other authorities available under law for such purposes, in the fiscal years 2005 and 2006, the Director of National Intelligence—

(1) is authorized within the Office of the Director of National Intelligence the total of 500 new personnel positions; and

(2) with the approval of the Director of the Office of Management and Budget, may detail not more
than 150 personnel funded within the National Intelligence Program to the Office of the Director of National Intelligence for a period of not more than 2 years.

SEC. 1097. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise expressly provided in this Act [see Short Title of 2004 Amendment note below], this title [see Short Title of 2004 Amendment note below] and the amendments made by this title shall take effect not later than six months after the date of the enactment of this Act [Dec. 17, 2004] [For determination by the President that certain sections of title I of Pub. L. 108–458 take effect earlier than the date of the enactment of this Act [Dec. 17, 2004], the Director of National Intelligence shall prescribe regulations, policies, and procedures, standards, and guidelines under required under section 102A of the National Security Act of 1947 [50 U.S.C. 403–1], as amended by section 101(a) of this Act.

(b) SPECIFIC EFFECTIVE DATES.—(1)(A) Not later than 60 days after the date of the appointment of the first Director of National Intelligence, the Director of National Intelligence shall first appoint individuals to positions within the Office of the Director of National Intelligence.

(B) Subparagraph (A) shall not apply with respect to the Principal Deputy Director of National Intelligence.

(2) Not later than 180 days after the effective date of this Act [probably means the effective date of title I of Pub. L. 108–458, see above], the President shall transmit to Congress the implementation plan required by section 104 of title I and section 101(a) of this Act.

(3) Not later than one year after the date of the enactment of this Act [Dec. 17, 2004], the Director of National Intelligence shall prescribe regulations, policies, procedures, standards, and guidelines under required under section 102A of the National Security Act of 1947 [50 U.S.C. 403–1], as amended by section 101(a) of this Act.

Functions of President under section 1094 of Pub. L. 108–458, set out in a note above, assigned to the Director of National Intelligence by section 3 of Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note below.

Short Title of 2002 Amendment

Short Title of 1996 Amendment
Pub. L. 104–293, title VIII, §801, Oct. 11, 1996, 110 Stat. 3474, provided that: “This title [enacting sections 403, 403–1, 403–5a, and 403c of this title, amending sections 402, 403, 403–3 to 403–6, and 404 of this title and sections 5314 and 5315 of Title 5, Government Organization and Employees, repealing former section 403 of this title, and enacting provisions set out as notes under sections 403–3, 403–4, and 405 of this title] may be cited as the ‘Intelligence Renewal and Reform Act of 1996’.”

Short Title of 1994 Amendment
Pub. L. 103–359, title VIII, §801, Oct. 14, 1994, 108 Stat. 3434, provided that: “This title [enacting sections 402a, 435 to 438, and 1821 to 1829 of this title, section 2170b of the Appendix to this title, section 1599 [now 1611] of Title 10, Armed Forces, and section 1593 of Title 10, Crimes and Criminal Procedure, amending section 783 of this title, section 2170 of the Appendix to this title, section 8312 of Title 5, Government Organization and Employees, section 1604 of Title 10, and sections 793, 794, 795, 3071, and 3077 of Title 18, enacting provisions set out as notes under sections 435 and 1821 of this title, and amending provisions set out as notes under sections 402 and 1801 of this title] may be cited as the ‘Counterintelligence and Security Enhancements Act of 1994’.”

Short Title of 1992 Amendment

Short Title of 1984 Amendment
Pub. L. 98–477, §1, Oct. 15, 1984, 98 Stat. 2209, provided: “That this Act [enacting sections 431 and 432 of this title, amending section 552a of Title 5, Government Organization and Employees, and enacting provisions set out as notes under sections 431 and 432 of this title] may be cited as the ‘Central Intelligence Agency Information Act’.”

Short Title of 1982 Amendment

Short Title of 1979 Amendment
Section 1 of act Aug. 10, 1979, provided: “This Act [enacting sections 408 and 412 of this title and sec-
tions 171-1, 171, 172, 172a to 172d, and 172f to 172j of former Title 5, Executive Departments and Government Officers and Employees, amending this section, sections 151, 402, 483d, 485, 410, 459, 461, and 494 of this title, sections 171, 171a, 171b to 171d, 171e to 171j, 171m, 171r, 172e, 411b, and 626c of former Title 5, section 174b of Title 12, Banks and Banking, section 1517 of Title 15, Commerce and Trade, section 474, 481 to 484, and 487 of former Title 40, Public Buildings, Property, and Works, section 364a of Title 43, Public Lands, sections 1156 and 1157 of former Title 49, Transportation, and section 1193 of the Appendix to this title, and enacting provisions set out as notes under this section and sections 171 and 171c of former Title 5 may be cited as the ‘National Security Act Amendments of 1949.’”

SHORT TITLE

Section 1 of act July 26, 1947, provided: “That this Act (enacting this section, sections 401a to 405, 406, 408, and 410 to 412 of this title, and sections 171, 171-1, 171-2, 171a, 171b to 171d, 171e to 171j, 171k to 171m, 171n, 171r, 172, 172a to 172d, 172e to 172j, 181-1, 181-2, 411a, 411b, 626a to 626c, and 626f of former Title 5, Executive Department and Government Officers and Employees, amending sections 1, 11, and 172e of former Title 5, section 1517 of Title 15, Commerce and Trade, and section 72 of former Title 31, Money and Finance, and enacting provisions set out as notes under this section and section 135 of Title 10, Armed Forces) may be cited as the ‘National Security Act of 1947.’”

Sections of National Security Act of 1947, which were classified to former Title 5, were repealed and restated in Title 10, Armed Forces, except as noted, as follows:

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Savings Provisions

Pub. L. 108–487, title VIII, §803, Dec. 23, 2004, 118 Stat. 3962, provided that: ““(a) HEAD OF INTELLIGENCE COMMUNITY.—(1) During the period beginning on the date of the enactment of this Act [Dec. 23, 2004] and ending on the date of the appointment of the Director of National Intelligence [Apr. 21, 2005] under section 102 of the National Security Act of 1947, as amended by section 101(a) of the National Security Intelligence Reform Act of 2004 [50 U.S.C. 403], the Director of Central Intelligence may, acting as the head of the intelligence community, discharge the functions and authorities provided in this Act, and the amendments made by this Act [see Effective Date of 2004 Amendments note set out under section 2656f of Title 22, Foreign Relations and Intercourse], to the Director of National Intelligence.

“(2) During the period referred to in paragraph (1) any reference in this Act or the amendments made by this Act to the Director of National Intelligence shall be considered to be a reference to the Director of Central Intelligence, as the head of the intelligence community.

“(3) Upon the appointment of an individual as Director of National Intelligence under section 102 of the National Security Act of 1947, as so amended, any reference in this Act, or in the classified annex to accompany this Act, to the Director of Central Intelligence as head of the intelligence community shall be considered to be a reference to the Director of National Intelligence.

“(b) HEAD OF CENTRAL INTELLIGENCE AGENCY.—(1) During the period beginning on the date of the enactment of this Act [Dec. 23, 2004] and ending on the date of the appointment of the Director of the Central Intelligence Agency under section 104A of the National Security Act of 1947, as amended by section 101(a) of the National Security Intelligence Reform Act of 2004 [50 U.S.C. 403–4a], the Director of Central Intelligence may, acting as the head of the Central Intelligence Agency, discharge the functions and authorities provided in this Act, and the amendments made by this Act, to the Director of the Central Intelligence Agency.

“(2) Upon the appointment of an individual as Director of the Central Intelligence Agency under section 104A of the National Security Act of 1947, as so amended, any reference in this Act, or in the classified annex to accompany this Act, to the Director of Central Intelligence as head of the Central Intelligence Agency shall be considered to be a reference to the Director of the Central Intelligence Agency.”

Section 12(g) of act Aug. 10, 1949, provided: “All laws, orders, regulations, and other actions relating to the National Military Establishment, the Departments of the Army, the Navy, or the Air Force, or to any officer or activity of such establishment or such departments, shall, except to the extent inconsistent with the provisions of this Act [see Short Title of 1949 Amendment note above], have the same effect as if this Act had not been enacted; but, after the effective date of this Act [Aug. 10, 1949], any such law, order, regulation, or other action which vested functions in or otherwise related to any officer, department, or establishment, shall be deemed to have vested such function in or relate to the officer or department, executive or military, succeeding the officer, department, or establishment in which such function was vested. For purposes of this subsection the Department of Defense shall be deemed the department succeeding the National Military Establishment, and the military departments of Army, Navy, and Air Force shall be deemed the departments succeeding the Executive Departments of Army, Navy, and Air Force.

Separability

Pub. L. 108–487, title I, §1103, Dec. 17, 2004, 118 Stat. 3700, provided that: “If any provision of this Act [see Short Title of 2004 Amendment note above], or an amendment made by this Act, or the application of such provision to any person or circumstance is held
invalid, the remainder of this Act, or the application of such provision to persons or circumstances other those to which such provision is held invalid shall not be affected thereby.”

Section 309 of act July 26, 1947, provided: “If any provision of this Act (see Short Title note above) or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.”

[Section 310(a) of act July 26, 1947, set out as an Effective Date note above, provided that section 309 of act July 26, 1947, is effective July 26, 1947.]

CONSTRUCTION OF REFERENCES TO DIRECTOR OF CENTRAL INTELLIGENCE

Pub. L. 108–487, title VIII, § 802, Dec. 23, 2004, 118 Stat. 3962, provided: “Except as otherwise specifically provided or otherwise provided by context, any reference in this Act (see Effective Date of 2004 Amendments note set out under section 2656f of Title 22, Foreign Relations and Intercourse), or in the classified annex to accompany this Act, to the Director of Central Intelligence shall be deemed to be a reference to the Director of Central Intelligence as head of the intelligence community.”

CHARTER FOR THE NATIONAL RECONNAISSANCE OFFICE

Pub. L. 111–84, div. A, title X, § 1035, Oct. 28, 2009, 123 Stat. 2604, provided that: “(a) Establishments.—There is established a commission to be known as the ‘National Commission for the Review of the Research and Development Programs of the United States Intelligence Community’ (in this title referred to as the ‘Commission’).

(b) Composition.—The Commission shall be composed of 12 members, as follows:

(1) The Principal Deputy Director of National Intelligence.
(2) A senior intelligence official of the Office of the Secretary of Defense, as designated by the Secretary of Defense.
(3) Three members appointed by the majority leader of the Senate, in consultation with the Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and two from private life.
(4) Two members appointed by the minority leader of the Senate, in consultation with the Vice Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and one from private life.
(5) Three members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and two from private life.
(6) Two members appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and one from private life.

(c) Membership.—(1) The individuals appointed from private life as members of the Commission shall be individuals who are nationally recognized for expertise, knowledge, or experience in—
“(A) research and development programs;

“(B) technology discovery and insertion;

“(C) use of intelligence information by national policymakers and military leaders; or

“(D) the implementation, funding, or oversight of the national security policies of the United States.

“An official who appoints members of the Commission may not appoint an individual as a member of the Commission if, in the judgment of the official, such individual possesses any personal or financial interest in the discharge of any of the duties of the Commission.

“(3) All members of the Commission appointed from private life shall possess an appropriate security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

“(d) Co-Chairs.—(1) The Commission shall have two co-chairs, selected from among the members of the Commission.

“(1) One co-chair of the Commission shall be a member of the Democratic Party, and one co-chair shall be a member of the Republican Party.

“(B) The individuals who serve as the co-chairs of the Commission shall be jointly agreed upon by the President, the majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives.

“(e) Appointment; Initial Meeting.—(1) Members of the Commission shall be appointed not later than 45 days after the date of the enactment of this Act [Nov. 27, 2002].

“(2) The Commission shall hold its initial meeting on the date that is 60 days after the date of the enactment of this Act.

“(f) Meetings; Quorum; Vacancies.—(1) After its initial meeting, the Commission shall meet upon the call of the co-chairs of the Commission.

“(2) Six members of the Commission shall constitute a quorum for purposes of conducting business, except that two members of the Commission shall constitute a quorum for purposes of receiving testimony.

“(3) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

“(g) Actions of Commission.—(1) The Commission shall act by resolution agreed to by a majority of the members of the Commission voting and present.

“(2) The Commission may establish panels composed of less than the full membership of the Commission for purposes of carrying out the duties of the Commission under this title. The actions of any such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

“(h) Any member, agent, or staff of the Commission may, if authorized by the co-chairs of the Commission, take any action which the Commission is authorized to take pursuant to this title.

“(i) Duties.—The duties of the Commission shall be—

“(1) to conduct, until not later than the date on which the Commission submits the report under section 1007(a), the review described in subsection (i); and

“(2) to submit to the congressional intelligence committees, the Director of National Intelligence, and the Secretary of Defense a final report on the results of the review.

“(i) Review.—The Commission shall review the status of research and development programs and activities within the intelligence community, including advanced research and development programs and activities. Such review shall include—

“(1) an assessment of the advisability of modifying the scope of research and development for purposes of such programs and activities;

“(2) a review of the particular individual research and development activities under such programs;

“(3) an evaluation of the current allocation of resources for research and development, including whether the allocation of such resources for that purpose should be modified;

“(4) an identification of the scientific and technological fields judged to be of most importance to the intelligence community;

“(5) an evaluation of the relationship between the research and development programs and activities of the intelligence community and the research and development programs and activities of other departments and agencies of the Federal Government; and

“(6) an evaluation of the relationship between the research and development programs and activities of the intelligence community and the research and development programs and activities of the private sector.

“SEC. 1008. POWERS OF COMMISSION.

“(a) In General.—(1) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title—

“(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths; and

“(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memora, papers, and documents, as the Commission or such designated subcommittee or designated member considers necessary.

“(2) Subpoenas may be issued under subparagraph (1) by the signature of the co-chairs of the Commission, and may be served by any person designated by such co-chairs.

“(3) The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192–194) shall apply in the case of any failure of a witness to comply with any subpoena or to testify when summoned under authority of this section.

“(b) Contracting.—The Commission may, to such extent and in such amounts as are provided in advance in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

“(c) Information from Federal Agencies.—The Commission may secure directly from any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each such department, agency, bureau, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request of the co-chairs of the Commission. The Commission shall handle and protect all classified information provided to it under this section in accordance with applicable statutes and regulations.

“(d) Assistance from Federal Agencies.—(1) The Director of National Intelligence shall provide to the Commission, on a nonreimbursable basis, such administrative services, funds, staff, facilities, and other support services as are necessary for the performance of the Commission’s duties under this title.

“(2) The Secretary of Defense may provide the Commission, on a nonreimbursable basis, with such administrative services, staff, and other support services as the Commission may request.

“(3) In addition to the assistance set forth in paragraphs (1) and (2), other departments and agencies of the United States may provide the Commission such services, funds, facilities, staff, and other support as such departments and agencies consider advisable and as may be authorized by law.

“(4) The Commission shall receive the full and timely cooperation of any official, department, or agency of the United States Government whose assistance is nec-
essay for the fulfillment of the duties of the Commission under this title, including the provision of full and current briefings and analyses.

SEC. 1002. WITHHOLDING INFORMATION.—No department or agency of the Government may withhold information from the Commission on the grounds that providing the information to the Commission would constitute the unauthorized disclosure of classified information or information relating to intelligence sources or methods.

(1) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

(2) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property in carrying out its duties under this title.

SEC. 1004. STAFF OF COMMISSION.

(a) In General.—(1) The co-chairs of the Commission, in accordance with rules agreed upon by the Commission, shall appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its duties, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of such title.

(b) Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) All staff of the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(2) CONSULTANT SERVICES.—(1) The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(2) All experts and consultants employed by the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

SEC. 1005. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—(1) Except as provided in paragraph (2), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission under this title.

(2) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay by reason of their service on the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

SEC. 1006. TREATMENT OF INFORMATION RELATED TO NATIONAL SECURITY.

(a) IN GENERAL.—(1) The Director of National Intelligence shall assume responsibility for the handling and disposition of any information related to the national security of the United States that is received, considered, or used by the Commission under this title.

(2) Any information related to the national security of the United States that is provided to the Commission by a congressional intelligence committee may not be further provided or released without the approval of the chairman of such committee.

(b) ACCESS AFTER TERMINATION.—Notwithstanding any other provision of law, after the termination of the Commission under section 1007, only the Members and designated staff of the congressional intelligence committees, the Director of National Intelligence (and the designees of the Director), and such other officials of the executive branch as the President may designate shall have access to information related to the national security of the United States that is received, considered, or used by the Commission.

SEC. 1007. FINAL REPORT; TERMINATION.

(a) FINAL REPORT.—Not later than one year after the date on which all members of the Commission are appointed pursuant to section 701(a)(9) of the Intelligence Authorization Act for Fiscal Year 2010 (Pub. L. 111–259, set out above), the Commission shall submit to the congressional intelligence committees, the Director of National Intelligence, and the Secretary of Defense a final report as required by section 1002(h)(2).

(b) TERMINATION.—(1) The Commission, and all the authorities of this title, shall terminate at the end of the 120-day period beginning on the date on which the final report under subsection (a) is transmitted to the congressional intelligence committees.

(2) The Commission may use the 120-day period referred to in paragraph (1) for the purposes of concluding its activities, including providing testimony to Congress concerning the final report referred to in that paragraph and disseminating the report.

SEC. 1008. ASSESSMENTS OF FINAL REPORT.

Not later than 60 days after receipt of the final report under section 1007(a), the Director of National Intelligence and the Secretary of Defense shall each submit to the congressional intelligence committees an assessment by the Director or the Secretary, as the case may be, of the final report. Each assessment shall include such comments on the findings and recommendations contained in the final report as the Director or Secretary, as the case may be, considers appropriate.

SEC. 1009. INAPPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.

(a) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission under this title.

(b) FREEDOM OF INFORMATION ACT.—The provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), shall not apply to the activities, records, and proceedings of the Commission under this title.


SEC. 1011. DEFINITIONS.

In this title:

(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence committees’ means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) INTELLIGENCE COMMUNITY.—The term ‘intelligence community’ has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(Pub. L. 111–259, title VII, §701(a)(1), Oct. 7, 2010, 124 Stat. 2744, provided that the amendment made by section 701(a)(1) of Pub. L. 111–259 is effective on the date on which funds are first appropriated pursuant to sec-
section 701(b)(1) of Pub. L. 111–259 [124 Stat. 2745] and subject to section 701(a)(3) of Pub. L. 111–274, provided that: "(a) The amendment made by paragraph (1) [amending Pub. L. 107–306, §1007(a), set out above] shall take effect as if included in the enactment of such section 1007.''


″SEC. 3. ESTABLISHMENT.″

"There is established a commission to be known as [the] National Commission on Defense and National Security (hereinafter in this Act referred to as the 'Commission'). The Commission is established until 30 days following submission of the final report required by section 6 of this section.

″SEC. 4. DUTIES OF COMMISSION.″

"(a) IN GENERAL.—The Commission shall analyze and make recommendations to the President and Congress concerning the national security and national defense policies of the United States.

"(b) MATTERS TO BE ANALYZED.—Matters to be analyzed by the Commission shall include the following:

"(1) The world-wide interests, goals, and objectives of the United States that are vital to the national security of the United States.

"(2) The political, economic, and military developments around the world and the implications of those developments for United States national security interests, including—

"(A) the developments in Eastern Europe and the Soviet Union;

"(B) the question of German unification;

"(C) the future of NATO and European economic integration;

"(D) the future of the Pacific Basin; and

"(E) potential instability resulting from regional conflicts or economic problems in the developing world.

"(3) The foreign policy, world-wide commitments, and national defense capabilities of the United States necessary to deter aggression and implement the national security strategy of the United States, including the contribution that can be made by bilateral and multilateral political and economic associations in promoting interests that the United States shares with other members of the world community.

"(4) The proposed short-term uses of the political, economic, military, and other elements of national power for the United States to protect or promote the interests and to achieve the goals and objectives referred to in paragraph (1).

"(5) Long-term options that should be considered further for a number of potential courses of world events over the remainder of the century and into the next century.

″SEC. 5. MEMBERSHIP.″

"(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 10 members, as follows:

"(1) Three appointed by the President.

"(2) Two appointed by the Speaker of the House of Representatives.

"(3) One appointed by the minority leader of the House of Representatives.

"(4) Two appointed by the majority leader of the Senate.

"(5) One appointed by the minority leader of the Senate.

"(b) QUALIFICATIONS.—Persons appointed to the Commission shall be persons who are not officers or employees of the Federal Government (including Members of Congress) and who are specially qualified to serve on the Commission by virtue of their education, training, or experience.

"(c) TERMS.—Members shall be appointed for the life of the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(d) BASIC PAY.—Members of the Commission shall serve without pay.

"(e) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

"(f) CHAIRMAN AND VICE CHAIRMAN.—The Chairman of the Commission shall be designated by the President.
from among the members appointed by the President. The Vice Chairman of the Commission shall be designated by the Speaker of the House of Representatives from among the members appointed by the Speaker of the House of Representatives.

"(g) MEETINGS.—The Commission shall meet at the call of the Chairman or a majority of its members.

"(h) DEADLINE FOR APPOINTMENTS.—Members of the Commission shall be appointed not later than the end of the 30-day period beginning on the date of the enactment of this Act [Nov. 5, 1990].

"SEC. 6. REPORTS.

"(a) INITIAL REPORT.—The Commission shall transmit to the President and to Congress an initial report one year following submission of the initial report under subsection (a).

"(c) CONTENTS OF REPORTS.—The report under subsection (b) shall contain a detailed statement of the findings and conclusions of the Commission concerning the matters to be studied by the Commission under section 4, together with its recommendations for such legislation and administrative actions as it considers appropriate. Such report shall include a comprehensive description and discussion of the matters set forth in section 4.

"(d) REPORTS TO BE UNCLASSIFIED.—Each such report shall be submitted in unclassified form.

"(e) ADDITIONAL AND MINORITY VIEWS.—Each report may include such additional and minority views as individual members of the Commission may request be included.

"SEC. 7. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

"(a) DIRECTOR.—The Commission shall, without regard to section 5311(b) of title 5, United States Code, have a Director who shall be appointed by the Chairman and who shall be paid at a rate not to exceed the maximum rate of basic pay payable for GS-18 of the General Schedule.

"(b) STAFF.—The Chairman may appoint and fix the pay of such additional personnel as the Chairman considers appropriate.

"(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 55 of title 5, United States Code, as such title relates to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

"(d) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

"(e) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act.

"SEC. 8. POWERS OF COMMISSION

"(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

"(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

"(c) OBTAINING OFFICIAL DATA.—The Chairman or a designee on behalf of the Chairman may request information necessary to enable the Commission to carry out this Act directly from any department or agency of the United States.

"(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

"(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(f) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

"SEC. 9. INITIAL FUNDING OF COMMISSION.

"If funds are not otherwise available for the necessary expenses of the Commission for fiscal year 1991, the Secretary of Defense shall make available to the Commission, from funds available to the Secretary for the fiscal year concerned, such funds as the Commission requires. When funds are specifically appropriated for the expenses of the Commission, the Commission shall reimburse the Secretary from such funds for any funds provided to it under the preceding sentence.

"References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 329 (title 1, § 101(c)(1)) of Pub. L. 101–509, set out in a note under section 5556 of Title 5.

"INTELLIGENCE PRIORITIES AND REORGANIZATION


"(a) REVISION OF PRIORITIES AND CONSOLIDATION OF FUNCTIONS.—The Secretary of Defense, together with the Director of Central Intelligence, shall conduct a joint review of all intelligence and intelligence-related activities in the Tactical Intelligence and Related Activities (TIARA) programs and the National Foreign Intelligence Program (NFIP). The Secretary, together with the Director, shall take the following actions with respect to those activities:

"(1) In cases in which redundancy or fragmentation exist, consolidate functions, programs, organizations, and operations to improve the efficiency and effectiveness of the conduct of those intelligence activities or programs.

"(2) Revise intelligence collection and analysis priorities and resource allocations to reflect changes in the international security environment.

"(3) Strengthen joint intelligence functions, operations, and organizations.

"(4) Improve the quality and independence of intelligence support to the weapons acquisition process.

"(5) Improve the responsiveness and utility of national intelligence systems and organizations to the needs of the combatant commanders.

"(b) PERSONNEL REDUCTIONS.—(1) The number of personnel assigned or detailed to the National Foreign Intelligence Program and related Tactical Intelligence and Related Activities programs shall be reduced by not less than 5 percent of the number of such personnel described in paragraph (2) during each of fiscal years 1992 through 1996.

"(2) The number of personnel referred to in paragraph (1) is the number of personnel assigned or detailed to such programs on September 30, 1990.

"FOREIGN INTELLIGENCE ELECTRONIC SURVEILLANCE

For provisions relating to the exercise of certain authority respecting foreign intelligence electronic surveillance, see Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, set out under section 1802 of this title.

"CHANGE OF TITLES OF SECRETARY OF DEFENSE, ET AL.; RAPPOINTMENT

Section 12(f) of act Aug. 10, 1949, provided in part that: 'The titles of the Secretary of Defense, the Sec-
retary of the Army, the Secretary of the Navy, the Sec-
etary of the Air Force, the Under Secretaries and the
Assistant Secretaries of the Departments of the Army,
Navy, and Air Force, the Chairman of the Munitions
Board, and the Chairman of the Research and Develop-
ment Board, shall not be changed by virtue of this Act
[see Short Title of 1949 Amendment note set out above]
and the reappointment of the officials holding such
titles on the effective date of this Act (Aug. 10, 1949)
shall not be required."

REORGANIZATION PLAN No. 8 of 1949

Section 12(i) of act Aug. 10, 1949, provided that: "Re-
organization Plan Numbered 8 of 1949, which was trans-
mitted to the Congress by the President on July 18, 1949
[set out in Appendix to Title 5, Government Organiza-
tion Act of 1949], shall not take effect, not-
withstanding the provisions of section 6 of such Reor-
ganization Act of 1949."

EX. ORD. No. 10431. NATIONAL SECURITY MEDAL

Ex. Ord. No. 10431, Jan. 19, 1953, 18 F.R. 337, provided:
1. There is hereby established a medal to be known as the
National Security Medal with accompanying rib-
bons and appurtenances. The medal and its appur-
tenances shall be of appropriate design, approved by
the Executive Secretary of the National Security Coun-
cil.
2. The National Security Medal may be awarded to
any person, without regard to nationality, including
members of the armed forces of the United States, for
distinguished achievement or outstanding contribution
on or after July 26, 1947, in the field of intelligence rel-
ating to the national security.
3. The decoration established by this order shall be
awarded by the President of the United States or,
under regulations approved by him, by such person
or persons as he may designate.
4. No more than one National Security Medal shall be
awarded to any one person, but for subsequent services
justifying an award, a suitable device may be awarded
to be worn with the Medal.
5. Members of the armed forces of the United States
who are awarded the decoration established by this
order are authorized to wear the medal and the ribbon
symbolic of the award, as may be authorized by uni-
form regulations approved by the Secretary of Defense.
6. The decoration established by this order may be
awarded posthumously.

REGULATIONS GOVERNING THE AWARD OF THE NATIONAL
SECURITY MEDAL

Pursuant to Paragraph 2 of Executive Order 10431, the
following regulations are hereby issued to govern the
award of the National Security Medal:
1. The National Security Medal may be awarded to
any person without regard to nationality, including
a member of the Armed Forces of the United States, who,
on or after 26 July 1947, has made an outstanding con-
tribution to the National intelligence effort. This con-
tribution may consist of either exceptionally meritori-
ous service performed in a position of high responsibil-
ity or of an act of valor requiring personal courage of
a high degree and complete disregard of personal safety.
2. The National Security Medal with accompanying
ribbon and appurtenances, shall be of appropriate de-
sign to be approved by the Executive Secretary of the
National Security Council.
3. The National Security Medal shall be awarded only
by the President or his designee for that purpose.
4. Recommendations may be submitted to the Execu-
tive Secretary of the National Security Council by any
individual having personal knowledge of the facts of
the exceptionally meritorious conduct or act of valor
of the candidate in the performance of outstanding serv-
ces, either as an eyewitness or from the testimony of
others who have personal knowledge or were eye-
witnesses. Any recommendations shall be accompanied
by complete documentation, including where nec-
essary, certificates, affidavits or sworn transcripts of
testimony. Each recommendation for an award shall
show the exact status, at the time of the rendition of
the service on which the recommendation is based,
with respect to citizenship, employment, and all other
material factors, of the person who is being rec-
ommended for the National Security Medal.
5. Each recommendation shall contain a draft of an
appropriate citation to accompany the award of the Na-
tional Security Medal.

EXECUTIVE ORDER No. 11905

Ex. Ord. No. 11905, Feb. 18, 1976, 41 F.R. 7783, as
amended by Ex. Ord. No. 11985, May 15, 1977, 42 F.R.
29847; Ex. Ord. No. 11994, June 1, 1977, 42 F.R. 28869,
which related to United States foreign intelligence ac-
tivities, was superseded by Ex. Ord. No. 12036, Jan. 24,
1978, 43 F.R. 3674, formerly set out below.

EXECUTIVE ORDER No. 12036

Ex. Ord. No. 12036, Jan. 24, 1978, 43 F.R. 3674, as
amended by Ex. Ord. No. 12139, May 23, 1979, 44 F.R.
30311, which related to United States foreign intel-
ligence activities, was revoked by Ex. Ord. No. 12333,
12333 being amended by Ex. Ord. No. 12470, §4(j), July 30,
2008, 73 F.R. 45341.

EX. ORD. No. 12333. UNITED STATES INTELLIGENCE
ACTIVITIES

Ex. Ord. No. 12333, Dec. 4, 1981, 46 F.R. 59941, as
amended by Ex. Ord. No. 12324, §16, Jan. 21, 2003, 68 F.R.
4077; Ex. Ord. No. 13355, §§2, 3, 6, Aug. 27, 2004, 69 F.R.
33693; Ex. Ord. No. 13470, §§1-4, July 30, 2008, 73 F.R.
45325, provided:

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Timely, accurate, and insightful information about the
activities, capabilities, plans, and intentions of for-
ign powers, organizations, and persons, and their
agents, is essential to the national security of the
United States. All reasonable and lawful means must
be used to ensure that the United States will receive
the best intelligence available. For that purpose, by
virtue of the authority vested in me by the Constitu-
tion and the laws of the United States of America, in-
cluding the National Security Act of 1947, as amended
(Act) [see Short Title note above], and as President of
the United States of America, in order to provide for the
effective conduct of United States intelligence ac-
tivities and the protection of constitutional rights, it is
hereby ordered as follows:

PART 1—GOALS, DIRECTIONS, DUTIES, AND RE-
SPONSIBILITIES WITH RESPECT TO UNITED STATES INTELLIGENCE EFFORTS

1. GOALS

The United States intelligence effort shall provide
the President, the National Security Council, and the
Homeland Security Council with the necessary infor-
mation on which to base decisions concerning the de-
velopment and conduct of foreign, defense, and eco-
omic policies, and the protection of United States na-
tional interests from foreign security threats. All de-
partments and agencies shall cooperate fully to fulfill
this goal.
(a) All means, consistent with applicable Federal law
and this order, and with full consideration of the rights
of United States persons, shall be used to obtain reli-
able intelligence information to protect the United
States and its interests.
(b) The United States Government has a solemn obli-
gation, and shall continue in the conduct of intel-
ligence activities under this order, to protect fully the
legal rights of all United States persons, including free-
doms, civil liberties, and privacy rights guaranteed by
Federal law.
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(c) Intelligence collection under this order should be guided by the need for information to respond to intelligence priorities set by the President.
(d) Special emphasis should be given to detecting and countering:
(1) Espionage and other threats and activities directed by foreign powers or their intelligence services against the United States and its interests;
(2) Threats to the United States and its interests from terrorism; and
(3) Threats to the United States and its interests from the development, possession, proliferation, or use of weapons of mass destruction.
(e) Special emphasis shall be given to the production of timely, accurate, and insightful reports, responsive to decisionmakers in the executive branch, that draw on all appropriate sources of information, including open source information, meet rigorous analytic standards, consider diverse analytic viewpoints, and accurately represent appropriate alternative views.
(f) State, local, and tribal governments are critical partners in securing and defending the United States from terrorism and other threats to the United States and its interests. Our national intelligence effort should take into account the responsibilities and requirements of State, local, and tribal governments and, as appropriate, private sector entities, when undertaking the collection and dissemination of information and intelligence to protect the United States.
(g) All departments and agencies have a responsibility to prepare and to provide intelligence in a manner that allows the full and free exchange of information, consistent with applicable law and presidential guidance.

1.2 THE NATIONAL SECURITY COUNCIL
(a) Purpose. The National Security Council (NSC) shall act as the highest ranking executive branch entity that provides support to the President for review of, guidance for, and direction to the conduct of all foreign intelligence, counterintelligence, and covert action, and attendant policies and programs.
(b) Covert Action and Other Sensitive Intelligence Operations. The NSC shall consider and submit to the President a policy recommendation, including all dissent, on each proposed covert action and conduct a periodic review of ongoing covert action activities, including an evaluation of the effectiveness and consistency with current national policy of such activities and consistency with applicable legal requirements. The NSC shall perform such other functions related to covert action as the President may direct, but shall not undertake the conduct of covert actions. The NSC shall also review proposals for other sensitive intelligence operations.

1.3 DIRECTOR OF NATIONAL INTELLIGENCE
Subject to the authority, direction, and control of the President, the Director of National Intelligence (Director) shall serve as the head of the Intelligence Community, act as the principal adviser to the President, to the NSC, and to the Homeland Security Council for intelligence matters related to national security, and shall oversee and direct the implementation of the National Intelligence Program and execution of the National Intelligence Program budget. The Director will lead a unified, coordinated, and effective intelligence effort. In addition, the Director shall, in carrying out the duties and responsibilities under this section, take into account the views of the heads of departments containing an element of the Intelligence Community and of the Director of the Central Intelligence Agency.
(a) Except as otherwise directed by the President or prohibited by law, the Director shall have access to all information and intelligence described in section 1.5(a) of this order. For the purpose of access to and sharing of information and intelligence, the Director:
(1) Is hereby assigned the function under section 3(5) of the Act, to determine that intelligence, regardless of the source from which derived and including information gathered within or outside the United States, pertains to more than one United States Government agency; and
(2) Shall develop guidelines for how information or intelligence is provided to or accessed by the Intelligence Community in accordance with section 1.5(a) of this order, and for how the information or intelligence may be used and shared by the Intelligence Community. All guidelines developed in accordance with this section shall be approved by the Attorney General and, where applicable, shall be consistent with guidelines issued pursuant to section 1016 of the Intelligence Reform and Terrorism Protection Act of 2004 (Public Law 108–458) (IRTPA).
(b) In addition to fulfilling the obligations and responsibilities prescribed by the Act, the Director:
(1) Shall establish objectives, priorities, and guidance for the Intelligence Community to ensure timely and effective collection, processing, analysis, and dissemination of intelligence, of whatever nature and from whatever source derived;
(2) May designate, in consultation with affected heads of departments or Intelligence Community elements, one or more Intelligence Community elements to develop and to maintain services of common concern on behalf of the Intelligence Community if the Director determines such services can be more efficiently or effectively accomplished in a consolidated manner;
(3) Shall oversee and provide advice to the President and the NSC with respect to all ongoing and proposed covert action programs;
(4) In regard to the establishment and conduct of intelligence arrangements and agreements with foreign governments and international organizations:
(A) May enter into intelligence and counterintelligence arrangements and agreements with foreign governments and international organizations;
(B) Shall formulate policies concerning intelligence and counterintelligence arrangements and agreements with foreign governments and international organizations; and
(C) Shall align and synchronize intelligence and counterintelligence foreign relationships among the elements of the Intelligence Community to further United States national security, policy, and intelligence objectives;
(5) Shall participate in the development of procedures approved by the Attorney General governing criminal drug intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;
(6) Shall establish common security and access standards for managing and handling intelligence systems, information, and products, with special emphasis on facilitating:
(A) The fullest and most prompt access to and dissemination of information and intelligence practicable, assigning the highest priority to detecting, preventing, preempting, and disrupting terrorist threats and activities against the United States, its interests, and allies; and
(B) The establishment of standards for an interoperable information sharing enterprise that facilitates the sharing of intelligence information among elements of the Intelligence Community;
(7) Shall ensure that appropriate departments and agencies have access to intelligence and receive the support needed to perform independent analysis;
(8) Shall protect, and ensure that programs are developed to protect, intelligence sources, methods, and activities from unauthorized disclosure;
(9) Shall, after consultation with the heads of affected departments and agencies, establish guidelines for Intelligence Community elements for:
(A) Classification and declassification of all intelligence and intelligence-related information classified under the authority of the Director of the Central Intelligence Agency.
(10) Except as otherwise directed by the President or prohibited by law, the Director shall have access to all information and intelligence described in section 1.5(a) of this order. For the purpose of access to and sharing of information and intelligence, the Director:
(1) Is hereby assigned the function under section 3(5) of the Act, to determine that intelligence, regardless of
(B) Access to and dissemination of all intelligence and intelligence-related information, both in its final form and in the form when initially gathered, to include intelligence originally classified by the head of a department or Intelligence Community element, except that access to and dissemination of information concerning United States persons shall be governed by procedures developed in accordance with Part 2 of this order; 
(10) May, only with respect to Intelligence Community elements, after consultation with the head (sic) of the originating Intelligence Community element or the head of the originating department, declassify, or direct the declassification of, information or intelligence relating to intelligence sources, methods, and activities. The Director may only delegate this authority to the Principal Deputy Director of National Intelligence; 
(11) May establish, operate, and direct one or more national intelligence centers to address intelligence priorities; 
(12) shall establish Functional Managers and Mission Managers, and designate officers or employees of the United States to serve in these positions. 
(A) Functional Managers shall report to the Director concerning the execution of their duties as Functional Managers, and may be charged with developing and implementing strategic guidance, policies, and procedures for activities related to a specific intelligence discipline or set of intelligence activities; set training and tradecraft standards; and ensure coordination within and across intelligence disciplines and Intelligence Community elements and with related non-intelligence activities. Functional Managers may also advise the Director on: the management of resources; policies and procedures; collection capabilities and gaps; processing and dissemination of intelligence; technical architectures; and other issues or activities determined by the Director. 
(i) The Director of the National Security Agency is designated the Functional Manager for signals intelligence; 
(ii) The Director of the Central Intelligence Agency is designated the Functional Manager for human intelligence; and 
(iii) The Director of the National Geospatial-Intelligence Agency is designated the Functional Manager for geospatial intelligence. 
(B) Mission Managers shall serve as principal substantive advisors on all or specified aspects of intelligence related to designated countries, regions, topics, and functional issues. 
(13) Shall establish uniform criteria for the determination of relative priorities for the transmission of critical foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such communications; 
(14) Shall have ultimate responsibility for production and dissemination of intelligence produced by the Intelligence Community and authority to levy analytic tasks on intelligence production organizations within the Intelligence Community, in consultation with the heads of the Intelligence Community elements concerned; 
(15) May establish advisory groups for the purpose of obtaining advice from within the Intelligence Community to carry out the Director’s responsibilities, to include Intelligence Community executive management committees composed of senior Intelligence Community leaders. Advisory groups shall consist of representatives from elements of the Intelligence Community, as designated by the Director, or other executive branch departments, agencies, and offices, as appropriate; 
(16) Shall ensure the timely exploitation and dissemination of data gathered by national intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government officials, including military leaders; 
(17) Shall determine requirements and priorities for, and manage and direct the tasking, collection, analysis, production, and dissemination of, national intelligence by elements of the Intelligence Community, including approving requirements for collection and analysis and resolving conflicts in collection requirements and in the tasking of national collection assets of Intelligence Community elements (except when otherwise directed by the President or when the Secretary of Defense exercises collection tasking authorities under plans and arrangements approved by the Secretary of Defense and the Director); 
(18) May provide advisory tasking concerning collection and analysis of information or intelligence relevant to national intelligence or national security to departments, agencies, and establishments of the United States Government that are not elements of the Intelligence Community; and shall establish procedures, in consultation with affected heads of departments or agencies and subject to approval by the Attorney General, to implement this authority and to monitor or evaluate the responsiveness of United States Government departments, agencies, and other establishments; 
(19) Shall fulfill the responsibilities in section 1.3(b)(17) and (18) of this order, consistent with applicable law and with full consideration of the rights of United States persons, whether information is to be collected inside or outside the United States; 
(20) Shall ensure, through appropriate policies and procedures, the deconfliction, coordination, and integration of all intelligence activities conducted by an Intelligence Community element or funded by the National Intelligence Program. In accordance with these policies and procedures: 
(A) The Director of the Federal Bureau of Investigation shall coordinate the clandestine collection of foreign intelligence collected through human sources or through human-enabled means and counterintelligence activities inside the United States; 
(B) The Director of the Central Intelligence Agency shall coordinate the clandestine collection of foreign intelligence collected through human sources or through human-enabled means and counterintelligence activities outside the United States; 
(C) All policies and procedures for the coordination of counterintelligence activities and the clandestine collection of foreign intelligence inside the United States shall be subject to the approval of the Attorney General; and 
(D) All policies and procedures developed under this section shall be coordinated with the heads of affected departments and Intelligence Community elements; 
(21) Shall, with the concurrence of the heads of affected departments and agencies, establish joint procedures to deconflict, coordinate, and synchronize intelligence activities conducted by an Intelligence Community element or funded by the National Intelligence Program, with intelligence activities, activities that involve foreign intelligence and security services, or activities that involve the use of clandestine methods, conducted by other United States Government departments, agencies, and establishments; 
(22) Shall, in coordination with the heads of departments containing elements of the Intelligence Community, develop procedures to govern major system acquisitions funded in whole or in majority part by the National Intelligence Program; 
(23) Shall seek advice from the Secretary of State to ensure that the foreign policy implications of proposed intelligence activities are considered, and shall ensure, through appropriate policies and procedures, that intelligence activities are conducted in a manner consistent with the responsibilities pursuant to law and presidential direction of Chiefs of United States Missions; and 
(24) Shall facilitate the use of Intelligence Community products by the Congress in a secure manner. 
(c) The Director’s exercise of authorities in this Act and this order shall not abrogate the statutory or other responsibilities of the heads of departments of the
United States Government or the Director of the Central Intelligence Agency. Directives issued and actions taken by the Director in the exercise of the Director’s authorities and responsibilities to integrate, organize, and make the Intelligence Community more effective in providing intelligence related to national security shall be implemented by the elements of the Intelligence Community, provided that any department head whose department contains an element of the Intelligence Community and who believes that a directive or action of the Director violates the requirements of section 1018 of the IRTPA or this subsection shall bring the issue to the attention of the Director, the NSC, or the President for resolution in a manner that respects and does not abrogate the statutory responsibilities of the heads of the departments.

(d) Appointments to certain positions.

(1) The relevant department or bureau head shall provide recommendations and obtain the concurrence of the Director for the selection of: the Director of the National Security Agency, the Director of the National Reconnaissance Office, the Director of the National Geospatial-Intelligence Agency, the Under Secretary of Homeland Security for Intelligence and Analysis, the Assistant Secretary of State for Intelligence and Research, the Director of the Office of Intelligence and Counterintelligence of the Department of Energy, the Assistant Secretary for Intelligence and Analysis of the Department of the Treasury, and the Executive Assistant Director for the National Security Branch of the Federal Bureau of Investigation. If the Director does not concur in the recommendation, the department head may not fill the vacancy or make the recommendation to the President, as the case may be. If the department head and the Director do not reach an agreement on the selection or recommendation, the Director and the department head concerned may advise the President directly of the Director’s intention to withhold concurrence.

(2) The relevant department head shall consult with the Director before appointing an individual to fill a vacancy or recommending to the President an individual be nominated to fill a vacancy in any of the following positions: the Under Secretary of Defense for Intelligence; the Director of the Defense Intelligence Agency; uniformed heads of the intelligence elements of the Army, the Navy, the Air Force, and the Marine Corps above the rank of Major General or Rear Admiral; the Assistant Commandant of the Coast Guard for Intelligence; and the Assistant Attorney General for National Security.

(e) Removal from certain positions.

(1) Except for the Director of the Central Intelligence Agency, whose removal the Director may recommend to the President, the Director and the relevant department head shall consult on the removal, or recommendation to the President for removal, as the case may be, of the Director of the National Security Agency, the Director of the National Geospatial-Intelligence Agency, the Director of the Defense Intelligence Agency, the Under Secretary of Homeland Security for Intelligence and Analysis, the Assistant Secretary of State for Intelligence and Research, and the Assistant Secretary for Intelligence and Analysis of the Department of the Treasury. If the Director and the department head do not agree on removal, or recommendation for removal, either may make a recommendation to the President for the removal of the individual.

(2) The Director and the relevant department or bureau head shall consult on removal of: the Executive Assistant Director for the National Security Branch of the Federal Bureau of Investigation, the Director of the Office of Intelligence and Counterintelligence of the Department of Energy, the Director of the National Reconnaissance Office, the Assistant Commandant of the Coast Guard for Intelligence, and the Under Secretary of Defense for Intelligence. With respect to an individual appointed by a department head, the department head may remove the individual upon the request of the Director; if the department head chooses not to remove the individual, either the Director or the department head may advise the President of the department head’s intention to retain the individual. The Under Secretary of Defense for Intelligence, the Secretary of Defense may recommend to the President either the removal or the retention of the individual. For uniformed heads of the intelligence elements of the Army, the Navy, the Air Force, and the Marine Corps, the Director may make a recommendation for removal to the Secretary of Defense.

(3) Nothing in this subsection shall be construed to limit or otherwise affect the authority of the President to nominate, appoint, assign, or terminate the appointment or assignment of any individual, with or without a consultation, recommendation, or concurrence.

1.4 The Intelligence Community

Consistent with applicable Federal law and with the other provisions of this order, and under the leadership of the Director, as specified in such law and this order, the Intelligence Community shall:

(a) Collect and provide information needed by the President and, in the performance of executive functions, the Vice President, the NSC, the Homeland Security Council, the Chairman of the Joint Chiefs of Staff, senior military commanders, and other executive branch officials and, as appropriate, the Congress of the United States;

(b) In accordance with priorities set by the President, collect information concerning, and conduct activities to protect against, international terrorism, proliferation of weapons of mass destruction, intelligence activities directed against the United States, international criminal drug activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;

(c) Analyze, produce, and disseminate intelligence;

(d) Conduct administrative, technical, and other support activities within the United States and abroad necessary for the performance of authorized activities, to include providing services of common concern for the Intelligence Community as designated by the Director in accordance with this order;

(e) Conduct research, development, and procurement of technical systems and devices relating to authorized functions and missions or the provision of services of common concern for the Intelligence Community;

(f) Protect the security of intelligence related activities, information, installations, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Intelligence Community elements as are necessary;

(g) Take into account State, local, and tribal governments’ and, as appropriate, private sector entities’ information needs relating to national and homeland security;

(h) Deconflict, coordinate, and integrate all intelligence activities and other information gathering in accordance with section 1.3(b)(20) of this order; and

(i) Perform such other functions and duties related to intelligence activities as the President may direct.

1.5 Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies

The heads of all departments and agencies shall:

(a) Provide the Director access to all information and intelligence relevant to the national security or that otherwise is required for the performance of the Director’s duties, to include administrative and other appropriate management information, except such information excluded by law, by the President, or by the Attorney General acting under this order at the direction of the President;

(b) Provide all programmatic and budgetary information necessary to support the Director in developing the National Intelligence Program;

(c) Coordinate development and implementation of intelligence systems and architectures and, as appro-
priate, operational systems and architectures of their departments, agencies, and other elements with the Director to respond to national intelligence requirements and share applicable information and security guidelines, information privacy, and other legal requirements;
(d) Provide, to the maximum extent permitted by law or applicable agreements or arrangements, copies of all information, intelligence sharing and security guidelines, information privacy, and other legal requirements;
(e) Provide, to the maximum extent permitted by law, copies of all information, intelligence sharing and security guidelines, information privacy, and other legal requirements;
(f) Deconflict, coordinate, and integrate all intelligence activities in accordance with section 1.3(b)(20), and intelligence and other activities in accordance with section 1.3(b)(21) of this order;
(g) Inform the Attorney General, either directly or through the Federal Bureau of Investigation, and the Director of the Federal Bureau of Investigation, the Director of clandestine collection of foreign intelligence and counterintelligence activities inside the United States not coordinated with the Federal Bureau of Investigation;
(h) Inform the Attorney General, either directly or through the Federal Bureau of Investigation, and the Director of the Federal Bureau of Investigation, the Director of clandestine collection of foreign intelligence and counterintelligence activities inside the United States not coordinated with the Federal Bureau of Investigation;
(i) Pursuant to arrangements developed by the head of the department or agency and the Director of the Central Intelligence Agency and approved by the Director, inform the Director and the Director of the Central Intelligence Agency, either directly or through his designee serving outside the United States, as appropriate, of clandestine collection of foreign intelligence collected through human-enabled means outside the United States that has not been coordinated with the Central Intelligence Agency; and
(j) Inform the Secretary of Defense, either directly or through his designee, as appropriate, of clandestine collection of foreign intelligence outside the United States in a region of combat or contingency military operations designated by the Secretary of Defense, for purposes of this paragraph, after consultation with the Director of National Intelligence.

1.6 HEADS OF ELEMENTS OF THE INTELLIGENCE COMMUNITY

The heads of elements of the Intelligence Community shall:
(a) Provide the Director access to all information and intelligence relevant to the national security or that otherwise is required for the performance of the Director's duties, to include administrative and other appropriate management information, except such information excluded by law, by the President, or by the Attorney General acting under this order at the direction of the President;
(b) Report to the Attorney General possible violations of Federal criminal laws by employees and of specified Federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department, agency, or establishment concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;
(c) Report to the Intelligence Oversight Board, consistent with Executive Order 13462 of February 29, 2008, and provide copies of all such reports to the Director, concerning any intelligence activities of their elements that have reason to believe may be unlawful or contrary to executive order or presidential directive; recommend intelligence collection, intelligence sources, methods, and activities from unauthorized disclosure in accordance with guidance from the Director;
(d) Facilitate, as appropriate, the sharing of information or intelligence, as directed by law or the President, to State, local, tribal, and private sector entities;
(e) Facilitate, as appropriate, the sharing of information or intelligence to foreign governments and international organizations under intelligence or counterintelligence arrangements or agreements established in accordance with section 1.3(b)(4) of this order;
(f) Participate in the development of procedures approved by the Attorney General governing production and dissemination of information or intelligence resulting from criminal drug intelligence activities abroad if they have intelligence responsibilities for foreign or domestic criminal drug production and trafficking; and
(g) Ensure that the inspectors general, general counsels, and agency officials responsible for privacy or civil liberties protection for their respective organizations have access to any information or intelligence necessary to perform their official duties.

1.7 INTELLIGENCE COMMUNITY ELEMENTS

Each element of the Intelligence Community shall have the duties and responsibilities specified below, in addition to those specified by law or elsewhere in this order. Intelligence Community elements within executive departments shall serve the information and intelligence needs of their respective department's heads of department or agency, and also shall operate as part of an integrated Intelligence Community, as provided in law or this order.

(a) THE CENTRAL INTELLIGENCE AGENCY. The Director of the Central Intelligence Agency shall:
(1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence;
(2) Conduct counterintelligence activities without assuming or performing any internal security functions within the United States;
(3) Collect administrative and technical support activities within and outside the United States as necessary for cover and proprietary arrangements;
(4) Conduct covert action activities approved by the President. No agency except the Central Intelligence Agency (or the Armed Forces of the United States in time of war declared by the Congress or during any period covered by a report from the President to the Congress consistent with the War Powers Resolution, Public Law 93–148) may conduct any covert action activity unless the President determines that another agency is more likely to achieve a particular objective;
(5) Conduct foreign intelligence liaison relationships with intelligence or security services of foreign governments or international organizations consistent with section 1.3(b)(4) of this order;
(6) Under the direction and guidance of the Director, and in accordance with section 1.3(b)(4) of this order, coordinate the implementation of intelligence and counterintelligence relationships between elements of the Intelligence Community and the intelligence or security services of foreign governments or international organizations; and
(7) Perform such other functions and duties related to intelligence as the Director may direct.
(b) THE DEFENSE INTELLIGENCE AGENCY. The Director of the Defense Intelligence Agency shall:
(1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence to support national and departmental missions;
(2) Collect, analyze, produce, or, through tasking and coordination, provide defense and defense-related intelligence for the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, combatant commanders, other Defense components, and non-Defense agencies;
(3) Conduct counterintelligence activities;
(4) Conduct administrative and technical support activities within and outside the United States as necessary for cover and proprietary arrangements;
(5) Conduct foreign defense intelligence liaison relationships and defense intelligence exchange programs
with foreign defense establishments, intelligence or security services of foreign governments, and international organizations in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order; and
(6) Manage and coordinate all matters related to the Defense Attaché system; and
(7) Provide foreign intelligence and counterintelligence staff support as directed by the Secretary of Defense.

(c) THE NATIONAL SECURITY AGENCY. The Director of the National Security Agency shall:
(1) Collect (including through clandestine means), process, analyze, produce, and disseminate signals intelligence information and data for foreign intelligence and counterintelligence purposes to support national and departmental missions;
(2) Establish and operate an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense, after coordination with the Director;
(3) Control signals intelligence collection and processing activities, including assignment of resources to appropriate agents for such periods and tasks as required for the direct support of military commanders;
(4) Conduct administrative and technical support activities within and outside the United States as necessary for cover arrangements;
(5) Provide signals intelligence support for national and departmental requirements and for the conduct of military operations;
(6) Act as the National Manager for National Security Systems as established in law and policy, and in this capacity be responsible to the Secretary of Defense and to the Director;
(7) Prescribe, consistent with section 102(a)(g) of the Act, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling, and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the National Security Agency, and exercise the necessary supervisory control to ensure compliance with the regulations; and
(8) Conduct foreign cryptologic liaison relationships in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(d) THE NATIONAL RECONNAISSANCE OFFICE. The Director of the National Reconnaissance Office shall:
(1) Be responsible for research and development, acquisition, launch, deployment, and operation of over-the-head systems and related data processing facilities to collect intelligence and information to support national and departmental missions and other United States Government needs; and
(2) Conduct foreign liaison relationships relating to the above missions, in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(e) THE NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY. The Director of the National Geospatial-Intelligence Agency shall:
(1) Collect, process, analyze, produce, and disseminate geospatial intelligence information and data for foreign intelligence and counterintelligence purposes to support national and departmental missions;
(2) Provide geospatial intelligence support for national and departmental requirements and for the conduct of military operations;
(3) Conduct administrative and technical support activities within and outside the United States as necessary for cover arrangements; and
(4) Conduct foreign geospatial intelligence liaison relationships, in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(f) THE INTELLIGENCE AND COUNTERINTELLIGENCE ELEMENTS OF THE ARMY, NAVY, AIR FORCE, AND MARINE CORPS. The Commanders and heads of the Intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps shall:
(1) Collect (including through clandestine means), produce, analyze, and disseminate defense and defense-related intelligence and counterintelligence to support national and departmental requirements, and, as appropriate, national requirements;
(2) Conduct counterintelligence activities; and
(3) Monitor the development, procurement, and management of tactical intelligence systems and equipment and conduct related research, development, and test and evaluation activities; and
(4) Conduct intelligence liaison relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(g) INTELLIGENCE ELEMENTS OF THE FEDERAL BUREAU OF INVESTIGATION. Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the intelligence elements of the Federal Bureau of Investigation shall:
(1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence to support national and departmental missions or international organizations in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.
(2) Conduct counterintelligence activities; and
(3) Conduct foreign intelligence and counterintelligence liaison relationships with intelligence, security, and law enforcement services of foreign governments or international organizations in accordance with sections 1.3(b)(4) and 1.7(a)(6) of this order.

(h) THE INTELLIGENCE AND COUNTERINTELLIGENCE ELEMENTS OF THE COAST GUARD. The Commandant of the Coast Guard shall:
(1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence including defense and defense-related information and intelligence to support national and departmental missions; and
(2) Conduct counterintelligence activities; and
(3) Monitor the development, procurement, and management of tactical intelligence systems and equipment and conduct related research, development, and test and evaluation activities; and
(4) Conduct foreign intelligence liaison relationships and intelligence exchange programs with foreign intelligence services, security services or international organizations in accordance with sections 1.3(b)(4), 1.7(a)(6), and, when operating as part of the Department of Defense, 1.10(i) of this order.

(i) THE BUREAU OF INTELLIGENCE AND RESEARCH, DEPARTMENT OF STATE; THE OFFICE OF INTELLIGENCE AND ANALYSIS, DEPARTMENT OF HOMELAND SECURITY; AND THE OFFICE OF INTELLIGENCE AND COUNTERINTELLIGENCE, DEPARTMENT OF ENERGY. The heads of the Bureau of Intelligence and Research, Department of State; the Office of Intelligence and Analysis, Department of the Treasury; the Office of National Security Intelligence, Drug Enforcement Administration; the Office of Intelligence and Analysis, Department of Homeland Security; and the Office of Intelligence and Counterintelligence, Department of Energy shall:
(1) Collect (overtly or through publicly available sources), analyze, produce, and disseminate information, intelligence, and counterintelligence to support national and departmental missions; and
(2) Conduct and participate in analytic or information exchanges with foreign partners and international organizations in accordance with sections 1.3(b)(4) and 1.7(a)(6) of this order.
(j) THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. The Director shall collect (overly or through publicly available sources), analyze, produce, and disseminate information, intelligence, and counterintelligence to support the missions of the Office of the Director of National Intelligence, including the National Counterterrorism Center, and to support other national missions.

1.8 THE DEPARTMENT OF STATE
In addition to the authorities exercised by the Bureau of Intelligence and Research under sections 1.4 and 1.7(i) of this order, the Secretary of State shall:

(a) Collect (overly or through publicly available sources) information relevant to United States foreign policy and national security concerns;

(b) Disseminate, to the maximum extent possible, reports received from United States diplomatic and consular posts;

(c) Meet reporting requirements and advisory taskings of the Intelligence Community to the Chiefs of United States Missions abroad; and

(d) Support Chiefs of United States Missions in disclosing their responsibilities pursuant to law and presidential direction.

1.9 THE DEPARTMENT OF THE TREASURY
In addition to the authorities exercised by the Office of Intelligence and Analysis of the Department of the Treasury under sections 1.4 and 1.7(i) of this order the Secretary of the Treasury shall collect (overly or through publicly available sources) foreign financial information and, in consultation with the Department of State, foreign economic information.

1.10 THE DEPARTMENT OF DEFENSE
The Secretary of Defense shall:

(a) Collect (including through clandestine means), analyze, produce, and disseminate information and intelligence and be responsive to collection tasking and advice by the Director;

(b) Collect (including through clandestine means), analyze, produce, and disseminate defense and defense-related intelligence and counterintelligence, as required for execution of the Secretary’s responsibilities;

(c) Conduct programs and missions necessary to fulfill national, departmental, and tactical intelligence requirements;

(d) Conduct counterintelligence activities in support of Department of Defense components and coordinate counterintelligence activities in accordance with section 1.3(b)(20) and (21) of this order;

(e) Act, in coordination with the Director, as the executive agent of the United States Government for signals intelligence activities;

(f) Provide for the timely transmission of critical intelligence, as defined by the Director, within the United States Government;

(g) Carry out or contract for research, development, and procurement of technical systems and devices relating to authorized intelligence functions;

(h) Protect the security of Department of Defense installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;

(i) Establish and maintain defense intelligence relationships and defense intelligence exchange programs with selected cooperative foreign defense establishments, intelligence or security services of foreign governments, or international organizations, and ensure that such relationships and programs are in accordance with sections 1.3(b)(4), 1.3(b)(21) and 1.7(a)(6) of this order;

(j) Conduct such administrative and technical support activities within and outside the United States as are necessary to provide for covert and proprietary arrangements, to perform the functions described in subsections (a) through (j) above, and to support the Intelligence Community elements of the Department of Defense;

(k) Use the Intelligence Community elements within the Department of Defense identified in section 1.7(b) through (f) and, when the Coast Guard is operating as part of the Department of Defense, (h) above to carry out the Secretary of Defense’s responsibilities assigned in this section or other departments, agencies, or offices within the Department of Defense, as appropriate, to conduct the intelligence missions and responsibilities assigned to the Secretary of Defense.

1.11 THE DEPARTMENT OF HOMELAND SECURITY
In addition to the authorities exercised by the Office of Intelligence and Analysis of the Department of Homeland Security under sections 1.4 and 1.7(i) of this order, the Secretary of Homeland Security shall conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President or the Vice President of the United States, the Executive Office of the President, and, as authorized by the Secretary of Homeland Security or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against use of such surveillance equipment, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of Homeland Security and the Attorney General.

1.12 THE DEPARTMENT OF ENERGY
In addition to the authorities exercised by the Office of Intelligence and Counterintelligence of the Department of Energy under sections 1.4 and 1.7(i) of this order, the Secretary of Energy shall:

(a) Provide expert scientific, technical, analytic, and research capabilities to other agencies within the Intelligence Community, as appropriate;

(b) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(c) Participate with the Department of State in overtly collecting information with respect to foreign energy matters.

1.13 THE FEDERAL BUREAU OF INVESTIGATION
In addition to the authorities exercised by the intelligence elements of the Federal Bureau of Investigation of the Department of Justice under sections 1.4 and 1.7(g) of this order and under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the Federal Bureau of Investigation shall provide technical assistance, within or outside the United States, to foreign intelligence and law enforcement services, consistent with section 1.3(b)(20) and (21) of this order, as may be necessary to support national or departmental missions.

PART 2—CONDUCT OF INTELLIGENCE ACTIVITIES

2.1 NEED
Timely, accurate, and insightful information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to informed decisionmaking in the areas of national security, national defense, and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative, and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

2.2 PURPOSE
This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign
intelligence, as well as the detection and countering of international terrorist activities, the spread of weapons of mass destruction, and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

2.3 COLLECTION OF INFORMATION

Elements of the Intelligence Community are authorized to collect, retain, or disseminate information concerning United States persons only in accordance with procedures established by the head of the Intelligence Community element concerned or by the head of a department containing such element and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order, after consultation with the Director. Those procedures shall permit collection, retention, and dissemination of the following types of information:

(a) Information that is publicly available or collected with the consent of the person concerned;

(b) Information constituting foreign intelligence or counterintelligence, including such information concerning the corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the Federal Bureau of Investigation (FBI) or, when significant foreign intelligence is sought, by other authorized elements of the Intelligence Community, provided that no foreign intelligence collection by such elements may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;

(c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international drug, or international terrorism investigation;

(d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims, or hostages of international terrorist organizations;

(e) Information needed to protect foreign intelligence or counterintelligence sources, methods, and activities from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other elements of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence element contractors or their present or former employees, or applicants for any such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical, or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate Federal, state, local, or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, elements of the Intelligence Community may disseminate information to each appropriate element within the Intelligence Community for purposes of allowing the recipient element to determine whether the information is relevant to its responsibilities and can be retained by it, except that information derived from signals intelligence may only be disseminated or made available to Intelligence Community elements in accordance with procedures established by the Director in coordination with the Secretary of Defense and approved by the Attorney General.

2.4 COLLECTION TECHNIQUES

Elements of the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Elements of the Intelligence Community are not authorized to use such techniques as electronic surveillance, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the Intelligence Community element concerned or the head of a department containing such element and approved by the Attorney General, after consultation with the Director. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

(a) The Central Intelligence Agency (CIA) to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;

(b) Unconsented physical searches in the United States by elements of the Intelligence Community other than the FBI, except for:

(1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve the use for intelligence purposes, within the United States or abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and

(2) Searches by CIA of personal property of non-United States persons lawfully in its possession;

(c) Physical surveillance of a United States person in the United States by elements of the Intelligence Community other than the FBI, except for:

(1) Physical surveillance of present or former employees, present or former intelligence element contractors or their present or former employees, or applicants for any such employment or contracting; and

(2) Physical surveillance of a military person employed by a nonintelligence element of a military service; and

(d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.

2.5 ATTORNEY GENERAL APPROVAL

The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, based upon a finding of probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. The authority delegated pursuant to this paragraph, including the authority to approve the use of electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978, as amended, shall be exercised in accordance with that Act.

2.6 ASSISTANCE TO LAW ENFORCEMENT AND OTHER CIVIL AUTHORITIES

Elements of the Intelligence Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property, and facilities of any element within the Intelligence Community;

(b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered,
to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the general counsel of the providing element or department; and
(d) Render any other assistance and cooperation to law enforcement or other civil authorities not precluded by applicable law.

2.7 CONTRACTING
Elements of the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

2.8 CONSISTENCY WITH OTHER LAWS
Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

2.9 UNDISCLOSED PARTICIPATION IN ORGANIZATIONS WITHIN THE UNITED STATES
No one acting on behalf of elements of the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any element of the Intelligence Community without disclosing such person’s intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the Intelligence Community element concerned or the head of a department containing such element and approved by the Attorney General, after consultation with the Director. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the Intelligence Community element head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or members except in cases where:
(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or
(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

2.10 HUMAN EXPERIMENTATION
No element of the Intelligence Community shall sponsor, contract for, or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject’s informed consent shall be documented as required by those guidelines.

2.11 PROHIBITION ON ASSASSINATION
No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12 INDIRECT PARTICIPATION
No element of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

2.13 LIMITATION ON COVERT ACTION
No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media.

PART 3—GENERAL PROVISIONS
3.1 CONGRESSIONAL OVERSIGHT
The duties and responsibilities of the Director and the heads of other departments, agencies, elements, and entities engaged in intelligence activities to operate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be implemented in accordance with applicable law, including title V of the Act [50 U.S.C. 413 et seq.]. The requirements of applicable law, including title V of the Act, shall apply to all covert action activities as defined in this Order.

3.2 IMPLEMENTATION
The President, supported by the NSC, and the Director shall issue such appropriate directives, procedures, and guidance as are necessary to implement this order. Heads of elements within the Intelligence Community shall issue appropriate procedures and supplementary directives consistent with this order. No procedures to implement Part 2 of this order shall be issued without the Attorney General’s approval, after consultation with the Director. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an element in the Intelligence Community (or the head of the department containing such element) other than the FBI. In instances where the element head or department head and the Attorney General are unable to reach agreements on other than constitutional or other legal grounds, the Attorney General, the head of department concerned, or the Director shall refer the matter to the NSC.

3.3 PROCEDURES
The activities herein authorized that require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order 12333. New procedures, as required by Executive Order 12333, as further amended, shall be established as expeditiously as possible. All new procedures promulgated pursuant to Executive Order 12333, as amended, shall be made available to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

3.4 REFERENCES AND TRANSITION
References to “Senior Officials of the Intelligence Community” or “SOICs” in executive orders or other Presidential guidance, shall be deemed references to the heads of elements of the Intelligence Community, unless the President otherwise directs; references in Intelligence Community or Intelligence Community element policies or guidance, shall be deemed to be references to the heads of elements of the Intelligence Community, unless the President or the Director otherwise directs.

3.5 DEFINITIONS
For the purposes of this Order, the following terms shall have these meanings:
(a) Counterintelligence means information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or their agents, or international terrorist organizations or activities.
(b) Covert action means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include:
(1) Activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;
(2) Traditional diplomatic or military activities or routine support to such activities;
(3) Traditional law enforcement activities conducted by United States Government law enforcement agencies; or
(k) United States person means a United States citizen, an alien known by the intelligence element concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

3.6 Revocation

Executive Orders 13354 and 13355 of August 27, 2004, are revoked; and paragraphs 13(b)(1) and (10) of Part I supersede provisions within Executive Order 12958, as amended, to the extent such provisions in Executive Order 12958, as amended, are inconsistent with this Order.

3.7 General Provisions

(a) Consistent with section 1.3(c) of this order, nothing in this order shall be construed to impair or otherwise affect:
(1) Authority granted by law to a department or agency, or the head thereof; or
(2) Functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.

[For provisions relating to consideration of Commandant and Assistant Commandant for Intelligence of the Coast Guard as a “Senior Official of the Intelligence Community” for purposes of Ex. Ord. No. 12333, set out above, and all other relevant authorities, see Ex. Ord. No. 12386, §7, Feb. 28, 2003, 68 F.R. 10632, set out as a note under section 111 of Title 6, Domestic Security.]

EXECUTIVE ORDER No. 12334

EXECUTIVE ORDER No. 12863

EX. ORD. No. 13434. NATIONAL SECURITY PROFESSIONAL DEVELOPMENT
Ex. Ord. No. 13434, May 17, 2007, 72 F.R. 28583, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance the national security, it is hereby ordered as follows:

SECTION 1. Policy. In order to enhance the national security of the United States, including preventing, protecting against, responding to, and recovering from natural and manmade disasters, such as acts of terrorism, it is the policy of the United States to promote the education, training, and experience of current and future professionals in national security positions (security professionals) in executive departments and agencies (agencies).

SEC. 2. National Strategy for Professional Development. Not later than 60 days after the date of this order, the
Assistant to the President for Homeland Security and Counterterrorism (APHS/CT), in coordination with the Assistant to the President for National Security Affairs (APNSA), shall submit to the President for approval a National Strategy for the Development of Security Professionals (National Strategy). The National Strategy shall set forth a framework that will provide national security professionals access to integrated education, training, and professional experience opportunities for the purpose of enhancing their mission-related knowledge, skills, and experience and thereby improve their capability to safeguard the security of the Nation. Such opportunities shall be provided across organizations, levels of government, and incident management disciplines, as appropriate.

Sect. 3. Executive Steering Committee. (a) There is established the Security Professional Development Executive Steering Committee (Steering Committee), which shall facilitate the implementation of the National Strategy. Not later than 120 days after the approval of the National Strategy by the President, the Steering Committee shall submit to the APHS/CT and the APNSA an implementation plan (plan) for the National Strategy, and annually thereafter shall submit to the APHS/CT and the APNSA a status report on the implementation of the plan and any recommendations for changes to the National Strategy.

(b) The Steering Committee shall consist exclusively of the following members (or their designees who shall be full-time officers or employees of the members’ respective agencies):

(i) the Director of the Office of Personnel Management, who shall serve as Chair;

(ii) the Secretary of State;

(iii) the Secretary of the Treasury;

(iv) the Secretary of Defense;

(v) the Attorney General;

(vi) the Secretary of Agriculture;

(vii) the Secretary of Labor;

(viii) the Secretary of Health and Human Services;

(ix) the Secretary of Housing and Urban Development;

(x) the Secretary of Transportation;

(xi) the Secretary of Energy;

(xii) the Secretary of Education;

(xiii) the Secretary of Homeland Security;

(xiv) the Director of National Intelligence;

(xv) the Director of the Office of Management and Budget; and

(xvi) such other officers of the United States as the Chair of the Steering Committee may designate from time to time.

(c) The Steering Committee shall coordinate, to the maximum extent practicable, national security professional development programs and guidance issued by the heads of agencies in order to ensure an integrated approach to such programs.

(d) The Chair of the Steering Committee shall convene, at least biannually, the meetings of the Steering Committee, set its agenda, coordinate its work, and, as appropriate to deal with particular subject matters, establish subcommittees of the Steering Committee that shall consist exclusively of members of the Steering Committee (or their designees under subsection (b) of this section), and such other full-time or permanent part-time officers or employees of the Federal Government as the Chair may designate.

Sect. 4. Responsibilities. The head of each agency with national security functions shall:

(a) identify and enhance existing national security professional development programs and infrastructure, and establish new programs as necessary, in order to fulfill their respective missions to educate, train, and employ security professionals consistent with the National Strategy and, to the maximum extent practicable, the plan and related guidance from the Steering Committee; and

(b) cooperate with the Steering Committee and provide information, support, and assistance as the Chair of the Steering Committee may request from time to time.

Sect. 5. Additional Responsibilities. (a) Except for employees excluded by law, and subject to subsections (b), (c), and (d) of this section, the Director of the Office of Personnel Management, after consultation with the Steering Committee, shall:

(i) consistent with applicable merit-based hiring and advancement principles, lead the establishment of national security professional development programs in accordance with the National Strategy and the plan that provides for interagency and intergovernmental assignments and fellowship opportunities and provides for professional development guidelines for career advancement; and

(ii) issue to agencies rules and guidance or apply existing rules and guidance relating to the establishment of national security professional development programs to implement the National Strategy and the plan;

(b) The Secretary of Defense shall issue rules or guidance on professional development programs for Department of Defense military personnel, including interagency and intergovernmental assignments and fellowship opportunities, to implement the National Strategy and the plan, as appropriate, and shall coordinate such programs, to the maximum extent practicable, with the Steering Committee;

(c) The Secretary of State shall issue rules or guidance on national security professional development programs for the Foreign Service, including interagency and intergovernmental exchanges and fellowship opportunities, to implement the National Strategy and the plan, as appropriate, and shall coordinate such programs, to the maximum extent practicable, with the Steering Committee;

(d) The Director of National Intelligence, in coordination with the heads of agencies of which elements of the intelligence community are a part, shall issue rules or guidance on national security professional development programs for the intelligence community, including interagency and intergovernmental assignments and fellowship opportunities, to implement the National Strategy and the plan, as appropriate, and shall coordinate such programs, to the maximum extent practicable, with the Steering Committee;

(e) The Secretary of Homeland Security shall develop a program to provide to Federal, State, local, and tribal government officials education in disaster preparedness, response, and recovery plans and authorities, and training in crisis decision-making skills, consistent with applicable presidential guidance.

Sect. 6. General Provisions. This order:

(a) shall be implemented consistent with applicable law and authorities of agencies, or heads of agencies, vested by law, and subject to the availability of appropriations;

(b) shall not be construed to impair or otherwise affect the authorities of any agency, instrumentality, officer, or employee of the United States under applicable law, including the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals, or the functions assigned by the President to the Director of the Office of Personnel Management; and

(c) is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

EX. ORD. NO. 13462. PRESIDENT’S INTELLIGENCE ADVISORY BOARD AND INTELLIGENCE OVERSIGHT BOARD

EX. ORD. No. 13462, Feb. 29, 2008, 73 F.R. 11805, as amended by Ex. Ord. No. 13516, § 1, Oct. 29, 2009, 74 F.R. 56321, 57241, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. Policy. It is the policy of the United States to ensure that the President and other officers of the
United States with responsibility for the security of the Nation and the advancement of its interests have access to accurate, insightful, objective, and timely information concerning the capabilities, intentions, and activities of foreign powers.

SNC. 2. Definitions. As used in this order:
(a) "department concerned" means an executive department listed in section 101 of Title 5, United States Code, that contains an organization listed in or designated pursuant to section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a(4));
(b) "intelligence activities" has the meaning specified in section 3.5 of Executive Order 12333 of December 4, 1981, as amended; and
(c) "intelligence community" means the organizations listed in or designated pursuant to section 3(4) of the National Security Act of 1947, as amended.

SNC. 3. Establishment of the President's Intelligence Advisory Board (PIAB).
(a) There is hereby established, within the Executive Office of the President and exclusively to advise and assist the President as set forth in this order, the President's Intelligence Advisory Board (PIAB).
(b) The PIAB shall consist of not more than 16 members appointed by the President from among individuals who are not full-time employees of the Federal Government.
(c) The President shall designate a Chair or Co-Chairs from among the members of the PIAB, who shall convene and preside at meetings of the PIAB, determine its agenda, and direct its work.

SNC. 4. Functions of the PIAB. Consistent with the policy set forth in section 1 of this order, the PIAB shall have the authority to, as the PIAB determines appropriate, or shall, when directed by the President:
(a) assess the quality, quantity, and adequacy of intelligence collection, of analysis and estimates, and of intelligence activities that involve possible violations of Federal criminal laws or otherwise implicate the authority of the Attorney General;
(b) inform the President of intelligence activities that the IOB determines are necessary to enable the IOB to carry out its functions under this order;
(c) forward to the Attorney General information concerning intelligence activities that involve possible violations of Federal criminal laws or otherwise implicate the authority of the Attorney General;
(d) review and assess the effectiveness, efficiency, and sufficiency of the processes by which the DNI and the heads of departments concerned perform their respective functions under this order and report thereon as necessary, together with any recommendations, to the President and, as appropriate, the DNI and the head of the department concerned;
(e) receive and review information submitted by the DNI under subsection 7(c) of this order and make recommendations thereon, including for any needed corrective action, with respect to such information, and the intelligence activities to which the information relates, as necessary, but not less than twice each year, to the President, the DNI, and the head of the department concerned; and
(f) conduct, or request that the DNI or the head of the department concerned, as appropriate, carry out and report to the IOB the results of, investigations of intelligence activities that the IOB determines are necessary to enable the IOB to carry out its functions under this order.

SNC. 7. Functions of the Director of National Intelligence. Consistent with the policy set forth in section 1 of this order, the DNI shall:
(a) with respect to guidelines applicable to organizations within the intelligence community that concern reporting of intelligence activities described in subsection 6(b)(1)(A) of this order:
(i) review and ensure that such guidelines are consistent with section 1.6(c) of Executive Order 12333, as amended, or a corresponding provision of any successor order, and this order; and
(ii) issue for incorporation in such guidelines instructions relating to the format and schedule of such reporting as necessary to implement this order;
(b) with respect to intelligence activities described in subsection 6(b)(1)(A) of this order:
(i) receive reports submitted to the IOB pursuant to section 1.6(c) of Executive Order 12333, as amended, or a corresponding provision of any successor order; and
(ii) forward to the Attorney General information in such reports relating to such intelligence activities to the extent that such activities involve possible violations of Federal criminal laws or implicate the authority of the Attorney General unless the DNI or the head of the department concerned has previously provided such information to the Attorney General; and
(iii) monitor the intelligence community to ensure that the head of the department concerned has directed needed corrective actions and that such actions have been taken and report to the IOB and the head of the department concerned, as appropriate, the President, when such actions have not been timely taken; and

SNC. 6. Functions of the IOB. Consistent with the policy set forth in section 1 of this order, the IOB shall:
(a) issue criteria on the thresholds for reporting matters to the IOB, to the extent consistent with section 1.6(c) of Executive Order 12333, as amended, or the corresponding provision of any successor order;
(b) inform the President of intelligence activities that the IOB believes:
(i) (A) may be unlawful or contrary to Executive Order or presidential directive; and
(ii) should be immediately reported to the President:
(c) forward to the Attorney General information concerning intelligence activities that involve possible violations of Federal criminal laws or otherwise implicate the authority of the Attorney General;
(d) review and assess the effectiveness, efficiency, and sufficiency of the processes by which the DNI and the heads of departments concerned perform their respective functions under this order and report thereon as necessary, together with any recommendations, to the President and, as appropriate, the DNI and the head of the department concerned; and
(e) review and ensure that such guidelines are consistent with section 1.6(c) of Executive Order 12333, as amended, or a corresponding provision of any successor order, and this order; and
(ii) issue for incorporation in such guidelines instructions relating to the format and schedule of such reporting as necessary to implement this order; and
(iii) conduct, or request that the DNI or the head of the department concerned, as appropriate, carry out and report to the IOB the results of, investigations of intelligence activities that the IOB determines are necessary to enable the IOB to carry out its functions under this order.

SNC. 5. Establishment of Intelligence Oversight Board.
(a) There is hereby established a committee of the PIAB to be known as the Intelligence Oversight Board. The PIAB shall consist of not more than five members of the PIAB who are designated by the President from among members of the PIAB to serve on the IOB.
(b) The IOB shall utilize such full-time professional and administrative staff as authorized by the Chair and approved by the President or the President's designee. Such staff shall be supervised by an Executive Director of the IOB, appointed by the President, whom the President may designate to serve also as the Executive Director of the PIAB.
(c) The President shall designate a Chair from among the members of the IOB, who shall convene and preside at meetings of the IOB, determine its agenda, and direct its work.

SNC. Establishment of the Intelligence Oversight Board. No department concerned when the PIAB determines appropriate; and
(i) to the President, as necessary but not less than twice each year; and
(ii) to the Director of National Intelligence (DNI) and the heads of departments concerned when the PIAB determines appropriate; and
(b) consider and make appropriate recommendations to the President, the DNI, or the head of the department concerned with respect to matters identified to the PIAB by the DNI or the head of a department concerned.

SNC. 5. Establishment of Intelligence Oversight Board.
(a) There is hereby established a committee of the PIAB to be known as the Intelligence Oversight Board.
(b) The IOB shall consist of not more than five members of the PIAB who are designated by the President from among members of the PIAB to serve on the IOB.
(c) The President shall designate a Chair from among the members of the IOB, who shall convene and preside at meetings of the IOB, determine its agenda, and direct its work.

SNC. 5. Establishment of Intelligence Oversight Board.
(a) There is hereby established a committee of the PIAB to be known as the Intelligence Oversight Board.
(b) The IOB shall consist of not more than five members of the PIAB who are designated by the President from among members of the PIAB to serve on the IOB.
(c) The President shall designate a Chair from among the members of the IOB, who shall convene and preside at meetings of the IOB, determine its agenda, and direct its work.

SNC. 5. Establishment of Intelligence Oversight Board.
(a) There is hereby established a committee of the PIAB to be known as the Intelligence Oversight Board.
(b) The IOB shall consist of not more than five members of the PIAB who are designated by the President from among members of the PIAB to serve on the IOB.
(c) The President shall designate a Chair from among the members of the IOB, who shall convene and preside at meetings of the IOB, determine its agenda, and direct its work.
(c) submit to the IOB as necessary and no less than twice each year:
(i) an analysis of the reports received under subsection (ii) of this section including an assessment of the gravity, frequency, trends, and patterns of occurrences of intelligence activities described in subsection 6(b)(i)(A) of this order;
(ii) a summary of direction under subsection (b)(ii) of this section and any related recommendations; and
(iii) an assessment of the effectiveness of corrective action taken by the DNI or the head of the department concerned with respect to intelligence activities described in subsection 6(b)(i)(A) of this order.
Sec. 8. Functions of Heads of Departments Concerned and Additional Functions of the Director of National Intelligence
(a) To the extent permitted by law, the DNI and the heads of departments concerned shall provide such information and assistance as the PIAB and the IOB determine is needed to perform their functions under this order.
(b) The heads of departments concerned shall:
(i) ensure that the DNI receives:
(A) copies of reports submitted to the IOB pursuant to section 1.6(c) of Executive Order 12333, as amended, or a corresponding provision of any successor order; and
(B) such information and assistance as the DNI may need to perform functions under this order; and
(ii) designate the offices within their respective organizations that shall submit reports to the IOB required by Executive Order and inform the DNI and the IOB of such designations; and
(iii) ensure that departments concerned comply with instructions issued by the DNI under subsection 7(a)(ii) of this order.
(c) The head of a department concerned who does not implement a recommendation to that head of department from the PIAB under subsection 4(b) of this order or from the IOB under subsections 6(c) or 6(d) of this order shall promptly report through the DNI to the Board that made the recommendation, or to the President, the reasons for not implementing the recommendation.
(d) The DNI shall ensure that the Director of the Central Intelligence Agency performs the functions with respect to the Central Intelligence Agency under this order that a head of a department concerned performs with respect to organizations within the intelligence community that are part of that department.
Sec. 9. References and Transition. (a) References in Executive Orders other than this order, or in any other presidential guidance, to the "President's Foreign Intelligence Advisory Board" shall be deemed to refer to the President's Intelligence Advisory Board established by this order.
(b) Individuals who are members of the President's Foreign Intelligence Advisory Board under Executive Order 12863 of September 13, 1993, as amended, immediately prior to the signing of this order shall be members of the President's Intelligence Advisory Board immediately upon the signing of this order, to serve as such consistent with this order until the date that is 15 months following the date of this order.
(c) Individuals who are members of the Intelligence Oversight Board under Executive Order 12863 immediately prior to the signing of this order shall be members of the Intelligence Oversight Board under this order, to serve as such consistent with this order until the date that is 15 months following the date of this order.
(d) The individual serving as Executive Director of the President's Foreign Intelligence Advisory Board immediately prior to the signing of this order shall serve as the Executive Director of the PIAB until such person resigns, dies, or is removed, or upon appointment of a successor under this order and shall serve as the Executive Director of the IOB if the IOB is appointed or designated under this order.
Sec. 10. Revocation. Executive Order 12863 is revoked.
Sec. 11. General Provisions.
(a) Nothing in this order shall be construed to impair or otherwise affect:
(i) authority granted by law to a department or agency, or the head thereof; or
(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
(b) Any person who is a member of the PIAB or the IOB, or who is granted access to classified national security information in relation to the activities of the PIAB or the IOB, as a condition of access to such information, shall sign and comply with appropriate agreements to protect such information from unauthorized disclosure. This order shall be implemented in a manner consistent with Executive Order 12956 of April 17, 1995, as amended, and Executive Order 12988 of August 2, 1995, as amended.
(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
(d) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other persons.
GEORGE W. BUSH.

Effective Dates of Provisions in Title I of the Intelligence Reform and Terrorism Prevention Act of 2004
Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, provided:
Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[,] the Attorney General[,] the Secretary of Energy[,] the Secretary of Homeland Security[,] the Director of the Office of Management and Budget[,] and the Director of National Intelligence
Subsection 1097(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458, December 17, 2004) (the Act) [set out in a note above] provides:
(a) IN GENERAL—Except as otherwise expressly provided in this Act, this title and the amendments made by this title shall take effect not later than 6 months after the date of the enactment of this Act. Subsection 1097(a) clearly contemplates that one or more of the provisions in Title I of the Act may take effect earlier than the date that is 6 months after the date of enactment of the Act, but does not state explicitly the mechanism for determining when such earlier effect shall occur, leaving it to the President in the execution of the Act. Moreover, given that section 1097(a) evinces a legislative intent to afford the President flexibility, and such flexibility is constitutionally appropriate with respect to intelligence matters (see United States v. Curtiss-Wright Export Corporation, 299 U.S. 304 (1936)), the executive branch shall construe section 1097(a) to authorize the President to select different effective dates that precede the 6-month deadline for different provisions in Title I.
Therefore, pursuant to the Constitution and the laws of the United States of America, including subsection 1097(a) of the Act, I hereby determine and direct:
1. Sections 1097(a) and 1103 of the Act [set out in notes above], relating respectively to effective dates of provisions and to severability, shall take effect immediately upon the signing of this memorandum to any extent that they have not already taken effect.
2. Provisions in Title I of the Act other than those addressed in numbered paragraph 1 of this memorandum shall take effect immediately upon the signing of this memorandum, except:
(a) any provision in Title I of the Act for which the Act expressly provides the date on which the provision shall take effect; and
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(b) sections 1021 and 1092 of this Act [enacting section 404 of this title and provisions set out in a note above, respectively], relating to the National Counterterrorism Center.

The taking of effect of a provision pursuant to section 1097(a) of the Act and this memorandum shall not affect the construction of such provision by the executive branch as set forth in my Statement of December 17, 2004, upon signing the Act into law.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 401a. Definitions

As used in this Act:

(1) The term “intelligence” includes foreign intelligence and counterintelligence.

(2) The term “foreign intelligence” means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(3) The term “counterintelligence” means information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(4) The term “intelligence community” includes the following:

(A) The Office of the Director of National Intelligence.

(B) The Central Intelligence Agency.

(C) The National Security Agency.

(D) The Defense Intelligence Agency.

(E) The National Geospatial-Intelligence Agency.

(F) The National Reconnaissance Office.

(G) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

(H) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Department of Energy.

(I) The Bureau of Intelligence and Research of the Department of State.

(J) The Office of Intelligence and Analysis of the Department of the Treasury.

(K) The elements of the Department of Homeland Security concerned with the analysis of intelligence information.

(L) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

(5) The terms “national intelligence” and “intelligence related to national security” refer to all intelligence, regardless of the source, from which derived and including information gathered within or outside the United States, that—

(A) pertains, as determined consistent with any guidance issued by the President, to more than one United States Government agency; and

(B) that involves—

(i) threats to the United States, its people, property, or interests;

(ii) the development, proliferation, or use of weapons of mass destruction; or

(iii) any other matter bearing on United States national or homeland security.

(6) The term “National Intelligence Program” refers to all programs, projects, and activities of the intelligence community, as well as any other programs of the intelligence community designated jointly by the Director of Central Intelligence and the head of a United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by United States Armed Forces.

(7) The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

The taking of effect of a provision pursuant to section 1097(a) of the Act and this memorandum shall not affect the construction of such provision by the executive branch as set forth in my Statement of December 17, 2004, upon signing the Act into law.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.
“(A) each refer to intelligence which pertains to the interests of more than one department or agency of the Government; and

“(B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Investigation except to the extent provided for in procedures agreed to by the Director of Central Intelligence and the Attorney General, or otherwise as expressly provided for in this title.”

Par. (6). Pub. L. 108–458, §1074(a), struck out “Foreign” before “Intelligence Program”.


Par. (4)(J) to (K), (L). Pub. L. 107–296 added subpar. (J) and redesignated former subpars. (J) and (K) as (K) and (L), respectively.


Par. (4)(E). Pub. L. 103–359 substituted “the Central Imagery Office” for “the Central Imagery authority within the Department of Defense”.

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 Central 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.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 190 of Title 10, Armed Forces.

DELEGATION OF FUNCTIONS

For assignment of function of President under par. (3)(A) of this section to Director of National Intelligence and the Attorney General, see Ex. Ord. No. 12233, §1.3(a)(1), Dec. 4, 1981, 46 F.R. 59941, as amended, set out as a note under section 401 of this title.

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103–236, set out as a note under section 2651a of Title 22.

DEFINITIONS


“(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence committees’ means—

“(A) the Select Committee on Intelligence of the Senate; and

“(B) the Permanent Select Committee on Intelligence of the House of Representatives.

“(2) INTELLIGENCE COMMUNITY.—The term ‘intelligence community’ has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).”

SUBCHAPTER I—COORDINATION FOR NATIONAL SECURITY

§402. National Security Council

(a) Establishment; presiding officer; functions; composition

There is established a council to be known as the National Security Council (hereinafter in this section referred to as the “Council”).

The President of the United States shall preside over meetings of the Council: Provided, That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of—

(1) the President;

(2) the Vice President;

(3) the Secretary of State;

(4) the Secretary of Defense;

(5) the Secretary of Energy;

(6) the Director for Mutual Security;

(7) the Chairman of the National Security Resources Board; and

(8) the Secretaries and Under Secretaries of other executive departments and of the military departments, the Chairman of the Muntions Board, and the Chairman of the Research and Development Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

(b) Additional functions

In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

(1) to assess and appraise the objectives, commitments, and risks of the United States
(c) Executive secretary; appointment; staff employees

The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President. The executive secretary, subject to the direction of the Council, is authorized, subject to the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5, to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

(d) Recommendations and reports

The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

(e) Participation of Chairman or Vice Chairman of Joint Chiefs of Staff

The Chairman (or in his absence the Vice Chairman) of the Joint Chiefs of Staff may, in his role as principal military adviser to the National Security Council and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(f) Participation by Director of National Drug Control Policy

The Director of National Drug Control Policy may, in the role of the Director as principal adviser to the National Security Council on national drug control policy, and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(g) Board for Low Intensity Conflict

The President shall establish within the National Security Council a board to be known as the “Board for Low Intensity Conflict”. The principal function of the board shall be to coordinate the policies of the United States for low intensity conflict.

(h) Committee on Foreign Intelligence

(1) There is established within the National Security Council a committee to be known as the Committee on Foreign Intelligence (in this subsection referred to as the “Committee”).

(2) The Committee shall be composed of the following:

(A) The Director of National Intelligence.
(B) The Secretary of State.
(C) The Secretary of Defense.
(D) The Assistant to the President for National Security Affairs, who shall serve as the chairperson of the Committee.
(E) Such other members as the President may designate.

(3) The function of the Committee shall be to assist the Council in its activities by—

(A) identifying the intelligence required to address the national security interests of the United States as specified by the President;
(B) establishing priorities (including funding priorities) among the programs, projects, and activities that address such interests and requirements; and
(C) establishing policies relating to the conduct of intelligence activities of the United States, including appropriate roles and missions for the elements of the intelligence community and appropriate targets of intelligence collection activities.

(4) In carrying out its function, the Committee shall—

(A) conduct an annual review of the national security interests of the United States;
(B) identify on an annual basis, and at such other times as the Council may require, the intelligence required to meet such interests and establish an order of priority for the collection and analysis of such intelligence; and
(C) conduct an annual review of the elements of the intelligence community in order to determine the success of such elements in collecting, analyzing, and disseminating the intelligence identified under subparagraph (B).

(5) The Committee shall submit each year to the Council and to the Director of National Intelligence a comprehensive report on its activities during the preceding year, including its activities under paragraphs (3) and (4).

(i) Committee on Transnational Threats

(1) There is established within the National Security Council a committee to be known as the Committee on Transnational Threats (in this subsection referred to as the “Committee”).

(2) The Committee shall include the following members:

(A) The Director of National Intelligence.
(B) The Secretary of State.
(C) The Secretary of Defense.
(D) The Attorney General.
(E) The Assistant to the President for National Security Affairs, who shall serve as the chairperson of the Committee.
(F) Such other members as the President may designate.

(3) The function of the Committee shall be to coordinate and direct the activities of the United States Government relating to combating transnational threats.

(4) In carrying out its function, the Committee shall—

(A) identify transnational threats;
(B) develop strategies to enable the United States Government to respond to transnational threats identified under subparagraph (A);
(C) monitor implementation of such strategies;
(D) make recommendations as to appropriate responses to specific transnational threats;
(E) assist in the resolution of operational and policy differences among Federal departments and agencies in their responses to transnational threats;
(F) develop policies and procedures to ensure the effective sharing of information about
transnational threats among Federal departments and agencies, including law enforcement agencies and the elements of the intelligence community; and

(G) develop guidelines to enhance and improve the coordination of activities of Federal law enforcement agencies and elements of the intelligence community outside the United States with respect to transnational threats.

(5) For purposes of this subsection, the term "transnational threat" means the following:

(A) Any transnational activity (including international terrorism, narcotics trafficking, the proliferation of weapons of mass destruction and the delivery systems for such weapons, and organized crime) that threatens the national security of the United States.

(B) Any individual or group that engages in an activity referred to in subparagraph (A).

(j) Participation of Director of National Intelligence

The Director of National Intelligence (or, in the Director’s absence, the Principal Deputy Director of National Intelligence) may, in the performance of the Director’s duties under this Act and subject to the direction of the President, attend and participate in meetings of the National Security Council.

(k) Special Adviser to the President on International Religious Freedom

It is the sense of the Congress that there should be within the staff of the National Security Council a Special Adviser to the President on International Religious Freedom, whose position should be comparable to that of a director within the Executive Office of the President. The Special Adviser should serve as a resource for executive branch officials, compiling and maintaining information on the facts and circumstances of violations of religious freedom (as defined in section 6402 of title 22), and making policy recommendations. The Special Adviser should serve as liaison with the Ambassador at Large for International Religious Freedom, the United States Commission on International Religious Freedom, Congress and, as advisable, religious nongovernmental organizations.

(l) Participation of Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism

The United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism (or, in the Coordinator’s absence, the Deputy United States Coordinator) may, in the performance of the Coordinator’s duty as principal advisor to the President on all matters relating to the prevention of weapons of mass destruction proliferation and terrorism, and, subject to the direction of the President, attend and participate in meetings of the National Security Council and the Homeland Security Council.


References in Text


Codification


In subsec. (c), provisions that specified compensation of $10,000 per year for the executive secretary to the Council were omitted. Section 304(b) of Pub. L. 88–426 amended section 105 of Title 3, The President, to include the executive secretary of the Council among those whose compensation was authorized to be fixed by the President. Section 1(a) of Pub. L. 88–426 further amended section 105 of Title 3 to authorize the President to appoint and fix the pay of the employees of the White House Office subject to certain provisions.

In subsec. (c), “chapter 51 and subchapter III of chapter 53 of title 5” substituted for “the Classification Act of 1949, as amended” on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Amendments

2007—Subsec. (a)(5) to (8). Pub. L. 110–140 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

Subsec. (i). Pub. L. 110–53, §1841(g)(1), redesignated subsec. (i), relating to Special Adviser to the President on International Religious Freedom, as (k).


Subsec. (j). Pub. L. 108–458, §1072(a)(1), substituted “Principal Deputy Director of National Intelligence” for “Deputy Director of Central Intelligence”.

Pub. L. 108–458, §1071(a)(1)(D), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

1998—Subsecs. (f), (g). Pub. L. 105–277 added subsec. (f) and redesignated former subsec. (f) as (g).


1981—Subsec. (a). Act Oct. 10, 1981, inserted cl. (5) relating to Director for Mutual Security, in fourth paragraph, and renumbered former cl. (5) and (6) thereof as cl. (6) and (7), respectively.
1949—Subsec. (a). Act Aug. 10, 1949, added the Vice President to the Council, removed the Secretaries of the military departments, to authorize the President to add, with the consent of the Senate, Secretaries and Under Secretaries of other executive departments and of the military department, and the Chairman of the Munitions Board and the Research and Development Board.
Subsec. (c). Act Oct. 28, 1949, substituted “Classification Act of 1949” for “Classification Act of 1923, as amended”.

**Effective Date of 2007 Amendment**

**Effective Date of 2004 Amendment**
For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1079(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

**Effective and Termination Dates of 1988 Amendment**
Amendment by Pub. L. 100–690 effective Jan. 1, 1989, and repealed on Sept. 30, 1992, see sections 1012 and 1009, respectively, of Pub. L. 100–690.

**Repeals**
Act Oct. 23, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §§8, 80 Stat. 632, 655.

**Transfer of Functions**
Office of Director for Mutual Security abolished and functions of Director, including those as a member of National Security Council, transferred to Director of Foreign Operations Administration by Reorg. Plan No. 7 of 1953, eff. Aug. 1, 1953, 18 F.R. 4541, set out in the Appendix to Title 5, Government Organization and Employees.


**Section as Unaffected by Repeals**
Repeals by section 542(a) of Mutual Security Act of 1954 did not repeal amendment to this section by act Oct. 10, 1951.

**Pilot Program on Cryptologic Service Training**

**National Security Agency Act of 1959**

"SEC. 2. There is a Director of Compliance of the National Security Agency, who shall be appointed by the Director of the National Security Agency and who shall be responsible for the programs of compliance over mission activities of the National Security Agency. [Added Pub. L. 111-259, title IV, §433, Oct. 7, 2010, 124 Stat. 2732."

"SEC. 3. [Amended section 1581(a) of title 10, Armed Forces.]"


"SEC. 5. Officers and employees of the National Security Agency who are citizens or nationals of the United States may be granted additional compensation, in accordance with regulations which shall be prescribed by the Secretary of Defense, not in excess of additional compensation authorized by section 207 of the Independent Offices Appropriation Act, 1949, as amended (5 U.S.C. 118h) (see 5 U.S.C. 5941), for employees whose rates of basic compensation are fixed by statute."

"SEC. 6. (a) Except as provided in subsection (b) of this section, nothing in this Act or any other law (including, but not limited to, the first section and section 2 of the Act of August 28, 1935 (5 U.S.C. 654) (repealed by Pub. L. 86-624, title I, §101, July 12, 1960, 74 Stat. 427)) shall be construed to require the disclosure of the organization or any function of the National Security Agency, or any information with respect to the activities thereof, or of the names, titles, salaries, or number of the persons employed by such agency.

"(b) The reporting requirements of section 1582 of title 10, United States Code, shall apply to positions established in the National Security Agency in the manner provided by section 4 of this Act."


"SEC. 8. The foregoing provisions of this Act shall take effect on the first day of the first pay period which begins later than the thirtieth day following the date of enactment of this Act [May 29, 1959]."

"SEC. 9. (a) Notwithstanding section 322 of the Act of June 30, 1952 (former 40 U.S.C. 278a), section 5536 of title 5, United States Code, and section 2675 of title 10, United States Code, the Director of the National Security Agency, on behalf of the Secretary of Defense, may lease real property outside the United States, for purposes not exceeding ten years, for the use of the National Security Agency for special cryptologic activities and for housing for personnel assigned to such activities.

"(b) The Director of the National Security Agency, on behalf of the Secretary of Defense, may provide to certain civilian and military personnel of the Department of Defense who are assigned to special cryptologic activities outside the United States and who are designated by the Secretary of Defense for the purposes of this subsection—

"(1) allowances and benefits—

"(A) comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4081 et seq.) or any other provision of law; and

"(B) in the case of selected personnel serving in circumstances similar to those in which personnel of the Central Intelligence Agency serve, comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency;

"(2) housing (including heat, light, and household equipment) without cost to such personnel, if the Director of the National Security Agency, on behalf of the Secretary of Defense, determines that it would be in the public interest to provide such housing; and

"(3) special retirement accrual in the same manner provided in section 303 of the Central Intelligence Agency Retirement Act of 1978 (50 U.S.C. 403s).

"(c) The authority of the Director of the National Security Agency, on behalf of the Secretary of Defense, to make payments under subsections (a) and (b), and under contracts for leases entered into under subsection (a), is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

"(d) Members of the Armed Forces may receive benefits under both subsection (b)(1) and title 37, United States Code, for the same purpose. The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.

"(e) Regulations issued pursuant to section (b)(1) shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate before such regulations take effect.


"SEC. 10. (a) The Director of the National Security Agency shall arrange for, and shall prescribe regulations concerning, language and language-related training programs for military and civilian cryptologic personnel. In establishing programs under this section for language and language-related training, the Director—

"(1) may provide for the training and instruction to be furnished, including functional and geographic area specializations;

"(2) may arrange for training and instruction through other Government agencies and, in any case in which appropriate training or instruction is unavailable through Government facilities, through nongovernmental facilities that furnish training and instruction useful in the fields of language and foreign affairs;

"(3) may support programs that furnish necessary language and language-related skills, including, in any case in which appropriate programs are unavailable at Government facilities, support through contracts, grants, or cooperation with nongovernmental educational institutions; and

"(4) may obtain by appointment or contract the services of individuals to serve as language instructors, linguists, or special language project personnel.

"(b)(1) In order to maintain necessary capability in foreign language skills and related abilities needed by the National Security Agency, the Director, without regard to subchapter IV of chapter 55 of title 5, United States Code, may provide special monetary or other incentives to encourage civilian cryptologic personnel of the Agency to acquire or retain proficiency in foreign languages or special related abilities needed by the Agency.

"(2) In order to provide linguistic training and support for cryptologic personnel, the Director—

"(A) may pay all or part of the tuition and other expenses related to the training of personnel who are
assigned or detailed for language and language-related training, orientation, or instruction; and

"(B) may pay benefits and allowances to civilian personnel in accordance with chapter 57 and 59 of title 5, United States Code, and to military personnel in accordance with chapter 7 of title 37, United States Code, and applicable provisions of title 10, United States Code, when such personnel are assigned to training at sites away from their designated duty station.

"(c)(1) To the extent not inconsistent, in the opinion of the Secretary of Defense, with the operation of military cryptologic reserve units and in order to maintain necessary capability in foreign language skills and related abilities needed by the National Security Agency, the Director may establish a cryptologic linguist reserve. The cryptologic linguist reserve may consist of former or retired civilian or military cryptologic personnel of the National Security Agency and of other qualified individuals, as determined by the Director of the Agency. Each member of the cryptologic linguist reserve shall agree that, during any period of emergency (as determined by the Director), the member shall return to active civilian status with the National Security Agency and shall perform such linguistic or linguistic-related duties as the Director may assign.

"(c)(2) In order to attract individuals to become members of the cryptologic linguist reserve, the Director, without regard to subchapter IV of chapter 55 of title 5, United States Code, may provide special monetary incentives to individuals eligible to become members of the reserve who agree to become members of the cryptologic linguist reserve and to acquire or retain proficiency in foreign languages or special related abilities.

"(3) In order to provide training and support for members of the cryptologic linguist reserve, the Director—

"(A) may pay all or part of the tuition and other expenses related to the training of individuals in the cryptologic linguist reserve who are assigned or detailed for language and language-related training, orientation, or instruction; and

"(B) may pay benefits and allowances in accordance with chapters 57 and 59 of title 5, United States Code, to individuals in the cryptologic linguist reserve who are assigned to training at sites away from their homes or regular places of business.

"(d)(1) The Director, before providing training under this section to any individual, may obtain an agreement from that individual that—

"(A) in the case of current employees, pertains to continuation of service of the employee, and repayment of the expenses of such training for failure to fulfill the agreement, consistent with the provisions of section 4108 of title 5, United States Code; and

"(B) in the case of individuals accepted for membership in the cryptologic linguist reserve, pertains to return to service when requested, and repayment of the expenses of such training for failure to fulfill the agreement, consistent with the provisions of section 4108 of title 5, United States Code.

"(2) The Director, under regulations prescribed under this section, may waive, in whole or in part, a right of recovery under an agreement made under this subsection if it is shown that the recovery would be against equity and good conscience or against the public interest.

"(e)(1) Subject to paragraph (2), the Director may provide to family members of military and civilian cryptologic personnel assigned to representational duties outside the United States, in anticipation of the assignment of such personnel outside the United States or while outside the United States, appropriate orientation and language training that is directly related to the assignment abroad.

"(2) Language training under paragraph (1) may not be provided to any individual through payment of the expenses of tuition or other cost of instruction at a non-Government educational institution unless appropriate instruction is not available at a Government facility.

"(f) The Director may waive the applicability of any provision of chapter 41 of title 5, United States Code, to any provision of this section if he finds that such waiver is important to the performance of cryptologic functions.

"(g) The authority of the Director to enter into contracts or to make grants under this section is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

"(h) Regulations issued pursuant to this section shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate before such regulations take effect.

"(i) The Director of the National Security Agency, on behalf of the Secretary of Defense, may, without regard to section 4109(a)(2)(B) of title 5, United States Code, pay travel, transportation, storage, and subsistence expenses under chapter 57 of such title to civilian and military personnel of the Department of Defense who are assigned to duty outside the United States for a period of one year or longer which involves cryptologic training, language training, or related disciplines. [Added Pub. L. 96–450, title IV, § 402(a)(1), Oct. 14, 1980, 94 Stat. 1778, and amended Pub. L. 97–89, title VI, § 802, Dec. 4, 1981, 95 Stat. 1154.]

"SEC. 11. (a)(1) The Director of the National Security Agency may authorize agency personnel within the United States to perform the same functions as officers and agents of the Department of Homeland Security, as provided in section 1315(b)(2) of title 40, United States Code, with the powers set forth in that section, except that such personnel shall perform such functions and exercise such powers—

"(A) at the National Security Agency Headquarters complex and at any facilities and protected property which are solely under the administration and control of, or are used exclusively by, the National Security Agency; and

"(B) in the streets, sidewalks, and the open areas within the zone beginning at the outside boundary of such facilities or protected property and extending outward 500 feet.

"(2) The performance of functions and exercise of powers under subparagraph (B) of paragraph (1) shall be limited to those circumstances where such personnel can identify specific and articulable facts giving such personnel reason to believe that the performance of such functions and exercise of such powers will enable to protect against physical damage or injury, or threats of physical damage or injury, to agency installations, property, or employees; or "(3) Nothing in this subsection shall be construed to preclude, or limit in any way, the authority of any Federal, State, or local law enforcement agency, or any other Federal police or Federal protective service.

"(4) The rules and regulations enforced by such personnel shall be the rules and regulations prescribed by the Director and shall only be applicable to the areas referred to in subparagraph (A) of paragraph (1).

"(5) Not later than July 1 each year through 2004, the Director shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report that describes in detail the exercise of the authority granted by this subsection and the underlying facts supporting the exercise of such authority, during the preceding fiscal year. The Director shall make such report available to the Inspector General of the National Security Agency.

"(b) The Director of the National Security Agency is authorized to establish penalties for violations of the rules or regulations prescribed by the Director under subsection (a). Such penalties shall not exceed those specified in section 1315(c)(2) of title 40, United States Code.

"(c) Agency personnel designated by the Director of the National Security Agency under subsection (a)
shall be clearly identifiable as United States Government security personnel while engaged in the performance of the functions to which subsection (a) refers.

(1) Notwithstanding any other provision of law, agency personnel designated by the Director of the National Security Agency under subsection (a) shall be considered for purposes of chapter 171 of title 28, United States Code, or any other provision of law relating to tort liability, to be acting within the scope of their office or employment when such agency personnel take reasonable action, which may include the use of force, to—

(A) protect an individual in the presence of such agency personnel from a crime of violence;

(B) provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or

(C) prevent the escape of any individual whom such agency personnel reasonably believe to have committed a crime of violence in the presence of such agency personnel.

(2) Paragraph (1) shall not affect the authorities of the Attorney General under section 2679 of title 28.


SEC. 12. (a)(1) The Secretary of Defense (or his designee) may by regulation establish a personnel system for senior civilian cryptologic personnel in the National Security Agency to be known as the Senior Cryptologic Executive Service. The regulations establishing the Senior Cryptologic Executive Service shall—

(A) meet the requirements set forth in section 3131 of title 5, United States Code, for the Senior Executive Service;

(B) provide that positions in the Senior Cryptologic Executive Service meet requirements that are consistent with the provisions of section 3329(a)(2) of such title;

(C) provide, without regard to section 2, rates of pay for the Senior Cryptologic Executive Service that are not in excess of the maximum rate or less than the minimum rate of basic pay established for the Senior Executive Service under section 5302 of such title, and that are adjusted at the same time and to the same extent as rates of basic pay for the Senior Executive Service are adjusted;

(D) provide a performance appraisal system for the Senior Cryptologic Executive Service that conforms to the provisions of subchapter II of chapter 43 of such title;

(E) provide for removal consistent with section 3592 of such title, and removal or suspension consistent with subsections (a), (b), and (c) of section 7543 of such title (except that any hearing or appeal to which a member of the Senior Cryptologic Executive Service is entitled shall be held or decided pursuant to procedures established by regulations of the Secretary of Defense or his designee);

(F) permit the payment of performance awards to members of the Senior Cryptologic Executive Service consistent with the provisions applicable to performance awards under section 3384 of such title;

(G) provide that members of the Senior Cryptologic Executive Service may be granted sabbatical leaves consistent with the provisions of section 3386 of such title[](.) and the Senior Cryptologic Executive Service any of the provisions of chapter 55 of title 5, United States Code, applicable to applicants for or members of the Senior Executive Service; and

(B) appoint, promote, and assign individuals to positions established within the Senior Cryptologic Executive Service without regard to the provisions of title 5, United States Code, governing appointments and other personnel actions in the competitive service.

(3) The President, based on the recommendations of the Secretary of Defense, may award ranks to members of the Senior Cryptologic Executive Service in a manner consistent with the provisions of section 4507 of title 5, United States Code.

(4) Notwithstanding any other provision of this section, the Secretary of Defense may detail or assign any member of the Senior Cryptologic Executive Service to serve in a position outside the National Security Agency in which the member’s expertise and experience may be of benefit to the National Security Agency or another Government agency. Any such member shall not by reason of such detail or assignment lose any entitlement or status associated with membership in the Senior Cryptologic Executive Service.


SEC. 13. (a) The Director of the National Security Agency may make grants to private individuals and institutions for the conduct of cryptologic research. An application for a grant under this section may not be approved unless the Director determines that the award of the grant would be clearly consistent with the national security.

(b) The grant program established by subsection (a) shall be conducted in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.) and shall extend beyond such Act to the extent that such Act is consistent with and in accordance with section 6 of this Act.

(c) The authority of the Director to make grants under this section is effective for any fiscal year only to the extent that appropriated funds are available for such purpose. [Added Pub. L. 97–97, title VI, §603, Dec. 4, 1981, 95 Stat. 1156.]

SEC. 14. Funds appropriated to an entity of the Federal Government other than an element of the Department of Defense that have been specifically appropriated for the purchase of cryptologic equipment, materials, or services with respect to which the National Security Agency has been designated as the central source of procurement for the Government shall remain available for a period of three fiscal years. [Added Pub. L. 97–97, title VI, §603, Dec. 4, 1981, 95 Stat. 1156.]

SEC. 15. (a) No person may, except with the written permission of the Director of the National Security Agency, knowingly use the words ‘National Security Agency’, the initials ‘NSA’, the seal of the National Security Agency, or any colorable imitation of such words, initials, or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the National Security Agency.

(b) Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter an order enjoining, restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States.
States or to any person or class of persons for whose protection the action is brought. [Added Pub. L. 97–89, title VI, §402, Oct. 24, 1992, 106 Stat. 3183.]


SEC. 18. (a) The Secretary of Defense may pay the expenses referred to in section 5742(b) of title 5, United States Code, in the case of any employee of the National Security Agency who dies while on a rotational tour of duty within the United States or while in transit to or from such tour of duty.

(b) For the purposes of this section, the term ‘rotational tour of duty’, with respect to an employee, means a permanent change of station involving the transfer of the employee from the National Security Agency headquarters to another post of duty for a fixed period established by regulation to be followed at the end of such period by a permanent change of station involving a transfer of the employee back to such headquarters.

(c) The Panel shall study and assess, and periodically advise the Director on, the research, develop-
ment, and application of existing and emerging science and technology advances, advances in encryption, and other topics.


SEC. 20. (a) The Director may collect charges for evaluating, certifying, or validating information assurance products under the National Information Assurance Program or successor program.

"(b) The charges collected under subsection (a) shall be established through a public rulemaking process in accordance with Office of Management and Budget Circular No. A-25.

"(c) Charges collected under subsection (a) shall not exceed the direct costs of the program referred to in that subsection.

"(d) The appropriation or fund bearing the cost of the service for which charges are collected under the program referred to in subsection (a) may be reimbursed, or the Director may require advance payment subject to such adjustment on completion of the work as may be agreed upon.

"(e) Amounts collected under this section shall be credited to the account or accounts from which costs associated with such amounts have been or will be incurred, to reimburse or offset the direct costs of the program referred to in subsection (a)." [Added Pub. L. 109–364, div. A, title IX, §933, Oct. 7, 2006, 120 Stat. 3283.]

[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 Central 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 1083(a), (b) of Pub. L. 108–458, set out as a note under section 401 of this title.]

EXECUTIVE ORDER NO. 10483

EXECUTIVE ORDER NO. 10700


By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. Establishment. I hereby establish within the Executive Office of the President an Office of Homeland Security (the "Office") to be headed by the Assistant to the President for Homeland Security.

SEC. 2. Mission. The mission of the Office shall be to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks. The Office shall perform the functions necessary to carry out this mission, including the functions specified in section 3 of the charges collector.

SEC. 3. Functions. The functions of the Office shall be to coordinate the executive branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States.

(a) National Strategy. The Office shall work with executive departments and agencies, State and local governments, and private entities to ensure the adequacy of the national strategy for detecting, preparing for, preventing, protecting against, responding to, and recovering from terrorist threats or attacks within the United States and shall periodically review and coordinate revisions to that strategy as necessary.

(b) Detection. The Office shall identify priorities and coordinate efforts for collection and analysis of information within the United States regarding terrorist activities within the United States of terrorists or terrorist groups within the United States. The Office also shall identify, in coordination with the Assistant to the President for National Security Affairs, priorities for collecting data on the United States regarding threats of terrorism within the United States.

(i) In performing these functions, the Office shall work with Federal, State, and local agencies, as appropriate, to:

(A) facilitate collection from State and local governments and private entities of information pertaining to terrorist threats or activities within the United States;

(B) coordinate and prioritize the requirements for foreign intelligence relating to terrorism within the United States of executive departments and agencies responsible for homeland security and provide these requirements and priorities to the Director of Central Intelligence and other agencies responsible for collection of foreign intelligence;

(C) coordinate efforts to ensure that all executive departments and agencies that have intelligence collection responsibilities have sufficient technological capabilities and resources to collect intelligence and data relating to terrorist activities or possible terrorist acts within the United States, working with the Assistant to the President for National Security Affairs, as appropriate;

(D) coordinate development of monitoring protocols and equipment for use in detecting the release of biological, chemical, and radiological hazards; and

(E) ensure that, to the extent permitted by law, all appropriate and necessary intelligence and law enforcement information relating to homeland security is disseminated to and exchanged among appropriate executive departments and agencies responsible for homeland security and, where appropriate for reasons of homeland security, promote exchange of such information with and among State and local governments and private entities.

(ii) Executive departments and agencies shall, to the extent permitted by law, make available to the Office all information relating to terrorist threats and activities within the United States.

(c) Preparedness. The Office of Homeland Security shall coordinate national efforts to prepare for and mitigate the consequences of terrorist threats or attacks within the United States. In performing this function, the Office shall work with Federal, State, and local agencies, and private entities, as appropriate, to:

(i) review and assess the adequacy of the portions of all Federal emergency response plans that pertain to terrorist threats or attacks within the United States;

(ii) coordinate domestic exercises and simulations designed to assess and practice systems that would be called upon to respond to a terrorist threat or attack within the United States and coordinate programs and activities for training Federal, State, and local employees who would be called upon to respond to such a threat or attack;

(iii) coordinate national efforts to ensure public health preparedness for a terrorist attack, including reviewing vaccination policies and reviewing the adequacy of and, if necessary, increasing vaccine and pharmaceutical stockpiles and hospital capacity;
(iv) coordinate Federal assistance to State and local authorities and nongovernmental organizations to prepare for and respond to terrorist threats or attacks within the United States;

(v) ensure that national preparedness programs and activities for terrorist threats or attacks are developed and are regularly evaluated under appropriate standards and that resources are allocated to improving and sustaining preparedness based on such evaluations; and

(vi) ensure the readiness and coordinated deployment of Federal response teams to respond to terrorist threats or attacks, working with the Assistant to the President for National Security Affairs, when appropriate.

(d) *Prevention.* The Office shall coordinate efforts to prevent terrorist attacks within the United States. In performing this function, the Office shall work with Federal, State, and local agencies, and private entities, as appropriate, to:

(i) facilitate the exchange of information among such agencies relating to immigration and visa matters and shipments of cargo; and, working with the Assistant to the President for National Security Affairs, ensure coordination among such agencies to prevent the entry of terrorists and terrorist materials and supplies into the United States and facilitate removal of such terrorists from the United States, when appropriate;

(ii) coordinate efforts to investigate terrorist threats and attacks within the United States; and

(iii) coordinate efforts to improve the security of United States borders, territorial waters, and airspace in order to prevent acts of terrorism within the United States, working with the Assistant to the President for National Security Affairs, when appropriate.

(e) *Protection.* The Office shall coordinate efforts to protect the United States and its critical infrastructure from the consequences of terrorist attacks. In performing this function, the Office shall work with Federal, State, and local agencies, and private entities, as appropriate, to:

(i) strengthen measures for protecting energy production, transmission, and distribution services and critical facilities; other utilities; telecommunications; facilities that produce, use, store, or dispose of nuclear material; and other critical infrastructure services and critical facilities within the United States from terrorist attack;

(ii) coordinate efforts to protect critical public and privately owned information systems within the United States from terrorist attack;

(iii) develop criteria for reviewing whether appropriate security measures are in place at major public and privately owned facilities within the United States;

(iv) coordinate domestic efforts to ensure that special events determined by appropriate senior officials to have national significance are protected from terrorist attack;

(v) coordinate efforts to protect transportation systems within the United States, including railways, highways, shipping, ports and waterways, and airports and civilian aircraft, from terrorist attack;

(vi) coordinate efforts to protect United States livestock, agriculture, and systems for the provision of water and food for human use and consumption from terrorist attack; and

(vii) coordinate efforts to prevent unauthorized access to, development of, and unlawful importation into the United States of, chemical, biological, radiological, nuclear, explosive, or other related materials that have the potential to be used in terrorist attacks.

(f) *Response and Recovery.* The Office shall coordinate efforts to respond to and promote recovery from terrorist threats or attacks within the United States. In performing this function, the Office shall work with Federal, State, and local agencies, and private entities, as appropriate, to:

(i) coordinate efforts to ensure rapid restoration of transportation systems, energy production, transmission, and distribution systems; telecommunications; other utilities; and other critical facilities after disruption by a terrorist threat or attack;

(ii) coordinate efforts to ensure rapid restoration of public and private criminal information systems after disruption by a terrorist threat or attack;

(iii) work with the National Economic Council to coordinate efforts to stabilize United States financial markets after a terrorist threat or attack and manage the immediate economic and financial consequences of the incident;

(iv) coordinate Federal plans and programs to provide medical, financial, and other assistance to victims of terrorist attacks and their families; and

(v) coordinate containment and removal of biological, chemical, radiological, explosive, or other hazardous materials in the event of a terrorist threat or attack involving such hazards and coordinate efforts to mitigate the effects of such an attack.

(g) *Incident Management.* Consistent with applicable law, including the statutory functions of the Secretary of Homeland Security, the Assistant to the President for Homeland Security shall be the official primarily responsible for advising and assisting the President in the coordination of domestic incident management activities of all departments and agencies in the event of a terrorist threat, and during and in the aftermath of terrorist attacks, major disasters, or other emergencies, within the United States. Generally, the Assistant to the President for Homeland Security shall serve as the principal point of contact for and to the President with respect to the coordination of such activities. The Assistant to the President for Homeland Security shall coordinate with the Assistant to the President for National Security Affairs, as appropriate.

(h) *Continuity of Government.* The Assistant to the President for Homeland Security, in coordination with the Assistant to the President for National Security Affairs, shall develop and maintain plans for ensuring the continuity of the Federal Government in the event of a terrorist attack that threatens the safety and security of the United States Government or its leadership.

(i) *Public Affairs.* The Office, subject to the direction of the White House Office of Communications, shall coordinate the strategy of the executive branch for communicating with the public in the event of a terrorist threat or attack within the United States. The Office shall coordinate the development of programs for educating the public about the nature of terrorist threats and appropriate precautions and responses.

(j) *Cooperation with State and Local Governments and Private Entities.* The Office shall encourage and invite the participation of State and local governments and private entities, as appropriate, in carrying out the Office’s functions.

(k) *Review of Legal Authorities and Development of Legislative Proposals.* The Office shall coordinate a periodic review and assessment of the legal authorities available to executive departments and agencies to permit them to perform the functions described in this order. When the Office determines that such legal authorities are inadequate, the Office shall develop, in consultation with executive departments and agencies, proposals for presidential action and legislative proposals for submission to the Office of Management and Budget to enhance the ability of executive departments and agencies to perform those functions. The Office shall work with State and local governments in assessing the adequacy of their legal authorities to permit them to detect, prepare for, prevent, protect against, and recover from terrorist threats and attacks.

(l) *Budget Review.* The Assistant to the President for Homeland Security, in consultation with the Director of the Office of Management and Budget (the ‘*Director’*) and the heads of executive departments and agencies, shall identify programs that contribute to the Ad-
administration’s strategy for homeland security and, in the development of the President’s annual budget submission, shall review and provide advice to the heads of departments and agencies for such programs. The Assistant to the President for Homeland Security shall provide advice to the Director on the level and use of funding in departments and agencies for homeland security-related activities and, prior to the Director’s forwarding of the proposed annual budget submission to the President for transmittal to the Congress, shall certify to the Director the funding levels that the Assistant to the President for Homeland Security believes are necessary and appropriate for the homeland security-related activities of the executive branch.

SISC. 4. Administration.
(a) The Office of Homeland Security shall be directed by the Assistant to the President for Homeland Security.
(b) The Office of Administration within the Executive Office of the President shall provide the Office of Homeland Security with such personnel, funding, and administrative support, to the extent permitted by law and subject to the availability of appropriations, as directed by the Chief of Staff to carry out the provisions of this order.
(c) Heads of executive departments and agencies are authorized, to the extent permitted by law, to detail or assign personnel of such departments and agencies to the Office of Homeland Security upon request of the Assistant to the President for Homeland Security, subject to the approval of the Chief of Staff.

I hereby establish a Homeland Security Council (the “Council”), which shall be responsible for advising and assisting the President with respect to all aspects of homeland security. The Council shall serve as the mechanism for ensuring coordination of homeland security-related activities of executive departments and agencies and effective development and implementation of homeland security policies.

SISC. 6. Membership.
The Council shall have as its members the President, the Vice President, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Homeland Security, the Director of the Federal Emergency Management Agency, the Director of the Federal Bureau of Investigation, the Director of Central Intelligence, the Assistant to the President for Homeland Security, and such other officers of the executive branch as the President may from time to time designate. The Chief of Staff, the Counsel to the President, and the Director of National Intelligence shall be invited to attend meetings of the Council.

SISC. 7. Continuing Authorities. This order does not alter the existing authorities of United States Government departments and agencies, including the Department of Homeland Security. All executive departments and agencies are directed to assist the Council and the Assistant to the President for Homeland Security in carrying out the purposes of this order.

(a) This order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies or instrumentalities, its officers, employees, or any other person.
(b) References in this order to State and local governments shall be construed to include tribal governments and United States territories and other possessions.
(c) References to the “United States” shall be construed to include United States territories and possessions.

SISC. 9. [Amended Ex. Ord. No. 12656, set out as a note under section 5195 of this title.]

EXECUTIVE ORDER NO. 13260

§ 402-1. Joint Intelligence Community Council

(a) Joint Intelligence Community Council
There is a Joint Intelligence Community Council.

(b) Membership
The Joint Intelligence Community Council shall consist of the following:
(1) The Director of National Intelligence, who shall chair the Council.
(2) The Secretary of State.
(3) The Secretary of the Treasury.
(4) The Secretary of Defense.
(6) The Secretary of Energy.
(7) The Secretary of Homeland Security.
(8) Such other officers of the United States Government as the President may designate from time to time.

(c) Functions
The Joint Intelligence Community Council shall assist the Director of National Intelligence in developing and implementing a joint, unified national intelligence effort to protect national security by—
(1) advising the Director on establishing requirements, developing budgets, financial management, and monitoring and evaluating the performance of the intelligence community, and on such other matters as the Director may request; and
(2) ensuring the timely execution of programs, policies, and directives established or developed by the Director.

(d) Meetings
The Director of National Intelligence shall convene regular meetings of the Joint Intelligence Community Council.

(e) Advice and opinions of members other than Chairman
(1) A member of the Joint Intelligence Community Council (other than the Chairman) may
submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the Director of National Intelligence to the President or the National Security Council, in the role of the Chairman as Chairman of the Joint Intelligence Community Council. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time the Chairman presents the advice of the Chairman to the President or the National Security Council, as the case may be.

(2) The Chairman shall establish procedures to ensure that the presentation of the advice of the Chairman to the President or the National Security Council is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Council.

(f) Recommendations to Congress

Any member of the Joint Intelligence Community Council may make such recommendations to Congress relating to the intelligence community as such member considers appropriate.


**Effective Date**

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

§ 402a. Coordination of counterintelligence activities

(a) Establishment of Counterintelligence Policy Board

There is established within the executive branch of Government a National Counterintelligence Policy Board (in this section referred to as the “Board”). The Board shall report to the President through the National Security Council.

(b) Chairperson


(c) Membership

The membership of the National Counterintelligence Policy Board shall consist of the following:

(1) The National Counterintelligence Executive.

(2) Senior personnel of departments and elements of the United States Government, appointed by the head of the department or element concerned, as follows:

(A) The Department of Justice, including the Federal Bureau of Investigation.

(B) The Department of Defense, including the Joint Chiefs of Staff.

(C) The Department of State.

(D) The Department of Energy.

(E) The Central Intelligence Agency.

(F) Any other department, agency, or element of the United States Government specified by the President.

(d) Functions and discharge of functions

(1) The Board shall—

(A) serve as the principal mechanism for—

(i) developing policies and procedures for the approval of the President to govern the conduct of counterintelligence activities; and

(ii) upon the direction of the President, resolving conflicts that arise between elements of the Government conducting such activities; and

(B) act as an interagency working group to—

(i) ensure the discussion and review of matters relating to the implementation of the Counterintelligence Enhancement Act of 2002; and

(ii) provide advice to the National Counterintelligence Executive on priorities in the implementation of the National Counterintelligence Strategy produced by the Office of the National Counterintelligence Executive under section 904(e)(2) of that Act.1

(2) The Board may, for purposes of carrying out its functions under this section, establish such interagency boards and working groups as the Board considers appropriate.

(e) Coordination of counterintelligence matters with Federal Bureau of Investigation

(1) Except as provided in paragraph (5), the head of each department or agency within the executive branch shall ensure that—

(A) the Federal Bureau of Investigation is advised immediately of any information, regardless of its origin, which indicates that classified information is being, or may have been, disclosed in an unauthorized manner to a foreign power or an agent of a foreign power;

(B) following a report made pursuant to subparagraph (A), the Federal Bureau of Investigation is consulted with respect to all subsequent actions which may be undertaken by the department or agency concerned to determine the source of such loss or compromise; and

(C) where, after appropriate consultation with the department or agency concerned, the Federal Bureau of Investigation undertakes investigative activities to determine the source of the loss or compromise, the Federal Bureau of Investigation is given complete and timely access to the employees and records of the department or agency concerned for purposes of such investigative activities.

(2) Except as provided in paragraph (5), the Director of the Federal Bureau of Investigation shall ensure that espionage information obtained by the Federal Bureau of Investigation pertaining to the personnel, operations, or information of departments or agencies of the executive branch, is provided through appropriate channels in a timely manner to the department or agency concerned, and that such departments

1 See References in Text note below.
or agencies are consulted in a timely manner with respect to espionage investigations undertaken by the Federal Bureau of Investigation which involve the personnel, operations, or information of such department or agency.

(3)(A) The Director of the Federal Bureau of Investigation shall submit to the head of the department or agency concerned a written assessment of the potential impact of the actions of the department or agency on a counterintelligence investigation.

(B) The head of the department or agency concerned shall—

(1) use an assessment under subparagraph (A) as an aid in determining whether, and under what circumstances, the subject of an investigation under paragraph (1) should be left in place for investigative purposes; and

(ii) notify in writing the Director of the Federal Bureau of Investigation of such determination.

(C) The Director of the Federal Bureau of Investigation and the head of the department or agency concerned shall continue to consult, as appropriate, to review the status of an investigation covered by this paragraph, and to reassess, as appropriate, a determination of the head of the department or agency concerned to leave a subject in place for investigative purposes.

(4)(A) The Federal Bureau of Investigation shall notify appropriate officials within the executive branch, including the head of the department or agency concerned, of the commencement of a full field espionage investigation with respect to an employee within the executive branch.

(B) A department or agency may not conduct a polygraph examination, interrogate, or otherwise take any action that is likely to alert an appropriate, to review the status of an investigation covered by this paragraph, and to reassess, as appropriate, a determination of the head of the department or agency concerned to leave a subject in place for investigative purposes.

(5) Where essential to meet extraordinary circumstances affecting vital national security interests of the United States, the President may on a case-by-case basis waive the requirements of paragraph (1), (2), or (3), as they apply to the head of a particular department or agency, or the Director of the Federal Bureau of Investigation. Such waiver shall be in writing and shall fully state the justification for such waiver. Within thirty days, the President shall notify the Select Committee on Intelligence of the House of Representatives that such waiver has been issued, and that at that time or as soon as national security considerations permit, provide these committees with a complete explanation of the circumstances which necessitated such waiver.

(6) Nothing in this section may be construed to alter the existing jurisdictional arrangements between the Federal Bureau of Investigation and the Department of Defense with respect to investigations of persons subject to the Uniform Code of Military Justice, nor to impose additional reporting requirements upon the Department of Defense with respect to such investigations beyond those required by existing law and executive branch policy.

(7) As used in this section, the terms “foreign power” and “agent of a foreign power” have the same meanings as set forth in sections 1801(a) and (b), respectively, of this title.


REFERENCES IN TEXT


CODIFICATION

Section was enacted as part of the Counterintelligence and Security Enhancements Act of 1994 and also as part of the Intelligence Authorization Act for Fiscal Year 1995, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS


2003—Subsec. (e). Pub. L. 108–177, which directed the amendment of subsec. (c) by redesignating pars. (7) and (8) as (6) and (7), respectively, and striking out former par. (6), was executed by making the amendment to subsec. (e) to reflect the probable intent of Congress and the redesignation of subsec. (c) as (e) by Pub. L. 107–306, §903(a)(2), see below. Prior to amendment, par. (6) read as follows:

“(6)(A) Not later each year than the date provided in section 418b of this title, the Director of the Federal Bureau of Investigation shall submit to the congressional intelligence committees (as defined in section 401a of this title) a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

“(B) Not later than February 1 each year, the Director shall, in accordance with applicable security procedures, submit to the Committees on the Judiciary of the Senate and House of Representatives a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

“(C) The Director of the Federal Bureau of Investigation shall submit each report under this paragraph in consultation with the Director of Central Intelligence and the Secretary of Defense.”

2002—Subsec. (b). Pub. L. 107–306, §903(a)(1), (3), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “The Board shall serve as the principal mechanism for—

“(1) developing policies and procedures for the approval of the President to govern the conduct of counterintelligence activities; and

“(2) resolving conflicts, as directed by the President, which may arise between elements of the Government which carry out such activities.”

1 So in original. Probably should be “section".
§ 402b

TITLE 50—WAR AND NATIONAL DEFENSE

(a) Establishment

(1) There shall be a National Counterintelligence Executive, who shall be appointed by the Director of National Intelligence.

(2) It is the sense of Congress that the Director of National Intelligence should seek the views of the Attorney General, Secretary of Defense, and Director of the Central Intelligence Agency in selecting an individual for appointment as the Executive.

(b) Mission

The mission of the National Counterintelligence Executive shall be to serve as the head of national counterintelligence for the United States Government.

(c) Duties

Subject to the direction and control of the Director of National Intelligence, the duties of the National Counterintelligence Executive are as follows:

(1) To carry out the mission referred to in subsection (b) of this section.

(2) To act as chairperson of the National Counterintelligence Policy Board under section 402a of this title.

(3) To act as head of the Office of the National Counterintelligence Executive under section 402c of this title.

(4) To participate as an observer on such boards, committees, and entities of the executive branch as the Director of National Intelligence considers appropriate for the discharge of the mission and functions of the Executive and the Office of the National Counterintelligence Executive under section 402c of this title.

(Effective Date of 2004 Amendment)

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


(Effective Date of 2003 Amendment)

Amendment by Pub. L. 103–359 effective Dec. 31, 2003, see section 361(n) of Pub. L. 103–359, set out as a note under section 1611 of Title 10, Armed Forces.

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§ 402b. National Counterintelligence Executive

(a) Establishment

(1) There shall be a National Counterintelligence Executive, who shall be appointed by the Director of National Intelligence.

(2) It is the sense of Congress that the Director of National Intelligence should seek the views of the Attorney General, Secretary of Defense, and Director of the Central Intelligence Agency in selecting an individual for appointment as the Executive.

(b) Mission

The mission of the National Counterintelligence Executive shall be to serve as the head of national counterintelligence for the United States Government.

(c) Duties

Subject to the direction and control of the Director of National Intelligence, the duties of the National Counterintelligence Executive are as follows:

(1) To carry out the mission referred to in subsection (b) of this section.

(2) To act as chairperson of the National Counterintelligence Policy Board under section 402a of this title.

(3) To act as head of the Office of the National Counterintelligence Executive under section 402c of this title.

(4) To participate as an observer on such boards, committees, and entities of the executive branch as the Director of National Intelligence considers appropriate for the discharge of the mission and functions of the Executive and the Office of the National Counterintelligence Executive under section 402c of this title.


CODIFICATION

Section was enacted as part of the Counterintelligence Enhancement Act of 2002, and also as part of the Intelligence Authorization Act for Fiscal Year 2003, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS


Subsec. (a)(2). Pub. L. 108–458, §1072(d)(1)(B), substituted “Director of National Intelligence” for “President” and “Director of the Central Intelligence Agency” for “Director of Central Intelligence”.


(Effective Date of 2004 Amendment)

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

§ 402c. Office of the National Counterintelligence Executive

(a) Establishment

There shall be an Office of the National Counterintelligence Executive.

(b) Head of Office

The National Counterintelligence Executive shall be the head of the Office of the National Counterintelligence Executive.

(c) Location of Office

The Office of the National Counterintelligence Executive shall be located in the Office of the Director of National Intelligence.

(d) Functions

Subject to the direction and control of the National Counterintelligence Executive, the functions of the Office of the National Counterintelligence Executive shall be as follows:

(1) National threat identification and prioritization assessment

Subject to subsection (e), in consultation with appropriate department and agencies of the United States Government, and private sector entities, to produce on an annual basis a strategic planning assessment of the counterintelligence requirements of the United States to be known as the National Threat Identification and Prioritization Assessment.

(2) National Counterintelligence Strategy

Subject to subsection (e), in consultation with appropriate department and agencies of the United States Government, and private sector entities, and based on the most current National Threat Identification and Prioritization Assessment under paragraph (1), to produce on an annual basis a strategy for the counterintelligence programs and activities of the United States Government to be known as the National Counterintelligence Strategy.

(3) Implementation of National Counterintelligence Strategy

To evaluate on an ongoing basis the implementation of the National Counterintelligence Strategy and to submit to the President periodic reports on such evaluation, including a discussion of any shortfalls in the implementation of the Strategy and recommendations for remedies for such shortfalls.

(4) National counterintelligence strategic analyses

As directed by the Director of National Intelligence and in consultation with appropriate elements of the departments and agencies of the United States Government, to oversee and coordinate the production of strategic analyses of counterintelligence matters, including the production of counterintelligence damage assessments and assessments of lessons learned from counterintelligence activities.

(5) National counterintelligence program budget

In consultation with the Director of National Intelligence—

(A) to coordinate the development of budgets and resource allocation plans for the counterintelligence programs and activities of the Department of Defense, the Federal Bureau of Investigation, the Central Intelligence Agency, and other appropriate elements of the United States Government;

(B) to ensure that the budgets and resource allocation plans developed under subparagraph (A) address the objectives and priorities for counterintelligence under the National Counterintelligence Strategy; and

(C) to submit to the National Security Council periodic reports on the activities undertaken by the Office under subparagraphs (A) and (B).

(6) National counterintelligence collection and targeting coordination

To develop priorities for counterintelligence investigations and operations, and for collection of counterintelligence, for purposes of the National Counterintelligence Strategy, except that the Office may not—

(A) carry out any counterintelligence investigations or operations; or

(B) establish its own contacts, or carry out its own activities, with foreign intelligence services.

(7) National counterintelligence outreach, watch, and warning

(A) Counterintelligence vulnerability surveys

To carry out and coordinate surveys of the vulnerability of the United States Government, and the private sector, to intelligence threats in order to identify the areas, programs, and activities that require protection from such threats.

(B) Outreach

To carry out and coordinate outreach programs and activities on counterintelligence to other elements of the United States Government, and the private sector, and to coordinate the dissemination to the public of warnings on intelligence threats to the United States.

(C) Research and development

To ensure that research and development programs and activities of the United States Government, and the private sector, direct attention to the needs of the counterintelligence community for technologies, products, and services.

(D) Training and professional development

To develop policies and standards for training and professional development of individuals engaged in counterintelligence activities and to manage the conduct of joint training exercises for such personnel.
(e) Additional requirements regarding National Threat Identification and Prioritization Assessment and National Counterintelligence Strategy

(1) A National Threat Identification and Prioritization Assessment under subsection (d)(1), and any modification of such assessment, shall not go into effect until approved by the President.

(2) A National Counterintelligence Strategy under subsection (d)(2), and any modification of such strategy, shall not go into effect until approved by the President.

(3) Notwithstanding section 104(d) or any other provision of law limiting the period of the detail of personnel on a nonreimbursable basis, the detail of an officer or employee of United States or a member of the Armed Forces under paragraph (1) on a nonreimbursable basis may be for any period in excess of one year that the National Counterintelligence Executive and the head of the department, agency, or element concerned consider appropriate.

(g) Treatment of activities under certain administrative laws

The files of the Office shall be treated as operational files of the Central Intelligence Agency for purposes of section 701 of the National Security Act of 1947 (50 U.S.C. 431) to the extent such files meet criteria under subsection (b) of that section for treatment of files as operational files of an element of the Agency.

(h) Oversight by Congress

The location of the Office of the National Counterintelligence Executive within the Office of the Director of National Intelligence shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, record, or paper in the possession of the Office; or

(2) any personnel of the Office.

(i) Construction

Nothing in this section shall be construed as affecting the authority of the Director of Na-


Subsec. (h)(1), (2). Pub. L. 108–458, §1071(g)(2)(B)(iii), substituted “Director of National Intelligence” for “Director of Central Intelligence”.


Subsec. (m). Pub. L. 108–458, §1071(g)(2)(B)(iv), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

**Effective Date of 2004 Amendment**

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


§403. Director of National Intelligence

(a) Director of National Intelligence

(1) There is a Director of National Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate. Any individual nominated for appointment as Director of National Intelligence shall have extensive national security expertise.

(2) The Director of National Intelligence shall not be located within the Executive Office of the President.

(b) Principal responsibility

Subject to the authority, direction, and control of the President, the Director of National Intelligence shall—

(1) serve as head of the intelligence community;

(2) act as the principal adviser to the President, to the National Security Council, and the Homeland Security Council for intelligence matters related to the national security; and

(3) consistent with section 1018 of the National Security Intelligence Reform Act of 2004, oversee and direct the implementation of the National Intelligence Program.

(c) Prohibition on dual service

The individual serving in the position of Director of National Intelligence shall not, while so serving, also serve as the Director of the Central Intelligence Agency or as the head of any other element of the intelligence community.


**References in Text**

Section 1018 of the National Security Intelligence Reform Act of 2004, referred to in subsec. (b)(3), is section 1018 of Pub. L. 108–458, which is set out as a note below.

**Prior Provisions**


**Effective Date**

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

**Presidential Guidelines on Implementation and Preservation of Authorities**

Pub. L. 108–458, title I, §1018, Dec. 17, 2004, 118 Stat. 3670, provided that: “The President shall issue guidelines to ensure the effective implementation and execution within the executive branch of the authorities granted to the Director of National Intelligence by this title [see Short Title of 2004 Amendment note set out under section 401 of this title] and the amendments made by this title, in a manner that respects and does not abrogate the statutory responsibilities of the heads of the departments of the United States Government concerning such departments, including, but not limited to:

“(1) the authority of the Director of the Office of Management and Budget; and

“(2) the authority of the principal officers of the executive departments as heads of their respective departments, including, but not limited to, under—

“(A) section 199 of the Revised Statutes (22 U.S.C. 2551);

“(B) title II of the Department of Energy Organization Act (42 U.S.C. 1731 et seq.);

“(C) the State Department Basic Authorities Act of 1956 [Act Aug. 1, 1956, ch. 841, see Tables for classification];

“(D) section 102(a) of the Homeland Security Act of 2002 (6 U.S.C. 112(a)); and

“(E) sections 301 of title 5, 113(b) and 162(b) of title 10, 403 of title 28, and 301(b) of title 31, United States Code.”

**Improvement of Equality of Employment Opportunities in the Intelligence Community**


“(1) It is the recommendation of the Joint Inquiry of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, that the Intelligence Community should enhance recruitment of a more ethnically and culturally diverse workforce and devise a strategy to capitalize upon the unique cultural and linguistic capabilities of first generation Americans.”
“(2) The Intelligence Community could greatly benefit from an increased number of employees who are proficient in foreign languages and knowledgeable of world cultures, especially of foreign languages that are critical to the national security interests of the United States. Particular emphasis should be given to the recruitment of United States citizens whose linguistic capabilities are acutely required for the improvement of the overall intelligence collection and analysis effort of the United States Government.

“(3) The Intelligence Community has a significantly lower percentage of women and minorities than the total workforce of the Federal government and the total civilian labor force.

“(4) Women and minorities continue to be underrepresented in senior grade levels, and in core mission areas, of the intelligence community.”

REPORT ON LESSONS LEARNED FROM MILITARY OPERATIONS IN IRAQ


“(a) REPORT.—As soon as possible, but not later than one year after the date of the enactment of this Act (Dec. 13, 2003), the Director of National Intelligence shall submit to the appropriate committees of Congress a report on the intelligence lessons learned as a result of Operation Iraqi Freedom, including lessons relating to the following:

“(1) The tasking, collection, processing, exploitation, analysis, and dissemination of intelligence.

“(2) The accuracy, timeliness, and objectivity of intelligence analysis.

“(3) The intelligence support available to policymakers and members of the Armed Forces in combat.

“(4) The coordination of intelligence activities and operations with military operations.

“(5) The strengths and limitations of intelligence systems and equipment.

“(6) Such other matters as the Director considers appropriate.

“(b) RECOMMENDATIONS.—The report under subsection (a) shall include such recommendations on improvement in the matters described in subsection (a) as the Director considers appropriate.

“(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘approp"
(2) Such national intelligence should be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community and other appropriate entities.

(b) Access to intelligence

Unless otherwise directed by the President, the Director of National Intelligence shall have access to all national intelligence and intelligence related to the national security which is collected by any Federal department, agency, or other entity, except as otherwise provided by law or, as appropriate, under guidelines agreed upon by the Attorney General and the Director of National Intelligence.

(c) Budget authorities

(1) With respect to budget requests and appropriations for the National Intelligence Program, the Director of National Intelligence shall—
(A) based on intelligence priorities set by the President, provide to the heads of departments containing agencies or organizations within the intelligence community, and to the heads of such agencies and organizations, guidance for developing the National Intelligence Program budget pertaining to such agencies and organizations;
(B) based on budget proposals provided to the Director of National Intelligence by the heads of agencies and organizations within the intelligence community and the heads of their respective departments and, as appropriate, after obtaining the advice of the Joint Intelligence Community Council, develop and determine an annual consolidated National Intelligence Program budget; and
(C) present such consolidated National Intelligence Program budget, together with any comments from the heads of departments containing agencies or organizations within the intelligence community, to the President for approval.

(2) In addition to the information provided under paragraph (1)(B), the heads of agencies and organizations within the intelligence community shall provide the Director of National Intelligence such other information as the Director shall request for the purpose of determining the annual consolidated National Intelligence Program budget under that paragraph.

(3)(A) The Director of National Intelligence shall participate in the development by the Secretary of Defense of the annual budget for the Military Intelligence Program or any successor program or programs.
(B) The Director of National Intelligence shall provide guidance for the development of the annual budget for each element of the intelligence community that is not within the National Intelligence Program.

(4) The Director of National Intelligence shall ensure the effective execution of the annual budget for intelligence and intelligence-related activities.

(5)(A) The Director of National Intelligence shall be responsible for managing appropriations for the National Intelligence Program by directing the allotment or allocation of such appropriations through the heads of the departments containing agencies or organizations within the intelligence community and the Director of the Central Intelligence Agency, with prior notice (including the provision of appropriate supporting information) to the head of the department containing an agency or organization receiving any such allocation or allotment or the Director of the Central Intelligence Agency.

(B) Notwithstanding any other provision of law, pursuant to relevant appropriations Acts for the National Intelligence Program, the Director of the Office of Management and Budget shall exercise the authority of the Director of the Office of Management and Budget to apportion funds, at the exclusive direction of the Director of National Intelligence, for allocation to the elements of the intelligence community through the relevant host executive departments and the Central Intelligence Agency. Department comptrollers or appropriate budget execution officers shall allot, allocate, reprogram, or transfer funds appropriated for the National Intelligence Program in an expeditious manner.

(C) The Director of National Intelligence shall monitor the implementation and execution of the National Intelligence Program by the heads of the elements of the intelligence community that manage programs and activities that are part of the National Intelligence Program, which may include audits and evaluations.

(6) Apportionment and allotment of funds under this subsection shall be subject to chapter 13 and section 1517 of title 31 and the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.).

(7)(A) The Director of National Intelligence shall provide a semi-annual report, beginning April 1, 2005, and ending April 1, 2007, to the President and the Congress regarding implementation of this section.

(B) The Director of National Intelligence shall report to the President and the Congress not later than 15 days after learning of any instance in which a departmental comptroller acts in a manner inconsistent with the law (including permanent statutes, authorization Acts, and appropriations Acts), or the direction of the Director of National Intelligence, in carrying out the National Intelligence Program.

(d) Role of Director of National Intelligence in transfer and reprogramming of funds

(1)(A) No funds made available under the National Intelligence Program may be transferred or reprogrammed without the prior approval of the Director of National Intelligence, except in accordance with procedures prescribed by the Director of National Intelligence.

(B) The Secretary of Defense shall consult with the Director of National Intelligence before transferring or reprogramming funds made available under the Military Intelligence Program or any successor program or programs.

(2) Subject to the succeeding provisions of this subsection, the Director of National Intelligence may transfer or reprogram funds appropriated for a program within the National Intelligence Program—
(A) to another such program;
(B) to other departments or agencies of the United States Government for the develop-
ment and fielding of systems of common concern related to the collection, processing, analysis, exploitation, and dissemination of intelligence information; or

(C) to a program funded by appropriations not within the National Intelligence Program to address critical gaps in intelligence information sharing or access capabilities.

(3) The Director of National Intelligence may only transfer or reprogram funds referred to in paragraph (1)(A)—

(A) with the approval of the Director of the Office of Management and Budget; and

(B) after consultation with the heads of departments containing agencies or organizations within the intelligence community to the extent such agencies or organizations are affected, and, in the case of the Central Intelligence Agency, after consultation with the Director of the Central Intelligence Agency.

(4) The amounts available for transfer or reprogramming in the National Intelligence Program in any given fiscal year, and the terms and conditions governing such transfers and reprogrammings, are subject to the provisions of annual appropriations Acts and this subsection.

(5)(A) A transfer or reprogramming of funds may be made under this subsection only if—

(i) the funds are being transferred to an activity that is a higher priority intelligence activity;

(ii) the transfer or reprogramming supports an emergent need, improves program effectiveness, or increases efficiency;

(iii) the transfer or reprogramming does not involve a transfer or reprogramming of funds to a Reserve for Contingencies of the Director of National Intelligence or the Reserve for Contingencies of the Central Intelligence Agency;

(iv) the transfer or reprogramming results in a cumulative transfer or reprogramming of funds out of any department or agency, as appropriate, funded in the National Intelligence Program in a single fiscal year—

(I) that is less than $150,000,000, and

(II) that is less than 5 percent of amounts available to a department or agency under the National Intelligence Program; and

(v) the transfer or reprogramming does not terminate an acquisition program.

(B) A transfer or reprogramming may be made without regard to a limitation set forth in clause (iv) or (v) of subparagraph (A) if the transfer has the concurrence of the head of the department involved or the Director of the Central Intelligence Agency (in the case of the Central Intelligence Agency). The authority to provide such concurrence may only be delegated by the head of the department involved or the Director of the Central Intelligence Agency (in the case of the Central Intelligence Agency) to the deputy of such officer.

(6) Funds transferred or reprogrammed under this subsection shall remain available for the same period as the appropriations account to which transferred or reprogrammed.

(7) Any transfer or reprogramming of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer or reprogramming for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer or reprogramming and how it satisfies the requirements of this subsection. In addition, the congressional intelligence committees shall be promptly notified of any transfer or reprogramming of funds made pursuant to this subsection in any case in which the transfer or reprogramming would not have otherwise required reprogramming notification under procedures in effect as of December 17, 2004.

(e) Transfer of personnel

(1)(A) In addition to any other authorities available under law for such purposes, in the first twelve months after establishment of a new national intelligence center, the Director of National Intelligence, with the approval of the Director of the Office of Management and Budget and in consultation with the congressional committees of jurisdiction referred to in subparagraph (B), may transfer not more than 100 personnel authorized for elements of the intelligence community to such center.

(B) The Director of National Intelligence shall promptly provide notice of any transfer of personnel made pursuant to this paragraph to—

(i) the congressional intelligence committees;

(ii) the Committees on Appropriations of the Senate and the House of Representatives;

(iii) in the case of the transfer of personnel to or from the Department of Defense, the Committees on Armed Services of the Senate and the House of Representatives; and

(iv) in the case of the transfer of personnel to or from the Department of Justice, to the Committees on the Judiciary of the Senate and the House of Representatives.

(C) The Director shall include in any notice under subparagraph (B) an explanation of the nature of the transfer and how it satisfies the requirements of this subsection.

(2)(A) The Director of National Intelligence, with the approval of the Director of the Office of Management and Budget and in accordance with procedures to be developed by the Director of National Intelligence and the heads of the departments and agencies concerned, may transfer personnel authorized for an element of the intelligence community to another such element for a period of not more than 2 years.

(B) A transfer of personnel may be made under this paragraph only if—

(i) the personnel are being transferred to an activity that is a higher priority intelligence activity; and

(ii) the transfer supports an emergent need, improves program effectiveness, or increases efficiency.

(C) The Director of National Intelligence shall promptly provide notice of any transfer of personnel made pursuant to this paragraph to—

(i) the congressional intelligence committees;
in the case of the transfer of personnel to or from the Department of Defense, the Committees on Armed Services of the Senate and the House of Representatives; and

(iii) in the case of the transfer of personnel to or from the Department of Justice, to the Committees on the Judiciary of the Senate and the House of Representatives.

(D) The Director shall include in any notice under subparagraph (C) an explanation of the nature of the transfer and how it satisfies the requirements of this paragraph.

(3)(A) In addition to the number of full-time equivalent positions authorized for the Office of the Director of National Intelligence for a fiscal year, there is authorized for such Office for each fiscal year an additional 100 full-time equivalent positions that may be used only for the purposes described in subparagraph (B).

(B) Except as provided in subparagraph (C), the Director of National Intelligence may use a full-time equivalent position authorized under subparagraph (A) only for the purpose of providing a temporary transfer of personnel made in accordance with paragraph (2) to an element of the intelligence community to enable such element to increase the total number of personnel authorized for such element, on a temporary basis—

(i) during a period in which a permanent employee of such element is absent to participate in critical language training; or

(ii) to accept a permanent employee of another element of the intelligence community to provide language-capable services.

(C) Paragraph (2)(B) shall not apply with respect to a transfer of personnel made under subparagraph (B).

(D) The Director of National Intelligence shall submit to the congressional intelligence committees an annual report on the use of authorities under this paragraph. Each such report shall include a description of—

(i) the number of transfers of personnel made by the Director pursuant to subparagraph (B), disaggregated by each element of the intelligence community;

(ii) the critical language needs that were fulfilled or partially fulfilled through the use of such transfers; and

(iii) the cost to carry out subparagraph (B).

(4) It is the sense of Congress that—

(A) the nature of the national security threats facing the United States will continue to challenge the intelligence community to respond rapidly and flexibly to bring analytic resources to bear against emerging and unforeseen requirements;

(B) both the Office of the Director of National Intelligence and any analytic centers determined to be necessary should be fully and properly supported with appropriate levels of personnel resources and that the President’s yearly budget requests adequately support those needs; and

(C) the President should utilize all legal and administrative discretion to ensure that the Director of National Intelligence and all other elements of the intelligence community have the necessary resources and procedures to respond promptly and effectively to emerging and unforeseen national security challenges.

(f) Tasking and other authorities

(1)(A) The Director of National Intelligence shall—

(i) establish objectives, priorities, and guidance for the intelligence community to ensure timely and effective collection, processing, analysis, and dissemination (including access by users to collected data consistent with applicable law and, as appropriate, the guidelines referred to in subsection (b) of this section and analytic products generated by or within the intelligence community) of national intelligence;

(ii) determine requirements and priorities for, and manage and direct the tasking of, collection, analysis, production, and dissemination of national intelligence by elements of the intelligence community, including—

(I) approving requirements (including those requirements responding to needs provided by consumers) for collection and analysis; and

(II) resolving conflicts in collection requirements and in the tasking of national collection assets of the elements of the intelligence community; and

(iii) provide advisory tasking to intelligence elements of those agencies and departments not within the National Intelligence Program.

(B) The authority of the Director of National Intelligence under subparagraph (A) shall not apply—

(i) insofar as the President so directs;

(ii) with respect to clause (ii) of subparagraph (A), insofar as the Secretary of Defense exercises tasking authority under plans or arrangements agreed upon by the Secretary of Defense and the Director of National Intelligence; or

(iii) to the direct dissemination of information to State government and local government officials and private sector entities pursuant to sections 121 and 482 of title 6.

(2) The Director of National Intelligence shall oversee the National Counterterrorism Center and may establish such other national intelligence centers as the Director determines necessary.

(3)(A) The Director of National Intelligence shall prescribe, in consultation with the heads of other agencies or elements of the intelligence community, and the heads of their respective departments, personnel policies and programs applicable to the intelligence community that—

(i) encourage and facilitate assignments and career development of personnel of the intelligence community;

(ii) set standards for education, training, and management and retention by the intelligence community; and

(iii) encourage and facilitate the recruitment and retention by the intelligence community of highly qualified individuals for the effective conduct of intelligence activities;

(iv) ensure that the personnel of the intelligence community are sufficiently diverse for
purposes of the collection and analysis of intelligence through the recruitment and training of women, minorities, and individuals with diverse ethnic, cultural, and linguistic backgrounds;

(v) make service in more than one element of the intelligence community a condition of promotion to such positions within the intelligence community as the Director shall specify; and

(vi) ensure the effective management of intelligence community personnel who are responsible for intelligence community-wide matters.

(B) Policies prescribed under subparagraph (A) shall not be inconsistent with the personnel policies otherwise applicable to members of the uniformed services.

(4) The Director of National Intelligence shall ensure compliance with the Constitution and laws of the United States by the Central Intelligence Agency and shall ensure such compliance by other elements of the intelligence community through the host executive departments that manage the programs and activities that are part of the National Intelligence Program.

(5) The Director of National Intelligence shall ensure the elimination of waste and unnecessary duplication within the intelligence community.

(6) The Director of National Intelligence shall establish requirements and priorities for foreign intelligence information to be collected under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), and provide assistance to the Attorney General to ensure that information derived from electronic surveillance or physical searches under that Act is disseminated so it may be used efficiently and effectively for national intelligence purposes, except that the Director shall have no authority to direct or undertake electronic surveillance or physical search operations pursuant to that Act unless authorized by statute or Executive order.

(7)(A) The Director of National Intelligence shall, if the Director determines it is necessary, or may, if requested by a congressional intelligence committee, conduct an accountability review of an element of the intelligence community or the personnel of such element in relation to a failure or deficiency within the intelligence community.

(B) The Director of National Intelligence, in consultation with the Attorney General, shall establish guidelines and procedures for conducting an accountability review under subparagraph (A).

(C)(i) The Director of National Intelligence shall provide the findings of an accountability review conducted under subparagraph (A) and the Director’s recommendations for corrective or punitive action, if any, to the head of the applicable element of the intelligence community. Such recommendations may include a recommendation for dismissal of personnel.

(ii) If the head of such element does not implement a recommendation made by the Director under clause (i), the head of such element shall submit to the congressional intelligence committees a notice of the determination not to implement the recommendation, including the reasons for the determination.

(D) The requirements of this paragraph shall not be construed to limit any authority of the Director of National Intelligence under subsection (m) or with respect to supervision of the Central Intelligence Agency.

(8) The Director of National Intelligence shall perform such other functions as the President may direct.

(9) Nothing in this subchapter shall be construed as affecting the role of the Department of Justice or the Attorney General under the Foreign Intelligence Surveillance Act of 1978.

(g) Intelligence information sharing

(1) The Director of National Intelligence shall have principal authority to ensure maximum availability of and access to intelligence information within the intelligence community consistent with national security requirements. The Director of National Intelligence shall—

(A) establish uniform security standards and procedures;

(B) establish common information technology standards, protocols, and interfaces;

(C) ensure development of information technology systems that include multi-level security and intelligence integration capabilities;

(D) establish policies and procedures to resolve conflicts between the need to share intelligence information and the need to protect intelligence sources and methods;

(E) develop an enterprise architecture for the intelligence community and ensure that elements of the intelligence community comply with such architecture;

(F) have procurement approval authority over all enterprise architecture-related information technology items funded in the National Intelligence Program; and

(G) in accordance with Executive Order No. 13526 (75 Fed. Reg. 707; relating to classified national security information) (or any subsequent corresponding executive order), and part 2001 of title 32, Code of Federal Regulations (or any subsequent corresponding regulation), establish—

(i) guidance to standardize, in appropriate cases, the formats for classified and unclassified intelligence products created by elements of the intelligence community for purposes of promoting the sharing of intelligence products; and

(ii) policies and procedures requiring the increased use, in appropriate cases, and including portion markings, of the classification of portions of information within one intelligence product.

(2) The President shall ensure that the Director of National Intelligence has all necessary support and authorities to fully and effectively implement paragraph (1).

(3) Except as otherwise directed by the President or with the specific written agreement of the head of the department or agency in question, a Federal agency or official shall not be considered to have met any obligation to provide any information, report, assessment, or other material (including unevaluated intelligence information) to that department or agency solely by virtue of having provided that information, report, assessment, or other mate-
rial to the Director of National Intelligence or the National Counterterrorism Center.

(4) Not later than February 1 of each year, the Director of National Intelligence shall submit to the President and to the Congress an annual report that identifies any statute, regulation, policy, or practice that the Director believes impedes the ability of the Director to fully and effectively implement paragraph (1).

(h) Analysis

To ensure the most accurate analysis of intelligence is derived from all sources to support national security needs, the Director of National Intelligence shall—

(1) implement policies and procedures—
   (A) to encourage sound analytic methods and tradecraft throughout the elements of
   the intelligence community;
   (B) to ensure that analysis is based upon all sources available; and
   (C) to ensure that the elements of the intelligence community regularly conduct
   competitive analysis of analytic products, whether such products are produced by or
   disseminated to such elements;
   (2) ensure that resource allocation for intelligence analysis is appropriately proportional
   to resource allocation for intelligence collection systems and operations in order to
   maximize analysis of all collected data;
   (3) ensure that differences in analytic judgment are fully considered and brought to the
   attention of policymakers; and
   (4) ensure that sufficient relationships are established between intelligence collectors
   and analysts to facilitate greater understanding of the needs of analysts.

(i) Protection of intelligence sources and methods

(1) The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.

(2) Consistent with paragraph (1), in order to maximize the dissemination of intelligence, the Director of National Intelligence shall establish and implement guidelines for the intelligence community for the following purposes:
   (A) Classification of information under applicable law, Executive orders, or other
   Presidential directives.
   (B) Access to and dissemination of intelligence, both in final form and in the form
   when initially gathered.
   (C) Preparation of intelligence products in such a way that source information is removed
   to allow for dissemination at the lowest level of classification possible or in unclassified
   form to the extent practicable.
   (3) The Director may only delegate a duty or authority given the Director under this sub-
   section to the Principal Deputy Director of National Intelligence.

(j) Uniform procedures for sensitive compartmented information

The Director of National Intelligence, subject to the direction of the President, shall—

(1) establish uniform standards and procedures for the grant of access to sensitive com-
partmented information to any officer or employee of any agency or department of the
United States and to employees of contractors of those agencies or departments;

(2) ensure the consistent implementation of those standards and procedures throughout
such agencies and departments;

(3) ensure that security clearances granted by individual elements of the intelligence
community are recognized by all elements of the intelligence community, and under con-
tracts entered into by those agencies; and

(4) ensure that the process for investigation and adjudication of an application for access
to sensitive compartmented information is performed in the most expeditious manner
possible consistent with applicable standards for national security.

(k) Coordination with foreign governments

Under the direction of the President and in a manner consistent with section 3927 of title 22,
the Director of National Intelligence shall oversee the coordination of the relationships be-
tween elements of the intelligence community and the intelligence or security services of for-
geen governments or international organizations on all matters involving intelligence related to
the national security or involving intelligence acquired through clandestine means.

(l) Enhanced personnel management

(1)(A) The Director of National Intelligence shall, under regulations prescribed by the Direc-
tor, provide incentives for personnel of elements of the intelligence community to serve—
   (i) on the staff of the Director of National Intelligence;
   (ii) on the staff of the national intelligence centers;
   (iii) on the staff of the National Counter-
terrorism Center; and
   (iv) in other positions in support of the intelligence community management functions of the Director.

   (B) Incentives under subparagraph (A) may include financial incentives, bonuses, and such
   other awards and incentives as the Director considers appropriate.

(2)(A) Notwithstanding any other provision of law, the personnel of an element of the intel-
ligence community who are assigned or detailed under paragraph (1)(A) to service under the Dire-
cotor of National Intelligence shall be promoted at rates equivalent to or better than per-
sonnel of such element who are not so assigned or detailed.

   (B) The Director may prescribe regulations to carry out this paragraph.

(3)(A) The Director of National Intelligence shall prescribe mechanisms to facilitate the ro-
tation of personnel of the intelligence community through various elements of the intel-
gence community in the course of their careers in order to facilitate the widest possible under-
standing by such personnel of the variety of intelligence requirements, methods, users, and capa-
bilities.

(B) The mechanisms prescribed under subparagraph (A) may include the following:
   (i) The establishment of special occupational categories involving service, over the course of
a career, in more than one element of the intelligence community.

(ii) The provision of rewards for service in positions undertaking analysis and planning of operations involving two or more elements of the intelligence community.

(iii) The establishment of requirements for education, training, service, and evaluation for service involving more than one element of the intelligence community.

(C) It is the sense of Congress that the mechanisms prescribed under this subsection should, to the extent practical, seek to duplicate for civilian personnel within the intelligence community the joint officer management policies established by chapter 38 of title 10 and the other amendments made by title IV of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433).

(4)(A) Except as provided in subparagraph (B) and subparagraph (D), this subsection shall not apply with respect to personnel of the elements of the intelligence community who are members of the uniformed services.

(B) Mechanisms that establish requirements for education and training pursuant to paragraph (3)(B)(iii) may apply with respect to members of the uniformed services who are assigned to an element of the intelligence community funded through the National Intelligence Program, but such mechanisms shall not be inconsistent with personnel policies and education and training requirements otherwise applicable to members of the uniformed services.

(C) The personnel policies and programs developed and implemented under this subsection with respect to law enforcement officers (as that term is defined in section 5541(3) of title 5) shall not affect the ability of law enforcement entities to conduct operations or, through the applicable chain of command, to control the activities of such law enforcement officers.

(D) Assignment to the Office of the Director of National Intelligence of commissioned officers of the Armed Forces shall be considered a joint-duty assignment for purposes of the joint officer management policies prescribed by chapter 38 of title 10 and other provisions of that title.

(m) Additional authority with respect to personnel

(1) In addition to the authorities under subsection (f)(5) of this section, the Director of National Intelligence may exercise with respect to the personnel of the Office of the Director of National Intelligence any authority of the Director of the Central Intelligence Agency with respect to the personnel of the Central Intelligence Agency under the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), and other applicable provisions of law, as of December 17, 2004.

(n) Acquisition and other authorities

(1) In carrying out the responsibilities and authorities under this section, the Director of National Intelligence may exercise the acquisition and appropriations authorities referred to in the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) other than the authorities referred to in section 8(b) of that Act (50 U.S.C. 403j(b)).

(2) For the purpose of the exercise of any authority referred to in paragraph (1), a reference to the head of an agency shall be deemed to be a reference to the Director of National Intelligence or the Principal Deputy Director of National Intelligence.

(3)(A) Any determination or decision to be made under an authority referred to in paragraph (1) by the head of an agency may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final.

(B) Except as provided in subparagraph (C), the Director of National Intelligence or the Principal Deputy Director of National Intelligence may, in such official’s discretion, delegate to any officer or other official of the Office of the Director of National Intelligence any authority to make a determination or decision as the head of the agency under an authority referred to in paragraph (1).

(C) The limitations and conditions set forth in section 3(d) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c(d)) shall apply to the exercise by the Director of National Intelligence of an authority referred to in paragraph (1).

(4)(A) In addition to the authority referred to in paragraph (1), the Director of National Intelligence may authorize the head of an element of the intelligence community to exercise an acquisition authority referred to in section 3 or 8(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c and 403j(a)) for an acquisition by such element that is more than 50 percent funded under the National Intelligence Program.

(B) The head of an element of the intelligence community may not exercise an authority referred to in subparagraph (A) until—

(i) the head of such element (without delegation) submits to the Director of National Intelligence a written request that includes—

(I) a description of such authority requested to be exercised;

(II) an explanation of the need for such authority, including an explanation of the reasons that other authorities are insufficient; and
(III) a certification that the mission of such element would be—
   (aa) impaired if such authority is not exercised; or
   (bb) significantly and measurably enhanced if such authority is exercised; and
(ii) the Director of National Intelligence issues a written authorization that includes—
   (I) a description of the authority referred to in subparagraph (A) that is authorized to be exercised; and
   (II) a justification to support the exercise of such authority.

(C) A request and authorization to exercise an authority referred to in subparagraph (A) may be made with respect to an individual acquisition or with respect to a specific class of acquisitions described in the request and authorization referred to in subparagraph (B).

(D)(i) A request from a head of an element of the intelligence community located within one of the departments described in clause (ii) to exercise an authority referred to in subparagraph (A) shall be submitted to the Director of National Intelligence in accordance with any procedures established by the head of such department.

(ii) The departments described in this clause are the Department of Defense, the Department of Energy, the Department of Homeland Security, the Department of Justice, the Department of State, and the Department of the Treasury.

(E)(i) The head of an element of the intelligence community may not be authorized to utilize an authority referred to in subparagraph (A) for a class of acquisitions for a period of more than 3 years, except that the Director of National Intelligence (without delegation) may authorize the use of such an authority for not more than 6 years.

(ii) Each authorization to utilize an authority referred to in subparagraph (B) for successive periods of not more than 3 years, except that the Director of National Intelligence (without delegation) may authorize an extension period of not more than 6 years.

(F) Subject to clauses (i) and (ii) of subparagraph (E), the Director of National Intelligence may only delegate the authority of the Director under subparagraphs (A) through (E) to the Principal Deputy Director of National Intelligence or a Deputy Director of National Intelligence.

(G) The Director of National Intelligence shall submit—
   (i) to the congressional intelligence committees a notification of an authorization to exercise an authority referred to in subparagraph (A) or an extension of such authorization that includes the written authorization referred to in subparagraph (B)(ii); and
   (ii) to the Director of the Office of Management and Budget a notification of an authorization to exercise an authority referred to in subparagraph (A) for an acquisition or class of acquisitions that will exceed $50,000,000 annually.

(H) Requests and authorizations to exercise an authority referred to in subparagraph (A) shall remain available within the Office of the Director of National Intelligence for a period of at least 6 years following the date of such request or authorization.

(i) Nothing in this paragraph may be construed to alter or otherwise limit the authority of the Central Intelligence Agency to independently exercise an authority under section 3 or 8(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c and 403j(a)).

(o) Consideration of views of elements of intelligence community

In carrying out the duties and responsibilities under this section, the Director of National Intelligence shall take into account the views of a head of a department containing an element of the intelligence community and of the Director of the Central Intelligence Agency.

(p) Responsibility of Director of National Intelligence regarding National Intelligence Program budget concerning the Department of Defense

Subject to the direction of the President, the Director of National Intelligence shall, after consultation with the Secretary of Defense, ensure that the National Intelligence Program budgets for the elements of the intelligence community that are within the Department of Defense are adequate to satisfy the national intelligence needs of the Department of Defense, including the needs of the Chairman of the Joint Chiefs of Staff and the commanders of the unified and specified commands, and wherever such elements are performing Government-wide functions, the needs of other Federal departments and agencies.

(q) Acquisitions of major systems

(1) For each intelligence program within the National Intelligence Program for the acquisition of a major system, the Director of National Intelligence shall—
   (A) require the development and implementation of a program management plan that includes cost, schedule, and performance goals and program milestone criteria, except that with respect to Department of Defense programs the Director shall consult with the Secretary of Defense; and
   (B) serve as exclusive milestone decision authority, except that with respect to Department of Defense programs the Director shall serve as milestone decision authority jointly with the Secretary of Defense or the designee of the Secretary; and
   (C) periodically—
      (i) review and assess the progress made toward the achievement of the goals and milestones established in such plan; and
      (ii) submit to Congress a report on the results of such review and assessment.

(2) If the Director of National Intelligence and the Secretary of Defense are unable to reach an agreement on a milestone decision under paragraph (1)(B), the President shall resolve the conflict.

(3) Nothing in this subsection may be construed to limit the authority of the Director of National Intelligence to delegate to any other official any authority to perform the responsibilities of the Director under this subsection.
(4) In this subsection:
   (A) The term “intelligence program”, with respect to the acquisition of a major system, means a program that—
   (i) is carried out to acquire such major system for an element of the intelligence community; and
   (ii) is funded in whole out of amounts available for the National Intelligence Program.
   (B) The term “major system” has the meaning given such term in section 109 of title 41.

(r) Performance of common services
   The Director of National Intelligence shall, in consultation with the heads of departments and agencies of the United States Government containing elements within the intelligence community and with the Director of the Central Intelligence Agency, coordinate the performance by the elements of the intelligence community within the National Intelligence Program of such services as are of common concern to the intelligence community, which services the Director of National Intelligence determines can be more efficiently accomplished in a consolidated manner.

(o) Pay authority for critical positions
   (1) Notwithstanding any pay limitation established under any other provision of law applicable to employees in elements of the intelligence community, the Director of National Intelligence may, in coordination with the Director of the Office of Personnel Management and the Director of the Office of Management and Budget, grant authority to the head of a department or agency to fix the rate of basic pay for one or more positions within the intelligence community at a rate in excess of any applicable limitation, subject to the provisions of this subsection. The exercise of authority so granted is at the discretion of the head of the department or agency employing the individual in a position covered by such authority, subject to the provisions of this subsection and any conditions established by the Director of National Intelligence when granting such authority.
   (2) Authority under this subsection may be granted or exercised only—
      (A) with respect to a position that requires an extremely high level of expertise and is critical to successful accomplishment of an important mission; and
      (B) to the extent necessary to recruit or retain an individual exceptionally well qualified for the position.
   (3) The head of a department or agency may not fix a rate of basic pay under this subsection at a rate greater than the rate payable for level I of Executive Schedule under section 5312 of title 5, except upon written approval of the Director of National Intelligence or as otherwise authorized by law.
   (4) The head of a department or agency may not fix a rate of basic pay under this subsection at a rate greater than the rate payable for level II of Executive Schedule under section 5313 of title 5, except upon written approval of the President in response to a request by the Director of National Intelligence or as otherwise authorized by law.
   (5) Any grant of authority under this subsection for a position shall terminate at the discretion of the Director of National Intelligence.
   (6)(A) The Director of National Intelligence shall notify the congressional intelligence committees not later than 30 days after the date on which the Director grants authority to the head of a department or agency under this subsection.
   (B) The head of a department or agency to which the Director of National Intelligence grants authority under this subsection shall notify the congressional intelligence committees and the Director of the exercise of such authority not later than 30 days after the date on which such head exercises such authority.

(f) Award of rank to members of the Senior National Intelligence Service
   (1) The President, based on the recommendation of the Director of National Intelligence, may award a rank to a member of the Senior National Intelligence Service or other intelligence community senior civilian officer not already covered by such a rank award program in the same manner in which a career appointee of an agency may be awarded a rank under section 4507 of title 5.
   (2) The President may establish procedures to award a rank under paragraph (1) to a member of the Senior National Intelligence Service or a senior civilian officer of the intelligence community whose identity as such a member or officer is classified information (as defined in section 426(1) of this title).

(u) Conflict of interest regulations
   (1) The Director of National Intelligence, in consultation with the Director of the Office of Government Ethics, shall issue regulations prohibiting an officer or employee of an element of the intelligence community from engaging in outside employment if such employment creates a conflict of interest or appearance thereof.
   (2) The Director of National Intelligence shall annually submit to the congressional intelligence committees a report describing all outside employment for officers and employees of elements of the intelligence community that was authorized by the head of an element of the intelligence community during the preceding calendar year. Such report shall be submitted each year on the date provided in section 4507b of this title.

References in Text

chapter 36 (§1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

This subchapter, referred to in subsec. (i)(9), was in the original “this title”, meaning title I of act July 26, 1947, ch. 343, 61 Stat. 496, which is classified generally to this subchapter. For complete classification of title I to the Code, see Tables. Executive Order No. 13226, referred to in subsec. (g)(1)(G), is set out as a note under section 435 of this title.


The Central Intelligence Agency Act of 1949, referred to in subsecs. (m) and (n)(1), is act June 20, 1949, ch. 227, 63 Stat. 298, as amended, which is classified generally to section 403a et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 403a of this title and Tables.

CODIFICATION


PRIOR PROVISIONS

A prior section 403–1, act July 26, 1947, ch. 343, title I, §102A, as added Pub. L. 104–293, title VIII, §805(b), Oct. 24, 1992, 106 Stat. 208, which is classified generally to section 403–1 of this title, was redesignated former par. (3) as (4).


Effective Date

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

AUTHORITIES OF HEADS OF OTHER DEPARTMENTS AND AGENCIES

Pub. L. 111–259, title IV, §402(b), Oct. 7, 2010, 124 Stat. 2709, provided that: “Notwithstanding any other provision of law, the head of any department or agency of the United States is authorized to receive and utilize funds made available to the department or agency by the Director of National Intelligence pursuant to section 102A(d)(2) of the National Security Act of 1947 (50 U.S.C. 403–1(d)(2)), as amended by subsection (a), and receive and utilize any system referred to in such section that is made available to such department or agency.”

JOINT PROCEDURES FOR OPERATIONAL COORDINATION BETWEEN DEPARTMENT OF DEFENSE AND CENTRAL INTELLIGENCE AGENCY


“(a) DEVELOPMENT OF PROCEDURES.—The Director of National Intelligence, in consultation with the Secretary of Defense and the Director of the Central Intelligence Agency, shall develop joint procedures to be used by the Department of Defense and the Central Intelligence Agency to improve the coordination and deconfliction of operations that involve elements of both the Armed Forces and the Central Intelligence Agency consistent with national security and the protection of human intelligence sources and methods.

Those procedures shall, at a minimum, provide the following:

“(1) Methods by which the Director of the Central Intelligence Agency and the Secretary of Defense can improve communication and coordination of military intelligence, planning, execution, and sustainment of operations, including, as a minimum—

“A information exchange between senior officials of the Central Intelligence Agency and senior officers and officials of the Department of Defense when planning for such an operation commences by either organization; and

“B exchange of information between the Secretary and the Director of the Central Intelligence Agency to ensure that senior operational officials in both the Department of Defense and the Central Intelligence Agency have knowledge of the existence of the ongoing operations of the other.

“(2) When appropriate, in cases where the Department of Defense and the Central Intelligence Agency are conducting separate missions in the same geographical area, a mutual agreement on the tactical and strategic objectives for the region and a clear delineation of operational responsibilities to prevent conflict and duplication of effort.

“(b) IMPLEMENTATION REPORT.—Not later than 180 days after the date of the enactment of the Act [Dec. 17, 2004], the Director of National Intelligence shall submit to the congressional defense committees (as defined in section 101 of title 10, United States Code) and the congressional intelligence committees (as defined...
Committee of the House of Representatives on the intelligence products. ("red-team analysis") of the information and conclusions of Intelligence shall establish a process and assign an implementation of subsection (a).'

on Intelligence of the Senate and the Permanent Select date of this Act, the Director of National Intelligence shall, in coordination with the Secretary of Defense and the Deputy Director of National Intelligence, shall jointly carry out the pilot program under subsection (a), the Director shall develop and utilize various mechanisms to facilitate the access to, and the analysis of, intelligence in the databases of the intelligence community by intelligence analysts of other elements of the intelligence community, including the use of so-called ‘detailees in place’.

I. BACKGROUND

II. OBJECTIVES

III. ASSESSMENT

IV. REPORT

V. SECURITY

VI. ENHANCING CLASSIFIED COUNTERTERRORIST TRAVEL EFFORTS

VII. REQUIREMENT FOR EFFICIENT USE BY INTELLIGENCE COMMUNITY OF OPEN-SOURCE INTELLIGENCE

VIII. INTELLIGENCE COMMUNITY USE OF NATIONAL INFRASTRUCTURE SIMULATION AND ANALYSIS CENTER

IX. PILOT PROGRAM ON ANALYSIS OF SIGNALS AND OTHER INTELLIGENCE BY INTELLIGENCE ANALYSTS OF VARIOUS ELEMENTS OF THE INTELLIGENCE COMMUNITY

in section 3(7) of the National Security Act of 1947 (50 U.S.C. 401a(7)) a report describing the procedures established pursuant to subsection (a) and the status of the implementation of those procedures.

ALTERNATIVE ANALYSIS OF INTELLIGENCE BY THE INTELLIGENCE COMMUNITY


“(a) IN GENERAL.—Not later than 180 days after the effective date of this Act [probably means the effective date of title I of Pub. L. 108–458, see Effective Date of 2004 Amendment; Transition Provisions note set out under section 401 of this title], the Director of National Intelligence shall establish a process and assign an individual or entity the responsibility for ensuring that, as appropriate, elements of the intelligence community conduct alternative analysis (commonly referred to as ‘red-team analysis’) of the information and conclusions in intelligence products.

“(b) REPORT.—Not later than 270 days after the effective date of this Act, the Director of National Intelligence shall provide a report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee of the House of Representatives on the implementation of subsection (a).

REQUIREMENT FOR EFFICIENT USE BY INTELLIGENCE COMMUNITY OF OPEN-SOURCE INTELLIGENCE

Pub. L. 108–458, title I, §1062(b), Dec. 17, 2004, 118 Stat. 3683, provided that: "The Director of National Intelligence shall ensure that the intelligence community makes efficient and effective use of open-source information and analysis.’’

ENHANCING CLASSIFIED COUNTERTERRORIST TRAVEL EFFORTS


"(1) IN GENERAL.—The Director of National Intelligence shall significantly increase resources and personnel to the small classified program that collects and analyzes intelligence on terrorist travel.

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this subsection.

INTELLIGENCE COMMUNITY USE OF NATIONAL INFRASTRUCTURE SIMULATION AND ANALYSIS CENTER


"(a) IN GENERAL.—The Director of National Intelligence shall establish a forgoing information sharing, between the elements of the intelligence community and the National Infrastructure Simulation and Analysis Center.

"(b) PURPOSE.—The purpose of the relationship under subsection (a) shall be to permit the intelligence community to take full advantage of the capabilities of the National Infrastructure Simulation and Analysis Center, particularly vulnerability and consequence analysis, for real time response to reported threats and long term planning for projected threats.’’

PILOT PROGRAM ON ANALYSIS OF SIGNALS AND OTHER INTELLIGENCE BY INTELLIGENCE ANALYSTS OF VARIOUS ELEMENTS OF THE INTELLIGENCE COMMUNITY


"(a) IN GENERAL.—The Director of National Intelligence shall, in coordination with the Secretary of Defense, carry out a pilot program to assess the feasibility and advisability of permitting intelligence analysts of various elements of the intelligence community to access and analyze intelligence from the databases of other elements of the intelligence community in order to achieve the objectives set forth in subsection (c).

"(b) COVERED INTELLIGENCE.—The intelligence to be analyzed under the pilot program under subsection (a) shall include the following:

"(1) Signals intelligence of the National Security Agency.

"(2) Such intelligence of other elements of the intelligence community as the Director shall select for purposes of the pilot program.

"(c) OBJECTIVES.—The objectives set forth in this subsection are as follows:

"(1) To enhance the capacity of the intelligence community to undertake ‘all source fusion’ analysis in support of the intelligence and intelligence-related missions of the intelligence community.

"(2) To reduce, to the extent possible, the amount of intelligence collected by the intelligence community that is not assessed, or reviewed, by intelligence analysts.

"(3) To reduce the burdens imposed on analytical personnel of the elements of the intelligence community by current practices regarding the sharing of intelligence among elements of the intelligence community.

"(d) COMMENCEMENT.—The Director shall commence the pilot program under subsection (a) not later than December 31, 2003.

"(e) VARIOUS MECHANISMS REQUIRED.—In carrying out the pilot program under subsection (a), the Director shall develop and utilize various mechanisms to facilitate the access to, and the analysis of, intelligence in the databases of the intelligence community by intelligence analysts of other elements of the intelligence community, including the use of so-called ‘detailees in place’.

"(f) SECURITY.—(1) In carrying out the pilot program under subsection (a), the Director shall take appropriate actions to protect against the disclosure and unauthorized use of intelligence in the databases of the elements of the intelligence community which may endanger sources and methods which (as determined by the Director) warrant protection.

"(2) The actions taken under paragraph (1) shall include the provision of training on the accessing and handling of information in the databases of various elements of the intelligence community and the establishment of limitations on access to information in such databases regarding United States persons.

"(g) ASSESSMENT.—Not later than February 1, 2004, after the commencement under subsection (d) of the pilot program under subsection (a), the Under Secretary of Defense for Intelligence and the Deputy Director of National Intelligence shall jointly carry out an assessment of the progress of the pilot program in meeting the objectives set forth in subsection (c).

"(h) REPORT.—(1) The Director of National Intelligence shall, in coordination with the Secretary of Defense, submit to the appropriate committees of Congress a report on the assessment carried out under subsection (g).

"(2) The report shall include—

"(A) a description of the pilot program under subsection (a);

"(B) the findings of the Under Secretary and Assistant Director [Deputy Director of National Intelligence] as a result of the assessment;

"(C) any recommendations regarding the pilot program that the Under Secretary and the Deputy Director of National Intelligence jointly consider appropriate in light of the assessment; and

"(D) any recommendations that the Director and Secretary consider appropriate for purposes of the report.

"(i) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

"(1) the Select Committee on Intelligence, the Committee on Armed Services, and the Committee on Appropriations of the Senate and

"(2) the Permanent Select Committee on Intelligence, the Committee on Armed Services, and the
Committee on Appropriations of the House of Representatives."

STANDARDIZED TRANSLITERATION OF NAMES INTO THE ROMAN ALPHABET

"(a) METHOD OF TRANSLITERATION REQUIRED.—Not later than 180 days after the date of the enactment of this Act (Nov. 27, 2002), the Director of Central Intelligence shall provide for a standardized method for transliterating into the Roman alphabet personal and place names originally rendered in any language that uses an alphabet other than the Roman alphabet.

"(b) USE BY INTELLIGENCE COMMUNITY.—The Director of National Intelligence shall ensure the use of the method established under subsection (a) in—

"(1) all intelligence products of the intelligence community; and

"(2) all intelligence products of the intelligence community.

STANDARDS FOR SPELLING OF FOREIGN NAMES AND PLACES AND FOR USE OF GEOGRAPHIC COORDINATES
Pub. L. 105–107, title III, § 3308, Nov. 20, 1997, 111 Stat. 2253, provided that:

"(a) SURVEY OF CURRENT STANDARDS.—

"(1) SURVEY.—The Director of Central Intelligence shall carry out a survey of current standards for the spelling of foreign names and places, and the use of geographic coordinates for such places, among the elements of the intelligence community.

"(2) REPORT.—Not later than 90 days after the date of enactment of this Act [Nov. 20, 1997], the Director shall submit to the congressional intelligence committees a report on the survey carried out under paragraph (1). The report shall be submitted in unclassified form, but may include a classified annex.

"(b) GUIDELINES.—

"(1) ISSUANCE.—Not later than 180 days after the date of enactment of this Act, the Director shall issue guidelines to ensure the uniform spelling of foreign names and places and the uniform use of geographic coordinates for such places. The guidelines shall apply to all intelligence reports, intelligence products, and intelligence databases prepared and utilized by the elements of the intelligence community.

"(2) BASIS.—The guidelines under paragraph (1) shall, to the maximum extent practicable, be based on current United States Government standards for the transliteration of foreign names, standards for foreign place names developed by the Board on Geographic Names, and a standard set of geographic coordinates.

"(3) SUBMITTAL TO CONGRESS.—The Director shall submit a copy of the guidelines to the congressional intelligence committees.

"(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term 'congressional intelligence committees' means the following:

"(1) The Select Committee on Intelligence of the Senate.

"(2) The Permanent Select Committee on Intelligence of the House of Representatives.

[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 Central 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.]

DATABASE PROGRAM TRACKING
Pub. L. 104–293, title VIII, § 807(d), Oct. 11, 1996, 110 Stat. 3461, provided that: "Not later than January 1, 1997, the Director of Central Intelligence and the Secretary of Defense shall develop and implement a database to provide timely and accurate information on the amounts, purposes, and status of the resources, including periodic budget execution updates, for all national, defense-wide, and tactical intelligence activities." [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 Central 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.]

IDENTIFICATION OF CONSTITUENT COMPONENTS OF BASE INTELLIGENCE BUDGET
Pub. L. 103–359, title VI, § 603, Oct. 14, 1994, 108 Stat. 3433, provided that: "The Director of Central Intelligence shall include the same level of budgetary detail for the Base Budget that is provided for Ongoing Initiatives and New Initiatives to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate in the congressional justificiation materials for the annual submission of the National Foreign Intelligence Program of each fiscal year."

[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 Central 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.]

§ 403–1a. Assignment of responsibilities relating to analytic integrity

(a) Assignment of responsibilities

For purposes of carrying out section 403–1(h) of this title, the Director of National Intelligence shall, not later than 180 days after December 17, 2004, assign an individual or entity to be responsible for ensuring that finished intelligence products produced by any element or elements of the intelligence community are timely, objective, independent of political considerations, based upon all sources of available intelligence, and employ the standards of proper analytic tradecraft.
§ 403–1b

(b) Responsibilities

(1) The individual or entity assigned responsibility under subsection (a) of this section—
   (A) may be responsible for general oversight and management of analysis and production, but may not be directly responsible for, or involved in, the specific production of any finished intelligence product;
   (B) shall perform, on a regular basis, detailed reviews of finished intelligence product or other analytic products by an element or elements of the intelligence community covering a particular topic or subject matter;
   (B) shall be responsible for identifying on an annual basis functional or topical areas of analysis for specific review under subparagraph (B); and
   (D) upon completion of any review under subparagraph (B), may draft lessons learned, identify best practices, or make recommendations for improvement to the analytic tradecraft employed in the production of the reviewed product or products.

(2) Each review under paragraph (1)(B) should—
   (A) include whether the product or products concerned were based on all sources of available intelligence, properly describe the quality and reliability of underlying sources, properly caveat and express uncertainties or confidence in analytic judgments, properly distinguish between underlying intelligence and the assumptions and judgments of analysts, and incorporate, where appropriate, alternative analyses; and
   (B) ensure that the analytic methodologies, tradecraft, and practices used by the element or elements concerned in the production of the product or products concerned meet the standards set forth in subsection (a) of this section.

(3) Information drafted under paragraph (1)(D) should, as appropriate, be included in analysis teaching modules and case studies for use throughout the intelligence community.

(c) Annual reports

Not later than December 1 each year, the Director of National Intelligence shall submit to the congressional intelligence committees, the heads of the relevant elements of the intelligence community, and the heads of analytic training departments a report containing a description, and the associated findings, of each review under subsection (b)(1)(B) of this section during such year.

(d) Congressional intelligence committees defined

In this section, the term “congressional intelligence committees” means—

(1) the Select Committee on Intelligence of the Senate; and
(2) the Permanent Select Committee on Intelligence of the House of Representatives.


Codification

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the National Security Intelligence Reform Act of 2004, and not as part of the National Security Act of 1947 which comprises this chapter.

Effective Date

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 403 of this title.
Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1907(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

Safeguard of Objectivity in Intelligence Analysis

   “(a) IN GENERAL.—Not later than 180 days after the effective date of this Act [probably means the effective date of title I of Pub. L. 108–458, see Effective Date of 2004 Amendment; Transition Provisions note set out under section 401 of this title], the Director of National Intelligence shall identify an individual within the Office of the Director of National Intelligence who shall be available to analysts within the Office of the Director of National Intelligence to counsel, conduct arbitration, offer recommendations, and, as appropriate, initiate inquiries into real or perceived problems of analytic tradecraft or politicization, biased reporting, or lack of objectivity in intelligence analysis.
   “(b) REPORT.—Not later than 270 days after the effective date of this Act, the Director of National Intelligence shall provide a report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives on the implementation of subsection (a).”

§ 403–1b. Additional education and training requirements

(a) Findings

Congress makes the following findings:

(1) Foreign language education is essential for the development of a highly-skilled workforce for the intelligence community.

(2) Since September 11, 2001, the need for language proficiency levels to meet required national security functions has been raised, and the ability to comprehend and articulate technical and scientific information in foreign languages has become critical.

(b) Linguistic requirements

(1) The Director of National Intelligence shall—
   (A) identify the linguistic requirements for the Office of the Director of National Intelligence;
   (B) identify specific requirements for the range of linguistic skills necessary for the intelligence community, including proficiency in scientific and technical vocabularies of critical foreign languages; and
   (C) develop a comprehensive plan for the Office to meet such requirements through the education, recruitment, and training of linguists.

(2) In carrying out activities under paragraph (1), the Director shall take into account education grant programs of the Department of Defense and the Department of Education that are in existence as of December 17, 2004.

(3) Not later than one year after December 17, 2004, and annually thereafter, the Director shall
submit to Congress a report on the requirements identified under paragraph (1), including the success of the Office of the Director of National Intelligence in meeting such requirements. Each report shall notify Congress of any additional resources determined by the Director to be required to meet such requirements.

(4) Each report under paragraph (3) shall be in unclassified form, but may include a classified annex.

(c) Professional intelligence training

The Director of National Intelligence shall require the head of each element and component within the Office of the Director of National Intelligence who has responsibility for professional intelligence training to periodically review and revise the curriculum for the professional intelligence training of the senior and intermediate level personnel of such element or component in order to—

(1) strengthen the focus of such curriculum on the integration of intelligence collection and analysis throughout the Office; and

(2) prepare such personnel for duty with other departments, agencies, and elements of the intelligence community.


CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the National Security Intelligence Reform Act of 2004, and not as part of the National Security Act of 1947 which comprises this chapter.

Effective Date

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

PILOT PROJECT ON CIVILIAN LINGUIST RESERVE CORPS


“(a) PILOT PROJECT.—(1) The Secretary of Defense shall conduct a pilot project to assess the feasibility and advisability of establishing a Civilian Linguist Reserve Corps comprised of United States citizens with advanced levels of proficiency in foreign languages who would be available upon the call of the Secretary to perform such service or duties with respect to foreign languages in the intelligence community as the Secretary may specify.

“(2) The Secretary shall conduct the pilot project in coordination with the Director of National Intelligence.

“(3) The Secretary shall conduct the pilot project through the National Security Education Program.

“(b) CONDUCT OF PILOT PROJECT.—Taking into account the findings and recommendations contained in the report required under section 325 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2591), in conducting the pilot project under subsection (a) the Secretary of Defense shall—

“(1) identify several foreign languages that are critical for the national security of the United States;

“(2) identify United States citizens with advanced levels of proficiency in the foreign languages identified under paragraph (1) who would be available to perform the services and duties referred to in subsection (a); and

“(3) when considered necessary by the Secretary, implement a call for the performance of such services and duties.

“(c) DURATION OF PROJECT.—The pilot project under subsection (a) shall be conducted for a five-year period.

“(d) AUTHORITY TO ENTER INTO CONTRACTS.—The Secretary of Defense may enter into contracts with appropriate agencies or entities to carry out the pilot project under subsection (a).

“(e) REPORTS.—(1) The Secretary of Defense shall submit to Congress an initial and a final report on the pilot project conducted under subsection (a).

“(2) Each report required under paragraph (1) shall contain information on the operation of the pilot project, the success of the pilot project in carrying out the objectives of the establishment of a Civilian Linguist Reserve Corps, and recommendations for the continuation or expansion of the pilot project.

“(3) The final report shall be submitted not later than six months after the completion of the pilot project.”

§403–1c. National Intelligence Reserve Corps

(a) Establishment

The Director of National Intelligence may provide for the establishment and training of a National Intelligence Reserve Corps (in this section referred to as “National Intelligence Reserve Corps”) for the temporary reemployment on a voluntary basis of former employees of elements of the intelligence community during periods of emergency, as determined by the Director.

(b) Eligible individuals

An individual may participate in the National Intelligence Reserve Corps only if the individual previously served as a full time employee of an element of the intelligence community.

(c) Terms of participation

The Director of National Intelligence shall prescribe the terms and conditions under which eligible individuals may participate in the National Intelligence Reserve Corps.

(d) Expenses

The Director of National Intelligence may provide members of the National Intelligence Reserve Corps transportation and per diem in lieu of subsistence for purposes of participating in any training that relates to service as a member of the Reserve Corps.

(e) Treatment of annuitants

(1) If an annuitant receiving an annuity from the Civil Service Retirement and Disability
§ 403–2. Intelligence community contracting

(a) In general

The Director of National Intelligence shall direct that elements of the intelligence community, whenever compatible with the national security interests of the United States and consistent with the operational and security concerns related to the conduct of intelligence activities, and where fiscally sound, shall award contracts in a manner that would maximize the procurement of products in the United States.

(b) Intelligence community defined

In this section, the term "intelligence community" has the meaning given that term in section 401a(4) of this title.


CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the National Security Intelligence Reform Act of 2004, and not as part of the National Security Act of 1947 which comprises this chapter.

§ 403–2a. Construction of intelligence community facilities; Presidential authorization

(a) No project for the construction of any facility, or improvement to any facility, having an estimated Federal cost in excess of $300,000, may be undertaken in any fiscal year unless specifically identified as a separate item in the President’s annual fiscal year budget request or otherwise specifically authorized and appropriated if such facility or improvement would be used primarily by personnel of the intelligence community.


CODIFICATION

Section was enacted as part of the Department of Defense Appropriations Act, 1995, and not as part of the National Security Act of 1947 which comprises this chapter.

§ 403–2b. Limitation on construction of facilities to be used primarily by intelligence community

(a) In general

(1) In general

Except as provided in subsection (b) of this section, no project for the construction of any facility to be used primarily by personnel of any component of the intelligence community which has an estimated Federal cost in excess of $5,000,000 may be undertaken in any fiscal year unless such project is specifically identified as a separate item in the President’s annual fiscal year budget request and is specifically authorized by the Congress.

(2) Notification

In the case of a project for the construction of any facility to be used primarily by personnel of any component of the intelligence community which has an estimated Federal cost greater than $1,000,000 but less than $5,000,000, or where any improvement project to such a facility has an estimated Federal cost greater than $1,000,000, the Director of National Intelligence shall submit a notification to the intelligence committees specifically identifying such project.

(b) Exception

(1) In general

Notwithstanding subsection (a) of this section but subject to paragraphs (2) and (3), a project for the construction of a facility to be used primarily by personnel of any component of the intelligence community may be carried out if the Secretary of Defense and the Director of National Intelligence jointly determine—

(A) that the project is vital to the national security or to the protection of health, safety, or the quality of the environment, and
that the requirement for the project is so urgent that deferral of the project for inclusion in the next Act authorizing appropriations for the intelligence community would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(2) Report

(A) When a decision is made to carry out a construction project under this subsection, the Secretary of Defense and the Director of National Intelligence jointly shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (i) the justification for the project and the current estimate of the cost of the project, (ii) the justification for carrying out the project under this subsection, and (iii) a statement of the source of the funds to be used to carry out the project. The project may then be carried out only after the end of the 7-day period beginning on the date the notification is received by such committees.

(B) Notwithstanding subparagraph (A), a project referred to in paragraph (1) may begin on the date the notification is received by the appropriate committees of Congress under that paragraph if the Director of National Intelligence and the Secretary of Defense jointly determine that—

(i) an emergency exists with respect to the national security or the protection of health, safety, or environmental quality; and

(ii) any delay in the commencement of the project would harm any or all of those interests.

(3) Projects primarily for CIA

If a project referred to in paragraph (1) is primarily for the Central Intelligence Agency, the Director of the Central Intelligence Agency shall make the determination and submit the report required by paragraphs (1) and (2).

(4) Limitation

A project carried out under this subsection shall be carried out within the total amount of funds appropriated for intelligence and intelligence-related activities that have not been obligated.

(c) Application

This section shall not apply to any project which is subject to subsection (a)(1)(A) or (c) of section 601.


2003—Subsec. (b)(1). Pub. L. 108–177, § 314(a), substituted “$5,000,000” for “$750,000” in pars. (1) and (2) and “$1,000,000” for “$500,000” in two places in par. (2).

Subsec. (b)(2). Pub. L. 108–177, § 314(b), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, substituted “21-day period” for “7-day period”, and added subpar. (B).

DEFINITIONS

Section 604 of title VI of Pub. L. 103–359 provided that: “As used in this title [enacting this section and provisions set out as a note under section 403–3 of this title]:

‘(1) INTELLIGENCE COMMITTEES.—The term ‘intelligence committees’ means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

‘(2) INTELLIGENCE COMMUNITY.—The term ‘intelligence community’ has the same meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)).’

§ 403–3. Office of the Director of National Intelligence

(a) Office of Director of National Intelligence

There is an Office of the Director of National Intelligence.

(b) Function

The function of the Office of the Director of National Intelligence is to assist the Director of National Intelligence in carrying out the duties and responsibilities of the Director under this Act and other applicable provisions of law, and to carry out such other duties as may be prescribed by the President or by law.

(c) Composition

The Office of the Director of National Intelligence is composed of the following:

(1) The Director of National Intelligence.
(2) The Principal Deputy Director of National Intelligence.
(3) Any Deputy Director of National Intelligence appointed under section 403–3a of this title.
(4) The National Intelligence Council.
(5) The General Counsel.
(6) The Civil Liberties Protection Officer.
(7) The Director of Science and Technology.
(8) The National Counterintelligence Executive (including the Office of the National Counterintelligence Executive).
(9) The Chief Information Officer of the Intelligence Community.
(10) The Inspector General of the Intelligence Community.
(11) The Director of the National Counterterrorism Center.
(12) The Director of the National Counter Proliferation Center.
(13) The Chief Financial Officer of the Intelligence Community.

§ 403–3a. Amendments

2010—Subsecs. (a)(2), (b)(1), (2)(A), (B), Pub. L. 111–259, § 809(1), (2)(A), (B), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2003—Subsec. (a). Pub. L. 108–177, § 314(a), substituted “$5,000,000” for “$750,000” in pars. (1) and (2) and “$1,000,000” for “$500,000” in two places in par. (2).

Subsec. (b)(2). Pub. L. 108–177, § 314(b), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, substituted “7-day period” for “21-day period”, and added subpar. (B).
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tablish or designate in the Office, including national intelligence centers.

(d) Staff

(1) To assist the Director of National Intelligence in fulfilling the duties and responsibilities of the Director, the Director shall employ and utilize in the Office of the Director of National Intelligence a professional staff having an expertise in matters relating to such duties and responsibilities, and may establish permanent positions and appropriate rates of pay with respect to that staff.

(2) The staff of the Office of the Director of National Intelligence under paragraph (1) shall include the staff of the Office of the Deputy Director of National Intelligence for Community Management that is transferred to the Office of the Director of National Intelligence under section 1091 of the National Security Intelligence Reform Act of 2004.

(e) Location of the Office of the Director of National Intelligence

The headquarters of the Office of the Director of National Intelligence may be located in the Washington metropolitan region, as that term is defined in section 8301 of title 40.


REFERENCES IN TEXT


Section 1091 of the National Security Intelligence Reform Act of 2004, referred to in subsec. (d)(2), is section 1091 of Pub. L. 108–458, which is set out as a note under section 401 of this title.

PRIOR PROVISIONS


Another prior section 103 of act July 26, 1947, was renumbered section 107 and is classified to section 401 of this title.

AMENDMENTS


Subsec. (c)(9) to (14), Pub. L. 111–259, §407(b), added pars. (9) to (13) and redesignated former par. (9) as (14).

Subsec. (e), Pub. L. 111–259, §403, amended subsec. (e) generally. Prior to amendment, text read as follows: "Commencing as of October 1, 2008, the Office of the Director of National Intelligence may not be co-located with any other element of the intelligence community."

§ 403–3a. Deputy Directors of National Intelligence

(a) Principal Deputy Director of National Intelligence

(1) There is a Principal Deputy Director of National Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) In the event of a vacancy in the position of Principal Deputy Director of National Intelligence, the Director of National Intelligence shall recommend to the President an individual for appointment as Principal Deputy Director of National Intelligence.

(3) Any individual nominated for appointment as Principal Deputy Director of National Intelligence shall have extensive national security experience and management expertise.

(4) The individual serving as Principal Deputy Director of National Intelligence shall not, while so serving, serve in any capacity in any other element of the intelligence community.

(5) The Principal Deputy Director of National Intelligence shall assist the Director of National Intelligence in carrying out the duties and responsibilities of the Director.

(b) Deputy Directors of National Intelligence

(1) There may be not more than four Deputy Directors of National Intelligence who shall be appointed by the Director of National Intelligence.

(2) Each Deputy Director of National Intelligence appointed under this subsection shall have such duties, responsibilities, and authorities as the Director of National Intelligence may assign or are specified by law.

(c) Military status of Director of National Intelligence and Principal Deputy Director of National Intelligence

(1) Not more than one of the individuals serving in the positions specified in paragraph (2) may be a commissioned officer of the Armed Forces in active status.

(2) The positions referred to in this paragraph are the following:

(A) The Director of National Intelligence.

(B) The Principal Deputy Director of National Intelligence.

(3) It is the sense of Congress that, under ordinary circumstances, it is desirable that one of the individuals serving in the positions specified in paragraph (2) —
(A) be a commissioned officer of the Armed Forces, in active status; or
(B) have, by training or experience, an appreciation of military intelligence activities and requirements.

(4) A commissioned officer of the Armed Forces, while serving in a position specified in paragraph (2), (A) shall not be subject to supervision or control by the Secretary of Defense or by any officer or employee of the Department of Defense; (B) shall not exercise, by reason of the officer's status as a commissioned officer, any supervision or control with respect to any of the military or civilian personnel of the Department of Defense except as otherwise authorized by law; and (C) shall not be counted against the numbers and percentages of commissioned officers of the rank and grade of such officer authorized for the military department of that officer.

(5) Except as provided in subparagraph (A) or (B) of paragraph (4), the appointment of an officer of the Armed Forces to a position specified in paragraph (2) shall not affect the status, position, rank, or grade of such officer in the Armed Forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of such status, position, rank, or grade.

(6) A commissioned officer of the Armed Forces on active duty who is appointed to a position specified in paragraph (2), while serving in such position and while remaining on active duty, shall continue to receive military pay and allowances and shall not receive the pay prescribed for such position. Funds from which such pay and allowances are paid shall be reimbursed from funds available to the Director of National Intelligence.


**Effective Date**

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

§ 403–3b. National Intelligence Council

(a) National Intelligence Council

There is a National Intelligence Council.

(b) Composition

(1) The National Intelligence Council shall be composed of senior analysts within the intelligence community and substantive experts from the public and private sector, who shall be appointed by, report to, and serve at the pleasure of, the Director of National Intelligence.

(2) The Director shall prescribe appropriate security requirements for personnel appointed from the private sector as a condition of service on the Council, or as contractors of the Council or employees of such contractors, to ensure the protection of intelligence sources and methods while avoiding, wherever possible, unduly intrusive requirements which the Director considers to be unnecessary for this purpose.

(c) Duties and responsibilities

(1) The National Intelligence Council shall—

(A) produce national intelligence estimates for the United States Government, including alternative views held by elements of the intelligence community and other information as specified in paragraph (2);

(B) evaluate community-wide collection and production of intelligence by the intelligence community and the requirements and resources of such collection and production; and

(C) otherwise assist the Director of National Intelligence in carrying out the responsibilities of the Director under section 403–1 of this title.

(2) The Director of National Intelligence shall ensure that the Council satisfies the needs of policymakers and other consumers of intelligence.

(d) Service as senior intelligence advisers

Within their respective areas of expertise and under the direction of the Director of National Intelligence, the members of the National Intelligence Council shall constitute the senior intelligence advisers of the intelligence community for purposes of representing the views of the intelligence community within the United States Government.

(e) Authority to contract

Subject to the direction and control of the Director of National Intelligence, the National Intelligence Council may carry out its responsibilities under this section by contract, including contracts for substantive experts necessary to assist the Council with particular assessments under this section.

(f) Staff

The Director of National Intelligence shall make available to the National Intelligence Council such staff as may be necessary to permit the Council to carry out its responsibilities under this section.

(g) Availability of Council and staff

(1) The Director of National Intelligence shall take appropriate measures to ensure that the National Intelligence Council and its staff satisfy the needs of policymaking officials and other consumers of intelligence.

(2) The Council shall be readily accessible to policymaking officials and other appropriate individuals not otherwise associated with the intelligence community.

(h) Support

The heads of the elements of the intelligence community shall, as appropriate, furnish such support to the National Intelligence Council, including the preparation of intelligence analyses, as may be required by the Director of National Intelligence.

(i) National Intelligence Council product

For purposes of this section, the term “National Intelligence Council product” includes a
National Intelligence Estimate and any other intelligence community assessment that sets forth the judgment of the intelligence community as a whole on a matter covered by such product.


Effective Date
For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

§403–3c. General Counsel
(a) General Counsel

There is a General Counsel of the Office of the Director of National Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Prohibition on dual service as General Counsel of another agency

The individual serving in the position of General Counsel may not, while so serving, also serve as the General Counsel of any other department, agency, or element of the United States Government.

(c) Scope of position

The General Counsel is the chief legal officer of the Office of the Director of National Intelligence.

(d) Functions

The General Counsel shall perform such functions as the Director of National Intelligence may prescribe.


Effective Date
For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

§403–3d. Civil Liberties Protection Officer
(a) Civil Liberties Protection Officer

(1) Within the Office of the Director of National Intelligence, there is a Civil Liberties Protection Officer who shall be appointed by the Director of National Intelligence.

(2) The Civil Liberties Protection Officer shall report directly to the Director of National Intelligence.

(b) Duties

The Civil Liberties Protection Officer shall—

(1) ensure that the protection of civil liberties and privacy is appropriately incor-
(b) Requirement relating to appointment

An individual appointed as Director of Science and Technology shall have a professional background and experience appropriate for the duties of the Director of Science and Technology.

(c) Duties

The Director of Science and Technology shall—

(1) act as the chief representative of the Director of National Intelligence for science and technology;

(2) chair the Director of National Intelligence Science and Technology Committee under subsection (d) of this section;

(3) assist the Director in formulating a long-term strategy for scientific advances in the field of intelligence;

(4) assist the Director on the science and technology elements of the budget of the Office of the Director of National Intelligence; and

(5) perform other such duties as may be prescribed by the Director of National Intelligence or specified by law.

(d) Director of National Intelligence Science and Technology Committee

(1) There is within the Office of the Director of Science and Technology a Director of National Intelligence Science and Technology Committee.

(2) The Committee shall be composed of the principal science officers of the National Intelligence Program.

(3) The Committee shall—

(A) coordinate advances in research and development related to intelligence; and

(B) perform such other functions as the Director of Science and Technology shall prescribe.

(4) The Committee shall—

(A) coordinate advances in research and development related to intelligence; and

(B) perform such other functions as the Director of Science and Technology shall prescribe.


Effective Date

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment, Transition Provisions note under section 401 of this title.

§ 403–3g. Chief Information Officer

(a) Chief Information Officer

To assist the Director of National Intelligence in carrying out the responsibilities of the Director under this Act and other applicable provisions of law, there shall be within the Office of the Director of National Intelligence a Chief Information Officer of the Intelligence Community who shall be appointed by the President.

(b) Duties and responsibilities

Subject to the direction of the Director of National Intelligence, the Chief Information Officer of the Intelligence Community shall—

(1) manage activities relating to the information technology infrastructure and enterprise architecture requirements of the intelligence community;

(2) have procurement approval authority over all information technology items related to the enterprise architectures of all intelligence community components;

(3) direct and manage all information technology-related procurement for the intelligence community; and

(4) ensure that all expenditures for information technology and research and development activities are consistent with the intelligence community enterprise architecture and the strategy of the Director for such architecture.

(c) Prohibition on simultaneous service as other chief information officer

An individual serving in the position of Chief Information Officer of the Intelligence Community may not, while so serving, serve as the chief information officer of any other department or agency, or component thereof, of the United States Government.


References in Text

This Act, referred to in subsec. (a), means act July 26, 1947, ch. 343, 61 Stat. 495, as amended, known as the National Security Act of 1947. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

Amendments

§ 403–3h

Office of Inspector General of the Intelligence Community shall—

(a) Purpose

The purpose of the Office of the Inspector General of the Intelligence Community is—

(1) to create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independent investigations, inspections, audits, and reviews on programs and activities within the responsibility and authority of the Director of National Intelligence;

(2) to provide leadership and coordination and recommend policies for activities designated—

(A) to promote economy, efficiency, and effectiveness in the administration and implementation of such programs and activities; and

(B) to prevent and detect fraud and abuse in such programs and activities;

(3) to provide a means for keeping the Director of National Intelligence fully and currently informed about—

(A) problems and deficiencies relating to the administration of programs and activities within the responsibility and authority of the Director of National Intelligence; and

(B) the necessity for, and the progress of, corrective actions; and

(4) in the manner prescribed by this section, to ensure that the congressional intelligence committees are kept similarly informed of—

(A) significant problems and deficiencies relating to programs and activities within the responsibility and authority of the Director of National Intelligence; and

(B) the necessity for, and the progress of, corrective actions.

(b) Duties and responsibilities

It shall be the duty and responsibility of the Inspector General of the Intelligence Community, who shall be the head of the Office of the Inspector General of the Intelligence Community, who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) Inspector General of the Intelligence Community

There is an Inspector General of the Intelligence Community, who shall be the head of the Office of the Inspector General of the Intelligence Community, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The nomination of an individual for appointment as Inspector General shall be made—

(A) without regard to political affiliation;

(B) on the basis of integrity, compliance with security standards of the intelligence community, and prior experience in the field of intelligence or national security; and

(C) on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or investigations.

(3) The Inspector General shall report directly to and be under the general supervision of the Director of National Intelligence.

(4) The Inspector General may be removed from office only by the President. The President shall communicate in writing to the congressional intelligence committees the reasons for the removal not later than 30 days prior to the effective date of such removal. Nothing in this paragraph shall be construed to prohibit a personnel action otherwise authorized by law, other than transfer or removal.

(d) Assistant Inspectors General

Subject to the policies of the Director of National Intelligence, the Inspector General of the Intelligence Community shall—

(1) appoint an Assistant Inspector General for Audit who shall have the responsibility for supervising the performance of auditing activities relating to programs and activities within the responsibility and authority of the Director;

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and activities; and

(3) appoint other Assistant Inspectors General that, in the judgment of the Inspector General, are necessary to carry out the duties of the Inspector General.

(e) Duties and responsibilities

It shall be the duty and responsibility of the Assistant Inspector General of the Intelligence Community—

(1) to provide policy direction for, and to plan, conduct, supervise, and coordinate independently, the investigations, inspections, audits, and reviews relating to programs and activities within the responsibility and authority of the Director of National Intelligence;

(2) to keep the Director of National Intelligence fully and currently informed concerning violations of law and regulations, fraud, and other serious problems, abuses, and deficiencies relating to the programs and activities within the responsibility and authority of the Director, to recommend corrective action concerning such problems, and to report on the progress made in implementing such corrective action;

(3) to take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Inspector General.
General, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports; and

(3) by the exercise of the duties and responsibilities under this section, to comply with generally accepted government auditing.

(f) Limitations on activities

(1) The Director of National Intelligence may prohibit the Inspector General of the Intelligence Community from initiating, carrying out, or completing any investigation, inspection, audit, or review if the Director determines that such prohibition is necessary to protect vital national security interests of the United States.

(2) Not later than seven days after the date on which the Director exercises the authority under paragraph (1), the Director shall submit to the congressional intelligence committees an appropriately classified statement of the reasons for the exercise of such authority.

(3) The Director shall advise the Inspector General at the time a statement under paragraph (2) is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the Inspector General with a copy of such statement.

(4) The Inspector General may submit to the congressional intelligence committees any comments on the statement of which the Inspector General has notice under paragraph (3) that the Inspector General considers appropriate.

(g) Authorities

(1) The Inspector General of the Intelligence Community shall have direct and prompt access to the Director of National Intelligence when necessary for any purpose pertaining to the performance of the duties of the Inspector General.

(A) The Inspector General shall, subject to the limitations in subsection (f), make such investigations and reports relating to the administration of the programs and activities within the authorities and responsibilities of the Director as are, in the judgment of the Inspector General, necessary or desirable.

(B) The Inspector General shall have access to any employee, or any employee of a contractor, of any element of the intelligence community needed for the performance of the duties of the Inspector General.

(C) The Inspector General shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials that relate to the programs and activities with respect to which the Inspector General has responsibilities under this section.

(D) The level of classification or compartmentation of information shall not, in and of itself, provide a sufficient rationale for denying the Inspector General access to any materials under subparagraph (C).

(E) The Director, or on the recommendation of the Director, another appropriate official of the intelligence community, shall take appropriate administrative actions against an employee, or an employee of a contractor, of an element of the intelligence community that fails to cooperate with the Inspector General. Such administrative action may include loss of employment or the termination of an existing contractual relationship.

(3) The Inspector General is authorized to receive and investigate, pursuant to subsection (h), complaints or information from any person concerning the existence of an activity within the authorities and responsibilities of the Director of National Intelligence constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received from an employee of the intelligence community—

(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and

(B) no action constituting a reprisal, or threat of reprisal, for making such complaint or disclosing such information to the Inspector General may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(4) The Inspector General shall have the authority to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the duties of the Inspector General, which oath, affirmation, or affidavit when administered or taken by or before an employee of the Office of the Inspector General of the Intelligence Community designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal.

(5) (A) Except as provided in subparagraph (B), the Inspector General is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and evidence in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the duties and responsibilities of the Inspector General.

(B) In the case of departments, agencies, and other elements of the United States Government, the Inspector General shall obtain information, documents, reports, answers, records, accounts, papers, and other data and evidence for the purpose specified in subparagraph (A) using procedures other than by subpoenas.

(C) The Inspector General may not issue a subpoena for, or on behalf of, any component of the Office of the Director of National Intelligence or any element of the intelligence community, including the Office of the Director of National Intelligence.

(D) In the case of contumacy or refusal to obey a subpoena issued under this paragraph, the subpoena shall be enforceable by order of any appropriate district court of the United States.
(6) The Inspector General may obtain services as authorized by section 3109 of title 5 at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for grade GS–15 of the General Schedule under section 3352 of title 5.

(7) The Inspector General may, to the extent and in such amounts as may be provided in appropriations, enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this section.

(h) Coordination among Inspectors General

(1)(A) In the event of a matter within the jurisdiction of the Inspector General of the Intelligence Community that may be subject to an investigation, inspection, audit, or review by both the Inspector General of the Intelligence Community and an inspector general with oversight responsibility for an element of the intelligence community, the Inspector General of the Intelligence Community and such other inspector general shall expeditiously resolve the question of which inspector general shall conduct such investigation, inspection, audit, or review to avoid unnecessary duplication of the activities of the inspectors general.

(B) In attempting to resolve a question under subparagraph (A), the inspectors general concerned may request the assistance of the Intelligence Community Inspectors General Forum established under paragraph (2). In the event of a dispute between an inspector general within a department or agency of the United States Government and the Inspector General of the Intelligence Community that has not been resolved with the assistance of such Forum, the inspectors general shall submit the question to the Director of National Intelligence and the head of the affected department or agency for resolution.

(2)(A) There is established the Intelligence Community Inspectors General Forum, which shall consist of all statutory or administrative inspectors general with oversight responsibility for an element of the intelligence community.

(B) The Inspector General of the Intelligence Community shall serve as the Chair of the Forum established under subparagraph (A). The Forum shall have no administrative authority over any inspector general, but shall serve as a mechanism for informing its members of the work of individual members of the Forum that may be of common interest and discussing questions about jurisdiction or access to employees, employees of contract personnel, records, audits, reviews, documents, recommendations, or other materials that may involve or be of assistance to more than one of its members.

(3) The inspector general conducting an investigation, inspection, audit, or review covered by paragraph (1) shall submit the results of such investigation, inspection, audit, or review to any other inspector general, including the Inspector General of the Intelligence Community, with jurisdiction to conduct such investigation, inspection, audit, or review who did not conduct such investigation, inspection, audit, or review.

(i) Counsel to the Inspector General

(1) The Inspector General of the Intelligence Community shall—

(A) appoint a Counsel to the Inspector General who shall report to the Inspector General; or

(B) obtain the services of a counsel appointed by and directly reporting to another inspector general or the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

(2) The counsel appointed or obtained under paragraph (1) shall perform such functions as the Inspector General may prescribe.

(j) Staff and other support

(1) The Director of National Intelligence shall provide the Inspector General of the Intelligence Community with appropriate and adequate office space at central and field office locations, together with such equipment, office supplies, maintenance services, and communications facilities and services as may be necessary for the operation of such offices.

(2)(A) Subject to applicable law and the policies of the Director of National Intelligence, the Inspector General shall select, appoint, and employ such officers and employees as may be necessary to carry out the functions, powers, and duties of the Inspector General. The Inspector General shall ensure that any officer or employee so selected, appointed, or employed has security clearances appropriate for the assigned duties of such officer or employee.

(B) In making selections under subparagraph (A), the Inspector General shall ensure that such officers and employees have the requisite training and experience to enable the Inspector General to carry out the duties of the Inspector General effectively.

(C) In meeting the requirements of this paragraph, the Inspector General shall create within the Office of the Inspector General of the Intelligence Community a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of the duties of the Inspector General.

(3) Consistent with budgetary and personnel resources allocated by the Director of National Intelligence, the Inspector General has final approval of—

(A) the selection of internal and external candidates for employment with the Office of the Inspector General; and

(B) all other personnel decisions concerning personnel permanently assigned to the Office of the Inspector General, including selection and appointment to the Senior Intelligence Service, but excluding all security-based determinations that are not within the authority of a head of a component of the Office of the Director of National Intelligence.

(4)(A) Subject to the concurrence of the Director of National Intelligence, the Inspector General may request such information or assistance as may be necessary for carrying out the duties and responsibilities of the Inspector General from any department, agency, or other element of the United States Government.

(B) Upon request of the Inspector General for information or assistance under subparagraph
(A), the head of the department, agency, or element concerned shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the department, agency, or element, furnish to the Inspector General, such information or assistance as the Inspector General may request, and, as appropriate, unclassified semiannual report summarizing the activities of the element involved to the Director of National Intelligence.

(C) The Inspector General of the Intelligence Community may, upon reasonable notice to the head of any element of the intelligence community and in coordination with that element’s inspector general pursuant to subsection (h), conduct, as authorized by this section, an investigation, inspection, audit, or review of such element and may enter into any place occupied by such element for purposes of the performance of the duties of the Inspector General.

(k) Reports

(1) (A) The Inspector General of the Intelligence Community shall, not later than January 31 and July 31 of each year, prepare and submit to the Director of National Intelligence a classified, and, as appropriate, unclassified semiannual report summarizing the activities of the Office of the Inspector General of the Intelligence Community during the immediately preceding 6-month period ending December 31 (of the preceding year) and June 30, respectively. The Inspector General of the Intelligence Community shall provide any portion of the report involving a component of a department of the United States Government to the head of that department simultaneously with submission of the report to the Director of National Intelligence.

(B) Each report under this paragraph shall include, at a minimum, the following:

(i) A list of the title or subject of each investigation, inspection, audit, or review conducted during the period covered by such report.

(ii) A description of significant problems, abuses, and deficiencies relating to the administration of programs and activities of the intelligence community within the responsibility and authority of the Director of National Intelligence, and in the relationships between elements of the intelligence community, identified by the Inspector General during the period covered by such report.

(iii) A description of the recommendations for corrective action made by the Inspector General during the period covered by such report with respect to significant problems, abuses, or deficiencies identified in clause (ii).

(iv) A statement of whether or not corrective action has been completed on each significant recommendation described in previous semiannual reports, and, in a case where corrective action has been completed, a description of such corrective action.

(v) A certification of whether or not the Inspector General has had full and direct access to all information relevant to the performance of the functions of the Inspector General.

(vi) A description of the exercise of the subpoena authority under subsection (g)(5) by the Inspector General during the period covered by such report.

(vii) Such recommendations as the Inspector General considers appropriate for legislation to promote economy, efficiency, and effectiveness in the administration and implementation of programs and activities within the responsibility and authority of the Director of National Intelligence, and to detect and eliminate fraud and abuse in such programs and activities.

(C) Not later than 30 days after the date of receipt of a report under subparagraph (A), the Director shall transmit the report to the congressional intelligence committees together with any comments the Director considers appropriate. The Director shall transmit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the United States Government any portion of the report involving a component of such department simultaneously with submission of the report to the congressional intelligence committees.

(B) The Director shall transmit to the congressional intelligence committees each report under subparagraph (A) within 7 calendar days of receipt of such report, together with such comments as the Director considers appropriate. The Director shall transmit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the United States Government any portion of each report under subparagraph (A) that involves a problem, abuse, or deficiency related to a component of such department simultaneously with transmission of the report to the congressional intelligence committees.

(3) (A) In the event that—

(i) the Inspector General is unable to resolve any differences with the Director affecting the execution of the duties or responsibilities of the Inspector General;

(ii) an investigation, inspection, audit, or review carried out by the Inspector General focuses on any current or former intelligence community official who—

(I) holds or held a position in an element of the intelligence community that is subject to appointment by the President, whether or not by and with the advice and consent of the Senate, including such a position held on an acting basis;

(II) holds or held a position in an element of the intelligence community, including a position held on an acting basis, that is appointed by the Director of National Intelligence; or

(III) holds or held a position as head of an element of the intelligence community or a position covered by subsection (b) or (c) of section 403–6 of this title;

(iii) a matter requires a report by the Inspector General to the Department of Justice on possible criminal conduct by a current or former official described in clause (ii);

(iv) the Inspector General receives notice from the Department of Justice declining or...
approving prosecution of possible criminal conduct of any current or former official described in clause (ii); or
(v) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, inspection, audit, or review,
the Inspector General shall immediately notify, and submit a report to, the congressional intelligence committees on such matter.
(B) The Inspector General shall submit to the committees of the Senate and of the House of Representatives with jurisdiction over a department of the United States Government any portion of each report under subparagraph (A) that involves an investigation, inspection, audit, or review carried out by the Inspector General focused on any current or former official of a component of such department simultaneously with submission of the report to the congressional intelligence committees.
(4) The Director shall submit to the congressional intelligence committees any report or findings and recommendations of an investigation, inspection, audit, or review conducted by the office which has been requested by the Chairman or Vice Chairman or ranking minority member of either committee.
(5)(A) An employee of an element of the intelligence community, an employee assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.
(B) Not later than the end of the 14-calendar-day period beginning on the date of receipt from an employee of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the Director a notice of that determination, together with the complaint or information.
(C) Upon receipt of a transmittal from the Inspector General under subparagraph (B), the Director shall, within 7 calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the Director considers appropriate.
(D)(i) If the Inspector General does not find credible under subparagraph (B) a complaint or information submitted under subparagraph (A), the Inspector General shall not transmit the complaint or information to the Director in accurate form under subparagraph (B), the employee (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the congressional intelligence committees directly; and
(ii) A member or employee of one of the congressional intelligence committees who receives a complaint or information under this subparagraph does so in that member or employee’s official capacity as a member or employee of such committee.
(E) The Inspector General shall notify an employee who reports a complaint or information to the Inspector General under this paragraph of each action taken under this paragraph with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.
(F) An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.
(G) In this paragraph, the term “urgent concern” means any of the following:
(i) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information, but does not include differences of opinions concerning public policy matters.
(ii) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.
(iii) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, constituting reprisal or threat of reprisal prohibited under subsection (g)(3)(B) of this section in response to an employee’s reporting an urgent concern in accordance with this paragraph.
(H) Nothing in this section shall be construed to limit the protections afforded to an employee under section 403q(d) of this title or section 8H of the Inspector General Act of 1978 (5 U.S.C. App.).
(6) In accordance with section 535 of title 28, the Inspector General shall expeditiously report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law that involves a program or operation of an element of the intelligence community, or in the relationships between the elements of the intelligence community, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of each such report shall be furnished to the Director.
(I) Construction of duties regarding elements of Intelligence Community
Except as resolved pursuant to subsection (h), the performance by the Inspector General of the

1 So in original. Probably should be “involve”. 
Intelligence Community of any duty, responsibility, or function regarding an element of the intelligence community shall not be construed to modify or affect the duties and responsibilities of any other inspector general having duties and responsibilities relating to such element.

(m) Separate budget account

The Director of National Intelligence shall, in accordance with procedures issued by the Director in consultation with the congressional intelligence committees, include in the National Intelligence Program budget a separate account for the Office of the Inspector General of the Intelligence Community.

(n) Budget

(1) For each fiscal year, the Inspector General of the Intelligence Community shall transmit a budget estimate and request to the Director of National Intelligence that specifies for such fiscal year—

(A) the aggregate amount requested for the operations of the Inspector General;

(B) the amount requested for all training requirements of the Inspector General, including a certification from the Inspector General that the amount requested is sufficient to fund all training requirements for the Office of the Inspector General; and

(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency, including a justification for such amount.

(2) In transmitting a proposed budget to the President for a fiscal year, the Director of National Intelligence shall include for such fiscal year—

(A) the aggregate amount requested for the Inspector General of the Intelligence Community;

(B) the amount requested for Inspector General training;

(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency; and

(D) the comments of the Inspector General, if any, with respect to such proposed budget.

(3) The Director of National Intelligence shall submit to the congressional intelligence committees, the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Representatives for each fiscal year—

(A) a separate statement of the budget estimate transmitted pursuant to paragraph (1);

(B) the amount requested by the Director for the Inspector General pursuant to paragraph (2)(A);

(C) the amount requested by the Director for the training of personnel of the Office of the Inspector General pursuant to paragraph (2)(B);

(D) the amount requested by the Director for support for the Council of the Inspectors General on Integrity and Efficiency pursuant to paragraph (2)(C); and

(E) the comments of the Inspector General under paragraph (2)(D), if any, on the amounts requested pursuant to paragraph (2), including whether such amounts would substantially inhibit the Inspector General from performing the duties of the Office of the Inspector General.


REFERENCES IN TEXT

Section 8H of the Inspector General Act of 1978, referred to in subsec. (k)(5)(H), is section 8H of Pub. L. 95-452, which is set out in the Appendix to Title 5, Government Organization and Employees.

CONSTRUCTION

Pub. L. 111-259, title IV, §405(c), Oct. 7, 2010, 124 Stat. 2719, provided that: "Nothing in the amendment made by subsection (a)(1) [enacting this section] shall be construed to alter the duties and responsibilities of the General Counsel of the Office of the Director of National Intelligence..."

§403–3i. Chief Financial Officer of the Intelligence Community

(a) Chief Financial Officer of the Intelligence Community

To assist the Director of National Intelligence in carrying out the responsibilities of the Director under this Act and other applicable provisions of law, there is within the Office of the Director of National Intelligence a Chief Financial Officer of the Intelligence Community who shall be appointed by the Director.

(b) Duties and responsibilities

Subject to the direction of the Director of National Intelligence, the Chief Financial Officer of the Intelligence Community shall—

(1) serve as the principal advisor to the Director of National Intelligence and the Principal Deputy Director of National Intelligence on the management and allocation of intelligence community budgetary resources;

(2) participate in overseeing a comprehensive and integrated strategic process for resource management within the intelligence community;

(3) ensure that the strategic plan of the Director of National Intelligence—

(A) is based on budgetary constraints as specified in the Future Year Intelligence Plans and Long-term Budget Projections required under section 415a–9 of this title; and

(B) contains specific goals and objectives to support a performance-based budget;

(4) prior to the obligation or expenditure of funds for the acquisition of any major system pursuant to a Milestone A or Milestone B decision, receive verification from appropriate authorities that the national requirements for meeting the strategic plan of the Director have been established, and that such requirements are prioritized based on budgetary constraints as specified in the Future Year Intelligence Plans and the Long-term Budget Projections for such major system required under section 415a–9 of this title; and

(5) ensure that the collection architectures of the Director are based on budgetary constraints as specified in the Future Year Intelligence Plans and the Long-term Budget Pro-
sections required under section 415a–9 of this title;
(6) coordinate or approve representations made to Congress by the intelligence community regarding National Intelligence Program budgetary resources;
(7) participate in key mission requirements, acquisitions, or architectural boards formed within or by the Office of the Director of National Intelligence; and
(8) perform such other duties as may be prescribed by the Director of National Intelligence.

(c) Other law
The Chief Financial Officer of the Intelligence Community shall serve as the Chief Financial Officer of the intelligence community and, to the extent applicable, shall have the duties, responsibilities, and authorities specified in chapter 9 of title 31.

(d) Prohibition on simultaneous service as other Chief Financial Officer
An individual serving in the position of Chief Financial Officer of the Intelligence Community may not, while so serving, serve as the chief financial officer of any other department or agency, or component thereof, of the United States Government.

(e) Definitions
In this section:
(1) The term “major system” has the meaning given that term in section 415a–1(e) of this title.
(2) The term “Milestone A” has the meaning given that term in section 415a–9(f)(1) of this title.
(3) The term “Milestone B” has the meaning given that term in section 415a–9(e) of this title.


REFERENCES IN TEXT
This Act, referred to in subsec. (a), means act July 26, 1947, ch. 343, 61 Stat. 495, known as the National Security Act of 1947. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

§ 403–4. Central Intelligence Agency
(a) Central Intelligence Agency
There is a Central Intelligence Agency.

(b) Function
The function of the Central Intelligence Agency is to assist the Director of the Central Intelligence Agency in carrying out the responsibilities specified in section 403–4(a)(c) of this title.


PRIOR PROVISIONS

Another prior section 104 of act July 26, 1947, was renumbered section 108 and is classified to section 404a of this title.

EFFECTIVE DATE
For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

IMPLEMENTATION OF COMPENSATION REFORM PLAN

Pub. L. 107–306, title IV, §402, Nov. 27, 2002, 116 Stat. 2403, as amended by Pub. L. 108–177, title IV, §405(a), Dec. 13, 2003, 117 Stat. 2632, delayed implementation of a compensation reform plan for Central Intelligence Agency employees, required the Director of Central Intelligence to conduct a pilot project to test the efficacy and fairness of the plan and to submit a report on the project to the congressional intelligence committees, and expressed the sense of Congress that the Director of the National Security Agency should delay implementation of a compensation reform plan for National Security Agency employees and that an employee performance evaluation mechanism should be phased in before implementation of any new compensation plan at either Agency.

DESIGNATION OF HEADQUARTERS COMPOUND OF CENTRAL INTELLIGENCE AGENCY AS THE GEORGE BUSH CENTER FOR INTELLIGENCE
“(a) DESIGNATION.—The headquarters compound of the Central Intelligence Agency located in Langley, Virginia, shall be known and designated as the ‘George Bush Center for Intelligence’.
“(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the headquarters compound referred to in subsection (a) shall be deemed to be a reference to the ‘George Bush Center for Intelligence’.”

COMMUNICATION OF RESTRICTED DATA
Authorization for the communication of Restricted Data by the Central Intelligence Agency, see Ex. Ord. No. 10899, eff. Dec. 9, 1960, 25 F.R. 12729, set out as a note under section 2162 of Title 42. The Public Health and Welfare.

§ 403–4a. Director of the Central Intelligence Agency
(a) Director of Central Intelligence Agency
There is a Director of the Central Intelligence Agency who shall be appointed by the President,
by and with the advice and consent of the Senate.

(b) Supervision

The Director of the Central Intelligence Agency shall report to the Director of National Intelligence regarding the activities of the Central Intelligence Agency.

(c) Duties

The Director of the Central Intelligence Agency shall—

(1) serve as the head of the Central Intelligence Agency; and

(2) carry out the responsibilities specified in subsection (d) of this section.

(d) Responsibilities

The Director of the Central Intelligence Agency shall—

(1) collect intelligence through human sources and by other appropriate means, except that the Director of the Central Intelligence Agency shall have no police, subpoena, or law enforcement powers or internal security functions;

(2) correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence;

(3) provide overall direction for and coordination of the collection of national intelligence outside the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other departments, agencies, or elements of the United States Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that appropriate account is taken of the risks to the United States and those involved in such collection; and

(4) perform such other functions and duties related to intelligence affecting the national security as the President or the Director of National Intelligence may direct.

(e) Termination of employment of CIA employees

(1) Notwithstanding the provisions of any other law, the Director of the Central Intelligence Agency may, in the discretion of the Director, terminate the employment of any officer or employee of the Central Intelligence Agency whenever the Director deems the termination of employment of such officer or employee necessary or advisable in the interests of the United States.

(2) Any termination of employment of an officer or employee under paragraph (1) shall not affect the right of the officer or employee to seek or accept employment in any other department, agency, or element of the United States Government if declared eligible for such employment by the Office of Personnel Management.

(f) Coordination with foreign governments

Under the direction of the Director of National Intelligence and in a manner consistent with section 3927 of Title 22, the Director of the Central Intelligence Agency shall coordinate the relationships between elements of the intelligence community and the intelligence or security services of foreign governments or international organizations on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.

(g) Foreign language proficiency for certain senior level positions in Central Intelligence Agency

(1) Except as provided pursuant to paragraph (2), an individual may not be appointed to a position in the Senior Intelligence Service in the Directorate of Intelligence or the National Clandestine Service of the Central Intelligence Agency unless the Director of the Central Intelligence Agency determines that the individual—

(A) has been certified as having a professional speaking and reading proficiency in a foreign language, such proficiency being at least level 3 on the Interagency Language Roundtable Language Skills Level or commensurate proficiency level using such other indicator of proficiency as the Director of the Central Intelligence Agency considers appropriate; and

(B) is able to effectively communicate the priorities of the United States and exercise influence in that foreign language.

(2) The Director of the Central Intelligence Agency may, in the discretion of the Director, waive the application of paragraph (1) to any position or category of positions otherwise covered by that paragraph if the Director determines that foreign language proficiency is not necessary for the successful performance of the duties and responsibilities of such position or category of positions.


AMENDMENTS


EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–487, title VI, §611(b), Dec. 23, 2004, 118 Stat. 3955, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to appointments made on or after the date that is one year after the date of the enactment of this Act [Dec. 23, 2004].”

EFFECTIVE DATE

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1997(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

POST-EMPLOYMENT RESTRICTIONS

Pub. L. 104–293, title IV, §402, Oct. 11, 1996, 110 Stat. 3468, provided that: “(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Oct. 11, 1996], the Direc-
§ 403–4b Transformation of Central Intelligence Agency

The Director of the Central Intelligence Agency shall, in accordance with standards developed by the Director in consultation with the Director of National Intelligence—

(1) enhance the analytic, human intelligence, and other capabilities of the Central Intelligence Agency;

(2) develop and maintain an effective language program within the Agency;

(3) emphasize the hiring of personnel of diverse backgrounds for purposes of improving the capabilities of the Agency;

(4) establish and maintain effective relationships between human intelligence and signals intelligence within the Agency at the operational level; and

(5) achieve a more effective balance within the Agency with respect to unilateral operations and liaison operations.


CODIFICATION

Section was enacted as part of the Intelligence Reform and Terrorism Prevention Act of 2004, and also as part of the National Security Intelligence Reform Act of 2004, and not as part of the National Security Act of 1947 which comprises this chapter.

EFFECTIVE DATE

For Determination by President that section take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

SENSE OF CONGRESS


(1) the human intelligence officers of the intelligence community have performed admirably and honorably in the face of great personal dangers;

(2) during an extended period of unprecedented investment and improvements in technical collection means, the human intelligence capabilities of the United States have not received the necessary and commensurate priorities;

(3) human intelligence is becoming an increasingly important capability to provide information on the asymmetric threats to the national security of the United States;

(4) the continued development and improvement of a robust and empowered and flexible human intelligence work force is critical to identifying, understanding, and countering the plans and intentions of the adversaries of the United States; and

(5) an increased emphasis on, and resources applied to, enhancing the depth and breadth of human intelligence capabilities of the United States intelligence community must be among the top priorities of the Director of National Intelligence;"

§ 403–4c. Deputy Director of the Central Intelligence Agency

(a) Deputy Director of the Central Intelligence Agency

There is a Deputy Director of the Central Intelligence Agency who shall be appointed by the President.

(b) Duties

The Deputy Director of the Central Intelligence Agency shall—

(1) assist the Director of the Central Intelligence Agency in carrying out the duties and responsibilities of the Director of the Central Intelligence Agency; and

(2) during the absence or disability of the Director of the Central Intelligence Agency, or during a vacancy in the position of Director of the Central Intelligence Agency, act for and exercise the powers of the Director of the Central Intelligence Agency.


EFFECTIVE DATE

Pub. L. 111–259, title IV, §423(c), Oct. 7, 2010, 124 Stat. 2728, provided that: "The amendments made by this section [enacting this section and amending section 3514 of Title 5, Government Organization and Employees] shall apply on the earlier of—

"(1) the date of the appointment by the President of an individual to serve as Deputy Director of the Central Intelligence Agency pursuant to section 104B of the National Security Act of 1947 [50 U.S.C. 403–4c], as added by subsection (a), except that the individual administratively performing the duties of the Deputy Director of the Central Intelligence Agency as of the date of the enactment of this Act (Oct. 7, 2010) may continue to perform such duties until the individual appointed to the position of Deputy Director of the
Central Intelligence Agency assumes the duties of such position; or
"(2) the date of the cessation of the performance of the duties of the Deputy Director of the Central Intelligence Agency by the individual administratively performing such duties as of the date of the enactment of this Act."

§ 403–5. Responsibilities of Secretary of Defense pertaining to National Intelligence Program

(a) In general
Consistent with sections 403 and 403–1 of this title, the Secretary of Defense, in consultation with the Director of National Intelligence, shall—

(1) ensure that the budgets of the elements of the intelligence community within the Department of Defense, including the needs of the chairman of the Joint Chiefs of Staff and the commanders of the unified and specified commands and, wherever such elements are performing governmentwide functions, the needs of other departments and agencies;
(2) ensure appropriate implementation of the policies and resource decisions of the Director by elements of the Department of Defense within the National Intelligence Program;
(3) ensure that the tactical intelligence activities of the Department of Defense complement and are compatible with intelligence activities under the National Intelligence Program;
(4) ensure that the elements of the intelligence community within the Department of Defense are responsive and timely with respect to satisfying the needs of operational military forces;
(5) eliminate waste and unnecessary duplication among the intelligence activities of the Department of Defense; and
(6) ensure that intelligence activities of the Department of Defense are conducted jointly where appropriate.

(b) Responsibility for performance of specific functions
Consistent with sections 403 and 403–1 of this title, the Secretary of Defense shall ensure—

(1) through the National Security Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community;
(2) through the National Reconnaissance Office (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the production of timely, objective military and military-related intelligence, based upon all sources available to the intelligence community, and shall ensure the appropriate dissemination of such intelligence to authorized recipients;
(3) through the National Geospatial-Intelligence Agency (except as otherwise directed by the President or the National Security Council), the effective management of Department of Defense human intelligence activities, including defense attaches; and
(4) that the military departments maintain sufficient capabilities to collect and produce intelligence to meet—

(A) the requirements of the Director of National Intelligence;
(B) the requirements of the Secretary of Defense or the Chairman of the Joint Chiefs of Staff;
(C) the requirements of the unified and specified combatant commands and of joint operations; and
(D) the specialized requirements of the military departments for intelligence necessary to support tactical commanders, military planners, the research and development process, the acquisition of military equipment, and training and doctrine.

(c) Use of elements of Department of Defense
The Secretary of Defense, in carrying out the functions described in this section, may use such elements of the Department of Defense as may be appropriate for the execution of those functions, in addition to, or in lieu of, the elements identified in this section.

(1) prescribing technical architecture and standards related to imagery intelligence and geospatial information and ensuring compliance with such architecture and standards; and
(2) developing and fielding systems of common concern related to imagery intelligence and geospatial information;
(3) through the National Reconnaissance Office (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community;
(4) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the production of timely, objective military and military-related intelligence, based upon all sources available to the intelligence community, and shall ensure the appropriate dissemination of such intelligence to authorized recipients;
(5) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), the effective management of Department of Defense human intelligence activities, including defense attaches; and
(6) that the military departments maintain sufficient capabilities to collect and produce intelligence to meet—

(A) the requirements of the Director of National Intelligence;
(B) the requirements of the Secretary of Defense or the Chairman of the Joint Chiefs of Staff;
(C) the requirements of the unified and specified combatant commands and of joint operations; and
(D) the specialized requirements of the military departments for intelligence necessary to support tactical commanders, military planners, the research and development process, the acquisition of military equipment, and training and doctrine.
For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memo-
The strategy shall be incorporated within the larger Defense intelligence strategy.

(2) Submission.—The Secretary shall submit to Congress a report setting forth the strategy developed under paragraph (1). The report shall be submitted not later than 180 days after the date of the enactment of this Act [Jan. 8, 2006].

(c) Matters to be Included.—The strategy under subsection (b) shall include the following:

"(1) A plan for providing funds over the period of the future-years defense program for the development of a robust open-source intelligence capability for the Department of Defense, with particular emphasis on exploitation and dissemination.

"(2) A description of how management of the collection of open-source intelligence is currently conducted within the Department of Defense and how that management can be improved.

"(3) A description of the tools, systems, centers, organizational entities, and procedures to be used within the Department of Defense to perform open-source intelligence tasking, collection, processing, exploitation, and dissemination.

"(4) A description of proven tradecraft for effective exploitation of open-source intelligence, to include consideration of operational security.

"(5) A detailed description on how open-source intelligence will be fused with all other intelligence sources across the Department of Defense.

"(6) A description of—

"(A) a training plan for Department of Defense intelligence personnel with respect to open-source intelligence; and

"(B) open-source intelligence guidance for Department of Defense intelligence personnel.

"(7) A plan to incorporate the function of oversight of open-source intelligence—

"(A) into the Office of the Undersecretary of Defense for Intelligence; and

"(B) into service intelligence organizations.

"(8) A plan to incorporate and identify an open-source intelligence specialty into personnel systems of the Department of Defense, including military personnel systems.

"(9) A plan for the use of intelligence personnel of the reserve components to augment and support the open-source intelligence mission.

"(10) A plan for the use of the Open-Source Information System for the purpose of exploitation and dissemination of open-source intelligence.

ROLE OF DIRECTOR OF CENTRAL INTELLIGENCE IN EXPERIMENTAL PERSONNEL PROGRAM FOR CERTAIN SCIENTIFIC AND TECHNICAL PERSONNEL

Pub. L. 106–567, title V, § 501, Dec. 27, 2000, 114 Stat. 2850, as amended by Pub. L. 108–136, div. A, title IX, § 921(g), Nov. 24, 2003, 117 Stat. 1570, provided that: "If the Director of Central Intelligence requests that the Secretary of Defense exercise any authority available to the Secretary under section 1101(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 5 U.S.C. 3104 note) to carry out a program of special personnel management authority at the National Geospatial-Intelligence Agency and the National Security Agency in order to facilitate recruitment of eminent experts in science and engineering at such agencies, the Secretary shall respond to such request not later than 30 days after the date of such request." [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 Central 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 1018(a), (b) of Pub. L. 108–458, set out as a note under section 401 of this title.]

§ 403–5a. Assistance to United States law enforcement agencies

(a) Authority to provide assistance

Subject to subsection (b) of this section, elements of the intelligence community may, upon the request of a United States law enforcement agency, collect information outside the United States about individuals who are not United States persons. Such elements may collect such information notwithstanding that the law enforcement agency intends to use the information collected for purposes of a law enforcement investigation or counterintelligence investigation.

(b) Limitation on assistance by elements of Department of Defense

(1) With respect to elements within the Department of Defense, the authority in subsection (a) of this section applies only to the following:

(A) The National Security Agency.

(B) The National Reconnaissance Office.

(C) The National Geospatial-Intelligence Agency.

(D) The Defense Intelligence Agency.

(2) Assistance provided under this section by elements of the Department of Defense may not include the direct participation of a member of the Army, Navy, Air Force, or Marine Corps in an arrest or similar activity.

(3) Assistance may not be provided under this section by an element of the Department of Defense if the provision of such assistance will adversely affect the military preparedness of the United States.

(4) The Secretary of Defense shall prescribe regulations governing the exercise of authority under this section by elements of the Department of Defense, including regulations relating to the protection of sources and methods in the exercise of such authority.

(c) Definitions

For purposes of subsection (a) of this section:

(1) The term "United States law enforcement agency" means any department or agency of the Federal Government that the Attorney General designates as law enforcement agency for purposes of this section.

(2) The term "United States person" means the following:

(A) A United States citizen.

(B) An alien known by the intelligence agency concerned to be a permanent resident alien.

(C) An unincorporated association substantially composed of United States citizens or permanent resident aliens.

(D) A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

(3) The term "United States law enforcement agency" means any department or agency of the Federal Government that the Attorney General designates as law enforcement agency for purposes of this section.

(4) Assistance provided under this section by elements of the Department of Defense may not include the direct participation of a member of the Army, Navy, Air Force, or Marine Corps in an arrest or similar activity.

(5) Assistance may not be provided under this section by an element of the Department of Defense if the provision of such assistance will adversely affect the military preparedness of the United States.

(6) The Secretary of Defense shall prescribe regulations governing the exercise of authority under this section by elements of the Department of Defense, including regulations relating to the protection of sources and methods in the exercise of such authority.

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(1) The term "United States law enforcement agency" means any department or agency of the Federal Government that the Attorney General designates as law enforcement agency for purposes of this section.

(2) The term "United States person" means the following:

(A) A United States citizen.

(B) An alien known by the intelligence agency concerned to be a permanent resident alien.

(C) An unincorporated association substantially composed of United States citizens or permanent resident aliens.

(D) A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

(3) The term "United States law enforcement agency" means any department or agency of the Federal Government that the Attorney General designates as law enforcement agency for purposes of this section.

(4) Assistance provided under this section by elements of the Department of Defense may not include the direct participation of a member of the Army, Navy, Air Force, or Marine Corps in an arrest or similar activity.

(5) Assistance may not be provided under this section by an element of the Department of Defense if the provision of such assistance will adversely affect the military preparedness of the United States.

(6) The Secretary of Defense shall prescribe regulations governing the exercise of authority under this section by elements of the Department of Defense, including regulations relating to the protection of sources and methods in the exercise of such authority.

(c) Definitions

For purposes of subsection (a) of this section:

(1) The term "United States law enforcement agency" means any department or agency of the Federal Government that the Attorney General designates as law enforcement agency for purposes of this section.

(2) The term "United States person" means the following:

(A) A United States citizen.

(B) An alien known by the intelligence agency concerned to be a permanent resident alien.

(C) An unincorporated association substantially composed of United States citizens or permanent resident aliens.

(D) A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.
§ 403–5b. Disclosure of foreign intelligence acquired in criminal investigations; notice of criminal investigations of foreign intelligence sources

(a) Disclosure of foreign intelligence

(1) Except as otherwise provided by law and subject to paragraph (2), the Attorney General, or the head of any other department or agency of the Federal Government with law enforcement responsibilities, shall expeditiously disclose to the Director of National Intelligence, pursuant to guidelines developed by the Attorney General in consultation with the Director, foreign intelligence acquired by an element of the Department of Justice or an element of such department or agency, as the case may be, in the course of a criminal investigation.

(2) The Attorney General by regulation and in consultation with the Director may provide for exceptions to the applicability of paragraph (1) for one or more classes of foreign intelligence, or foreign intelligence with respect to one or more targets or matters, if the Attorney General determines that disclosure of such foreign intelligence under that paragraph would jeopardize an ongoing law enforcement investigation or impair other significant law enforcement interests.

(b) Procedures for notice of criminal investigations

Not later than 180 days after October 26, 2001, the Attorney General, in consultation with the Director of National Intelligence, shall develop guidelines to ensure that after receipt of a report from an element of the intelligence community of activity of a foreign intelligence source or potential foreign intelligence source that may warrant investigation as criminal activity, the Attorney General provides notice to the Director, within a reasonable period of time, of his intention to commence, or decline to commence, a criminal investigation of such activity.

(c) Procedures

The Attorney General shall develop procedures for the administration of this section, including the disclosure of information by elements of the Department of Justice, and elements of other departments and agencies of the Federal Government, under subsection (a) of this section and the provision of notice with respect to criminal investigations under subsection (b) of this section.


Prior Provisions


Amendments


Subsec. (b). Pub. L. 108–458, §1071(a)(2)(C), struck out “of Central Intelligence” after “notice to the Director”.

Pub. L. 108–458, §1071(a)(1)(H), substituted “with the Director of National Intelligence” for “with the Director of Central Intelligence”.

Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


§ 403–5c. Transferred

Codification


§ 403–5d. Foreign intelligence information

(1) In general

Notwithstanding any other provision of law, it shall be lawful for foreign intelligence or counterintelligence (as defined in section 401a of this title) or foreign intelligence information obtained as part of a criminal investigation to be disclosed to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties. Any Federal official who receives foreign intelligence information pursuant to this provision may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information. Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision
may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.

(2) Definition

In this section, the term “foreign intelligence information” means—

(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power;

(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

(i) the national defense or the security of the United States; or

(ii) the conduct of the foreign affairs of the United States.


CODIFICATION

Section was enacted as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or USA PATRIOT Act, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS

2002—Par. (1). Pub. L. 107–296 inserted at end “Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.”
§ 403–7. Prohibition on using journalists as agents or assets

(a) Policy

It is the policy of the United States that an element of the Intelligence Community may not use as an agent or asset for the purposes of collecting intelligence any individual who—

(1) is authorized by contract or by the issuance of press credentials to represent himself or herself, either in the United States or abroad, as a correspondent of a United States news media organization; or

(2) is officially recognized by a foreign government as a representative of a United States media organization.

(b) Waiver

Pursuant to such procedures as the President may prescribe, the President or the Director of Central Intelligence may waive subsection (a) of this section in the case of an individual if the President or the Director, as the case may be, makes a written determination that the waiver is necessary to address the overriding national security interest of the United States. The Permanent Select Committee on Intelligence of the Senate shall be notified of any waiver under this subsection.

(c) Voluntary cooperation

Subsection (a) of this section shall not be construed to prohibit the voluntary cooperation of any person who is aware that the cooperation is being provided to an element of the United States Intelligence Community.


Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out as an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

AMENDMENTS


2004—Pub. L. 108–458 amended text generally, substituting provisions relating to involvement of Director of National Intelligence in appointments, consisting of subsecs. (a) to (c), for provisions relating to involvement of Director of Central Intelligence in appointments, consisting of subsecs. (a) and (b).


2001—Subsec. (b)(2)(C), (D). Pub. L. 107–108 added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: “the Director of the Office of Nonproliferation and National Security of the Department of Energy.”

1994—Pub. L. 103–359 substituted “Assistant Secretary of State for Intelligence and Research.” in place of “Assistant Secretary for Intelligence”. under section 403–7. Prohibition on using journalists as agents or assets.
§ 403–8. Reaffirmation of longstanding prohibition against drug trafficking by employees of the intelligence community

(a) Finding

Congress finds that longstanding statutes, regulations, and policies of the United States prohibit employees, agents, and assets of the elements of the intelligence community, and of every other Federal department and agency, from engaging in the illegal manufacture, purchase, sale, transport, and distribution of drugs.

(b) Obligation of employees of intelligence community

Any employee of the intelligence community having knowledge of a fact or circumstance that reasonably indicates that an employee, agent, or asset of an element of the intelligence community is involved in any activity that violates a statute, regulation, or policy described in subsection (a) of this section shall report such knowledge to an appropriate official.

(c) Intelligence community defined

In this section, the term “intelligence community” has the meaning given that term in section 401a(4) of this title.


CODIFICATION

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 2000, and not as part of the National Security Act of 1947 which comprises this chapter.

§ 403–9. Information access by the Comptroller General of the United States

(a) DNI directive governing access

(1) Requirement for directive

The Director of National Intelligence, in consultation with the Comptroller General of the United States, shall issue a written directive governing the access of the Comptroller General to information in the possession of an element of the intelligence community.

(2) Amendment to directive

The Director of National Intelligence, in consultation with the Comptroller General, may issue an amendment to the directive issued under paragraph (1) at any time the Director determines such an amendment is appropriate.

(3) Relationship to other laws

The directive issued under paragraph (1) and any amendment to such directive issued under paragraph (2) shall be consistent with the provisions of—

(A) chapter 7 of title 31; and

(B) the National Security Act of 1947 (50 U.S.C. 401 et seq.).

(b) Confidentiality of information

(1) Requirement for confidentiality

The Comptroller General of the United States shall ensure that the level of confidentiality of information made available to the Comptroller General pursuant to the directive issued under subsection (a)(1) or an amendment to such directive issued under subsection (a)(2) is not less than the level of confidentiality of such information required of the head of the element of the intelligence community from which such information was obtained.

(2) Penalties for unauthorized disclosure

An officer or employee of the Government Accountability Office shall be subject to the same statutory penalties for unauthorized disclosure or use of such information as an officer or employee of the element of the intelligence community from which such information was obtained.

(c) Submission to Congress

(1) Submission of directive

The directive issued under subsection (a)(1) shall be submitted to Congress by the Director of National Intelligence, together with any comments of the Comptroller General of the United States, no later than May 1, 2011.

(2) Submission of amendment

Any amendment to such directive issued under subsection (a)(2) shall be submitted to Congress by the Director, together with any comments of the Comptroller General.

(d) Effective date

The directive issued under subsection (a)(1) and any amendment to such directive issued under subsection (a)(2) shall take effect 60 days after the date such directive or amendment is submitted to Congress under subsection (c), unless the Director determines that for reasons of national security the directive or amendment should take effect sooner.


REFERENCES IN TEXT


CODIFICATION

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 2010, and not as part of the National Security Act of 1947 which comprises this chapter.

DEFINITION

For definition of “intelligence community”, see section 2 of Pub. L. 111–259, set out as a note under section 401a of this title.

§ 403a. Definitions relating to Central Intelligence Agency

When used in sections 403a to 403s of this title, the term—

(1) “Agency” means the Central Intelligence Agency;

(2) “Director” means the Director of the Central Intelligence Agency; and

(3) “Government agency” means any executive department, commission, council, independent establishment, corporation wholly or
partly owned by the United States which is an instrumentality of the United States board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government.


CODIFICATION

Section was enacted as part of the Central Intelligence Agency Act of 1949 and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS

2004—Pub. L. 108–458 redesignated subsecs. (a) to (c) as pars. (1) to (3), respectively, and amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Director" means the Director of Central Intelligence.


§ 403b. Seal of office of Central Intelligence Agency

The Director shall cause a seal of office to be made for the Central Intelligence Agency, of such design as the President shall approve, and judicial notice shall be taken thereof.


CODIFICATION

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS

2004—Pub. L. 108–458 struck out "of Central Intelligence" after "Director".

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


§ 403c. Procurement authority of Central Intelligence Agency

(a) Purchases and contracts for supplies and services

In the performance of its functions the Central Intelligence Agency is authorized to exercise the authorities contained in sections 2304(a)(1) to (6), (10), (12), (15), (17), and sections 2305(a) to (c), 2306, 2307, 2308, 2309, 2312, and 2313 of title 10.1

(b) "Agency head" defined

In the exercise of the authorities granted in subsection (a) of this section, the term "Agency head" shall mean the Director, the Deputy Director, or the Executive of the Agency.

(c) Classes of purchases and contracts; finality of decision; powers delegable

The determinations and decisions provided in subsection (a) of this section to be made by the Agency head may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final. Except as provided in subsection (d) of this section, the Agency head is authorized to delegate his powers provided in this section, including the making of such determinations and decisions, in his discretion and subject to his direction, to any other officer or officers or officials of the Agency.

(d) Powers not delegable; written findings

The power of the Agency head to make the determinations or decisions specified in paragraphs (12) and (15) of section 2304(a) and section 2307(a) of title 10 shall not be delegable. Each determination or decision required by paragraphs (12) and (15) of section 2304(a), by sections 2306 and 2313, or by section 2307(a) of title 10 shall be based upon written findings made by the official making such determinations, which findings shall be final and shall be available within the Agency for a period of at least six years following the date of the determination. (June 20, 1949, ch. 227, §3, 63 Stat. 208; Pub. L. 97–269, title V, §502(a), Sept. 27, 1982, 96 Stat. 1145; Pub. L. 104–106, div. E, title LVI, §5607(f), Feb. 10, 1996, 110 Stat. 702.)

CODIFICATION

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS

2004—Pub. L. 108–458 struck out "of Central Intelligence" after "Director".

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


1 See Codification note below.
§ 403e. Central Intelligence Agency personnel; allowances and benefits

(a) Travel, allowances, and related expenses for officers and employees assigned to duty stations outside United States

Under such regulations as the Director may prescribe, the Agency, with respect to its officers and employees assigned to duty stations outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia, shall—

1. (A) pay the travel expenses of officers and employees of the Agency, including expenses incurred while traveling pursuant to authorized home leave;

2. (B) pay the travel expenses of members of the family of an officer or employee of the Agency when proceeding to or returning from his post of duty; accompanying him on authorized home leave; or otherwise traveling in accordance with authority granted pursuant to the terms of sections 403a to 403s of this title or any other Act;

3. (C) pay the cost of transporting the furniture and household and personal effects of an officer or employee of the Agency to his successive posts of duty and, on the termination of his services, to his residence at time of appointment or to a point not more distant, or, upon retirement, to the place where he will reside;

4. (D) pay the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of an officer or employee of the Agency, when he is absent from his post of assignment under orders, or when he is assigned to a post to which he cannot take or at which he is unable to use such furniture and household personal effects, or when it is in the public interest or more economical to authorize storage; but in no instance shall the weight or volume of the effects transported exceed the maximum limitations fixed by regulations, when not otherwise fixed by law;

5. (E) pay the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of an officer or employee of the Agency in connection with assignment or transfer to a new post, from the date of his departure from his last post or from the date of his departure, from his place of residence in the case of a new officer or employee and for not to exceed three months after arrival at the new post, or until the establishment of a quarters, whichever shall be shorter; and in connection with separation of an officer or employee of the Agency, the cost of packing and unpacking, transporting to and from a place of storage, and storing for a period not to exceed three months, his furniture and household and personal effects; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations, when not otherwise fixed by law;

6. (F) pay the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of an officer or employee of the Agency in connection with assignment or transfer to a new post, from the date of his departure from his last post or from the date of his departure, from his place of residence in the case of a new officer or employee and for not to exceed three months after arrival at the new post, or until the establishment of a quarters, whichever shall be shorter; and in connection with separation of an officer or employee of the Agency, the cost of packing and unpacking, transporting to and from a place of storage, and storing for a period not to exceed three months, his furniture and household and personal effects; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the max-


Section, act June 20, 1949, ch. 227, § 4, 63 Stat. 308, related to education and training of officers and employees. See section 4101 et seq. of Title 5, Government Organization and Employees.

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.
§ 403e  See Codification note below.

So in original. The period probably should be a semicolon.

[F] pay the travel expenses and transportation costs incident to the removal of the members of the family of an officer or employee of the Agency and his furniture and household and personal effects, including automobiles, from a post at which, because of the prevalence of disturbed conditions, there is imminent danger to life and property, and the return of such persons, furniture, and effects to such post upon the cessation of such conditions; or to such other post as may in the meantime have become the post to which such officer or employee has been assigned.

(2) Charge expenses in connection with travel of personnel, their dependents, and transportation of their household goods and personal effects, involving a change of permanent station, to the appropriation for the fiscal year current when any part of either the travel or transportation pertaining to the transfer begins pursuant to previously issued travel and transfer orders, notwithstanding the fact that such travel or transportation may not all be effected during such fiscal year, or the travel and transfer orders may have been issued during the prior fiscal year.

(3)(A) Order to any of the several States of the United States of America (including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States) on leave of absence each of its officers or employees, by whatever means the Director determines to be the most practicable and in the interest of the Government. After the expiration of a period of four years following the date of transportation under authority of this paragraph of a privately owned motor vehicle of any officer or employee who has remained in continuous service outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia, during such period, the transportation of a replacement for such motor vehicle for such officer or employee may be authorized by the Director in accordance with this paragraph.

(5)(A) In the event of illness or injury requiring the hospitalization of an officer or full time employee of the Agency incurred while on assignment abroad, in a locality where there does not exist a suitable hospital or clinic, pay the travel expenses of such officer or employee by whatever means the Director deems appropriate and without regard to the Standardized Government Travel Regulations and section 5751 of title 5, to the nearest locality where a suitable hospital or clinic exists and on the recovery of such officer or employee pay for the travel expenses of the return to the post of duty of such officer or employee. If the officer or employee is too ill to travel unattended, the Director may also pay the travel expenses of an attendant.

(B) Establish a first-aid station and provide for the services of a nurse at a post at which, in the opinion of the Director, sufficient personnel is employed to warrant such a station:

Provided, That, in the opinion of the Director, it is not feasible to utilize an existing facility;

(C) Where an officer or employee on leave returns to the United States (as described in paragraph (3)(A) of this subsection) on leave, the service of any officer or employee shall be available for work or duties in the Agency or elsewhere as the Director may prescribe; and the time of such work or duty shall not be counted as leave.

(D) Provide for the periodic physical examination of officers and employees of the Agency and for the cost of administering inoculation or vaccinations to such officers or employees.

(E) Pay the costs of preparing and transporting the remains of an officer or employee of the Agency or a member of his family who may die while in travel status or abroad, to his home or official station, or to such other place as the Director may determine to be the appropriate place of interment, provided that in no case shall the expense payable be greater than the amount which would have been payable had the destination been the home or official station.

(F) Pay the travel expenses and transportation costs incident to the removal of household goods and personal effects to such post upon the cessation of such conditions; or to such other post as may in the meantime have become the post to which such officer or employee has been assigned.

(2) Charge expenses in connection with travel of personnel, their dependents, and transportation of their household goods and personal effects, involving a change of permanent station, to the appropriation for the fiscal year current when any part of either the travel or transportation pertaining to the transfer begins pursuant to previously issued travel and transfer orders, notwithstanding the fact that such travel or transportation may not all be effected during such fiscal year, or the travel and transfer orders may have been issued during the prior fiscal year.

(3)(A) Order to any of the several States of the United States of America (including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States) on leave of absence each of its officers or employees, by whatever means the Director determines to be the most practicable and in the interest of the Government. After the expiration of a period of four years following the date of transportation under authority of this paragraph of a privately owned motor vehicle of any officer or employee who has remained in continuous service outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia, during such period, the transportation of a replacement for such motor vehicle for such officer or employee may be authorized by the Director in accordance with this paragraph.

(5)(A) In the event of illness or injury requiring the hospitalization of an officer or full time employee of the Agency incurred while on assignment abroad, in a locality where there does not exist a suitable hospital or clinic, pay the travel expenses of such officer or employee by whatever means the Director deems appropriate and without regard to the Standardized Government Travel Regulations and section 5751 of title 5, to the nearest locality where a suitable hospital or clinic exists and on the recovery of such officer or employee pay for the travel expenses of the return to the post of duty of such officer or employee. If the officer or employee is too ill to travel unattended, the Director may also pay the travel expenses of an attendant.

(B) Establish a first-aid station and provide for the services of a nurse at a post at which, in the opinion of the Director, sufficient personnel is employed to warrant such a station:

Provided, That, in the opinion of the Director, it is not feasible to utilize an existing facility;

(C) Where an officer or employee on leave returns to the United States (as described in paragraph (3)(A) of this subsection) on leave, the service of any officer or employee shall be available for work or duties in the Agency or elsewhere as the Director may prescribe; and the time of such work or duty shall not be counted as leave.

(D) Provide for the periodic physical examination of officers and employees of the Agency and for the cost of administering inoculation or vaccinations to such officers or employees.

(E) Pay the costs of preparing and transporting the remains of an officer or employee of the Agency or a member of his family who may die while in travel status or abroad, to his home or official station, or to such other place as the Director may determine to be the appropriate place of interment, provided that in no case shall the expense payable be greater than the amount which would have been payable had the destination been the home or official station.

(F) Pay the travel expenses and transportation costs incident to the removal of household goods and personal effects to such post upon the cessation of such conditions; or to such other post as may in the meantime have become the post to which such officer or employee has been assigned.

(2) Charge expenses in connection with travel of personnel, their dependents, and transportation of their household goods and personal effects, involving a change of permanent station, to the appropriation for the fiscal year current when any part of either the travel or transportation pertaining to the transfer begins pursuant to previously issued travel and transfer orders, notwithstanding the fact that such travel or transportation may not all be effected during such fiscal year, or the travel and transfer orders may have been issued during the prior fiscal year.

(3)(A) Order to any of the several States of the United States of America (including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States) on leave of absence each of its officers or employees, by whatever means the Director determines to be the most practicable and in the interest of the Government. After the expiration of a period of four years following the date of transportation under authority of this paragraph of a privately owned motor vehicle of any officer or employee who has remained in continuous service outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia, during such period, the transportation of a replacement for such motor vehicle for such officer or employee may be authorized by the Director in accordance with this paragraph.

(5)(A) In the event of illness or injury requiring the hospitalization of an officer or full time employee of the Agency incurred while on assignment abroad, in a locality where there does not exist a suitable hospital or clinic, pay the travel expenses of such officer or employee by whatever means the Director deems appropriate and without regard to the Standardized Government Travel Regulations and section 5751 of title 5, to the nearest locality where a suitable hospital or clinic exists and on the recovery of such officer or employee pay for the travel expenses of the return to the post of duty of such officer or employee. If the officer or employee is too ill to travel unattended, the Director may also pay the travel expenses of an attendant.

(B) Establish a first-aid station and provide for the services of a nurse at a post at which, in the opinion of the Director, sufficient personnel is employed to warrant such a station:

Provided, That, in the opinion of the Director, it is not feasible to utilize an existing facility;

(C) Where an officer or employee on leave returns to the United States (as described in paragraph (3)(A) of this subsection) on leave, the service of any officer or employee shall be available for work or duties in the Agency or elsewhere as the Director may prescribe; and the time of such work or duty shall not be counted as leave.

(D) Provide for the periodic physical examination of officers and employees of the Agency and for the cost of administering inoculation or vaccinations to such officers or employees.

(E) Pay the costs of preparing and transporting the remains of an officer or employee of the Agency or a member of his family who may die while in travel status or abroad, to his home or official station, or to such other place as the Director may determine to be the appropriate place of interment, provided that in no case shall the expense payable be greater than the amount which would have been payable had the destination been the home or official station.
shall be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate before such regulations take effect.


REFERENCES IN TEXT


COMPARISON

In subsec. (a)(3)(B), (C), “this subsection” substituted for “this section” as the probable intent of Congress in view of the designation of the existing provisions of this section as subsec. (a) and the addition of subsec. (b) by Pub. L. 97–89, title V, §501, Dec. 4, 1981, 95 Stat. 1152.

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS

2003—Subsec. (b)(5). Pub. L. 108–177 inserted “, other than regulations under paragraph (1),” after “Regulations”.

1994—Subsec. (a)(5)(A), Pub. L. 103–339, §401(1)(A)–(D), struck out “”, not the result of vicious habits, intemperance, or misconduct on his part,” after “the Agency” and substituted “the Director deems” for “he shall deem”, “section 3731 of title 5” for “section 10 of the Act of March 3, 1933 (47 Stat. 1516; 5 U.S.C. 73b)”, and “the recovery of such officer or employee” for “his recovery”.

Pub. L. 103–339, §401(1)(E), which directed the substitution of “the return to the post of duty of such officer or employee” for “his return to his post”, was executed by making the substitution for “his return to his post of duty” to reflect the probable intent of Congress.

Subsec. (a)(5)(B), Pub. L. 103–339, §401(2), substituted “the opinion of the Director” for “his opinion” in two places.

Subsec. (a)(5)(C), Pub. L. 103–339, §401(3), struck out “, not the result of vicious habits, intemperance, or misconduct on his part,” after “the Agency”.

1981—Pub. L. 97–89 designated existing provisions as subsec. (a) and added subsec. (b).

1960—Pub. L. 86–707, §323(a), substituted “duty stations outside the several States of the United States of America, excluding Alaska and Hawaii, but including the District of Columbia” for “permanent-duty stations outside the continental United States, its territories, and possessions” in opening provisions, and struck out subsec. (a) designation.

Par. (1)(A). Pub. L. 86–707, §531(c)(2), substituted “pursuant to authorized home leave” for “pursuant to orders issued by the Director in accordance with the provisions of subsection (a)(3) of this section with regard to the granting of home leave”.

Par. (1)(D). Pub. L. 86–707, §301(b), authorized payment of cost of packing and unpacking and transporting to and from a place of storage, extended authority not more distant: Provided, That such appointees agree in writing to remain with the United States Government for a period of not less than twelve months from the time of appointment.

Violation of such agreement for personal convenience of an employee or because of separation for misconduct will bar such return payments and, if determined by the Director or his designee to be in the best interests of the United States, any money expended by the United States on account of such travel and transportation shall be considered as a debt due by the individual concerned to the United States.
to pay storage costs for an officer or employee assigned to a post to which he cannot take or at which he is unable to use his furniture and household personal effects by striking out provisions which restricted such payment only to cases where an emergency exists, empowered Director to pay storage costs when it is in the public interest or more economical to authorize storage, and limited weight or volume of effects stored or weight or volume of effects transported to not more than maximum limitations fixed by regulations, when not otherwise fixed by law.

Par. (1)(E). Pub. L. 86–707, § 301(b), authorized payment of cost of packing and unpacking and transporting to and from a place of storage, permitted payment from date of departure from officer's or employee's last post or from date of departure from place of residence in the case of a new officer or employee, empowered Director to pay storage costs in connection with separation of an officer or employee from the Agency, and limited weight or volume of effects stored or weight or volume of effects transported to not more than maximum limitations fixed by regulations, when not otherwise fixed by law.

Par. (3)(A). Pub. L. 86–707, § 511(c)(3), substituted “to and from several States of the United States of America (including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States) on leave of absence each officer or employee of the Agency who was a resident of the United States (as described above) at time of employment, upon completion of two years' continuous service abroad, or as soon as possible thereafter” for “to the United States or its Territories and possessions on leave provided for in sections 30–30b of Title 5 [former Title 5, Executive Departments and Government Officials and Employees], or as such sections may hereafter be amended, every officer and employee of the agency who was a resident of the United States or its Territories and possessions at time of employment, upon completion of two years' continuous service abroad, or as soon as possible thereafter: Provided, That such officer or employee has accrued to his credit at the time of such order, annual leave sufficient to carry him in a pay status while in the United States for at least a thirty-day period”.

Par. (3)(B). Pub. L. 86–707, § 511(c)(4), substituted “to and from several States of the United States of America (as described in paragraph (3)(A) of this section)” for “returns to the United States or its Territories and possessions” and “from the United States (as so described)” for “from the United States or its Territories and possessions”.

Par. (4). Pub. L. 86–707, § 321(b), limited transportation of motor vehicles to one for any officer or employee during any four-year period, and empowered Director to approve transportation of one additional motor vehicle for replacement either during the four-year period or after expiration of four years following date of transportation of a motor vehicle of any officer or employee who has remained in continuous service outside the several States, excluding Alaska and Hawaii, but including the District of Columbia, for such period.

Pub. L. 86–707, § 511(a)(3), repealed subsec. (b), which authorized Director to grant allowances in accordance with provisions of section 1311(1), (2) of Title 22, Foreign Relations and Intercourse. See pars. (1)(D) and (1)(E) of this section.

Effective Date of 1981 Amendment
Amendment by Pub. L. 97–89 effective Oct. 1, 1981, see section 806 of Pub. L. 97–89, set out as an Effective Date note under section 1621 of Title 10, Armed Forces.

Clarification of Terms Applied to Furniture, Household Goods, and Personal Effects in 1960 Amendment
Section 301(d) of Pub. L. 86–707 provided that: ‘‘The term ‘furniture and household and personal effects’, as used in the amendments made by this part to the Foreign Service Act of 1946, as amended [amending section 1130 of Title 22, Foreign Relations and Intercourse], and the Central Intelligence Agency Act of 1949, as amended [amending this section], and the term ‘household goods and personal effects’, as used in the amendments made by this part to the Administrative Expenses Act of 1946, as amended [amending section 73b–1 of former Title 5, Executive Departments and Government Officers and Employees], mean such personal property of an employee and the dependents of such employee as the Secretary of State and the Director of Central Intelligence, as the case may be, with respect to the term ‘furniture and household and personal effects’, and the President, with respect to the term ‘household goods and personal effects’, shall by regulation authorize to be transported or stored under the amendments made by this part to such Acts (including, in emergencies, motor vehicles authorized to be shipped at Government expense). Such motor vehicles shall be excluded from the weight and volume limitations prescribed by the laws set forth in this part.’’ [Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency as such authority may be exercised with respect to the personnel of the Central Intelligence Agency deemed to be a reference to the Director of National Intelligence. 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 Central 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.]

Section 301(d) of Pub. L. 86–707 was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 661, insofar as it is applicable to the Administrative Expenses Act of 1946, as amended.

Executive Order No. 10100
Ex. Ord. No. 10100, Jan. 28, 1950, 15 F.R. 499, which provided for regulations governing the granting of allowances by the Director of the Central Intelligence Agency under this section, was revoked by section 5(a) of Ex. Ord. No. 10903, Jan. 9, 1961, 26 F.R. 217, set out in a note under section 5921 of Title 5, Government Organization and Employees.

§ 403e–1. Eligibility for incentive awards
(a) Scope of authority with respect to Federal employees and members of Armed Forces
The Director of Central Intelligence may exercise the authority granted in section 4503 of title 5, with respect to Federal employees and members of the Armed Forces detailed or assigned to the Central Intelligence Agency or to the Intelligence Community Staff, in the same manner as such authority may be exercised with respect to the personnel of the Central Intelligence Agency and the Intelligence Community Staff.

(b) Time for exercise of authority
The authority granted by subsection (a) of this section may be exercised with respect to Federal employees or members of the Armed Forces detailed or assigned to the Central Intelligence Agency or to the Intelligence Community Staff.
on or after a date five years before December 9, 1983.

(c) Exercise of authority with respect to members of Armed Forces assigned to foreign intelligence duties

During fiscal year 1987, the Director of Central Intelligence may exercise the authority granted in section 4503(2) of title 5 with respect to members of the Armed Forces who are assigned to foreign intelligence duties at the time of the conduct which gives rise to the exercise of such authority.

(d) Payment and acceptance of award

An award made by the Director of Central Intelligence to an employee or member of the Armed Forces under the authority of section 4503 of title 5 or this section may be paid and accepted notwithstanding—

(1) section 5536 of title 5; and
(2) the death, separation, or retirement of the employee or the member of the Armed Forces whose conduct gave rise to the award, or the assignment of such member to duties other than foreign intelligence duties.


Codification

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 1984, and not as part of the Central Intelligence Agency Act of 1949 which comprises section 403a et seq. of this title, nor as part of the National Security Act of 1947 which comprises this chapter.

Amendments

1986—Subsecs. (c), (d). Pub. L. 99–569 added subsecs. (c) and (d).

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 Central 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.

§ 403f. General authorities of Agency

(a) In general

In the performance of its functions, the Central Intelligence Agency is authorized to—

(1) Transfer to and receive from other Government agencies such sums as may be approved by the Office of Management and Budget, for the performance of any of the functions or activities authorized under section 403–4a of this title, and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under

the authority of sections 403a to 403s of this title without regard to limitations of appropriations from which transferred;
(2) Exchange funds without regard to section 3651 of the Revised Statutes;
(3) Reimburse other Government agencies for services of personnel assigned to the Agency, and such other Government agencies are authorized, without regard to provisions of law to the contrary, so to assign or detail any officer or employee for duty with the Agency;
(4) Authorize personnel designated by the Director to carry firearms to the extent necessary for the performance of the Agency's authorized functions, except that, within the United States, such authority shall be limited to the purposes of protection of classified materials and information, the training of Agency personnel and other authorized persons in the use of firearms, the protection of Agency installations and property, the protection of current and former Agency personnel and their immediate families, defectors and their immediate families, and other persons in the United States under Agency auspices, and the protection of the Director of National Intelligence and such personnel of the Office of the Director of National Intelligence as the Director of National Intelligence may designate;
(5) Make alterations, improvements, and repairs on premises rented by the Agency, and pay rent therefor;
(6) Determine and fix the minimum and maximum limits of age within which an original appointment may be made to an operational position within the Agency, notwithstanding the provision of any other law, in accordance with such criteria as the Director, in his discretion, may prescribe; and
(7) Notwithstanding section 1341(a)(1) of title 31, enter into multiyear leases for up to 15 years.

(b) Scope of authority for expenditure

(1) The authority to enter into a multiyear lease under subsection (a)(7) of this section shall be subject to appropriations provided in advance for—

(A) the entire lease; or
(B) the first 12 months of the lease and the Government's estimated termination liability.

(2) In the case of any such lease entered into under subparagraph (B) of paragraph (1)—

(A) such lease shall include a clause that provides that the contract shall be terminated if budget authority (as defined by section 622(2) of title 2) is not provided specifically for that project in an appropriations Act in advance of an obligation of funds in respect thereto;
(B) notwithstanding section 1552 of title 31, amounts obligated for paying termination costs with respect to such lease shall remain available until the costs associated with termination of such lease are paid;
(C) funds available for termination liability shall remain available to satisfy rental obligations with respect to such lease in subsequent fiscal years in the event such lease is not terminated early, but only to the extent those funds are in excess of the amount of termi-
nation liability at the time of their use to satisfy such rental obligations; and
(D) funds appropriated for a fiscal year may be used to make payments on such lease, for a maximum of 12 months, beginning any time during such fiscal year.

(c) Transfers for acquisition of land
(1) Sums appropriated or otherwise made available to the Agency for the acquisition of land that are transferred to another department or agency for that purpose shall remain available for 3 years.

(2) The Director shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives a report on the transfer of sums described in paragraph (1) each time that authority is exercised.


REFERENCES IN TEXT
Section 3651 of the Revised Statutes, referred to in subsec. (a)(2), was classified to section 543 of former Title 31, and was repealed by Pub. L. 97–298, §§5(b), Sept. 13, 1982, 96 Stat. 1084, the first section of which enacted Title 31, Money and Finance.

CODIFICATION
Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS
2010—Subsec. (a)(1). Pub. L. 111–259, § 803(1), substituted “authorized under section 403–4a of this title,” for “authorized under paragraphs (2) and (3) of section 403(a) of this title, subsections (c)7) and (d) of section 403–3 of this title, subsections (a) and (g) of section 403–4 of this title, and section 405 of this title”.

Subsec. (a)(4). Pub. L. 111–259, § 421, substituted “the protection of current” for “and the protection of current and”.

2009—Subsec. (a)(4). Pub. L. 110–557 substituted “paragraphs (2) and (3) of section 403(a)” for “paragraphs (B) and (C) of section 403a(2)” and “(c)(b)” for “(c)(b)”. The protection of current and former Agency personnel and their immediate families, defectors and their immediate families,” for “and the protection of Agency personnel and of defectors, their families,”.

1997—Pub. L. 105–107 designated existing provisions as subsec. (a), redesignated former subsecs. (a) to (f) as pars. (1) to (6), respectively, of subsec. (a), in par. (5) substituted semicolon for “without regard to limitations on expenditures contained in the Act of June 30, 1932, as amended: Provided, That in each case the Director shall certify that exception from such limitations is necessary to the successful performance of the Agency’s functions or to the security of its activities; and”, and added par. (7) and subsec. (b).

1993—Subsec. (a). Pub. L. 102–178 substituted “Office of Management and Budget” for “Bureau of the Budget” and “paragraphs (B) and (C) of section 403(a)(2) of this title, subsections (c)(5) and (d) of section 403–3 of this title, subsections (a) and (g) of section 403–4 of this title, and section 405 of this title” for “sections 403 and 405 of this title”.


1981—Subsec. (d). Pub. L. 97–89 substituted “Authorize personnel designated by the Director to carry firearms to the extent necessary for the performance of the Agency’s authorized functions, except that, within the United States, such authority shall be limited to the purposes of protection of classified materials and information, the training of Agency personnel and other authorized persons in the use of firearms, the protection of Agency installations and property, and the protection of Agency personnel and of defectors, their families, and other persons in the United States under Agency auspices; and” for “Authorize couriers and guards designated by the Director to carry firearms when engaged in transportation of confidential documents and materials affecting the national defense and security;”.

1964—Subsec. (f). Pub. L. 88–448 repealed subsec. (f) which authorized employment of not more than fifteen retired officers who must elect between civilian salary and retired pay. See section 3101 et seq. of Title 5, Government Organization and Employees.


EFFECTIVE DATE OF 2000 AMENDMENT
Pub. L. 106–567, title IV, § 405(c), Dec. 27, 2000, 114 Stat. 2849, provided that: “Subsection (c) of section 5 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403(c)), as added by subsection (a) of this section, shall apply with respect to amounts appropriated otherwise made available for the Central Intelligence Agency for fiscal years after fiscal year 2000.”

EFFECTIVE DATE OF 1997 AMENDMENT
Pub. L. 105–107, title IV, § 401(b), Nov. 20, 1997, 111 Stat. 2257, provided that: “The amendments made by subsection (a) [amending this section] apply to multiyear leases entered into under section 5 of the Central Intelligence Agency Act of 1949 [this section], as so amended, on or after October 1, 1997.”

EFFECTIVE DATE OF 1981 AMENDMENT
Amendment by Pub. L. 97–89 effective Oct. 1, 1981, see section 806 of Pub. L. 97–89, set out as an Effective Date note under section 1621 of Title 10, Armed Forces.


**Effective Date of 1964 Amendment**

Amendment by Pub. L. 88–448 effective on first day of first month which begins later than the ninetieth day following Aug. 19, 1964, see section 403 of Pub. L. 88–448.

**Restriction on Transfer of Funds Available to Central Intelligence Agency for Drug Interdiction and Counter-Drug Activities**

Pub. L. 111–118, div. A, title VIII, §8047(b), Dec. 19, 2009, 123 Stat. 3439, provided that: ‘‘None of the funds available to the Central Intelligence Agency for any fiscal year for drug interdiction and counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.’’

Similar provisions were contained in the following prior appropriation acts:


§ 403g. Protection of nature of Agency’s functions

In the interests of the security of the foreign intelligence activities of the United States and in order further to implement section 403–1(i) of this title that the Director of National Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of sections 1 and 2 of the Act of August 28, 1935, (49 Stat. 956, 957; 5 U.S.C. 654), and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: Provided, That in furtherance of this section, the Director of the Office of Management and Budget shall make no reports to the Congress in connection with the Agency under section 607 of the Act of June 30, 1945, as amended (5 U.S.C. 654]).


References in Text


Section 607 of the Act of June 30, 1945, as amended, referred to in text, was repealed by act Sept. 12, 1950, ch. 946, title III, §301(b), 64 Stat. 843.

Codification

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

Amendments


Pub. L. 108–458, §1071(b)(1)(A), substituted “Director of National Intelligence” for “Director of Central Intelligence”.


1993—Pub. L. 104–178 substituted “403–3(c)(5)” of this title for “the proviso of section 403(d)(3) of this title” and “Office of Management and Budget” for “Bureau of the Budget”.

Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 104–48 take effect on Apr. 30, 2004, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transmittion Provisions note under section 401 of this title.

§ 403h. Admission of essential aliens; limitation on number

Whenever the Director, the Attorney General, and the Commissioner of Immigration and Naturalization shall determine that the admission of a particular alien into the United States for permanent residence without regard to their inadmissibility under the immigration or any other laws and regulations, or to the failure to comply with such laws and regulations pertaining to admissibility, Provided, That the number of aliens and members of their immediate families admitted to the United States under the authority of this section shall in no case exceed one hundred persons in any one fiscal year.

§ 403i

CODIFICATION

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS

1996—Pub. L. 104–208 substituted "that the admission" for "that the entry", "shall be admitted to" for "shall be given entry into", and "families entering".

CHANGE OF NAME

Ex. Ord. No. 6186, § 14, June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees, consolidated Bureaus of Immigration and Naturalization of Department of Labor to form an Immigration and Naturalization Service in Department of Labor, to be administered by a Commissioner of Immigration and Naturalization, which was then transferred from Department of Labor to Department of Justice by Reorg. Plan No. V of 1940, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238, set out in the Appendix to Title 5. Accordingly, "Commissioner of Immigration and Naturalization" was substituted for "Commissioner of Immigration".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1956, §§1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.


Section, acts June 20, 1949, ch. 227, § 9, 63 Stat. 212; Aug. 16, 1950, ch. 719, 64 Stat. 450, related to establishment of positions in the professional and scientific field.

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

§ 403j. Central Intelligence Agency; appropriations; expenditures

(a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including—

(1) personal services, including personal services without regard to limitations on types of persons to be employed, and rent at the seat of government and elsewhere; health-service program as authorized by law (5 U.S.C. 7901); rental of news-reporting services; purchase or rental and operation of photographic, reproduction, cryptographic, duplication, and printing machines, equipment, and devices, and radio-receiving and radio-sending equipment and devices, including telegraph and teletype equipment; purchase, maintenance, operation, repair, and hire of passenger motor vehicles, and aircraft, and vessels of all kinds; subject to policies established by the Director, transportation of officers and employees of the Agency in Government-owned automotive equipment between their domiciles and places of employment, where such personnel are engaged in work which makes such transportation necessary, and transportation in such equipment, to and from school, of children of Agency personnel who have quarters for themselves and their families at isolated stations outside the continental United States where adequate public or private transportation is not available; printing and binding; purchase, maintenance, and cleaning of firearms, including purchase, storage, and maintenance of ammunition; subject to policies established by the Director, expenses of travel in connection with, and expenses incident to attendance at meetings of professional, technical, scientific, and other similar organizations when such attendance would be a benefit in the conduct of the work of the Agency; association and library dues; payment of premiums or costs of surety bonds for officers or employees without regard to the provisions of section 141 of title 6; payment of claims pursuant to title 28; acquisition of necessary land and the clearing of such land; construction of buildings and facilities without regard to 36 Stat. 699; 40 U.S.C. 259, 267; repair, rental, operation, and maintenance of buildings, utilities, facilities, and apparatuses; and

(2) supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director.

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified.


REFERENCES IN TEXT


The reference to 36 Stat. 699; 40 U.S.C. 259, 267, in subsec. (a)(1), was probably meant to be a reference to section 3734 of the Revised Statutes. Section 33 of act June 25, 1910, ch. 383, which appears at 36 Stat. 699, amended generally section 3734 of the Revised Statutes which was classified to sections 259 and 267 of former Title 40, Public Buildings, Property, and Works. Section 3734 of

1 See References in Text note below.
the Revised Statutes was subsequently repealed by Pub. L. 86–249, §17(12), Sept. 9, 1959, 73 Stat. 485.

CODIFICATION

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

AVAILABILITY OF APPROPRIATIONS FOR CONSTRUCTION PROJECTS
Pub. L. 105–139, title VIII, §8104, Nov. 11, 1993, 107 Stat. 1463, provided that: "During the current fiscal year and thereafter, funds appropriated for construction projects of the Central Intelligence Agency, which are transferred to another Agency for execution, shall remain available until expended." Similar provisions were contained in the following prior appropriation acts:


ACQUISITION OF CRITICAL SKILLS
Pub. L. 99–569, title V, §506, Oct. 27, 1986, 100 Stat. 3262, provided that: "Pursuant to the authority granted in section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403), the Director of Central Intelligence shall establish a graduate training program with respect to civilian employees of the Central Intelligence Agency similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish under section 16 of the National Security Act of 1949 (50 U.S.C. 402 note) for civilian employees of the National Security Agency." [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 Central 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 1083(a), (b) or Pub. L. 106–398, set out as a note under section 401 of Title 50, War and National Defense.]

§ 403k. Authority to pay death gratuities

(a)(1) The Director may pay a gratuity to the surviving dependents of any officer or employee of the Agency who dies as a result of injuries (other than from disease) sustained outside the United States and whose death—

(A) resulted from hostile or terrorist activities; or

(B) occurred in connection with an intelligence activity having a substantial element of risk.

(2) The provisions of this subsection shall apply with respect to deaths occurring after June 30, 1974.

(b) Any payment under subsection (a) of this section—

(1) shall be in an amount equal to the amount of the annual salary of the officer or employee concerned at the time of death;

(2) shall be considered a gift and shall be in lieu of payment of any lesser death gratuity authorized by any other Federal law; and

(3) shall be made under the same conditions as apply to payments authorized by section 3973 of title 22.


CODIFICATION
In subsec. (b)(3), "section 3973 of title 22" substituted for "section 14 of the Act of August 1, 1956 (22 U.S.C. 2679a)" on authority of section 2401(c) of the Foreign Service Act of 1980 (22 U.S.C. 4172(c)), section 2255(a) of which repealed section 14 of the 1956 Act (22 U.S.C. 2679a).

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

§ 403l. Authority to accept gifts, devises and bequests

(a) Use for operational purposes prohibited

Subject to the provisions of this section, the Director may accept, hold, administer, and use gifts of money, securities, or other property whenever the Director determines it would be in the interest of the United States to do so. Any gift accepted under this section (and any income produced by any such gift) may be used only for artistic display or for purposes relating to the general welfare, education, or recreation of employees or dependents of employees of the Agency or for similar purposes, and under no circumstances may such a gift (or any income produced by it) be used for operational purposes. The Director may not accept any gift under this section which is expressly conditioned upon any expenditure not to be met from the gift itself or from income produced by the gift unless such expenditure has been authorized by law.

(b) Sale, exchange and investment of gifts

Unless otherwise restricted by the terms of the gift, the Director may sell or exchange, or invest or reinvest, any property which is accepted under this section, but any such investment may only be in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(c) Deposit of gifts into special fund

There is hereby created on the books of the Treasury of the United States a fund into which gifts of money, securities, and other intangible property accepted under the authority of this section, and the earnings and proceeds thereof, shall be deposited. The assets of such fund shall be disbursed upon the order of the Director for the purposes specified in subsection (a) or (b) of this section.

(d) Taxation of gifts

For purposes of Federal income, estate, and gift taxes, gifts accepted by the Director under
this section shall be considered to be to or for the use of the United States.

(e) "Gift" defined

For the purposes of this section, the term "gift" includes a bequest or devise.


CODIFICATION

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

§ 403m. Misuse of Agency name, initials, or seal

(a) Prohibited acts

No person may, except with the written permission of the Director, knowingly use the words "Central Intelligence Agency", the initials "CIA", the seal of the Central Intelligence Agency, or any colorable imitation of such words, initials, or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Central Intelligence Agency.

(b) Injunction

Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a) of this section, the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.


CODIFICATION

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–458 substituted "Director of the Central Intelligence Agency" for "Director of Central Intelligence".

1992—Subsec. (a). Pub. L. 102–496 substituted references to sections 2002, 2031 to 2035, 2052, 2071, and 2094 of this title for references in original to sections 204, 221 to 225, 232, 234 and 263 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees which were formerly set out in a note under section 403 of this title.

1987—Subsec. (a). Pub. L. 100–178, §402(b)(3), inserted "223(b)," before "234(c), 234(d),"

Pub. L. 100–178, §401(b), inserted "225," after "223, 224."


EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1987 AMENDMENT

§ 403o. Security personnel at Agency installations

(a) Special policemen: functions and powers; regulations: promulgation and enforcement

(1) The Director may authorize Agency personnel within the United States to perform the same functions as officers and agents of the Department of Homeland Security, as provided in section 1315(b)(2) of title 40, with the powers set forth in that section, except that such personnel shall perform such functions and exercise such powers—

(A) within the Agency Headquarters Compound and the property controlled and occupied by the Federal Highway Administration located immediately adjacent to such Compound;

(B) in the streets, sidewalks, and the open areas within the zone beginning at the outside boundary of such Compound and property and extending outward 500 feet;

(C) within any other Agency installation and protected property; and

(D) in the streets, sidewalks, and open areas within the zone beginning at the outside boundary of any installation or property referred to in subparagraph (C) and extending outward 500 feet.

(2) The performance of functions and exercise of powers under subparagraph (B) or (D) of paragraph (1) shall be limited to those circumstances where such personnel can identify specific and articulable facts giving such personnel reason to believe that the performance of such functions and exercise of such powers is reasonable to protect against physical damage or injury, or threats of physical damage or injury, to Agency installations, property, or employees.

(3) Nothing in this subsection shall be construed to preclude, or limit in any way, the authority of any Federal, State, or local law enforcement agency, or any other Federal police or Federal protective service.

(4) The rules and regulations enforced by such personnel shall be the rules and regulations prescribed by the Director and shall only be applicable to the areas referred to in subparagraph (A) or (C) of paragraph (1).

(b) Penalties for violations of regulations

The Director is authorized to establish penalties for violations of the rules or regulations promulgated by the Director under subsection (a) of this section. Such penalties shall not exceed those specified in section 1315(c)(2) of title 40.

(c) Identification

Agency personnel designated by the Director under subsection (a) of this section shall be clearly identifiable as United States Government security personnel while engaged in the performance of the functions to which subsection (a) of this section refers.

(d) Protection of certain CIA personnel from tort liability

(1) Notwithstanding any other provision of law, any Agency personnel designated by the Director under subsection (a) of this section, or designated by the Director under section 403(a)(4) of this title to carry firearms for the protection of current or former Agency personnel and their immediate families, dependents and their immediate families, and other persons in the United States under Agency auspices, shall be considered for purposes of chapter 171 of title 28, or any other provision of law relating to tort liability, to be acting within the scope of their office or employment when such Agency personnel take reasonable action, which may include the use of force, to—

(A) protect an individual in the presence of such Agency personnel from a crime of violence;

(B) provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or

(C) prevent the escape of any individual whom such Agency personnel reasonably believe to have committed a crime of violence in the presence of such Agency personnel.

(2) Paragraph (1) shall not affect the authorities of the Attorney General under section 2679 of title 28.

(3) In this subsection, the term "crime of violence" has the meaning given that term in section 16 of title 18.

(6) The Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.


Subsec. (b). Pub. L. 108–177, § 377(b)(3)(B), substituted "section 1315(c)(2) of title 40" for "the fourth section of the Act referred to in subsection (a) of this section (40 U.S.C. 318).".

§ 403p. Health benefits for certain former spouses of Central Intelligence Agency employees

(a) Persons eligible

Except as provided in subsection (e) of this section, any individual—

(A) formerly married to an employee or former employee of the Agency, whose marriage was dissolved by divorce or annulment before May 7, 1985;

(B) who, at any time during the eighteen-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

(C) who was married to such employee for not less than ten years during periods of service by such employee with the Agency, at least five years of which were spent outside the United States by both the employee and the former spouse,

is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

(b) Enrollment for health benefits

(1) Any individual eligible for coverage under subsection (a) of this section may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the six-month period beginning on October 1, 1986, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulations prescribe, such individual—

(A) files an election for such enrollment; and

(B) arranges to pay currently into the Employee Health Benefits Fund under section 8909 of title 5 an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

(2) The Director of the Central Intelligence Agency shall, as soon as possible, take all steps practicable—

(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a) of this section; and

(B) to notify each such former spouse of that individual’s rights under this section.

(3) The Director of the Office of Personnel Management, upon notification by the Director of the Central Intelligence Agency, shall waive the six-month limitation set forth in paragraph (1) in any case in which the Director of the Central Intelligence Agency determines that the circumstances so warrant.

(c) Eligibility of former wives or husbands

(1) Notwithstanding subsections (a) and (b) of this section and except as provided in subsections (d), (e), and (f) of this section, an individual—

(A) who was divorced on or before December 4, 1991, from a participant or retired participant in the Central Intelligence Agency Retirement and Disability System or the Federal Employees Retirement System Special Category;

(B) who was married to such participant for not less than ten years during the participant’s creditable service, at least five years of which were spent by the participant during the participant’s service as an employee of the Agency outside the United States, or otherwise in a position the duties of which qualified the participant for designation by the Director as a participant under section 2013 of this title; and

(C) who was enrolled in a health benefits plan as a family member at any time during the 18-month period before the date of dissolution of the marriage to such participant;

is eligible for coverage under a health benefits plan.

(2) A former spouse eligible for coverage under paragraph (1) may enroll in a health benefits plan in accordance with subsection (b)(1) of this section, except that the election for such enrollment must be submitted within 60 days after the date on which the Director notifies the former spouse of such individual’s eligibility for health insurance coverage under this subsection.

(d) Continuation of eligibility

Notwithstanding subsections (a), (b), and (c) of this section and except as provided in subsections (e) and (f) of this section, an individual divorced on or before December 4, 1991, from a participant or retired participant in the Central Intelligence Agency Retirement and Disability System or Federal Employees’ Retirement System Special Category who enrolled in a health benefits plan following the dissolution of the marriage to such participant may continue enrollment following the death of such participant notwithstanding the termination of the retirement annuity of such individual.

(e) Remarriage before age fifty-five; continued enrollment; restored eligibility

(1) Any former spouse who remarries before age fifty-five is not eligible to make an election under subsection (b)(1) of this section.

(2) Any former spouse enrolled in a health benefits plan pursuant to an election under sub-
section (b)(1) of this section or to subsection (d) of this section may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age fifty-five shall not be eligible for continued enrollment under this section after the end of the thirty-one-day period beginning on the date of remarriage.

(3)(A) A former spouse who is not eligible to enroll or to continue enrollment in a health benefits plan under this section solely because of remarriage before age fifty-five shall be restored to such eligibility on the date such remarriage is dissolved by death, annulment, or divorce.

(B) A former spouse whose eligibility is restored under subparagraph (A) may, under regulations which the Director of the Office of Personnel Management shall prescribe, enroll in a health benefits plan if such former spouse—

1. was an individual referred to in paragraph (1) and was an individual covered under a benefits plan as a family member at any time during the 18-month period before the date of dissolution of the marriage to the Agency employee or annuitant; or

2. was an individual referred to in paragraph (2) and was an individual covered under a benefits plan immediately before the remarriage ended the enrollment.

(f) Enrollment in health benefits plan under other authority

No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

(g) “Health benefits plan” defined

For purposes of this section the term “health benefits plan” means an approved health benefits plan under chapter 89 of title 5.


Subsecs. (f), (g). Pub. L. 103–178, § 203(c)(1)(A), redesignated subsecs. (d) and (e) as (f) and (g), respectively. 1991—Subsec. (c)(3). Pub. L. 102–88 added par. (3).

Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


Effective Date of 1993 Amendment

Amendment by section 203(c) of Pub. L. 103–178 applicable to individuals on and after Oct. 1, 1994, with no benefits provided pursuant to section 203(c) payable with respect to any period before Oct. 1, 1994, except that subsection (d) of this section applicable to individuals beginning Dec. 3, 1993, see section 203(e) of Pub. L. 103–178, set out as a Survivor Annuity, Retirement Annuity, and Health Benefits for Certain Ex-Spouses of Central Intelligence Agency Employees; Effective Date note under section 202 of this title.

Effective Date of 1991 Amendment

Section 307(d) of Pub. L. 102–88 provided that: ‘‘The amendments made by this section [amending this section and provisions formerly set out as a note under section 403 of this title] shall take effect as of October 1, 1990. No benefits provided pursuant to the amendments made by this section shall be payable with respect to any period before such date.’’

Effective Date

Section 303(b) of Pub. L. 99–569 provided that: ‘‘The amendment made by this section [enacting this section] shall take effect on October 1, 1986.’’

Compliance With Budget Act

Section 307(e) of Pub. L. 102–88 provided that: ‘‘Any new spending authority (within the meaning of section 401(c) of the Congressional Budget Act of 1974 [2 U.S.C. § 651(c)]) provided pursuant to the amendments made by this section [amending this section and provisions formerly set out as a note under section 403 of this title] shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.’’

§ 403q. Inspector General for Agency

(a) Purpose; establishment

In order to—

(1) create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independently inspections, investigations, and audits relating to programs and operations of the Agency;

(2) provide leadership and recommend policies designed to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and detect fraud and abuse in such programs and operations;

(3) provide a means for keeping the Director fully and currently informed about problems and deficiencies relating to the administration of such programs and operations, and the ne-
§ 403q  

(4) in the manner prescribed by this section, ensure that the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence (hereafter in this section referred to collectively as the “intelligence committees”) are kept similarly informed of significant problems and deficiencies as well as the necessity for and the progress of corrective actions,

there is hereby established in the Agency an Office of Inspector General (hereafter in this section referred to as the “Office”).

(b) Appointment; supervision; removal

(1) There shall be at the head of the Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate. This appointment shall be made without regard to political affiliation and shall be on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigation. Such appointment shall also be made on the basis of compliance with the security standards of the Agency and prior experience in the field of foreign intelligence.

(2) The Inspector General shall report directly to and be under the general supervision of the Director.

(3) The Director may prohibit the Inspector General from initiating, carrying out, or completing any audit, inspection, or investigation, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out, or complete such audit, inspection, or investigation or to issue such subpoena, if the Director determines that such prohibition is necessary to protect vital national security interests of the United States.

(4) If the Director exercises any power under paragraph (3), he shall submit an appropriately classified statement of the reasons for the exercise of such power within seven days to the intelligence committees. The Director shall advise the Inspector General at the time such report is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the Inspector General with a copy of any such report. In such cases, the Inspector General may submit such comments to the intelligence committees that he considers appropriate.

(5) In accordance with section 535 of title 28, the Inspector General shall report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law that involve a program or operation of the Agency, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of all such reports shall be furnished to the Director.

(6) The Inspector General may be removed from office only by the President. The President shall communicate in writing to the intelligence committees the reasons for any such removal not later than 30 days prior to the effective date of such removal. Nothing in this paragraph shall be construed to prohibit a personnel action otherwise authorized by law, other than transfer or removal.

(c) Duties and responsibilities

It shall be the duty and responsibility of the Inspector General appointed under this section—

(1) to provide policy direction for, and to plan, conduct, supervise, and coordinate independently, the inspections, investigations, and audits relating to the programs and operations of the Agency to ensure they are conducted efficiently and in accordance with applicable law and regulations;

(2) to keep the Director fully and currently informed concerning violations of law and regulations, fraud and other serious problems, abuses and deficiencies that may occur in such programs and operations, and to report the progress made in implementing corrective action;

(3) to take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Office, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports; and

(4) in the execution of his responsibilities, to comply with generally accepted government auditing standards.

(d) Semiannual reports; immediate reports of serious or flagrant problems; reports of functional problems; reports to Congress on urgent concerns

(1) The Inspector General shall, not later than January 31 and July 31 of each year, prepare and submit to the Director a classified semiannual report summarizing the activities of the Office during the immediately preceding six-month periods ending December 31 (of the preceding year) and June 30, respectively. Not later than the dates each year provided for the transmittal of such reports in section 507 of the National Security Act of 1947 [50 U.S.C. 415b], the Director shall transmit such reports to the intelligence committees with any comments he may deem appropriate. Such reports shall, at a minimum, include a list of the title or subject of each inspection, investigation, review, or audit conducted during the reporting period and—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Agency identified by the Office during the reporting period;

(B) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified in subparagraph (A);

(C) a statement of whether corrective action has been completed on each significant recommendation described in previous semiannual reports, and, in a case where corrective action has been completed, a description of such corrective action;

(D) a certification that the Inspector General has had full and direct access to all information relevant to the performance of his functions;
(E) a description of the exercise of the subpoena authority under subsection (e)(5) of this section by the Inspector General during the reporting period; and

(F) such recommendations as the Inspector General may wish to make concerning legislation to promote economy and efficiency in the administration of programs and operations undertaken by the Agency, and to detect and eliminate fraud and abuse in such programs and operations.

(2) The Inspector General shall report immediately to the Director whenever he becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs or operations. The Director shall transmit such report to the intelligence committees within seven calendar days, together with any comments he considers appropriate.

(3) In the event that—

(A) the Inspector General is unable to resolve any differences with the Director affecting the execution of the Inspector General’s duties or responsibilities;

(B) an investigation, inspection, or audit carried out by the Inspector General should focus on any current or former Agency official who—

(i) holds or held a position in the Agency that is subject to appointment by the President, by and with the advice and consent of the Senate, including such a position held on an acting basis; or

(ii) holds or held the position in the Agency, including such a position held on an acting basis, of—

(I) Deputy Director;

(II) Associate Deputy Director;

(III) Director of the National Clandestine Service;

(IV) Director of Intelligence;

(V) Director of Support; or

(VI) Director of Science and Technology.

(C) a matter requires a report by the Inspector General to the Department of Justice on possible criminal conduct by a current or former Agency official described or referred to in subparagraph (B);

(D) the Inspector General receives notice from the Department of Justice declining or approving prosecution of possible criminal conduct of any of the officials described in subparagraph (B); or

(E) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, inspection, or audit,

the Inspector General shall immediately notify and submit a report on such matter to the intelligence committees.

(4) Pursuant to Title V of the National Security Act of 1947 [50 U.S.C. 413 et seq.], the Director shall submit to the intelligence committees any report or findings and recommendations of an inspection, investigation, or audit conducted by the office which has been requested by the Chairman or Ranking Minority Member of either committee.

(5)(A) An employee of the Agency, or of a contractor to the Agency, who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

(B) Not later than the end of the 14-calendar day period beginning on the date of receipt from an employee of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the Director notice of that determination, together with the complaint or information.

(C) Upon receipt of a transmittal from the Inspector General under subparagraph (B), the Director shall, within 7 calendar days of such receipt, forward such transmittal to the intelligence committees directly.

(D) Upon receipt of a complaint or information from the Department of Justice declining or approving prosecution of possible criminal conduct of any current or former Agency official described or referred to in subparagraph (B), the employee (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the intelligence committees directly.

(E) The Inspector General shall notify the Director, through the Inspector General, a statement of the employee’s complaint or information and notice of the employee’s intent to contact the intelligence committees directly; and

(F) An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.

(G) In this paragraph:

(i) The term “urgent concern” means any of the following:

(A) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

(B) A false statement to Congress, or a willful withholding from Congress, on an
issue of material fact relating to the funding, administration, or operation of an intelligence activity.

(III) An action, including a personnel action described in section 2302(a)(2);(A) of title 5, constituting reprisal for or threat of reprisal prohibited under subsection (e)(3)(B) of this section in response to an employee’s reporting an urgent concern in accordance with this paragraph.

(ii) The term “intelligence committees” means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(e) Authorities of Inspector General

(1) The Inspector General shall have direct and prompt access to the Director when necessary for any purpose pertaining to the performance of his duties.

(2) The Inspector General shall have access to any employee or any employee of a contractor of the Agency whose testimony is needed for the performance of his duties. In addition, he shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which relate to the programs and operations with respect to which the Inspector General has responsibilities under this section. Failure on the part of any employee or contractor to cooperate with the Inspector General shall be grounds for appropriate administrative actions by the Director, to include loss of employment or the termination of an existing contractual relationship.

(3) The Inspector General is authorized to receive and investigate complaints or information from any person concerning the existence of an activity constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received from an employee of the Agency—

(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and

(B) no action constituting a reprisal, or threat of reprisal, for making such complaint or providing such information may be taken by any employee of the Agency in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(4) The Inspector General shall have authority to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of his duties, which oath\(^1\) affirmation, or affidavit when administered or taken by or before an employee of the Office designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal.

(5)(A) Except as provided in subparagraph (B), the Inspector General is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information or any tangible thing) and documentary evidence necessary in the performance of the duties and responsibilities of the Inspector General.

(B) In the case of Government agencies, the Inspector General shall obtain information, documents, reports, answers, records, accounts, papers, and other data and evidence for the purpose specified in subparagraph (A) using procedures other than by subpoenas.

(6) The Inspector General may not issue a subpoena for or on behalf of any other element or component of the Agency.

(7) In the case of contumacy or refusal to obey a subpoena issued under this paragraph, the subpoena shall be enforceable by order of any appropriate district court of the United States.

(8) The Inspector General shall be provided with appropriate and adequate office space at central and field office locations, together with such equipment, office supplies, maintenance services, and communications facilities and services as may be necessary for the operation of such offices.

(9) Subject to applicable law and the policies of the Director, the Inspector General shall select, appoint and employ such officers and employees as may be necessary to carry out his functions. In making such selections, the Inspector General shall ensure that such officers and employees have the requisite training and experience to enable him to carry out his duties effectively. In this regard, the Inspector General shall create within his organization a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of his duties.

(8)(A) The Inspector General shall—

(i) appoint a Counsel to the Inspector General who shall report to the Inspector General; or

(ii) obtain the services of a counsel appointed by and directly reporting to another Inspector General or the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

(B) The counsel appointed or obtained under subparagraph (A) shall perform such functions as the Inspector General may prescribe.

(9) The Inspector General may request such information or assistance as may be necessary for carrying out his duties and responsibilities from any Government agency. Upon request of the Inspector General for such information or assistance, the head of the Government agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Government agency concerned, furnish to the Inspector General, or to an authorized designee, such information or assistance. Consistent with budgetary and personnel resources allocated by the Director, the Inspector General has final approval of—

\(^1\) So in original. Probably should be followed by a comma.
(A) the selection of internal and external candidates for employment with the Office of Inspector General; and

(B) all other personnel decisions concerning personnel permanently assigned to the Office of Inspector General, including selection and appointment to the Senior Intelligence Service, but excluding all security-based determinations that are not within the authority of a head of other Central Intelligence Agency offices.

(f) Separate budget account

(1) Beginning with fiscal year 1991, and in accordance with procedures to be issued by the Director of National Intelligence in consultation with the intelligence committees, the Director of National Intelligence shall include in the National Intelligence Program budget a separate account for the Office of Inspector General established pursuant to this section.

(2) For each fiscal year, the Inspector General shall transmit a budget estimate and request through the Director to the Director of National Intelligence that specifies for such fiscal year—

(A) the aggregate amount requested for the operations of the Inspector General;

(B) the amount requested for all training requirements of the Inspector General, including a certification from the Inspector General that the amount requested is sufficient to fund all training requirements for the Office; and

(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency, including a justification for such amount.

(3) In transmitting a proposed budget to the President for a fiscal year, the Director of National Intelligence shall include for such fiscal year—

(A) the aggregate amount requested for the Inspector General of the Central Intelligence Agency;

(B) the amount requested for Inspector General training;

(C) the amount requested to support the Council of the Inspectors General on Integrity and Efficiency; and

(D) the comments of the Inspector General, if any, with respect to such proposed budget.

(4) The Director of National Intelligence shall submit to the Committee on Appropriations and the Select Committee on Intelligence of the Senate and the Committee on Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives for each fiscal year—

(A) a separate statement of the budget estimate transmitted pursuant to paragraph (2);

(B) the amount requested by the Director of National Intelligence for the Inspector General pursuant to paragraph (3)(A);

(C) the amount requested by the Director of National Intelligence for training of personnel of the Office of the Inspector General pursuant to paragraph (3)(B);

(D) the amount requested by the Director of National Intelligence for support for the Council of the Inspectors General on Integrity and Efficiency pursuant to paragraph (3)(C); and

(E) the comments of the Inspector General under paragraph (3)(D), if any, on the amounts requested pursuant to paragraph (3), including whether such amounts would substantially inhibit the Inspector General from performing the duties of the Office.

(g) Transfer

There shall be transferred to the Office the Office of the Agency referred to as the "Office of Inspector General," The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, or available to such "Office of Inspector General" are hereby transferred to the Office established pursuant to this section.


REFERENCES IN TEXT


CODIFICATION

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–259, §425(a), substituted "This appointment shall be made without regard to political affiliation and shall be on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigation. Such appointment shall also be made on the basis of compliance with the security standards of the Agency and prior experience in the field of foreign intelligence." for "This appointment shall be made without regard to political affiliation and shall be solely on the basis of integrity, compliance with the security standards of the Agency, and prior experience in the field of foreign intelligence. Such appointment shall also be made on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or auditing.

Subsec. (b)(6). Pub. L. 111–259, §126(b), struck out "immediately" after "President shall" and substituted "not later than 30 days prior to the effective date of such removal. Nothing in this paragraph shall be con-
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strued to prohibit a personnel action otherwise authorized by law, other than transfer or removal,” for period at end.
Subsec. (d)(3)(B)(ii). Pub. L. 111–259, § 802(2)(B), amended cl. (i) generally. Prior to amendment, cl. (ii) read as follows: “holds or held the position in the Agency, including such a position held on an acting basis, of—
“(I) Executive Director;
“(II) Deputy Director for Operations;
“(III) Deputy Director for Intelligence;
“(IV) Deputy Director for Administration;
“(V) Deputy Director for Science and Technology.’’;
Subsec. (e)(5)(B). Pub. L. 111–259, § 425(d), inserted “or providing such information” after “making such complaint”.
Subsec. (e)(5)(A). Pub. L. 111–259, § 425(e), inserted “in any medium (including electronically stored information or any tangible thing)” after “other data”.
Subsec. (e)(9). Pub. L. 111–259, § 425(f)(1)(A). (B), redesignated par. (8) as (9), substituted “The” for “Subject to the concurrence of the Director, the” and inserted at end “Consistent with budgetary and personnel resources allocated by the Director, the Inspector General has final approval of—
“(A) the selection of internal and external candidates for employment with the Office of Inspector General; and
“(B) all other personnel decisions concerning personnel permanently assigned to the Office of Inspector General, including selection and appointment to the Senior Intelligence Service, but excluding all security-based determinations that are not within the authority of a head of other Central Intelligence Agency offices.’’
Subsec. (f). Pub. L. 111–259, § 428, designated existing provisions as par. (1) and added pars. (2) to (4).
Subsec. (f). Pub. L. 108–458, § 1071(b)(1)(B), 1073(b)(2), substituted “Director of National Intelligence” for “Director of Central Intelligence” in two places and “National Intelligence Program” for “National Foreign Intelligence Program”.
2002—Subsec. (d)(1). Pub. L. 107–306 substituted “Not later than the dates each year provided for the transmittal of such reports in section 507 of the National Security Act of 1947,” for “Within thirty days of receipt of such reports,” in introductory provisions.
2001—Subsec. (d)(5)(B). Pub. L. 107–108, § 309(a)(1), substituted “Upon making such a determination, the Inspector General shall transmit to the Director notice of that determination, together with the complaint or information,” for “If the Inspector General determines that the complaint or information appears credible, the Inspector General shall, before the end of such period, transmit the complaint or information to the Director”.
Subsec. (d)(5)(D)(i). Pub. L. 107–108, § 309(a)(2), substituted “does not find credible under subparagraph (B) a complaint or information submitted under subparagraph (A), or does not transmit the complaint or information to the Director in accurate form under subparagraph (B),” for “does not transmit, or does not transmit in an accurate form, the complaint or information described in subparagraph (B),”.
2000—Subsec. (d)(1)(E). Pub. L. 106–567, § 402(a)(1), added subpar. (E) and struck out former subpar. (E) which read as follows: “a description of all cases occurring during the reporting period where the Inspector General could not obtain documentary evidence relevant to any inspection, audit, or investigation due to his lack of authority to subpoena such information; and’’;
Subsec. (d)(3). Pub. L. 106–567, § 403, added subpars. (B) to (E) and concluding provisions and struck out former subpars. (B) and (C) which read as follows:
“(B) an investigation, inspection, or audit carried out by the Inspector General should focus upon the Director or Acting Director; or
“(C) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, or audit, the Inspector General shall immediately report such matter to the intelligence committees.
Subsec. (e)(5)(E). Pub. L. 106–567, § 402(a)(2), struck out subpar. (E) which read as follows: “Not later than January 31 and July 31 of each year, the Inspector General shall submit to the Select Committees on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives a report of the Inspector General’s exercise of authority under this paragraph during the preceding six months.”
1997—Subsec. (b)(3). Pub. L. 105–107, § 402(b), inserted “, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out, or complete such audit, inspection, or investigation or to issue such subpoena,” after “or investigation”;
Subsec. (e)(5) to (8). Pub. L. 105–107, § 402(a), added par. (5) and redesignated former pars. (b) to (7) as (6) to (8), respectively.
1996—Subsec. (b)(5). Pub. L. 104–93, § 403(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “In accordance with section 536 of title 28, the Director shall report to the Attorney General any information, allegation, or complaint received from the Inspector General, relating to violations of Federal criminal law involving any officer or employee of the Agency, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of all such reports shall be furnished to the Inspector General.’’
Subsec. (e)(3)(A). Pub. L. 104–93, § 403(b), inserted “or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken” after “investigation”.
1994—Subsec. (b)(1). Pub. L. 103–359, § 402(a), substituted “analysis, public administration, or auditing” for “analysis, or public administration”.
Subsec. (c)(1). Pub. L. 103–359, § 402(b), substituted “to plan, conduct” for “to conduct”.
Subsec. (d)(1). Pub. L. 103–359, § 402(3), in introductory provisions, substituted “January 31 and July 31” for “December 31” and “periods ending December 31” for “July 31 and December 31” and “periods ending December 31 of the preceding year” and June 30, respectively for “period” and inserted “of receipt of such reports” after “thirty days”.
Subsec. (e)(6). Pub. L. 103–359, § 402(6), substituted “the Inspector General shall” for “it is the sense of Congress that the Inspector General should”.
1991—Pub. L. 101–190 amended section generally, substituting subsecs. (a) to (g) relating to establishment of the Office of Inspector General and appointment, duties, and authority of Inspector General for introductory par. and subsecs. (a) to (e) relating to various reports to be filed with the intelligence committees by Director of Central Intelligence concerning selection and activities of Inspector General.
EFFICIENT DATE OF 2004 AMENDMENT
For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memo-
rum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

CONSTRUCTION OF 2010 AMENDMENT

TERMINATION OF REPORTING REQUIREMENTS
For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 4th item on page 158, relating to the transmission of semiannual re-
ports to the intelligence committees, identifies a re-
porting provision which, as subsequently amended, is contained in subsec. (d)(1) of this section), see section 3093 of Pub. L. 101–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 403r. Special annuity computation rules for certain employees’ service abroad

(a) Officers and employees to whom rules apply
Notwithstanding any provision of chapter 83 of title 5, the annuity under subchapter III of such chapter of an officer or employee of the Central Intelligence Agency who retires on or after October 1, 1989, is not designated under section 2013 of this title, and has served abroad as an officer or employee of the Agency on or after January 1, 1987, shall be computed as provided in sub-
section (b) of this section.
(b) Computation rules
(1) The portion of the annuity relating to such
service abroad that is actually performed at any
time during the officer’s or employee’s first ten
years of total service shall be computed at the
rate and using the percent of average pay speci-
fied in section 8339(a)(3) of title 5 that is nor-

ormalively applicable only to so much of an employ-
nee’s total service as exceeds ten years.
(2) The portion of the annuity relating to serv-
ice abroad as described in subsection (a) of this
section but that is actually performed at any
time after the officer’s or employee’s first ten
years of total service shall be computed as pro-
vided in section 8339(a)(3) of title 5; but, in addi-
tion, the officer or employee shall be deemed for
annuity computation purposes to have actually
performed an equivalent period of service abroad
during his or her first ten years of total service,
and in calculating the portion of the officer’s or
employee’s annuity for his or her first ten years
of total service, the computation rate and per-
cent of average pay specified in paragraph (1)
shall also be applied to the period of such
deemed or equivalent service abroad.
(3) The portion of the annuity relating to
other service by an officer or employee as de-
scribed in subsection (a) of this section shall be
computed as provided in the provisions of sec-
nion 8339(a) of title 5 that would otherwise be ap-
pllicable to such service.
(4) For purposes of this subsection, the term
“total service” has the meaning given such term
under chapter 83 of title 5.
(c) Annuities deemed annuities under section 8339 of title 5
For purposes of subsections (f) through (m) of
section 8339 of title 5, an annuity computed
under this section shall be deemed to be an an-
nuity computed under subsections (a) and (o)1 of
section 8339 of title 5.
(d) Officers and employees entitled to greater annu-
ities under section 8339 of title 5
The provisions of subsection (a) of this section
shall not apply to an officer or employee of the
Central Intelligence Agency who would other-
wise be entitled to a greater annuity computed
under an otherwise applicable subsection of sec-
nion 8339 of title 5.

REFERENCE IN TEXT
Subsection (o) of section 8339 of title 5, referred to in subsec.

CODIFICATION
Section was enacted as part of the Central Intelli-
gence Agency Act of 1949, and not as part of the Na-
tional Security Act of 1947 which comprises this chap-

ER DATE OF 1992 AMENDMENT
Amendment by Pub. L. 102–496 effective on first day of
fourth month beginning after Oct. 24, 1992, see sec-
section 885 of Pub. L. 102–496, set out as an Effective Date
note under section 2001 of this title.

PORTABILITY OF OVERSEAS SERVICE RETIRE-
MENT BENEFIT
The special accrual rates provided by section 2153 of this title and by section 403r of this title for computation of the annuity of an individual who has served abroad as an officer or employee of the Central Intelligence Agency shall be used to compute that portion of the annuity of such individual relating to such service abroad whether or not the individual is employed by
the Central Intelligence Agency at the time of retirement from Federal service.

REFERENCES IN TEXT
Subsection (o) of section 8339 of title 5, referred to in subsec.

CODIFICATION
Section was enacted as part of the Intelligence Au-
thorization Act, Fiscal Year 1990, and not as part of the
1 See References in Text note below.
Central Intelligence Agency Act of 1949 which is classified to section 403a et seq. of this title, nor as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS


§ 403s. Special rules for disability retirement and death-in-service benefits with respect to certain employees

(a) Officers and employees to whom section 2051 rules apply

Notwithstanding any other provision of law, an officer or employee of the Central Intelligence Agency subject to retirement system coverage under subchapter III of chapter 83 of title 5 who—

(1) has five years of civilian service credit toward retirement under such subchapter III of chapter 83 of title 5;

(2) has not been designated under section 2013 of this title, 1 as a participant in the Central Intelligence Agency Retirement and Disability System;

(3) has become disabled during a period of assignment to the performance of duties that are qualifying toward such designation under such section 2013 of this title; and

(4) satisfies the requirements for disability retirement under section 8337 of title 5—

shall, upon his own application or upon order of the Director, be retired on an annuity computed in accordance with the rules prescribed in section 2051 of this title, in lieu of an annuity computed as provided by section 8337 of title 5.

(b) Survivors of officers and employees to whom section 2052 rules apply

Notwithstanding any other provision of law, in the case of an officer or employee of the Central Intelligence Agency subject to retirement system coverage under subchapter III of chapter 83, title 5, who—

(1) has at least eighteen months of civilian service credit toward retirement under such subchapter III of chapter 83, title 5;

(2) has not been designated under section 2013 of this title, 1 as a participant in the Central Intelligence Agency Retirement and Disability System;

(3) prior to separation or retirement from the Agency, dies during a period of assignment to the performance of duties that are qualifying toward such designation under such section 2013 of this title; and

(4) is survived by a surviving spouse, former spouse, or child as defined in section 2002 of this title, who would otherwise be entitled to an annuity under section 8341 of title 5—

such surviving spouse, former spouse, or child of such officer or employee shall be entitled to an annuity computed in accordance with section 2052 of this title, in lieu of an annuity computed in accordance with section 8341 of title 5.

1 So in original. The comma probably should not appear.

(c) Annuities under this section deemed annuities under chapter 83 of title 5

The annuities provided under subsections (a) and (b) of this section shall be deemed to be annuities under chapter 83 of title 5 for purposes of the other provisions of such chapter and other laws (including title 26) relating to such annuities, and shall be payable from the Central Intelligence Agency Retirement and Disability Fund maintained pursuant to section 2012 of this title.


CODIFICATION

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS


Subsec. (b)(2). Pub. L. 103–178, § 501(3)(B), made technical amendment to reference to section 2013 of this title to update reference to corresponding section of original act.

Subsec. (b)(2). Pub. L. 102–496, § 803(a)(3)(B)(i), (ii), (iv)–(vi), inserted heading, redesignated cl. (i) as par. (1), in cl. (ii), substituted reference to section 2013 of this title for reference in original to section 203 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, which was formerly set out as a note under section 403 of this title, and redesignated such cl. as par. (2), in cl. (iii), inserted “such” before reference to section 2013 of this title and redesignated such cl. as par. (3), redesignated cl. (iv) as par. (4), and substituted reference to section 2051 of this title for “such section 231” in concluding provisions.

Subsec. (b)(2). Pub. L. 102–496, § 803(a)(3)(B)(i), (ii), (iv)–(vi), inserted heading, redesignated cl. (i) as par. (1), in cl. (ii), substituted reference to section 2013 of this title for reference in original to section 203 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, which was formerly set out as a note under section 403 of this title, and redesignated cl. (ii) as par. (2), redesignated cls. (iii) and (iv) as pars. (3) and (4), respectively, and in concluding provisions substituted “surviving spouse, former spouse, and/or child” for “widow or widower, former spouse, and/or child or children” and substituted reference to section 2051 of this title for “such section 231”.

Pub. L. 102–496, § 803(a)(3)(B)(iii), which directed the substitution of “surviving spouse, former spouse, or child as defined in section 2002 of this title” in cl. (iv) for “widow or widower, former spouse, and/or child as defined in section 2002” and “Central Intelligence Agency Retirement Act of 1964” for “Central Intelligence Agency Retirement Act of 1964 for Certain Employees”, was executed by making the substitution for “widow or widower, former spouse, and/or child or children as defined in section 204 and section 232 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”, to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 102–496, § 803(a)(3)(D)(i)–(iii), inserted heading, struck out par. (1) designation before “The annuities provided”, substituted “maintained pursuant to section 2012 of this title” for “established” by section 203 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”, and struck out par. (2) which read as follows: “The annu-
§ 403t. General Counsel of Central Intelligence Agency

(a) Appointment

There is a General Counsel of the Central Intelligence Agency, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) Chief legal officer

The General Counsel is the chief legal officer of the Central Intelligence Agency.

(c) Functions

The General Counsel of the Central Intelligence Agency shall perform such functions as the Director may prescribe.


Codification

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

Amendments


Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment.

Applicability of Appointment Requirements

Section 413(b) of Pub. L. 104–293 provided that: “The requirement established by section 20 of the Central Intelligence Agency Act of 1949 [50 U.S.C. 403t], as added by subsection (a), for the appointment by the President, by and with the advice and consent of the Senate, of an individual to the position of General Counsel of the Central Intelligence Agency shall apply as follows:

“(1) To any vacancy in such position that occurs after the date of the enactment of this Act [Oct. 11, 1996].

“(2) To the incumbent serving in such position on the date of the enactment of this Act as of the date that is six months after such date of enactment, if such incumbent has served in such position continuously between such date of enactment and the date that is six months after such date of enactment.”

§ 403u. Central services program

(a) In general

The Director may carry out a program under which elements of the Agency provide items and services on a reimbursable basis to other elements of the Agency, nonappropriated fund entities or instrumentalities associated or affiliated with the Agency, and other Government agencies. The Director shall carry out the program in accordance with the provisions of this section.

(b) Participation of Agency elements

(1) In order to carry out the program, the Director shall—

(A) designate the elements of the Agency that are to provide items or services under the program (in this section referred to as “central service providers”);

(B) specify the items or services to be provided under the program by such providers; and

(C) assign to such providers for purposes of the program such inventories, equipment, and other assets (including equipment on order) as the Director determines necessary to permit such providers to provide items or services under the program.

(2) The designation of elements and the specification of items and services under paragraph (1) shall be subject to the approval of the Director of the Office of Management and Budget.

(c) Central Services Working Capital Fund

(1) There is established a fund to be known as the Central Services Working Capital Fund (in this section referred to as the “Fund”). The purpose of the Fund is to provide sums for activities under the program.

(2) There shall be deposited in the Fund the following:

(A) Amounts appropriated to the Fund.

(B) Amounts credited to the Fund from payments received by central service providers under subsection (e) of this section.

(C) Fees imposed and collected under subsection (f)(1) of this section.

(D) Amounts received in payment for loss or damage to equipment or property of a central service provider as a result of activities under the program.

(E) Other receipts from the sale or exchange of equipment or property of a central service provider as a result of activities under the program.

(F) Receipts from individuals in reimbursement for utility services and meals provided under the program.
(G) Receipts from individuals for the rental of property and equipment under the program.
(H) Such other amounts as the Director is authorized to deposit in or transfer to the Fund.
(3) Amounts in the Fund shall be available, without fiscal year limitation, for the following purposes:
   (A) To pay the costs of providing items or services under the program.
   (B) To pay the costs of carrying out activities under subsection (f)(2) of this section.
(d) Limitation on amount of orders
   The total value of all orders for items or services to be provided under the program in any fiscal year may not exceed an amount specified in advance by the Director of the Office of Management and Budget.
(e) Payment for items and services
   (1) A Government agency provided items or services under the program shall pay the central service provider concerned for such items or services an amount equal to the costs incurred by the provider in providing such items or services plus any fee imposed under subsection (f) of this section. In calculating such costs, the Director shall take into account personnel costs (including costs associated with salaries, annual leave, and workers’ compensation), plant and equipment costs (including depreciation of plant and equipment other than structures owned by the Agency), operation and maintenance expenses, amortized costs, and other expenses.
   (2) Payment for items or services under paragraph (1) may take the form of an advanced payment by an agency from appropriations available to such agency for the procurement of such items or services.
(f) Fees
   (1) The Director may permit a central service provider to impose and collect a fee with respect to the provision of an item or service under the program. The amount of the fee may not exceed an amount equal to four percent of the payment received by the provider for the item or service.
   (2) The Director may obligate and expend amounts in the Fund that are attributable to the fees imposed and collected under paragraph (1) to acquire equipment or systems for, or to improve the equipment or systems of, central service providers and any elements of the Agency that are not designated for participation in the program in order to facilitate the designation of such elements for future participation in the program.
(g) Termination
   (1) Subject to paragraph (2), the Director of the Central Intelligence Agency and the Director of the Office of Management and Budget, acting jointly—
      (A) may terminate the program under this section and the Fund at any time; and
      (B) upon such termination, shall provide for the disposition of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the program or the Fund.
   (2) The Director of the Central Intelligence Agency and the Director of the Office of Management and Budget may not undertake any action under paragraph (1) until 60 days after the date on which the Directors jointly submit notice of such action to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.


Compensation
Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

Amendments
Subsec. (g)(2). Pub. L. 108–458, § 1071(b)(3)(E), substituted “Director of the Central Intelligence Agency” for “Director of Central Intelligence”.
2003—Subsec. (f)(2). Pub. L. 108–177 substituted “The Director” for “(A) Subject to subparagraph (B), the Director” and struck out subpar. (B) which read as follows: “The Director may not expend amounts in the Fund for purposes specified in subparagraph (A) in fiscal year 1998, 1999, or 2000 unless the Director—
   (i) secures the prior approval of the Director of the Office of Management and Budget; and
   (ii) submits notice of the proposed expenditure to the Permanent Select Committee on Intelligence of the Senate.”
2002—Subsecs. (g), (h). Pub. L. 107–306 redesignated subsec. (h) as (g) and struck out former subsec. (g), which required annual audit of program activities, set forth provisions relating to form, content, and procedures, and required submission of copies to the Director of the Office of Management and Budget, the Director of Central Intelligence, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate.
2001—Subsec. (g)(1). Pub. L. 107–108, § 401(a), substituted “January 31” for “December 31” and “complete an audit” for “conduct an audit”.
Subsec. (h). Pub. L. 107–108, § 401(b), redesignated pars. (2) and (3) as (1) and (2), respectively, substituted “paragraph (2)” for “paragraph (3)” in par. (1) and “paragraph (1)” for “paragraph (2)” in par. (2), and struck out former par. (1) which read as follows: “The authority of the Director to carry out the program under this section shall terminate on March 31, 2002.”
2000—Subsec. (c)(2)(F) to (H). Pub. L. 106–567, § 401(a), added subpars. (F) and (G) and redesignated former subpar. (F) as (H).
Subsec. (e)(1). Pub. L. 106–567, § 401(b), in second sentence, inserted “other than structures owned by the Agency” after “depreciation of plant and equipment”.
Subsec. (g)(2). Pub. L. 106–567, § 401(c), substituted “financial statements to be prepared with respect to the program. Office of Management and Budget guidance
shall also determine the procedures for conducting annual audits under paragraph (1).” for “annual audits under paragraph (1).”

Subsec. (c)(2)(D), Pub. L. 106–120, § 401(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “Amounts collected in payment for loss or damage to equipment or other property of a central service provider as a result of activities under the program.”

Subsec. (c)(2)(E), (F), Pub. L. 106–120, § 401(b)(2), (3), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (f)(2)(A), Pub. L. 106–120, § 401(c), inserted “central service providers and any” before “elements of the Agency”.

Subsec. (h)(1), Pub. L. 106–120, § 401(d), substituted “2002” for “2000”.

Section was enacted as part of the Central Intelligence Agency Act of 1949, and not as part of the National Security Act of 1947 which comprises this chapter.

§ 403w. Intelligence operations and cover enhancement authority

(A) Definitions

In this section—

(1) the term “designated employee” means an employee designated by the Director of the Central Intelligence Agency under subsection (b) of this section; and

(2) the term “Federal retirement system” includes the Central Intelligence Agency Retirement and Disability System, and the Federal Employees’ Retirement System (including the Thrift Savings Plan).

(b) In general

(1) Authority

Notwithstanding any other provision of law, the Director of the Central Intelligence Agency may exercise the authorities under this section in order to—

(A) protect from unauthorized disclosure—

(i) intelligence operations;

(ii) the identities of undercover intelligence officers;

(iii) intelligence sources and methods; or

(iv) intelligence cover mechanisms; or

(B) meet the special requirements of work related to collection of foreign intelligence or other authorized activities of the Agency.

(2) Designation of employees

The Director of the Central Intelligence Agency may designate any employee of the Agency who is under nonofficial cover to be an employee to whom this section applies. Such designation may be made with respect to any or all authorities exercised under this section.

(c) Compensation

The Director of the Central Intelligence Agency may pay a designated employee salary, allowances, and other benefits in an amount and in a manner consistent with the nonofficial cover of that employee, without regard to any limitation that is otherwise applicable to a Federal employee. A designated employee may accept, utilize, and, to the extent authorized by regulations prescribed under subsection (1) of this section, retain any salary, allowances, and other benefits provided under this section.

(d) Retirement benefits

(1) In general

The Director of the Central Intelligence Agency may establish and administer a nonofficial cover employee retirement system for designated employees (and the spouse, former spouses, and survivors of such designated employees). A designated employee may not participate in the retirement system established under this paragraph and another Federal retirement system at the same time.

(2) Conversion to other Federal retirement system

(A) In general

A designated employee participating in the retirement system established under
paragraph (1) may convert to coverage under the Federal retirement system which would otherwise apply to that employee at any appropriate time determined by the Director of the Central Intelligence Agency (including at the time of separation of service by reason of retirement). If the Director of the Central Intelligence Agency determines that the employee’s participation in the retirement system established under this subsection is no longer necessary to protect from unauthorized disclosure—
(i) intelligence operations;
(ii) the identities of undercover intelligence officers;
(iii) intelligence sources and methods; or
(iv) intelligence cover mechanisms.

(B) Conversion treatment

Upon a conversion under this paragraph—
(i) all periods of service under the retirement system established under this subsection shall be deemed periods of creditable service under the applicable Federal retirement system;
(ii) the Director of the Central Intelligence Agency shall transmit an amount for deposit in any applicable fund of that Federal retirement system that—
(I) is necessary to cover all employee and agency contributions including—
(aa) interest as determined by the head of the agency administering the Federal retirement system into which the employee is converting; or
(bb) in the case of an employee converting into the Federal Employees’ Retirement System, interest as determined under section 8334(e) of title 5; and
(II) ensures that such conversion does not result in any unfunded liability to that fund; and
(iii) in the case of a designated employee who participated in an employee investment retirement system established under paragraph (1) and is converted to coverage under subchapter III of chapter 84 of title 5, the Director of the Central Intelligence Agency may transmit any or all amounts of that designated employee in that employee investment retirement system (or similar part of that retirement system) to the Thrift Savings Fund.

(C) Transmitted amounts

(i) in general

Amounts described under subparagraph (B)(ii) shall be paid from the fund or appropriation used to pay the designated employee.

(ii) Offset

The Director of the Central Intelligence Agency may use amounts contributed by the designated employee to a retirement system established under paragraph (1) to offset amounts paid under clause (i).

(D) Records

The Director of the Central Intelligence Agency shall transmit all necessary records relating to a designated employee who converts to a Federal retirement system under this paragraph (including records relating to periods of service which are deemed to be periods of creditable service under subparagraph (B)) to the head of the agency administering that Federal retirement system.

(e) Health insurance benefits

(1) In general

The Director of the Central Intelligence Agency may establish and administer a non-official cover employee health insurance program for designated employees (and the family of such designated employees). A designated employee may not participate in the health insurance program established under this paragraph and the program under chapter 89 of title 5 at the same time.

(2) Conversion to Federal employees health benefits program

(A) In general

A designated employee participating in the health insurance program established under paragraph (1) may convert to coverage under the program under chapter 89 of title 5 at any appropriate time determined by the Director of the Central Intelligence Agency (including at the time of separation of service by reason of retirement), if the Director of the Central Intelligence Agency determines that the employee’s participation in the health insurance program established under this subsection is no longer necessary to protect from unauthorized disclosure—
(i) intelligence operations;
(ii) the identities of undercover intelligence officers;
(iii) intelligence sources and methods; or
(iv) intelligence cover mechanisms.

(B) Conversion treatment

Upon a conversion under this paragraph—
(i) the employee (and family, if applicable) shall be entitled to immediate enrollment and coverage under chapter 89 of title 5;
(ii) any requirement of prior enrollment in a health benefits plan under chapter 89 of that title for continuation of coverage purposes shall not apply;
(iii) the employee shall be deemed to have had coverage under chapter 89 of that title from the first opportunity to enroll for purposes of continuing coverage as an annuitant; and
(iv) the Director of the Central Intelligence Agency shall transmit an amount for deposit in the Employees’ Health Benefits Fund that is necessary to cover any costs of such conversion.

(C) Transmitted amounts

Any amount described under subparagraph (B)(iv) shall be paid from the fund or appropriation used to pay the designated employee.

(f) Life insurance benefits

(1) In general

The Director of the Central Intelligence Agency may establish and administer a non-
official cover employee life insurance program for designated employees (and the family of such designated employees). A designated employee may not participate in the life insurance program established under this paragraph and the program under chapter 87 of title 5 at the same time.

(2) Conversion to Federal employees group life insurance program

(A) In general
A designated employee participating in the life insurance program established under paragraph (1) may convert to coverage under the program under chapter 87 of title 5 at any appropriate time determined by the Director of the Central Intelligence Agency (including at the time of separation of service by reason of retirement), if the Director of the Central Intelligence Agency determines that the employee’s participation in the life insurance program established under this subsection is no longer necessary to protect from unauthorized disclosure—

(i) intelligence operations;
(ii) the identities of undercover intelligence officers;
(iii) intelligence sources and methods; or
(iv) intelligence cover mechanisms.

(B) Conversion treatment
Upon a conversion under this paragraph—

(i) the employee (and family, if applicable) shall be entitled to immediate coverage under chapter 87 of title 5;
(ii) any requirement of prior enrollment in a life insurance program under chapter 87 of that title for continuation of coverage purposes shall not apply;
(iii) the employee shall be deemed to have had coverage under chapter 87 of that title for the full period of service during which the employee would have been entitled to be insured for purposes of continuing coverage as an annuitant; and
(iv) the Director of the Central Intelligence Agency shall transmit an amount for deposit in the Employees’ Life Insurance Fund that is necessary to cover any costs of such conversion.

(C) Transmitted amounts
Any amount described under subparagraph (B)(iv) shall be paid from the fund or appropriation used to pay the designated employee.

(g) Exemption from certain requirements
The Director of the Central Intelligence Agency may exempt a designated employee from mandatory compliance with any Federal regulation, rule, standardized administrative policy, process, or procedure that the Director of the Central Intelligence Agency determines—

(1) would be inconsistent with the nonofficial cover of that employee; and
(2) could expose that employee to detection as a Federal employee.

(h) Taxation and social security

(1) In general
Notwithstanding any other provision of law, a designated employee—

(A) shall file a Federal or State tax return as if that employee is not a Federal employee and may claim and receive the benefit of any exclusion, deduction, tax credit, or other tax treatment that would otherwise apply if that employee was a Federal employee, if the Director of the Central Intelligence Agency determines that taking any action under this paragraph is necessary to—

(i) protect from unauthorized disclosure—
(I) intelligence operations;
(II) the identities of undercover intelligence officers;
(III) intelligence sources and methods; or
(IV) intelligence cover mechanisms; and
(ii) meet the special requirements of work related to collection of foreign intelligence or other authorized activities of the Agency; and

(B) shall receive social security benefits based on the social security contributions made.

(2) Internal Revenue Service review
The Director of the Central Intelligence Agency shall establish procedures to carry out this subsection. The procedures shall be subject to periodic review by the Internal Revenue Service.

(i) Regulations
The Director of the Central Intelligence Agency shall prescribe regulations to carry out this section. The regulations shall ensure that the combination of salary, allowances, and benefits that an employee designated under this section may retain does not significantly exceed, except to the extent determined by the Director of the Central Intelligence Agency to be necessary to exercise the authority in subsection (b) of this section, the combination of salary, allowances, and benefits otherwise received by Federal employees not designated under this section.

(j) Finality of decisions
Any determinations authorized by this section to be made by the Director of the Central Intelligence Agency or the Director’s designee shall be final and conclusive and shall not be subject to review by any court.

(k) Subsequently enacted laws
No law enacted after the effective date of this section shall affect the authorities and provisions of this section unless such law specifically refers to this section.


References in text
The effective date of this section, referred to in subsec. (k), is the date of enactment of Pub. L. 108–487, which was approved December 23, 2004. See section 801 of Pub. L. 108–487, set out as an Effective Date of 2004 Amendments note under section 2656f of Title 22, Foreign Relations and Intercourse.
§ 403x. Separation pay program for voluntary separation from service

(a) Definitions

For purposes of this section—
(1) the term "Director" means the Director of the Central Intelligence Agency;\textsuperscript{1} \textsuperscript{1}
(2) the term "employee" means an employee of the Central Intelligence Agency, serving under an appointment without time limitation, who has been currently employed for a continuous period of at least 12 months, except that such term does not include—
(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5 or another retirement system for employees of the Government; or
(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A).

(b) Establishment of program

In order to avoid or minimize the need for involuntary separations due to downsizing, reorganization, transfer of function, or other similar action, the Director may establish a program under which employees may be offered separation pay to separate from service voluntarily (whether by retirement or resignation). An employee who receives separation pay under such program may not be reemployed by the Central Intelligence Agency for the 12-month period beginning on the effective date of the employee's separation. An employee who receives separation pay under this section on the basis of a separation occurring on or after March 30, 1994, and accepts employment with the Government of the United States within 5 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the Central Intelligence Agency. If the employment is with an Executive agency (as defined by section 105 of title 5), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(c) Bar on certain employment

(1) Bar

An employee may not be separated from service under this section unless the employee agrees that the employee will not—
(A) act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to the Central Intelligence Agency; or
(B) participate in any manner in the award, modification, extension, or performance of any contract for property or services with the Central Intelligence Agency, during the 12-month period beginning on the effective date of the employee's separation from service.

(2) Penalty

An employee who violates an agreement under this subsection shall be liable to the United States in the amount of the separation pay paid to the employee pursuant to this section times the proportion of the 12-month period during which the employee was in violation of the agreement.

(d) Limitations

Under this program, separation pay may be offered only—
(1) with the prior approval of the Director; and
(2) to employees within such occupational groups or geographic locations, or subject to such other similar limitations or conditions, as the Director may require.

(e) Amount and treatment for other purposes

Such separation pay—
(1) shall be paid in a lump sum;
(2) shall be equal to the lesser of—
(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, if the employee were entitled to payment under such section; or
(B) $25,000;
(3) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and
(4) shall not be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595 of title 5 based on any other separation.

(f) Regulations

The Director shall prescribe such regulations as may be necessary to carry out this section.

(g) Reporting requirements

(1) Offering notification

The Director may not make an offering of voluntary separation pay pursuant to this section until 30 days after submitting to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a re-
port describing the occupational groups or geographic locations, or other similar limitations or conditions, required by the Director under subsection (d) of this section.

(2) Annual report

At the end of each of the fiscal years 1993 through 1997, the Director shall submit to the President the Permanent Select Committee on Intelligence of the Senate a report concerning the effectiveness and costs of carrying out this section.


Modification

Section was formerly set out as a note under section 403–4 of this title.


Modification

Section was formerly set out as a note under section 403–4 of this title.

of 1949” on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS
1954—Act Sept. 3, 1954, struck out subsec. (a) relating to establishment of National Security Resources Board, and redesignated subsecs. (b) to (d) as subsecs. (a) to (c), respectively.
1949—Subsec. (b), Act Oct. 28, 1949, substituted “Classification Act of 1949” for “Classification Act of 1923”.

REPEALS
Act Oct. 23, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS
“Administrator of the Federal Emergency Management Agency” substituted for “Chairman of the Board” in subsec. (a) and for “Board” in subsecs. (b) and (c), on authority of the following:
“Chairman of the Board”, meaning Chairman of National Security Resources Board, substituted for “Board”, meaning National Security Resources Board, on authority of section 1 of Reorg. Plan No. 25 of 1950, set out below.
“Director of the Office of Defense Mobilization” substituted in text for “Chairman of Board” meaning National Security Resources Board, pursuant to Reorg. Plan No. 3 of 1953, §§1(a), 2(a), and 6, eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634, set out below, which established Office of Defense Mobilization, as an agency within Executive Office of President, abolished National Security Resources Board, and transferred to Director of Office of Defense Mobilization functions, records, property, personnel, and funds of Board.
Office of Emergency Preparedness, including offices of Director, Deputy Director, Assistant Directors, and Regional Directors, abolished and functions vested by law in Office of Emergency Preparedness transferred to President of United States by sections 1 and 3(a)(1) of Reorg. Plan No. 1 of 1973, eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.
Functions vested in Director of Office of Emergency Preparedness as of June 30, 1973, by Executive Order, proclamation, or other directive issued by or on behalf of President or otherwise under this section and Ex. Ord. No. 10241, formerly set out below, with certain exceptions, transferred to Administrator of General Services by Ex. Ord. No. 11725, §5, June 27, 1973, 38 F.R. 17175, formerly set out under section 2271 of the Appendix to this title, to be exercised in conformance with such guidance as provided by National Security Council and, with respect to economic and disposal aspects of stockpiling of strategic and critical materials by Council on Economic Policy. Functions of Administrator of General Services under this chapter performed by Federal Preparedness Agency within General Services Administration.
Functions of Director of Office of Defense Mobilization under this section, which were previously transferred to President, delegated to Secretary of Homeland Security by sections 1–103 and 4–102 of Ex. Ord. No. 12146, July 20, 1979, 44 F.R. 43239, as amended, set out as a note under section 5195 of Title 42, The Public Health and Welfare.
For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 555(d), 559(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 520 of Title 6.
“Administrator of the Federal Emergency Management Agency” substituted for “Director of the Federal Emergency Management Agency” in subsecs. (a) to (c) on authority of section 612(c) of Pub. L. 109–256 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(1)(2) of Pub. L. 109–256, set out as a note under section 313 of Title 6.

EMERGENCY PREPAREDNESS FUNCTIONS
For assignment of certain emergency preparedness functions to Secretary of Homeland Security, see parts 1, 2, and 17 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47941, as amended, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

OFFICE OF EMERGENCY PLANNING

REORGANIZATION PLAN NO. 25 OF 1950
Eff. July 9, 1950, 15 F.R. 4366, 64 Stat. 1280
Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 9, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

NATIONAL SECURITY RESOURCES BOARD

SECTION 1. FUNCTIONS OF CHAIRMAN AND OF BOARD
The functions of the National Security Resources Board are hereby transferred to the Chairman of the National Security Resources Board, and the Board shall hereafter advise and consult with the Chairman with respect to such matters within his jurisdiction as he may request.

SEC. 2. VICE CHAIRMAN
There is hereby established the office of Vice Chairman of the National Security Resources Board. Such Vice Chairman shall (1) be an additional member of the National Security Resources Board, (2) be appointed from civilian life by the President, by and with the advice and consent of the Senate, (3) receive compensation at the rate of $16,000 per annum, and (4) perform such of the duties of the Chairman as the Chairman shall designate.

SEC. 3. PERFORMANCE OF FUNCTIONS OF CHAIRMAN
The Chairman may from time to time make such provisions as he shall deem appropriate for authorizing the performance by any other officer, or by any agency or employee, of the National Security Resources Board of any function of the Chairman.

MESSAGE OF THE PRESIDENT
To the Congress of the United States:
I transmit herewith Reorganization Plan No. 25 of 1950, prepared in accordance with the provisions of the Reorganization Act of 1949. The plan transfers the function of the National Security Resources Board from the Board to the Chairman of the Board and makes the Board advisory to the Chairman. The plan also provides for a Vice Chairman, appointed by the President and confirmed by the Senate.

The function assigned to the National Security Resources Board by the National Security Act of 1947 is "to advise the President concerning the coordination of military, industrial and civilian mobilization." Proper performance of this function requires action by the Board and its staff in two broad areas:

(1) The conduct of advance mobilization planning which identifies the problems which will arise and the measures necessary to meet these problems if and when the Nation moves from a peacetime into a wartime situation.

(2) The formulation of current policies and programs which will help the Nation achieve an adequate state of readiness against the eventuality of a future war.

The role assigned the National Security Resources Board is clearly one of staff assistance to the President. The Congress recently recognized this fact in its approval of Reorganization Plan No. 4 of 1949 which, pursuant to the specific recommendation of the Hoover Commission, placed the National Security Resources Board in the Executive Office of the President.

The accompanying reorganization plan is designed to make the National Security Resources Board a more effective instrument. Successful performance of the Board's mission requires a wide range of detailed study and analysis to cover all the major aspects of national mobilization. A committee of department heads or departmental representatives encounters some natural difficulties in providing supervision and leadership in such an extensive and detailed activity. The Chairman has the difficult task of exercising discretion as to which matters shall be submitted for Board approval. The departmental members of the Board cannot possibly supervise or approve the Board's extensive and detailed activities and yet, as Board members, must accept ultimate responsibility for all such activities. Likewise, the departmental members are encumbered by the difficulty of having to reach collective and speedy decisions on a great many matters for which they, as Board members, are responsible.

By vesting the functions of the Board in the Chairman, the difficulties of Board operation will be overcome. At the same time, the reorganization plan provides for the continued participation of the several departments and agencies in the task of mobilization planning. This is not only a matter of established policy but also a requirement of the National Security Act. The departments will continue to have representation on the Board. The Board, in an advisory relationship to the Chairman, will be a useful arrangement for obtaining the necessary participation of departments in mobilization planning and for coordination of their activity. It will enable the departments to keep abreast of the total range of security resources planning. Without reliance on the departments for the execution of much of the actual job of mobilization planning, coordination with the total range of governmental policies and objectives would be lost.

The Congress in passing the National Security Act Amendments of 1949 recognized the difficulty which exists when functions of staff advice and assistance are placed in a board-type agency. The National Security Act Amendments of 1949, in clarifying the role of the Chairman of the Munitions Board and the Research and Development Board, strengthened and increased the effectiveness of these staff agencies of the Secretary of Defense by providing for the exclusive exercise of responsibilities by the Chairman. This plan achieves the same objective for the National Security Resources Board.

The accompanying reorganization plan provides for a Vice Chairman appointed by the President and confirmed by the Senate. The tremendous responsibilities of the National Security Resources Board and the heavy workload on the Chairman fully warrant this. Providing the Chairman with a principal associate for the exercise of his responsibilities is consistent with the usual practice in other agencies of the executive branch.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 25 of 1950 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

I have found and hereby declare that it is necessary to include in the accompanying reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of a Vice Chairman of the National Security Resources Board. The rate of compensation fixed for this officer is that which I have found to prevail in respect of comparable officers in the executive branch of the Government.

The taking effect of the reorganizations included in Reorganization Plan No. 25 may not in itself result in substantial immediate savings. However, the important objective is maximum effectiveness in security resources planning.

The security of this Nation requires that these steps be taken to enable security resources planning to move forward more effectively. It is for that reason, and that reason alone, that I strongly urge congressional acceptance of Reorganization Plan No. 25.

HARRY S. TRUMAN.

THE WHITE HOUSE, May 9, 1950.

REORGANIZATION PLAN NO. 3 OF 1953


Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 2, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 29, 1949, as amended [see 5 U.S.C. 901 et seq.].

OFFICE OF DEFENSE MOBILIZATION

SECTION 1. ESTABLISHMENT OF OFFICE

(a) There is hereby established in the Executive Office of the President a new agency which shall be known as the Office of Defense Mobilization, hereinafter referred to as the "Office."

(b) There shall be at the head of the Office a Director of the Office of Defense Mobilization, hereinafter referred to as the "Director," who shall be appointed by the President by and with the advice and consent of the Senate and shall receive compensation at the rate of $22,500 per annum.

(c) There shall be in the Office a Deputy Director of the Office of Defense Mobilization, who shall be appointed by the President, by and with the advice and consent of the Senate, shall receive compensation at the rate of $17,500 per annum, shall perform such functions as the Director shall designate, and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the office of the Director.

SECTION 2. TRANSFER OF FUNCTIONS

There are hereby transferred to the Director:

(a) All functions of the Chairman of the National Security Resources Board, including his functions as a member of the National Security Council, but excluding the functions abolished by section 5(a) of this reorganization plan.

(b) All functions under the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98 et seq.), vested in the Secretaries of the Army, Navy, Air Force, and Interior or in any combination of them, including the functions which were vested in the Army and Navy Munitions Board by the
SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS

(a) The Director may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Office, of any function of the Director, exclusive of the function of being a member of the National Security Council.

(b) When authorized by the Director, any function transferred to him by the provisions of this reorganization plan (exclusive of the function of being a member of the National Security Council) may be performed by the head of any agency of the executive branch of the Government or, subject to the direction and control of any such agency head, by such officers, employees, and organizational units under the jurisdiction of such agency head as such agency head may designate.

(c) In addition to the representatives who by virtue of the last sentence of section 2(a) of the Strategic and Critical Materials Stock Piling Act, as amended [former section 98a(a) of this title], and section 2 of this reorganization plan are designated to cooperate with the Director, the Secretary of Defense, the Secretary of the Interior, and the heads of such other agencies having functions regarding strategic or critical materials as the Director shall from time to time designate, shall each designate representatives who shall similarly cooperate with the Director.

SEC. 4. RECORDS, PROPERTY, PERSONNEL, AND FUNDS

There shall be transferred with the functions transferred by this reorganization plan from the Chairman of the National Security Resources Board and the Department of Defense, respectively, so much of the records, property, personnel, and unexpended balances of appropriations, allocations, and other funds, used, held, employed, available, or to be made available in connection with the said functions, as the Director shall determine to be required for the performance of the transferred functions by the Office, but all transfers from the Department of Defense under the foregoing provisions of this section shall be subject to the approval of the Secretary of Defense.

SEC. 5. ABOLITION OF FUNCTIONS

(a) The functions of the Chairman of the National Security Resources Board under section 18 of the Universal Military Training and Service Act (50 U.S. App. 468), as affected by Reorganization Plan Numbered 25 of 1950 (64 Stat. 1280) [set out above], with respect to being consulted by and furnishing advice to the President as required by that section, are hereby abolished.

(b) So much of the functions of the Secretary of Defense under section 202(b) of the National Security Act of 1947, as amended [see 10 U.S.C. 113(b)], as consists of direction, authority, and control over functions transferred by this reorganization plan are hereby abolished.

(c) Any functions which were vested in the Army and Navy Munitions Board or which are vested in the Munitions Board with respect to serving as agent through which the Secretaries of the Army, Navy, Air Force, and Interior jointly act, under section 3(a) of the Strategic and Critical Materials Act, as amended [former section 98a of this title], are hereby abolished.

SEC. 6. ABOLITION OF NATIONAL SECURITY RESOURCES BOARD

The National Security Resources Board (established by the National Security Act of 1947, 61 Stat. 499 [this section]), including the offices of Chairman and Vice Chairman of the National Security Resources Board, is hereby abolished, and the Director shall provide for winding up any outstanding affairs of the said Board or offices not otherwise provided for in this reorganization plan.

[For subsequent history relating to Office of Defense Mobilization, see notes set out under this section.]
Therefore, the reorganization plan would transfer to the Director of the new Office of Defense Mobilization responsibility for major stockpiling actions, including the determination of the nature and quantities of materials to be stockpiled. In the main, these functions are transferred from the Secretaries of the Army, Navy, and Air Force (acting jointly through the agency of the Munitions Board) and the Secretary of the Interior. The duties of the Administrator of General Services regarding the purchase of strategic and critical materials and the management of stockpiles are not affected by the reorganization plan, except that he will receive his directions, under the plan, from the Director of the Office of Defense Mobilization instead of from the Department of Defense.

This transfer of stockpiling functions will correct the present undesirable confusion of responsibilities. The functions of the heads of the military departments of the Department of Defense and the Secretary of the Interior under the Strategic and Critical Materials Stock Piling Act, as amended, are at present in considerable measure subject to other authority of delegates of the President springing from the Defense Production Act of 1950, as amended. The allocation and distribution of scarce materials among essential civilian and military activities and the continued maintenance of adequate stockpiles of strategic and critical materials are of major current importance. The reorganization plan will make possible more effective coordination and close control over the Government’s whole stockpile program. It will speed decisions. It can result in significant economies.

The Department of Defense will, of course, continue to be responsible for presenting the needs of the military services. The Department of Defense and the Department of the Interior are specifically designated in the plan as additional agencies which shall appoint representatives to cooperate with the Director of the Office of Defense Mobilization in determining which materials are strategic and critical and how much of them is to be purchased. Final authority with regard to such determination will, however, be in the Director of the Office of Defense Mobilization.

Section 5(a) of the reorganization plan withholds from transfer to the Director and abolishes the functions of the Chairman of the National Security Resources Board with regard to being consulted by and furnishing advice to the President concerning the placing of orders of mandatory precedence for articles or materials for the use of the armed forces of the United States or for the use of the Atomic Energy Commission, and with regard to determining that a plant, mine, or other facility can be readily converted to the purpose of or furnishing of such articles or materials. These abolished functions were vested in the National Security Resources Board by section 18 of the Selective Service Act of 1948 (later renamed as the Universal Military Training and Service Act) and were transferred to the Chairman of that Board by Reorganization Plan No. 25 of 1950. The practical effect of this abolition is to obviate a statutory mandate that the President consult and advise with another officer of the executive branch of the Government.

Section 5(b) of the reorganization plan abolishes the direction, authority, and control of the Secretary of Defense over functions transferred from the Department of Defense by the reorganization plan. The Secretary’s functions in this regard are provided for in section 202(b) of the National Security Act of 1947, as amended (5 U.S.C. 1714(b)) [see 19 U.S.C. 111(b)].

Section 5(c) of the reorganization plan abolishes any functions which were vested in the Army and Navy Munitions Board or which are vested in the Munitions Board with respect to serving as the agent through which the Secretaries of the Army, Navy, Air Force, and the Interior jointly act in determining which materials are strategic and critical under the provisions of the Strategic and Critical Materials Stock Piling Act, as amended, and the quantity and quantities of such materials to be stockpiled. These abolished functions are provided for in section 2(a) of the Strategic and Critical Materials Stock Piling Act, as amended.

After investigation I have found and hereby declare that each provision included in Reorganization Plan No. 3 of 1953 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended. I have also found and hereby declare that on the reasons of these reorganizations it is necessary to include in the reorganization plan provisions for the appointment and compensation of a Director and a Deputy Director of the Office of Defense Mobilization. The rates of compensation fixed for these officers are, respectively, those which I have found to prevail in respect of comparable officers of the executive branch of the Government.

The reorganization plan will permit better organization and management of the Federal programs relating to materials and requirements and will thus help to achieve the maximum degree of mobilization readiness at the least possible cost. It is not practicable, however, to itemize, in advance of actual experience, the reductions of expenditures to be brought about by the taking effect of the reorganizations included in Reorganization Plan No. 3 of 1953.

I urge that the Congress allow the proposed reorganization plan to become effective.

Dwight D. Eisenhower.

The White House, April 2, 1953.

EXECUTIVE ORDER No. 9905

EXECUTIVE ORDER No. 10169

EXECUTIVE ORDER No. 10421

EXECUTIVE ORDER No. 10438

§ 404a. Annual national security strategy report
(a) Transmittal to Congress
(1) The President shall transmit to Congress each year a comprehensive report on the national security strategy of the United States (hereinafter in this section referred to as a “national security strategy report”).
(2) The national security strategy report for any year shall be transmitted on the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31.
(3) Not later than 150 days after the date on which a new President takes office, the Presi-
dent shall transmit to Congress a national security strategy report under this section. That report shall be in addition to the report for that year transmitted at the time specified in paragraph (2).

(b) Contents

Each national security strategy report shall set forth the national security strategy of the United States and shall include a comprehensive description and discussion of the following:

(1) The worldwide interests, goals, and objectives of the United States that are vital to the national security of the United States.

(2) The foreign policy, worldwide commitments, and national defense capabilities of the United States necessary to deter aggression and to implement the national security strategy of the United States.

(3) The proposed short-term and long-term uses of the political, economic, military, and other elements of the national power of the United States to protect or promote the interests and achieve the goals and objectives referred to in paragraph (1).

(4) The adequacy of the capabilities of the United States to carry out the national security strategy of the United States, including an evaluation of the balance among the capabilities of all elements of the national power of the United States to support the implementation of the national security strategy.

(5) Such other information as may be necessary to help inform Congress on matters relating to the national security strategy of the United States.

(c) Classified and unclassified form

Each national security strategy report shall be transmitted in both a classified and an unclassified form.


AMENDMENTS


Pub. L. 102-172, title VIII, §8132, Nov. 26, 1991, 105 Stat. 1208, provided for establishment of a National Commission which was to submit to Congress, not later than May 1, 1992, a final report containing an assessment and recommendations regarding role of, and requirements for, nuclear weapons in security strategy of United States as result of significant changes in former Warsaw Pact, former Soviet Union, and third world, including possibilities for international cooperation with former Soviet Union regarding such problems, and safeguards to protect against accidental or unauthorized use of nuclear weapons, further directed Commission to obtain study from National Academy of Sciences on these matters, further authorized establishment of joint working group comprised of experts from governments of United States and former Soviet Union which was to meet on regular basis and provide recommendations regarding these matters, and further provided for composition of Commission as well as powers, procedures, personnel matters, appropriations, and termination of Commission upon submission of its final report.

§ 404b. Multiyear national intelligence program

(a) Annual submission of multiyear national intelligence program

The Director of National Intelligence shall submit to the congressional committees specified in subsection (d) of this section each year a multiyear national intelligence program plan reflecting the estimated expenditures and proposed appropriations required to support that program. Any such multiyear national intelligence program plan shall cover the fiscal year with respect to which the budget is submitted and at least four succeeding fiscal years.

(b) Time of submission

The Director of National Intelligence shall submit the report required by subsection (a) of this section each year at or about the same time that the budget is submitted to Congress pursuant to section 1105(a) of title 31.

(c) Consistency with budget estimates

The Director of National Intelligence and the Secretary of Defense shall ensure that the estimates referred to in subsection (a) of this section are consistent with the budget estimates submitted to Congress pursuant to section 1105(a) of title 31 for the fiscal year concerned and with the estimated expenditures and proposed appropriations for the future-years defense program submitted pursuant to section 221 of title 10.

(d) Specified congressional committees

The congressional committees referred to in subsection (a) of this section are the following:

(1) The Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.

(2) The Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.


CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1991, and not as part of the National Security Act of 1947 which comprises this chapter.

AMENDMENTS


Subsec. (a). Pub. L. 111-259, §803(a), (b)(1), struck out “foreign” after “national” wherever appearing in heading and text and substituted “Director of National Intelligence” for “Director of Central Intelligence” in text.

Subsec. (b). Pub. L. 111-259, §803(b)(2), inserted “of National Intelligence” after “Director”.

Subsec. (c). Pub. L. 111-259, §803(b)(1), (c), substituted “Director of National Intelligence” for “Director of National Intelligence” for “Director of
Central Intelligence” and “future-years defense program submitted pursuant to section 221 of title 10” for “multiyear defense program submitted pursuant to section 114a of title 10”.


1996—Subsec. (a). Pub. L. 104–106, §1502(c)(4)(B)(i), substituted “the congressional committees specified in subsection (d) of this section each year” for “the Committees on Armed Services and Appropriations of the Senate and the Committees on Representatives and the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives each year”.

Subsec. (d). Pub. L. 104–106, §1502(c)(4)(B)(ii), substituted “shall submit to the congressional committees specified in subsection (d) of this section each year” for “shall submit to the Committees on Armed Services and on Foreign Affairs of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate each year”.

Subsec. (c). Pub. L. 104–106, §1502(c)(4)(C)(i), substituted “The President” for “(1) Except as provided in paragraph (2), the President” and struck out par. (2) which read as follows: “In the case of the report required to be submitted in 1991, the evaluation, plan, and assessment referred to in paragraphs (2), (3), and (4) of subsection (b) of this section may be submitted not later than May 1, 1991.”


CHANGE OF NAME
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.


§ 404e. National mission of National Geospatial-Intelligence Agency

(a) In general
In addition to the Department of Defense missions set forth in section 422 of title 10, the National Geospatial-Intelligence Agency shall support the geospatial intelligence requirements of the Department of State and other departments and agencies of the United States outside the Department of Defense.

(b) Requirements and priorities
The Director of National Intelligence shall establish requirements and priorities governing the collection of national intelligence by the National Geospatial-Intelligence Agency under subsection (a) of this section.

(c) Correction of deficiencies
The Director of National Intelligence shall develop and implement such programs and policies...
as the Director and the Secretary of Defense jointly determine necessary to review and correct deficiencies identified in the capabilities of the National Geospatial-Intelligence Agency to accomplish assigned national missions, including support to the all-source analysis and production process. The Director shall consult with the Secretary of Defense on the development and implementation of such programs and policies. The Secretary shall obtain the advice of the Chairman of the Joint Chiefs of Staff regarding the matters on which the Director and the Secretary are to consult under the preceding sentence.


AMENDMENTS

2004—Subsec. (b). Pub. L. 108–458, \$1071(a)(1)(I), substituted “Director of National Intelligence” for “Director of Central Intelligence”:

Subsec. (c). Pub. L. 108–458, \$1071(a)(1)(J), substituted “Director of National Intelligence” for “Director of Central Intelligence”:


EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


EFFECTIVE DATE OF REPEAL

For Determination by President that repeal take effect on Apr. 21, 2006, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Repeal effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

$404g. Restrictions on intelligence sharing with United Nations

(a) Provision of intelligence information to United Nations

(1) No United States intelligence information may be provided to the United Nations or any organization affiliated with the United Nations, or to any officials or employees thereof, unless the President certifies to the appropriate committees of Congress that the Director of National Intelligence, in consultation with the Secretary of State and the Secretary of Defense, has established and implemented procedures, and has worked with the United Nations to ensure implementation of procedures, for protecting from unauthorized disclosure United States intelligence sources and methods connected to such information.

(2) Paragraph (1) may be waived upon written certification by the President to the appropriate committees of Congress that providing such information to the United Nations or an organization affiliated with the United Nations, or to any officials or employees thereof, is in the national security interests of the United States.

(b) Delegation of duties

The President may not delegate or assign the duties of the President under this section.

(c) Relationship to existing law

Nothing in this section shall be construed to—

(1) impair or otherwise affect the authority of the Director of National Intelligence to protect intelligence sources and methods from unauthorized disclosure pursuant to section 403–1(i) of this title; or

(2) supersede or otherwise affect the provisions of subchapter III of this chapter.

(d) “Appropriate committees of Congress” defined

As used in this section, the term “appropriate committees of Congress” means the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and the Committee on Foreign Relations and the Permanent Select Committee on Intelligence of the House of Representatives.

(Section was formerly classified to section 404d–1 of this title prior to renumbering by Pub. L. 105–107.)

AMENDMENTS

2010—Subsecs. (b) to (e). Pub. L. 111–239 redesignated subsecs. (c) to (e) as (b) to (d), respectively, and struck out former subsec. (b). Prior to amendment, text of subsec. (b) read as follows:

“(1) The President shall report annually to the appropriate committees of Congress on the types and volume...
of intelligence provided to the United Nations and the purposes for which it was provided during the period covered by the report. The President shall also report to the appropriate committees of Congress within 15 days after it has become known to the United States Government that there has been an unauthorized disclosure of intelligence provided by the United States to the United Nations.

(2) The requirement for periodic reports under the first sentence of paragraph (1) shall not apply to the provision of intelligence that is provided only to, and for the use of, appropriately cleared United States Government personnel serving with the United Nations.

(3) In the case of the annual reports required to be submitted under the first sentence of paragraph (1) to the congressional intelligence committees, the submit-
tal dates for such reports shall be as provided in section 415b of this title.


Pub. L. 108–458, §1071(a)(1)(L), substituted “Director of National Intelligence” for “Director of Central Intelligence”.


Subsec. (b)(1). Pub. L. 108–177, §361(b)(2), substituted “an annual” for “semiannually”.

Subsec. (b)(3). Pub. L. 108–177, §361(b)(3), substituted the “annual” for “periodic”.

Subsec. (d)(1). Pub. L. 108–177, §377(a), substituted “section 403–3(c)(7)” for “section 403–3(c)(6)”.


**Effective Date of 2004 Amendment**

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transmission Provisions note under section 401 of this title.

**Effective Date of 2003 Amendment**

Amendment by section 361(b) of Pub. L. 108–177 effective Dec. 31, 2003, see section 361(n) of Pub. L. 108–177, set out as a note under section 1611 of Title 10, Armed Forces.

§404h. Detail of intelligence community personnel—Intelligence Community Assignment Program

(a) Detail

(1) Notwithstanding any other provision of law, the head of a department with an element in the intelligence community or the head of an intelligence community agency or element may detail any employee within that department, agency, or element to serve in any position in the Intelligence Community Assignment Program on a reimbursable or a nonreimbursable basis.

(2) Nonreimbursable details may be for such periods as are agreed to between the heads of the parent and host agencies, up to a maximum of three years, except that such details may be extended for a period not to exceed one year when the heads of the parent and host agencies determine that such extension is in the public interest.

(b) Benefits, allowances, travel, incentives

(1) An employee detailed under subsection (a) of this section may be authorized any benefit, allowance, travel, or incentive otherwise provided to enhance staffing by the organization from which the employee is detailed.

(2) The head of an agency of an employee detailed under subsection (a) of this section may pay a lodging allowance for the employee subject to the following conditions:

(A) The allowance shall be the lesser of the cost of the lodging or a maximum amount payable for the lodging as established jointly by the Director of National Intelligence and—

(i) with respect to detailed employees of the Department of Defense, the Secretary of Defense; and

(ii) with respect to detailed employees of other agencies and departments, the head of such agency or department.

(B) The detailed employee maintains a primary residence for the employee’s immediate family in the local commuting area of the parent agency duty station from which the employee regularly commuted to such duty sta-

tion before the detail.

(C) The lodging is within a reasonable proximity of the host agency duty station.

(D) The distance between the detailed employee’s parent agency duty station and the host agency duty station is greater than 20 miles.

(E) The distance between the detailed employee’s primary residence and the host agency duty station is 10 miles greater than the distance between such primary residence and the employees parent duty station.

(F) The rate of pay applicable to the detailed employee does not exceed the rate of basic pay for grade GS–15 of the General Schedule.


**References in Text**


**Amendments**


2002—Subsec. (c). Pub. L. 107–306 struck out heading and text of subsec. (c). Text read as follows: “Not later than March 1, 1999, and annually thereafter, the Director of Central Intelligence shall submit to the Permanent Select Committee on Intelligence of the Senate a report describing the detail of intelligence community personnel pursuant to subsection (a) of this section during the 12-month period...
ending on the date of the report. The report shall set forth the number of personnel detailed, the identity of parent and host agencies or elements, and an analysis of the benefits of the details.”


**Effective Date of 2004 Amendment**

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


**Effective Date**

Pub. L. 105–107, title III, § 303(d), Nov. 20, 1997, 111 Stat. 2259, provided that: “The amendment made by subsection (a) [enacting this section] shall apply to an employee on detail on or after January 1, 1997."

### § 404h–1. Detail of other personnel

Except as provided in section 402c(g)(2)\(^1\) of this title and section 404h of this title, and notwithstanding any other provision of law, an officer or employee of the United States or member of the Armed Forces may be detailed to the staff of an element of the intelligence community funded through the National Intelligence Program from another element of the intelligence community or from another element of the United States Government on a reimbursable or non-reimbursable basis, as jointly agreed to by the head of the receiving element and the head of the detailing element, for a period not to exceed 2 years.


**References in Text**


### § 404i. Additional annual reports from the Director of National Intelligence

#### (a) Annual report on the safety and security of Russian nuclear facilities and nuclear military forces

1. The Director of National Intelligence shall submit to the congressional leadership on an annual basis, and to the congressional intelligence committees on the date each year provided in section 415b of this title, an intelligence report assessing the safety and security of the nuclear facilities and nuclear military forces in Russia.

2. Each such report shall include a discussion of the following:

   A. The ability of the Government of Russia to maintain its nuclear military forces.

   B. The security arrangements at civilian and military nuclear facilities in Russia.

   C. The reliability of controls and safety systems at civilian nuclear facilities in Russia.

(D) The reliability of command and control systems and procedures of the nuclear military forces in Russia.

3. Each such report shall be submitted in unclassified form, but may contain a classified annex.

#### (b) Annual report on hiring and retention of minority employees

1. The Director of National Intelligence shall, on an annual basis, submit to Congress a report on the employment of covered persons within each element of the intelligence community for the preceding fiscal year.

2. Each such report shall include disaggregated data by category of covered person from each element of the intelligence community on the following:

   A. Of all individuals employed in the element during the fiscal year involved, the aggregate percentage of such individuals who are covered persons.

   B. Of all individuals employed in the element during the fiscal year involved at the levels referred to in clauses (i) and (ii), the percentage of covered persons employed at such levels:

      i. Positions at levels 1 through 15 of the General Schedule.

      ii. Positions at levels 16 through 20.

   C. Of all individuals hired by the element during the fiscal year involved, the percentage of such individuals who are covered persons.

3. Each such report shall be submitted in unclassified form, but may contain a classified annex.

4. Nothing in this subsection shall be construed as providing for the substitution of any similar report required under another provision of law.

5. In this subsection, the term “covered persons” means—

   A. Racial and ethnic minorities;

   B. Women; and

   C. Individuals with disabilities.

#### (c) Annual report on threat of attack on the United States using weapons of mass destruction

1. Not later each year than the date provided in section 415b of this title, the Director of National Intelligence shall submit to the congressional committees specified in paragraph (3) a report assessing the following:

   A. The current threat of attack on the United States using ballistic missiles or cruise missiles.

   B. The current threat of attack on the United States using a chemical, biological, or nuclear weapon delivered by a system other than a ballistic missile or cruise missile.

2. Each report under paragraph (1) shall be a national intelligence estimate, or have the formality of a national intelligence estimate.

3. The congressional committees referred to in paragraph (1) are the following:

   A. The congressional intelligence committees.

   B. The Committees on Foreign Relations and Armed Services of the Senate.

\(^1\) See References in Text note below.
(C) The Committees on International Relations and Armed Services of the House of Representatives.

(d) Congressional leadership defined

In this section, the term ‘congressional leadership’ means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.


REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(2)(B), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

2004—Pub. L. 108–458, § 1071(a)(7), substituted ‘‘Additional annual reports from the Director of National Intelligence’’ for ‘‘Additional annual reports from the Director of Central Intelligence’’ in section catchline.

Subsec. (a)(1). Pub. L. 108–458, § 1071(a)(1)(V), substituted ‘‘Director of National Intelligence’’ for ‘‘Director of Central Intelligence’’.

Subsec. (b)(1). Pub. L. 108–458, § 1071(a)(1)(O), substituted ‘‘Director of National Intelligence’’ for ‘‘Director of Central Intelligence’’.


2003—Subsec. (a). Pub. L. 108–177, § 361(c), redesignated subsec. (b) as (a) and struck out former subsec. (a), which related to annual reports on intelligence community cooperation with Federal law enforcement agencies.

Subsecs. (b), (c). Pub. L. 108–177, § 361(c)(2), redesignated subsecs. (c) and (d) as (b) and (c), respectively. Former subsec. (b) redesignated (a).

Subsec. (d). Pub. L. 108–177, § 361(d), redesignated subsec. (e) as (d) and struck out former subsec. (d), which related to annual reports on covert leases of the intelligence community.

Pub. L. 108–177, § 361(c)(2), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 108–177, § 361(c)(2), redesignated subsec. (e) as (d).

Pub. L. 108–177, § 361(c)(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).


Subsec. (a)(2) to (4). Pub. L. 107–306, § 811(b)(1)(D)(i)(II), (III), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (b)(1). Pub. L. 107–306, § 811(b)(1)(D)(ii), substituted ‘‘submit to the congressional leadership on an annual basis, and to the congressional intelligence committees on the date each year provided in section 415b of this title,’’ for ‘‘‘on an annual basis, submit to the congressional intelligence committees and the congressional leadership’’.


(1) The term ‘congressional intelligence committees’ means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

‘‘(2) The term ‘congressional leadership’ means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.’’

Pub. L. 107–306, § 324(1), redesignated subsec. (c) as (d).


Pub. L. 107–306, § 822(1), redesignated subsec. (d) as (e).


CHANGE OF NAME

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.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23825, set out as a note under section 401 of this title.


EFFECTIVE DATE OF 2003 AMENDMENT


REPORT AND STRATEGIC PLAN ON BIOLOGICAL WEAPONS


‘‘(a) REQUIREMENT FOR REPORT.—Not later than 180 days after the date of the enactment of this Act (Oct. 7, 2010), the Director of National Intelligence shall submit to the congressional intelligence committees a report on—

‘‘(1) the intelligence collection efforts of the United States dedicated to assessing the threat from biological weapons from state, nonstate, or rogue actors, either foreign or domestic; and

‘‘(2) efforts to protect the biodiverse knowledge and infrastructure of the United States.

‘‘(b) CONTENT.—The report required by subsection (a) shall include—

‘‘(1) an assessment of the intelligence collection efforts of the United States dedicated to detecting the development or use of biological weapons by state, nonstate, or rogue actors, either foreign or domestic; and

‘‘(2) information on fiscal, human, technical, open-source, and other intelligence collection resources of the United States dedicated for use to detect or protect against the threat of biological weapons;

‘‘(3) an assessment of any problems that may reduce the overall effectiveness of United States intelligence collection and analysis to identify and protect biological weapons targets, including—

‘‘(A) intelligence collection gaps or inefficiencies;

‘‘(B) inadequate information sharing practices; or

‘‘(C) inadequate cooperation among departments or agencies of the United States;

‘‘(4) a strategic plan prepared by the Director of National Intelligence, in coordination with the Attorney General, the Secretary of Defense, and the Secretary of Homeland Security, that provides for actions for the appropriate elements of the intelligence community to close important intelligence gaps related to biological weapons;

‘‘(5) a description of appropriate goals, schedules, milestones, or metrics to measure the long-term ef-
fectiveness of actions implemented to carry out the plan described in paragraph (4); and

"(6) any long-term resource and human capital issues related to the collection of intelligence regarding biological weapons, including any recommendations to address shortfalls of experienced and qualified staff possessing relevant scientific, language, and technical skills.

"(c) IMPLEMENTATION OF STRATEGIC PLAN.—Not later than 30 days after the date on which the Director of National Intelligence submits the report required by subsection (a), the Director shall begin implementation of the strategic plan referred to in subsection (b)(4)."

[For definition of terms used in section 333 of Pub. L. 111–259, see set out above, see section 2 of Pub. L. 111–259, set out as a Definitions under section 401a of this title.]

**DATE FOR FIRST REPORT ON COOPERATION WITH CIVILIAN LAW ENFORCEMENT AGENCIES**

Pub. L. 105–272, title III, § 307(c), Oct. 20, 1998, 112 Stat. 2402, provided that the first report under former subsec. (a) of this section was to be submitted not later than Dec. 31, 1999.


**CORRECTING LONG-STANDING MATERIAL WEAKNESSES**


"(a) DEFINITIONS.—In this section:

"(1) COVERED ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'covered element of the intelligence community' means—

"(A) the Central Intelligence Agency;

"(B) the Defense Intelligence Agency;

"(C) the National Geospatial-Intelligence Agency; or

"(D) the National Reconnaissance Office; or

"(E) the National Security Agency.

"(2) INDEPENDENT AUDITOR.—The term 'independent auditor' means an individual who—

"(A)(i) is a Federal, State, or local government auditor who meets the independence standards included in generally accepted government auditing standards; or

"(ii) is a public accountant who meets such independence standards; and

"(B) is designated as an auditor by the Director of National Intelligence or the head of a covered element of the intelligence community, as appropriate.

"(3) INDEPENDENT REVIEW.—The term 'independent review' means an audit, attestation, or examination conducted by an independent auditor in accordance with generally accepted government auditing standards.

"(4) LONG-STANDING, CORRECTABLE MATERIAL WEAKNESS.—The term 'long-standing, correctable material weakness' means a material weakness—

"(A) that was first reported in the annual financial report of a covered element of the intelligence community for a fiscal year prior to fiscal year 2007; and

"(B) the correction of which is not substantially dependent on a business system that was not implemented prior to the end of fiscal year 2010.

"(5) MATERIAL WEAKNESS.—The term 'material weakness' has the meaning given that term under the Office of Management and Budget Circular A–124, entitled 'Management’s Responsibility for Internal Control,' revised December 21, 2004.

"(6) SENIOR INTELLIGENCE MANAGEMENT OFFICIAL.—The term 'senior intelligence management official' means an official within a covered element of the intelligence community who—

"(A)(i) compensated under the Senior Intelligence Service pay scale; or

"(ii) the head of a covered element of the intelligence community; and

"(B) compensated for employment with funds appropriated pursuant to an authorization of appropriations in this Act [Pub. L. 111–259, see Tables for classification].

"(b) IDENTIFICATION OF SENIOR INTELLIGENCE MANAGEMENT OFFICIALS.—

"(1) REQUIREMENT TO IDENTIFY.—Not later than 30 days after the date of the enactment of this Act [Oct. 7, 2010], the head of a covered element of the intelligence community shall designate a senior intelligence management official of such element to be responsible for correcting each long-standing, correctable material weakness of such element.

"(2) HEAD OF A COVERED ELEMENT OF THE INTELLIGENCE COMMUNITY.—The head of a covered element of the intelligence community may designate himself or herself as the senior intelligence management official responsible for correcting a long-standing, correctable material weakness under paragraph (1).

"(3) REQUIREMENT TO UPDATE DESIGNATION.—If the head of a covered element of the intelligence community determines that a senior intelligence management official designated under paragraph (1) is no longer responsible for correcting a long-standing, correctable material weakness, the head of such element shall designate the successor to such official not later than 10 days after the date of such determination.

"(c) NOTIFICATION.—Not later than 10 days after the date on which the head of a covered element of the intelligence community has designated a senior intelligence management official pursuant to paragraph (1) or (3) of subsection (b), the head of such element shall provide written notification of such designation to the Director of National Intelligence and to such senior intelligence management official.

"(d) CORRECTION OF LONG-STANDING, MATERIAL WEAKNESS.—

"(1) DETERMINATION OF CORRECTION OF DEFICIENCY.—If a long-standing, correctable material weakness is corrected, the senior intelligence management official who is responsible for correcting such long-standing, correctable material weakness shall make and issue a determination of the correction of the material weakness.

"(2) BASIS FOR DETERMINATION.—The determination of the senior intelligence management official under paragraph (1) shall be based on the findings of an independent review.

"(3) NOTIFICATION AND SUBMISSION OF FINDINGS.—A senior intelligence management official who makes a determination under paragraph (1) shall—

"(A) notify the head of the appropriate covered element of the intelligence community of such determination at the time the determination is made; and

"(B) ensure that the independent auditor whose findings are the basis of a determination under paragraph (1) submits to the head of the covered element of the intelligence community and the Director of National Intelligence the findings that such determination is based on not later than 5 days after the date on which such determination is made.

"(e) CONGRESSIONAL OVERSIGHT.—The head of a covered element of the intelligence community shall notify the congressional intelligence committees not later than 30 days after the date—

"(1) on which a senior intelligence management official is designated under paragraph (1) or (3) of subsection (b) and notified under subsection (c); or

"(2) of the correction of a long-standing, correctable material weakness, as verified by an independent auditor under subsection (d)(2)."
§ 404j. Limitation on establishment or operation of diplomatic intelligence support centers

(a) In general

(1) A diplomatic intelligence support center may not be established, operated, or maintained without the prior approval of the Director of National Intelligence.

(2) The Director may only approve the establishment, operation, or maintenance of a diplomatic intelligence support center if the Director determines that the establishment, operation, or maintenance of such center is required to provide necessary intelligence support in furtherance of the national security interests of the United States.

(b) Prohibition of use of appropriations

Amounts appropriated pursuant to authorizations by law for intelligence and intelligence-related activities may not be obligated or expended for the establishment, operation, or maintenance of a diplomatic intelligence support center that is not approved by the Director of National Intelligence.

(c) Definitions

In this section:

(1) The term “diplomatic intelligence support center” means an entity to which employees of the various elements of the intelligence community (as defined in section 401a(4) of this title) are detailed for the purpose of providing analytical intelligence support that—

(A) consists of intelligence analyses on military or political matters and expertise to conduct limited assessments and dynamic taskings for a chief of mission; and

(B) is not intelligence support traditionally provided to a chief of mission by the Director of National Intelligence.

(2) The term “chief of mission” has the meaning given that term by section 3902(3) of title 22, and includes ambassadors at large and other special representatives of the United States, or persons appointed to lead United States offices abroad designated by the Secretary of State as diplomatic in nature.

(d) Termination

This section shall cease to be effective on October 1, 2000.

AMENDMENTS


Subsec. (b). Pub. L. 108–458, § 1071(a)(1)(Q), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


§ 404k. Travel on any common carrier for certain intelligence collection personnel

(a) In general

Notwithstanding any other provision of law, the Director of National Intelligence may authorize travel on any common carrier when such travel, in the discretion of the Director—

(1) is consistent with intelligence community mission requirements, or

(2) is required for cover purposes, operational needs, or other exceptional circumstances necessary for the successful performance of an intelligence community mission.

(b) Authorized delegation of duty

The Director of National Intelligence may only delegate the authority granted by this section to the Principal Deputy Director of National Intelligence, or with respect to employees of the Central Intelligence Agency, to the Director of the Central Intelligence Agency, who may delegate such authority to other appropriate officials of the Central Intelligence Agency.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–259 substituted “who may delegate such authority to other appropriate officials of the Central Intelligence Agency.” for “the Principal Deputy Director of National Intelligence, or with respect to employees of the Central Intelligence Agency, the Director may delegate such authority to the Principal Deputy Director of National Intelligence, or with respect to employees of the Central Intelligence Agency, the Director may delegate such authority to the Deputy Director for Operations”, which was executed by making the substitution for “to the Deputy Director of Central Intelligence, or with respect to employees of the Central Intelligence Agency the Director may delegate such authority to the Deputy Director for Operations”, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memo-
§ 404l. POW/MIA analytic capability

(a) Requirement

(1) The Director of National Intelligence shall, in consultation with the Secretary of Defense, establish and maintain in the intelligence community an analytic capability with responsibility for intelligence in support of the activities of the United States relating to individuals who, after December 31, 1990, are unaccounted for United States personnel.

(2) The analytic capability maintained under paragraph (1) shall be known as the “POW/MIA analytic capability of the intelligence community”.

(b) Unaccounted for United States personnel

In this section, the term “unaccounted for United States personnel” means the following:

(1) Any missing person (as that term is defined in section 1513(1) of title 10).

(2) Any United States national who was killed while engaged in activities on behalf of the United States and whose remains have not been repatriated to the United States.


AMENDMENTS


EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


§ 404m. Annual report on financial intelligence on terrorist assets

(a) Annual report

On an annual basis, the Secretary of the Treasury (acting through the head of the Office of Intelligence Support) shall submit a report to the appropriate congressional committees that fully informs the committees concerning operations against terrorist financial networks. Each such report shall include with respect to the preceding one-year period—

(1) the total number of asset seizures, designations, and other actions against individuals or entities found to have engaged in financial support of terrorism;

(2) the total number of physical searches of offices, residences, or financial records of individuals or entities suspected of having engaged in financial support for terrorist activity; and

(3) whether the financial intelligence information seized in these cases has been shared on a full and timely basis with the all departments, agencies, and other entities of the United States Government involved in intelligence activities participating in the Foreign Terrorist Asset Tracking Center.

(b) Immediate notification for emergency designation

In the case of a designation of an individual or entity, or the assets of an individual or entity, as having been found to have engaged in terrorist activities, the Secretary of the Treasury shall report such designation within 24 hours of such a designation to the appropriate congressional committees.

(c) Submittal date of reports to congressional intelligence committees

In the case of the reports required to be submitted under subsection (a) of this section to the congressional intelligence committees, the submittal dates for such reports shall be as provided in section 415b of this title.

(d) Appropriate congressional committees defined

In this section, the term “appropriate congressional committees” means the following:

(1) The Permanent Select Committee on Intelligence, the Committee on Appropriations, the Committee on Armed Services, and the Committee on Financial Services of the House of Representatives.

(2) The Select Committee on Intelligence, the Committee on Appropriations, the Committee on Armed Services, and the Committee on Banking, Housing, and Urban Affairs of the Senate.


AMENDMENTS


Subsec. (a). Pub. L. 111–259, § 347(d)(2)(A), (B), in heading, substituted “Annual” for “Semiannual” and, in introductory provisions, substituted “annual basis” for “semiannual basis” and “preceding one-year period” for “preceding six-month period”.

Subsec. (a)(2) to (4). Pub. L. 111–259, § 347(d)(2)(C), (D), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: “the total number of applications for asset seizure and designations of individuals or entities suspected of having engaged in financial support of terrorist activities that were granted, modified, or denied;”.

Subsec. (d)(1), (2). Pub. L. 111–259, § 347(d)(3), inserted “the Committee on Armed Services,” after “the Committee on Appropriations.”.

§ 404n. National Virtual Translation Center

(a) Establishment

The Director of National Intelligence shall establish in the intelligence community an ele-
ment with the function of connecting the elements of the intelligence community engaged in the acquisition, storage, translation, or analysis of voice or data in digital form.

(b) Designation

The element established under subsection (a) of this section shall be known as the National Virtual Translation Center.

(c) Function

The element established under subsection (a) of this section shall provide for timely and accurate translations of foreign intelligence for all elements of the intelligence community through—

(1) the integration of the translation capabilities of the intelligence community;
(2) the use of remote-connection capabilities; and
(3) the use of such other capabilities as the Director considers appropriate.

(d) Administrative matters

(1) The Director shall retain direct supervision and control over the element established under subsection (a) of this section.
(2) The element established under subsection (a) of this section shall connect elements of the intelligence community utilizing the most current available information technology that is applicable to the function of the element.
(3) Personnel of the element established under subsection (a) of this section may carry out the duties and functions of the element at any location that—
(A) has been certified as a secure facility by a department or agency of the United States Government; or
(B) the Director has otherwise determined to be appropriate for such duties and functions.

(e) Deadline for establishment

The element required by subsection (a) of this section shall be established as soon as practicable after November 27, 2002, but not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

§ 404n–1. Foreign Terrorist Asset Tracking Center

(a) Establishment

The Director of National Intelligence shall establish within the Central Intelligence Agency an element responsible for conducting all-source intelligence analysis of information relating to the financial capabilities, practices, and activities of individuals, groups, and nations associated with international terrorism in their activities relating to international terrorism.

(b) Designation

The element established under subsection (a) of this section shall be known as the Foreign Terrorist Asset Tracking Center.

(c) Deadline for establishment

The element required by subsection (a) of this section shall be established as soon as practicable after November 27, 2002, but not later than 90 days after November 27, 2002.

§ 404n–2. Terrorist Identification Classification System

(a) Requirement

(1) The Director of National Intelligence shall—
(A) establish and maintain a list of individuals who are known or suspected international

1 So in original. Probably should be followed by a period.
terrorists, and of organizations that are known or suspected international terrorist organizations; and

(B) ensure that pertinent information on the list is shared with the departments, agencies, and organizations described by subsection (c) of this section.

(2) The list under paragraph (1), and the mechanisms for sharing information on the list, shall be known as the “Terrorist Identification Classification System”.

(b) Administration

(1) The Director shall prescribe requirements for the inclusion of an individual or organization on the list required by subsection (a) of this section, and for the deletion or omission from the list of an individual or organization currently on the list.

(2) The Director shall ensure that the information utilized to determine the inclusion, or deletion or omission, of an individual or organization on or from the list is derived from all-source intelligence.

(3) The Director shall ensure that the list is maintained in accordance with existing law and regulations governing the collection, storage, and dissemination of intelligence concerning United States persons.

(c) Information sharing

Subject to section 403–1(i) of this title, relating to the protection of intelligence sources and methods, the Director shall provide for the sharing of the list, and information on the list, with such departments and agencies of the Federal Government, State and local government agencies, and entities of foreign governments and international organizations as the Director considers appropriate.

(d) Report on criteria for information sharing

(1) Not later than March 1, 2003, the Director shall submit to the congressional intelligence committees a report describing the criteria used to determine which types of information on the list required by subsection (a) of this section are to be shared, and which types of information are not to be shared, with various departments and agencies of the Federal Government, State and local government agencies, and entities of foreign governments and international organizations.

(2) The report shall include a description of the circumstances in which the Director has determined that sharing information on the list with the departments and agencies of the Federal Government, and of State and local governments, described by subsection (c) of this section would be inappropriate due to the concerns addressed by section 403–3(c)(7)1 of this title, relating to the protection of sources and methods, and any instance in which the sharing of information on the list has been inappropriate in light of such concerns.

(e) System administration requirements

(1) The Director shall, to the maximum extent practicable, ensure the interoperability of the Terrorist Identification Classification System with relevant information systems of the departments and agencies of the Federal Government, and of State and local governments, described by subsection (c) of this section.

(2) The Director shall ensure that the System utilizes technologies that are effective in aiding the identification of individuals in the field.

(f) Report on status of System

(1) Not later than one year after November 27, 2002, the Director shall, in consultation with the Director of Homeland Security, submit to the congressional intelligence committees a report on the status of the Terrorist Identification Classification System. The report shall contain a certification on the following:

(A) Whether the System contains the intelligence information necessary to facilitate the contribution of the System to the domestic security of the United States.

(B) Whether the departments and agencies having access to the System have access in a manner that permits such departments and agencies to carry out appropriately their domestic security responsibilities.

(C) Whether the System is operating in a manner that maximizes its contribution to the domestic security of the United States.

(D) If a certification under subparagraph (A), (B), or (C) is in the negative, the modifications or enhancements of the System necessary to ensure a future certification in the positive.

(2) The report shall be submitted in unclassified form, but may include a classified annex.

(g) Congressional intelligence committees defined

In this section, the term “congressional intelligence committees” means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

REFERENCES IN TEXT


Codification

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 2003, and not as part of the National Security Act of 1947 which comprises this chapter.

Amendments

Subsecs. (d) to (h). Pub. L. 111–259 redesignated subsecs. (e) to (h) as (d) to (g), respectively, and struck out former subsec. (d). Prior to amendment, text of subsec. (d) read as follows:

“(1) The Director shall review on an annual basis the information provided by various departments and agencies for purposes of the list under subsection (a) of this

1See References in Text note below.
section in order to determine whether or not the information so provided is derived from the widest possible range of intelligence available to such departments and agencies.

“(2) The Director shall, as a result of each review under paragraph (1), certify whether or not the elements of the intelligence community responsible for the collection of intelligence related to the list have provided information for purposes of the list that is derived from the widest possible range of intelligence available to such department and agencies.”

2004—Subsec. (a)(1). Pub. L. 108–458, § 1072(c)(2)(A)(ii), which directed amendment of par. (1) by substituting “Director of National Intelligence” for “Director of Central Intelligence, acting as the head of the intelligence community,” was executed by making the substitution for “Director of Central Intelligence, acting as head of the Intelligence Community,” in introductory provisions to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 108–458, § 1072(d)(1)(A), which directed amendment of subsec. (c) by substituting “section 403–1(c)(7)’’ for “section 403–3(c)(7)’’ was executed by making the substitution for “section 403–3(c)(7)” to reflect the probable intent of Congress and the amendment by Pub. L. 108–177. See 2003 Amendment note below.

2003—Subsecs. (c), (e)(2). Pub. L. 108–177, § 377(d), substituted “section 403–3(c)(7) of this title” for “section 403–3(c)(6) of this title”.

Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23023, set out as a note under section 401 of this title.


Section, Pub. L. 107–306, title VIII, § 827, Nov. 27, 2002, 116 Stat. 2430, related to annual report on foreign commercial entities, consistent with applicable law and the direction of the President, and the direction of the President, and the matters described in paragraph (2) and the President with respect to matters described in paragraph (3).

(2) The matters described in this paragraph are as follows:

(A) The budget and programs of the National Counterterrorism Center.

(B) The activities of the Directorate of Intelligence of the National Counterterrorism Center under subsection (1).

(C) The conduct of intelligence operations implemented by other elements of the intelligence community; and

(3) The matters described in this paragraph are the planning and progress of joint counterterrorism operations (other than intelligence operations).

(d) Primary missions

The primary missions of the National Counterterrorism Center shall be as follows:

(1) To serve as the primary organization in the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism.

(2) To conduct strategic operational planning for counterterrorism activities, integrating all instruments of national power, including diplomatic, financial, military, intelligence, homeland security, and law enforcement activities within and among agencies.

(3) To assign roles and responsibilities as part of its strategic operational planning duties to lead Departments or agencies, as appropriate, for counterterrorism activities that are consistent with applicable law and that support counterterrorism strategic operational plans, but shall not direct the execution of any resulting operations.

(4) To ensure that agencies, as appropriate, have access to and receive all-source intelligence support needed to execute their counterterrorism plans or perform independent, alternative analysis.

(5) To ensure that such agencies have access to and receive intelligence needed to accomplish their assigned activities.

(6) To serve as the central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their goals, strategies, capabilities, and networks of contacts and support.

(e) Domestic counterterrorism intelligence

(1) The Center may, consistent with applicable law, the direction of the President, and the guidelines referred to in section 403–1(b) of this title, receive intelligence pertaining exclusively to domestic counterterrorism from any Federal, State, or local government or other source necessary to fulfill its responsibilities and retain and disseminate such intelligence.

(2) Any agency authorized to conduct counterterrorism activities may request information from the Center to assist it in its responsibilities, consistent with applicable law and the
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guidelines referred to in section 403–1(b) of this title.

(f) Duties and responsibilities of Director

(1) The Director of the National Counterterrorism Center shall—

(A) serve as the principal adviser to the Director of National Intelligence on intelligence operations relating to counterterrorism;

(B) provide strategic operational plans for the civilian and military counterterrorism efforts of the United States Government and for the effective integration of counterterrorism intelligence and operations across agency boundaries, both inside and outside the United States;

(C) advise the Director of National Intelligence on the extent to which the counterterrorism program recommendations and budget proposals of the departments, agencies, and elements of the United States Government conform to the priorities established by the President;

(D) disseminate terrorism information, including current terrorism threat analysis, to the President, the Vice President, the Secretaries of State, Defense, and Homeland Security, the Attorney General, the Director of the Central Intelligence Agency, and other officials of the executive branch as appropriate, and to the appropriate committees of Congress;

(E) support the Department of Justice and the Department of Homeland Security, and other appropriate agencies, in fulfillment of their responsibilities to disseminate terrorism information, consistent with applicable law, guidelines referred to in section 403–1(b) of this title, Executive orders and other Presidential guidance, to State and local government officials, and other entities, and coordinate dissemination of terrorism information to foreign governments as approved by the Director of National Intelligence;

(F) develop a strategy for combining terrorist travel intelligence, operations, and law enforcement into a cohesive effort to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility;

(G) have primary responsibility within the United States Government for conducting net assessments of terrorist threats;

(H) consistent with priorities approved by the President, assist the Director of National Intelligence in establishing requirements for the intelligence community for the collection of terrorism information; and

(I) perform such other duties as the Director of National Intelligence may prescribe or are prescribed by law.

(2) Nothing in paragraph (1)(G) shall limit the authority of the departments and agencies of the United States to conduct net assessments.

(g) Limitation

The Director of the National Counterterrorism Center may not direct the execution of counterterrorism operations.

(h) Resolution of disputes

The Director of National Intelligence shall resolve disagreements between the National Counterterrorism Center and the head of a department, agency, or element of the United States Government on designations, assignments, plans, or responsibilities under this section. The head of such a department, agency, or element may appeal the resolution of the disagreement by the Director of National Intelligence to the President.

(i) Directorate of Intelligence

The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Intelligence which shall have primary responsibility within the United States Government for analysis of terrorism and terrorist organizations (except for purely domestic terrorism and domestic terrorist organizations) from all sources of intelligence, whether collected inside or outside the United States.

(j) Directorate of Strategic Operational Planning

(1) The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Strategic Operational Planning which shall provide strategic operational plans for counterterrorism operations conducted by the United States Government.

(2) Strategic operational planning shall include the mission, objectives to be achieved, tasks to be performed, interagency coordination of operational activities, and the assignment of roles and responsibilities.

(3) The Director of the National Counterterrorism Center shall monitor the implementation of strategic operational plans, and shall obtain information from each element of the intelligence community, and from each other department, agency, or element of the United States Government relevant for monitoring the progress of such entity in implementing such plans.


Amendments

2010—Subsec. (c)(2)(B). Pub. L. 111–259 substituted ‘‘subsection (i)’’ for ‘‘subsection (h)’’.

Effective Date

Section effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1897(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

Strategy for Counterterrorist Travel Intelligence

Pub. L. 108–458, title VII, §7201(b), Dec. 17, 2004, 118 Stat. 3889, directed the Director of the National Counterterrorism Center, not later than 1 year after Dec. 17, 2004, to submit to Congress unclassified and classified versions of a strategy, to be developed in coordination with all relevant Federal agencies, for combining terrorist travel intelligence, operations, and law enforcement into a cohesive effort to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility domestically and internationally.

Executive Order No. 13354

Ex. Ord. No. 13354, Aug. 27, 2004, 69 F.R. 53589, which established a National Counterterrorism Center, was
§ 404–1. National Counter Proliferation Center

(a) Establishment

(1) The President shall establish a National Counter Proliferation Center, taking into account all appropriate government tools to prevent and halt the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies.

(2) The head of the National Counter Proliferation Center shall be the Director of the National Counter Proliferation Center, who shall be appointed by the Director of National Intelligence.

(3) The National Counter Proliferation Center shall be located within the Office of the Director of National Intelligence.

(b) Missions and objectives

In establishing the National Counter Proliferation Center, the President shall address the following missions and objectives to prevent and halt the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies:

(1) Establishing a primary organization within the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States pertaining to proliferation.

(2) Ensuring that appropriate agencies have full access to and receive all-source intelligence support needed to execute their counter proliferation plans or activities, and perform independent, alternative analyses.

(3) Establishing a central repository on known and suspected proliferation activities, including the goals, strategies, capabilities, networks, and any individuals, groups, or entities engaged in proliferation.

(4) Disseminating proliferation information, including proliferation threats and analyses, to the President, to the appropriate departments and agencies, and to the appropriate committees of Congress.

(5) Conducting net assessments and warnings about the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies.

(6) Coordinating counter proliferation plans and activities of the various departments and agencies of the United States Government to prevent and halt the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies.

(7) Conducting strategic operational counter proliferation planning for the United States Government to prevent and halt the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies.

(c) National security waiver

The President may waive the requirements of this section, and any parts thereof, if the President determines that such requirements do not materially improve the ability of the United States Government to prevent and halt the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies. Such waiver shall be made in writing to Congress and shall include a description of how the missions and objectives in subsection (b) of this section are being met.

(d) Report to Congress

(1) Not later than nine months after the implementation of this Act, the President shall submit to Congress, in classified form if necessary, the findings and recommendations of the President’s Commission on Weapons of Mass Destruction established by Executive Order in February 2004, together with the views of the President regarding the establishment of a National Counter Proliferation Center.

(2) If the President decides not to exercise the waiver authority granted by subsection (c) of this section, the President shall submit to Congress from time to time updates and plans regarding the establishment of a National Counter Proliferation Center.

(e) Sense of Congress

It is the sense of Congress that a central feature of counter proliferation activities, consistent with the President’s Proliferation Security Initiative, should include the physical interdiction, by air, sea, or land, of weapons of mass destruction, their delivery systems, and related materials and technologies, and enhanced law enforcement activities to identify and disrupt proliferation networks, activities, organizations, and persons.

(312x210)
§ 404o–2 National Intelligence Centers

(a) Authority to establish

The Director of National Intelligence may establish one or more national intelligence centers to address intelligence priorities, including, but not limited to, regional issues.

(b) Resources of directors of centers

(1) The Director of National Intelligence shall ensure that each national intelligence center under subsection (a) of this section has appropriate authority, direction, and control of such center, and of the personnel assigned to such center, to carry out the assigned mission of such center.

(2) The Director of National Intelligence shall ensure that each national intelligence center has appropriate personnel to accomplish effectively the mission of such center.

(c) Information sharing

The Director of National Intelligence shall, to the extent appropriate and practicable, ensure that each national intelligence center under subsection (a) of this section and the other elements of the intelligence community share information in order to facilitate the mission of such center.

(d) Mission of centers

Pursuant to the direction of the Director of National Intelligence, each national intelligence center under subsection (a) of this section may, in the area of intelligence responsibility assigned to such center—

(1) have primary responsibility for providing all-source analysis of intelligence based upon intelligence gathered both domestically and abroad;

(2) have primary responsibility for identifying and proposing to the Director of National Intelligence intelligence collection and analysis and production requirements; and

(3) perform such other duties as the Director of National Intelligence shall specify.

(e) Review and modification of centers

The Director of National Intelligence shall determine on a regular basis whether—

(1) the area of intelligence responsibility assigned to each national intelligence center under subsection (a) of this section continues to meet appropriate intelligence priorities; and

(2) the staffing and management of such center remains appropriate for the accomplishment of the mission of such center.

(f) Termination

The Director of National Intelligence may terminate any national intelligence center under subsection (a) of this section.

(g) Separate budget account

The Director of National Intelligence shall, as appropriate, include in the National Intelligence Program budget a separate line item for each national intelligence center under subsection (a) of this section.

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means act July 26, 1947, ch. 343, 61 Stat. 495, as amended, known as the National Security Act of 1947. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

AMENDMENTS


1988—Subsec. (a). Pub. L. 100–453 substituted “Retired members of the uniformed services employed by the Director of Central Intelligence who hold no other office or position under the United States for which they receive compensation, other” for “Other” in last sentence.

1981—Subsec. (a). Pub. L. 97–89, §504(a), substituted “at a daily rate not to exceed the daily equivalent of the rate of pay in effect for grade GS–16 of the General Schedule established by section 5332 of title 5,” for “at a rate not to exceed $50 for each day of service”.

Subsec. (b). Pub. L. 97–89, §504(b), substituted “section 203, 205, or 207 of title 18” for “section 281, 283, or 284 of title 18”.

1956—Subsec. (a). Act Aug. 10, 1956, struck out “Secretary of Defense, the” after “The”.

1954—Act Sept. 3, 1954, amended section generally, substituting the “Director of the Office of Defense Mobilization” for “Chairman of the National Security Resources Board” in subsec. (a), and substituting “sections 281, 283, or 284 of title 18” for “sections 198 or 203 of title 18 or section 118(e) of title 41”.


EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memo. of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out under section 401 of this title.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date note under section 1621 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–89 effective Oct. 1, 1981, see section 906 of Pub. L. 97–89, set out as an Effective Date note under section 1621 of Title 10, Armed Forces.

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 592 of Title 6.


TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 (title 1, §101(c)(1)) of Pub. L. 108–458, set out in a note under section 5376 of Title 5.

ANNUAL REPORT


“(1) In general.—The Director of National Intelligence and the Director of the Central Intelligence Agency shall each submit to the congressional intelligence committees an annual report on advisory committees created by each such Director. Each report shall include—

“(A) a description of each such advisory committee, including the subject matter of the committee; and

“(B) a list of members of each such advisory committee.

“(2) Report on reasons for ODNI exclusion of advisory committee from FAC—Each report submitted by the Director of National Intelligence in accordance with paragraph (1) shall include the reasons for a determination by the Director under section 4(b)(3) of the Federal Advisory Committee Act (5 U.S.C. App.), as added by subsection (a) of this section, that an advisory committee cannot comply with the requirements of such Act.”

For definition of “congressional intelligence committees” as used in section 410(b) of Pub. L. 111–259, set out above, see section 2 of Pub. L. 111–259, set out as a note under section 401a of this title.

§ 406. Omitted

CONCERNING SURRENDER; USE OF APPROPRIATIONS

No part of the funds appropriated in any act shall be used to pay (1) any person, firm, or cor-
poration, or any combinations of persons, firms, or corporations, to conduct a study or to plan when and how or in what circumstances the Government of the United States should surrender this country and its people to any foreign power, (2) the salary or compensation of any employee or official of the Government of the United States who proposes or contracts or who has entered into contracts for the making of studies or plans for the surrender by the Government of the United States of this country and its people to any foreign power in any event or under any circumstances.


CODIFICATION

Section was enacted as part of the Supplemental Appropriation Act, 1959, and not as part of the National Security Act of 1947 which comprises this chapter.

§ 408. Applicable laws

Except to the extent inconsistent with the provisions of this Act, the provisions of title 4 of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense.

(July 26, 1947, ch. 343, title II, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579.)

REFERENCES IN TEXT

This Act, referred to in text, means act July 26, 1947, ch. 343, 61 Stat. 495, as amended, known as the National Security Act of 1947. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

(b) The term "Department of the Army" as used in this Act shall be construed to mean the Department of the Army at the seat of the government and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Department of the Army.

(July 26, 1947, ch. 343, title II, §§205(c), 206(a), 207(c), 61 Stat. 501, 502.)

REFERENCES IN TEXT

This Act, referred to in text, means act July 26, 1947, ch. 343, 61 Stat. 495, as amended, known as the National Security Act of 1947. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

CODIFICATION

Section was formerly classified to section 171-2 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

Prior to the enactment of Title 10, Armed Forces, by Pub. L. 106-398, Oct. 28, 2000, 114 Stat. 2096, this section was classified to sections 181-1(c), 184(a), and 526(c), respectively, of former Title 5.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 409a. National Security Agency voluntary separation

(a) Short title

This section may be cited as the "National Security Agency Voluntary Separation Act".

(b) Definitions

For purposes of this section—

(1) the term "Director" means the Director of the National Security Agency; and

(2) the term "employee" means an employee of the National Security Agency, serving under an appointment without time limitation, who has been currently employed by the National Security Agency for a continuous period of at least 12 months prior to the effective date of the program established under subsection (c) of this section, except that such term does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5 or another retirement system for employees of the Government; or

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A).

(c) Establishment of program

Notwithstanding any other provision of law, the Director, in his sole discretion, may establish a program under which employees may,
after October 1, 2000, be eligible for early retirement, offered separation pay to separate from service voluntarily, or both.

(d) Early retirement

An employee who—
(1) is at least 50 years of age and has completed 20 years of service; or
(2) has at least 25 years of service,
may, pursuant to regulations promulgated under this section, apply and be retired from the National Security Agency and receive benefits in accordance with chapter 83 or 84 of title 5 if the employee has not less than 10 years of service with the National Security Agency.

(e) Amount of separation pay and treatment for other purposes

(1) Amount

Separation pay shall be paid in a lump sum and shall be equal to the lesser of—
(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5 if the employee were entitled to payment under such section; or
(B) $25,000.

(2) Treatment

Separation pay shall not—
(A) be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and
(B) be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595 of title 5 based on any other separation.

(f) Reemployment restrictions

An employee who receives separation pay under such program may not be reemployed by the National Security Agency for the 12-month period beginning on the effective date of the employee’s separation. An employee who receives separation pay under this section on the basis of a separation occurring on or after March 30, 1994, and accepts employment with the Government of the United States within 5 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the National Security Agency. If the employment is with an Executive agency (as defined by section 105 of title 5), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(g) Bar on certain employment

(1) Bar

An employee may not be separated from service under this section unless the employee agrees that the employee will not—
(A) act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to the National Security Agency; or
(B) participate in any manner in the award, modification, or extension of any contract for property or services with the National Security Agency.

during the 12-month period beginning on the effective date of the employee’s separation from service.

(2) Penalty

An employee who violates an agreement under this subsection shall be liable to the United States in the amount of the separation pay paid to the employee pursuant to this section multiplied by the proportion of the 12-month period during which the employee was in violation of the agreement.

(h) Limitations

Under this program, early retirement and separation pay may be offered only—
(1) with the prior approval of the Director;
(2) for the period specified by the Director; and
(3) to employees within such occupational groups or geographic locations, or subject to such other similar limitations or conditions, as the Director may require.

(i) Regulations

Before an employee may be eligible for early retirement, separation pay, or both, under this section, the Director shall prescribe such regulations as may be necessary to carry out this section.

(j) Notification of exercise of authority

The Director may not make an offer of early retirement, separation pay, or both, pursuant to this section until 15 days after submitting to the congressional intelligence committees a report describing the occupational groups or geographic locations, or other similar limitations or conditions, required by the Director under subsection (h) of this section, and includes the proposed regulations issued pursuant to subsection (i) of this section.

(k) Remittance of funds

In addition to any other payment that is required to be made under subchapter III of chapter 83 or chapter 84 of title 5, the National Security Agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund, an amount equal to 15 percent of the final basic pay of each

1 So in original. Probably should be “including”.

employee to whom a voluntary separation payment has been or is to be paid under this section. The remittance required by this subsection shall be in lieu of any remittance required by section 4(a) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 8331 note).


REFERENCES IN TEXT
Section 4(a) of the Federal Workforce Restructuring Act of 1994, referred to in subsec. (k), is section 4(a) of Pub. L. 103–226, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

PRIORI PROVISIONS
A prior section 301 of act July 26, 1947, ch. 343, title III, 61 Stat. 507; Apr. 2, 1949, ch. 47, § 2, 63 Stat. 31; Aug. 10, 1949, ch. 412, § 10(a), 63 Stat. 585, was classified to sections 171b and 171c–1 of former Title 5, Executive Departments and Government Officers and Employees, prior to repeal by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632.

AMENDMENTS
2002—Subsec. (j). Pub. L. 107–306, § 841(b), substituted ‘‘Notification of exercise of authority’’ for ‘‘Reporting requirements’’ in subsec. heading and struck out ‘‘(1) NOTIFICATION—’’ before ‘‘The Director may’’ and par. (2) which read as follows:

‘‘(2) ANNUAL REPORT.—The Director shall submit to the President and the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate an annual report on the effectiveness and costs of carrying out this section.’’

Pub. L. 107–306, § 353(b)(2)(A), substituted ‘‘congressional intelligence committees’’ for ‘‘Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate’’.

$409b. Authority of Federal Bureau of Investigation to award personal services contracts

(a) In general

The Director of the Federal Bureau of Investigation may enter into personal services contracts if the personal services to be provided under such contracts directly support the intelligence or counterintelligence missions of the Federal Bureau of Investigation.

(b) Inapplicability of certain requirements

Contracts under subsection (a) of this section shall not be subject to the annuity offset requirements of sections 834 and 846 of title 5, the requirements of section 3109 of title 5, or any law or regulation requiring competitive contracting.

(c) Contract to be appropriate means of securing services

The Chief Contracting Officer of the Federal Bureau of Investigation shall ensure that each personal services contract entered into by the Director under this section is the appropriate means of securing the services to be provided under such contract.


PRIORITY PROVISIONS

§ 409b–1. Reports on exercise of authority

(1) Not later than one year after December 13, 2003, and annually thereafter, the Director of the Federal Bureau of Investigation shall submit to the appropriate committees of Congress a report on the exercise of the authority in section 409b of this title.

(2) Each report under this section shall include, for the one-year period ending on the date of such report, the following:

(A) The number of contracts entered into during the period.

(B) The cost of each such contract.

(C) The length of each such contract.

(D) The types of services to be provided under each such contract.

(E) The availability, if any, of United States Government personnel to perform functions similar to the services to be provided under each such contract.

(F) The efforts of the Federal Bureau of Investigation to fill available personnel vacancies, or request additional personnel positions, in areas relating to the intelligence or counterintelligence mission of the Bureau.

(3) Each report under this section shall be submitted in unclassified form, but may include a classified annex.

(4) In this section—

(A) for purposes of the submittal of the classified annex to any report under this section, the term ‘‘appropriate committees of Congress’’ means—

(i) the Select Committee on Intelligence of the Senate; and

(ii) the Permanent Select Committee on Intelligence of the House of Representatives; and

(B) for purposes of the submittal of the unclassified portion of any report under this section, the term ‘‘appropriate committees of Congress’’ means—

(i) the committees specified in subparagraph (A);

(ii) the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate; and

(iii) the Committees on Appropriations, Government Reform and Oversight, and the Judiciary of the House of Representatives.


CODIFICATION
Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 2004, and not as part of the National Security Act of 1947 which comprises this chapter.

CHANGE OF NAME
Committee on Government Reform and Oversight of House of Representatives changed to Committee on
Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999, Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 410. “Function” and “Department of Defense” defined

(a) As used in this Act, the term “function” includes functions, powers, and duties.

(b) As used in this Act, the term “Department of Defense” shall be deemed to include the military departments of the Army, the Navy, and the Air Force, and all agencies created under title II of this Act.


PARTIAL REPEAL

Section 307 of Pub. L. 87–651, title III, Sept. 7, 1962, 76 Stat. 526, repealed subsection (a) of this section less its applicability to sections 401, 402, 403, 404, and 405 of this title.

REFERENCES IN TEXT

This Act, referred to in text, means act July 26, 1947, ch. 343, 61 Stat. 495, as amended, known as the National Security Act of 1947. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

Title II of this Act, referred to in subsec. (b), means title II of the National Security Act of 1947, act July 26, 1947, ch. 343, 61 Stat. 499, as amended, which enacted sections 408 and 409 of this title and sections 171, 171–1, 171–2, 171a, 171c, 171d, and 171e to 171f of former Title 5, Executive Department and Government Officers and Employees, and amended sections 1 and 11 of former Title II and section 1617 of Title 15, Commerce and Trade, and enacted a provision formerly set out as a note under section 135 [now 137] of Title 10, Armed Forces. Section 171 of former Title 5 was repealed by Pub. L. 87–651, title III, §307, Sept. 7, 1962, and reenacted in part as section 131 of Title 10. Sections 171e, 171f, and 171g of former Title 5 were repealed by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641, and reenacted as sections 171, 141, 142, and 143 [see Prior Provisions notes preceding section 151] of Title 10, respectively. Sections 171–1 and 171–2 of former Title 5 were transferred to sections 408 and 409 of this title, respectively. For complete classification of title II to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 17im of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1993—Pub. L. 103–178 substituted “provisions and purposes of this Act (other than the provisions and purposes of sections 102, 103, 104, 105 and titles V, VI, and VII)” for “provisions and purposes of this Act”.

§ 412. Repealing and savings provisions

All laws, orders, and regulations inconsistent with the provisions of this title are repealed insofar as they are inconsistent with the powers, duties, and responsibilities enacted hereby: Provided, That the powers, duties, and responsibilities of the Secretary of Defense under this title shall be administered in conformance with the policy and requirements for administration of budgetary and fiscal matters in the Government generally, including accounting and financial reporting, and that nothing in this title shall be construed as eliminating or modifying the powers, duties, and responsibilities of any other department, agency, or officer of the Government in connection with such matters, but no such department, agency, or officer shall exercise any such powers, duties, or responsibilities in a manner that will render ineffective the provisions of this title.

(July 26, 1947, ch. 343, title IV, §411, as added Aug. 10, 1949, ch. 412, §11, 63 Stat. 590.)

REFERENCES IN TEXT

This title, referred to in text, means title IV of act July 26, 1947, ch. 343, 61 Stat. 495, as added Aug. 10, 1949, ch. 412, §11, 63 Stat. 585, which enacted section 412 of this title and sections 172, 172a to 172d, and 172f to 172j of former Title 5, Executive Departments and Government Officers and Employees, and amended section 172e of former Title 5 and section 72 of former Title 31, Money and Finance. Section 172 of former Title 5 was repealed by Pub. L. 87–651, title III, §307, Sept. 7, 1962, 76 Stat. 526, and reenacted as section 136 [now 138] of Title 10, Armed Forces. Section 172a of former Title 5 was repealed by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641, and reenacted as sections 1034, 1061, and 8014 of Title 10. Sections 172b to 172d and 172f to 172h of former Title 5 were repealed by Pub. L. 87–651, title III, §307, Sept. 7, 1962, 76 Stat. 526, and reenacted as sections 2203, 2204, 2208, 2209, 126, 129, and 2206 of Title 10, respectively. Section 172i of former Title 5 was repealed by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641, and reenacted as section 2701 of Title 10. Section 172j, of former Title 5 was transferred to section 412 of this title. For complete classification of title IV to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 172j of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.
 subtitle III—ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

§ 413. General Congressional oversight provisions

(a) Reports to Congressional committees of intelligence activities and anticipated activities

(1) The President shall ensure that the congressional intelligence committees are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity as required by this subchapter.

(2) Nothing in this subchapter shall be construed as authorizing the President to withhold information from the congressional intelligence committees as a condition precedent to the initiation of any significant anticipated intelligence activity.

(b) Reports concerning illegal intelligence activities

The President shall ensure that any illegal intelligence activity is reported promptly to the congressional intelligence committees, as well as to any corrective action that has been taken or is planned in connection with such illegal activity.

(c) Procedures for reporting information

The President and the congressional intelligence committees shall each establish such written procedures as may be necessary to carry out the provisions of this subchapter.

(d) Procedures to protect from unauthorized disclosure

The House of Representatives and the Senate shall each establish, by rule or resolution of its respective House, procedures to protect from unauthorized disclosure all classified information, and all information relating to intelligence sources and methods, that is furnished to the congressional intelligence committees or to Members of Congress under this subchapter. Such procedures shall be established in consultation with the Director of National Intelligence. In accordance with such procedures, each of the congressional intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

(e) Construction of authority conferred

Nothing in this Act shall be construed as authorizing to withhold information from the congressional intelligence committees on the grounds that providing the information to the congressional intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.

(f) “Intelligence activities” defined

As used in this section, the term “intelligence activities” includes covert actions as defined in section 413b(e) of this title, and includes financial intelligence activities.

References in Text

This Act, referred to in subsec. (e), means act July 26, 1947, ch. 343, title V, § 401, as amended, known as the National Security Act of 1947. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

References to Pub. L. 108–458

§ 413a. Reporting of intelligence activities other than covert actions

(a) In general

To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of National Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall—

(1) keep the congressional intelligence committees fully and currently informed of all intelligence activities, other than a covert action (as defined in section 413b(e) of this title), which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government involved in intelligence activities.
States Government, including any significant anticipated intelligence activity and any significant intelligence failure; and
(2) furnish the congressional intelligence committees any information or material concerning intelligence activities (including the legal basis under which the intelligence activity is being or was conducted), other than covert actions, which is within their custody or control, and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.

(b) Form and contents of certain reports
Any report relating to a significant anticipated intelligence activity or a significant intelligence failure that is submitted to the congressional intelligence committees for purposes of subsection (a)(1) of this section shall be in writing, and shall contain the following:
(1) A concise statement of any facts pertinent to such report.
(2) An explanation of the significance of the intelligence activity or intelligence failure covered by such report.

(c) Standards and procedures for certain reports
The Director of National Intelligence, in consultation with the heads of the departments, agencies, and entities referred to in subsection (a) of this section, shall establish standards and procedures applicable to reports covered by subsection (b) of this section.


PRIOR PROVISIONS
A prior section 502 of act July 26, 1947, ch. 343, was renumbered section 504 and is classified to section 414 of this title.

AMENDMENTS
2010—Subsec. (a)(2). Pub. L. 111–259 inserted “(including the legal basis under which the intelligence activity is being or was conducted)” after “concerning intelligence activities”.
Subsec. (c). Pub. L. 108–458, § 1071(a)(1)(X), substituted “Director of National Intelligence” for “Director of Central Intelligence”.
2001—Pub. L. 107–108 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2004 AMENDMENT
For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of the President of the United States, Apr. 21, 2005, 70 F.R. 23525, set out as a note under section 401 of this title.

FURNISHING OF INTELLIGENCE INFORMATION TO SENATE AND HOUSE SELECT COMMITTEES ON INTELLIGENCE
Section 405 of Pub. L. 102–88 provided that:
“(a) FURNISHING OF SPECIFIC INFORMATION.—In accordance with title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the head of any department or agency of the United States involved in any intelligence activities which may pertain to United States military personnel listed as prisoner, missing, or unaccounted for in military actions shall furnish any information or documents in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the Permanent Select Committee on Intelligence of the House of Representatives or the Select Committee on Intelligence of the Senate.
“(b) ACCESS BY COMMITTEES AND MEMBERS OF CONGRESS.—In accordance with Senate Resolution 490, Ninety-Fourth Congress, and House Resolution 658, Ninety-Fifth Congress, the committees named in subsection (a) shall, upon request and under such regulations as the committees have prescribed to protect the classification of such information, make any information described in subsection (a) available to any other committee or any other Member of Congress and appropriately cleared staff.”

§ 413b. Presidential approval and reporting of covert actions
(a) Presidential findings
The President may not authorize the conduct of a covert action by departments, agencies, or entities of the United States Government unless the President determines such an action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States, which determination shall be set forth in a finding that shall meet each of the following conditions:

(1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit the preparation of a written finding, in which case a written record of the President’s decision shall be contemporaneously made and shall be reduced to a written finding as soon as possible but in no event more than 48 hours after the decision is made.
(2) Except as permitted by paragraph (1), a finding may not authorize or sanction a covert action, or any aspect of any such action, which already has occurred.
(3) Each finding shall specify each department, agency, or entity of the United States Government authorized to fund or otherwise participate in any significant way in such action. Any employee, contractor, or contract agent of a department, agency, or entity of the United States Government other than the Central Intelligence Agency directed to participate in any way in a covert action shall be subject either to the policies and regulations of the Central Intelligence Agency, or to written policies or regulations adopted by such department, agency, or entity, to govern such participation.
(4) Each finding shall specify whether it is contemplated that any third party which is
not an element of, or a contractor or contract agent of, the United States Government, or is not otherwise subject to United States Government policies and regulations, will be used to fund or otherwise participate in any significant way in the covert action concerned, or be used to undertake the covert action concerned on behalf of the United States.

(5) A finding may not authorize any action that would violate the Constitution or any statute of the United States.

(b) Reports to congressional intelligence committees; production of information

To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of National Intelligence and the heads of all departments, agencies, and entities of the United States Government involved in a covert action—

(1) shall keep the congressional intelligence committees fully and currently informed of all covert actions which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including significant failures; and

(2) shall furnish to the congressional intelligence committees any information or material concerning covert actions (including the legal basis under which the covert action is being or was conducted) which is in the possession, custody, or control of any department, agency, or entity of the United States Government and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.

(c) Timing of reports; access to finding

(1) The President shall ensure that any finding approved pursuant to subsection (a) of this section shall be reported in writing to the congressional intelligence committees as soon as possible after such approval and before the initiation of the covert action authorized by the finding, except as otherwise provided in paragraph (2) and paragraph (3).

(2) If the President determines that it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States, the finding may be reported to the chairman and ranking minority members of the congressional intelligence committees, the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, and such other member or members of the congressional leadership as may be included by the President.

(3) Whenever a finding is not reported pursuant to paragraph (1) or (2) of this section, the President shall fully inform the congressional intelligence committees in a timely fashion and shall provide a statement of the reasons for not giving prior notice.

(4) In a case under paragraph (1), (2), or (3), a copy of the finding, signed by the President, shall be provided to the chairman of each congressional intelligence committee.

(5)(A) When access to a finding, or a notification provided under subsection (d)(1), is limited to the Members of Congress specified in paragraph (2), a written statement of the reasons for limiting such access shall also be provided.

(B) Not later than 180 days after a statement of reasons is submitted in accordance with subparagraph (A) or this subparagraph, the President shall ensure that—

(i) all members of the congressional intelligence committees are provided access to the finding or notification; or

(ii) a statement of reasons that it is essential to continue to limit access to such finding or such notification to meet extraordinary circumstances affecting vital interests of the United States is submitted to the Members of Congress specified in paragraph (2).

(d) Changes in previously approved actions

(1) The President shall ensure that the congressional intelligence committees, or, if applicable, the Members of Congress specified in subsection (c)(2) of this section, are notified in writing of any significant change in a previously approved covert action, or any significant undertaking pursuant to a previously approved finding, in the same manner as findings are reported pursuant to subsection (c) of this section.

(2) In determining whether an activity constitutes a significant undertaking for purposes of paragraph (1), the President shall consider whether the activity—

(A) involves significant risk of loss of life;

(B) requires an expansion of existing authorities, including authorities relating to research, development, or operations;

(C) results in the expenditure of significant funds or other resources;

(D) requires notification under section 414 of this title;

(E) gives rise to a significant risk of disclosing intelligence sources or methods; or

(F) presents a reasonably foreseeable risk of serious damage to the diplomatic relations of the United States if such activity were disclosed without authorization.

(e) “Covert action” defined

As used in this subchapter, the term “covert action” means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include—

(1) activities the primary purpose of which is to acquire intelligence, traditional counter-intelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;

(2) traditional diplomatic or military activities or routine support to such activities;

(3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

(4) activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad.

1 So in original. Probably should be “subsection.”
(f) Prohibition on covert actions intended to influence United States political processes, etc.

No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media.

(g) Notice and general description where access to finding or notification limited; maintenance of records and written statements

(1) In any case where access to a finding reported under subsection (c) or notification provided under subsection (d) is not made available to all members of a congressional intelligence committee in accordance with subsection (c)(2), the President shall notify all members of such committee that such finding or notification has been provided only to the members specified in subsection (c)(2).

(2) In any case where access to a finding reported under subsection (c) or notification provided under subsection (d)(1) is not made available to all members of a congressional intelligence committee in accordance with subsection (c)(2), the President shall provide to all members of such committee a general description regarding the finding or notification, as applicable, consistent with the reasons for not yet fully informing all members of such committee.

(3) The President shall maintain—

(A) a record of the members of Congress to whom a finding is reported under subsection (c) or notification is provided under subsection (d)(1) and the date on which each member of Congress receives such finding or notification; and

(B) each written statement provided under subsection (c)(5).

(3) The President shall maintain—

(A) a record of the members of Congress to whom a finding is reported under subsection (c) or notification is provided under subsection (d)(1) and the date on which each member of Congress receives such finding or notification; and

(B) each written statement provided under subsection (c)(5).

Prior Provisions

A prior section 503 of act July 26, 1947, ch. 343, was renumbered section 505 and is classified to section 415 of this title.

Amendments


Subsec. (c)(4). Pub. L. 107–306, §353(b)(8), substituted “congressional intelligence committee” for “intelligence committee”.


Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


§413c. Communications with the Committees on Armed Services of the Senate and the House of Representatives

(a) Requests of committees

The Director of the National Counterterrorism Center, the Director of a national intelligence center, or the head of any element of the intelligence community shall, not later than 45 days after receiving a written request from the Chair or ranking minority member of the Committee on Armed Services of the Senate or the Committee on Armed Services of the House of Representatives for any existing intelligence assessment, report, estimate, or legal opinion relating to matters within the jurisdiction of such Committee, make available to such committee such assessment, report, estimate, or legal opinion, as the case may be.

(b) Assertion of privilege

(1) In general

In response to a request covered by subsection (a), the Director of the National Counterterrorism Center, the Director of a national intelligence center, or the head of any element of the intelligence community shall provide to the Committee making such request the document or information covered by such request unless the President determines that such document or information shall not be provided because the President is asserting a privilege pursuant to the Constitution of the United States.

(2) Submission to Congress

The White House Counsel shall submit to Congress in writing any assertion by the President under paragraph (1) of a privilege pursuant to the Constitution.

(c) Definitions

In this section:

(1) Intelligence community

The term "intelligence community" has the meaning given the term in section 401a(4) of this title.

(2) Intelligence assessment

The term "intelligence assessment" means an intelligence-related analytical study of a
subject of policy significance and does not include building-block papers, research projects, and reference aids.

(3) Intelligence estimate

The term “intelligence estimate” means an appraisal of available intelligence relating to a specific situation or condition with a view to determining the courses of action open to an enemy or potential enemy and the probable order of adoption of such courses of action. (Pub. L. 110–181, div. A, title X, §1079, Jan. 28, 2008, 122 Stat. 334.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2008, and not as part of the National Security Act of 1947 which comprises this chapter.

§ 414. Funding of intelligence activities

(a) Obligations and expenditures for intelligence or intelligence-related activity; prerequisites

Appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(1) those funds were specifically authorized by the Congress for use for such activities; or

(2) in the case of funds from the Reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 413b of this title concerning any significant anticipated intelligence activity, the Director of the Central Intelligence Agency has notified the appropriate congressional committees of the intent to make such funds available for such activity; or

(3) in the case of funds specifically authorized by the Congress for a different activity—

(A) the activity to be funded is a higher priority intelligence or intelligence-related activity;

(B) the use of such funds for such activity supports an emergent need, improves program effectiveness, or increases efficiency; and

(C) the Director of National Intelligence, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;

(4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31.

(b) Activities denied funding by Congress

Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.

(c) Presidential finding required for expenditure of funds on covert action

No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government may be expended, or may be directed to be expended, for any covert action, as defined in section 413b(e) of this title, unless and until a Presidential finding required by subsection (a) of section 413b of this title has been signed or otherwise issued in accordance with that subsection.

(d) Report to Congressional committees required for expenditure of nonappropriated funds for intelligence activity

(1) Except as otherwise specifically provided by law, funds available to an intelligence agency that are not appropriated funds may be obligated or expended for an intelligence or intelligence-related activity only if those funds are used for activities reported to the appropriate congressional committees pursuant to procedures which identify—

(A) the types of activities for which nonappropriated funds may be expended; and

(B) the circumstances under which an activity must be reported as a significant anticipated intelligence activity before such funds can be expended.

(2) Procedures for purposes of paragraph (1) shall be jointly agreed upon by the congressional intelligence committees and, as appropriate, the Director of National Intelligence or the Secretary of Defense.

(e) Definitions

As used in this section—

(1) the term “intelligence agency” means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the term “appropriate congressional committees” means the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives and the Select Committee on Intelligence and the Committee on Appropriations of the Senate; and

(3) the term “specifically authorized by the Congress” means that—

(A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity.


AMENDMENTS

read as follows: "the need for funds for such activity is based on unforeseen requirements; and‘.

2004—Subsec. (a)(2). Pub. L. 108–458, § 1071(a)(5), substituted "Director of the Central Intelligence Agency" for "Director of Central Intelligence".


Subsec. (d)(2). Pub. L. 108–458, § 1071(a)(1)(AA), substituted "Director of National Intelligence" for "Director of Central Intelligence".


Sec. 1081(a), (b) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

LIMITATION ON TRANSFER OF FUNDS BETWEEN CIA AND DEPARTMENT OF DEFENSE: CONGRESSIONAL NOTIFICATION REQUIRED

Pub. L. 102–172, title VIII, § 8014, Nov. 26, 1991, 105 Stat. 1193, provided that: "During the current fiscal year and hereafter, none of the funds appropriated for intelligence programs to the Department of Defense which are transferred to another Federal agency for execution shall be expended by the Department of Defense in any fiscal year in excess of amounts required for expenditure during such fiscal year by the Federal agency to which such funds are transferred."

ENHANCED SECURITY COUNTERMEASURES CAPABILITIES: APPLICATION OF SECTION


§ 415. Notice to Congress of certain transfers of defense articles and defense services

(a)(1) The transfer of a defense article or defense service, or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services, exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of this subchapter.

(2) Paragraph (1) does not apply if—

(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

(B) the transfer—

(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2301 et seq.], the Arms Export Control Act (22 U.S.C. 2751 et seq.), title 10 (including a law enacted pursuant to section 7307(a) of that title), or chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3506, 4710, and 4711) of subtitle I of title 41, and

(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

(b) As used in this section—

(1) the term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities.

(2) the terms "defense articles" and "defense services" mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act [22 U.S.C. 2778] (22 CFR part 121);
(3) the term "transfer" means—
   (A) in the case of defense articles, the transfer of possession of those articles; and
   (B) in the case of defense services, the provision of those services; and

(4) the term "value" means—
   (A) in the case of defense articles, the greater of—
      (i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or
      (ii) the replacement cost; and
   (B) in the case of defense services, the full cost to the Government of providing the services.


REFE RENCES IN TEXT


prepared before the submission to Congress of the budget of the President for the first fiscal year in which appropriated funds are anticipated to be obligated for the development or procurement of such major system.

(2) If the amount of appropriations requested in the budget of the President for the development or procurement of a major system is less than the amount of appropriations identified in the most current independent cost estimate for the major system for obligation for each fiscal year for which appropriations are requested for the major system in such budget, the President shall include in the budget justification materials submitted to Congress in support of such budget—

(A) an explanation for the difference between the amount of appropriations requested and the amount of appropriations identified in the most current independent cost estimate;

(B) a description of the importance of the major system to the national security;

(C) an assessment of the consequences for the funding of all programs of the National Foreign Intelligence Program in future fiscal years if the most current independent cost estimate for the major system is accurate and additional appropriations are required in future fiscal years to ensure the continued development or procurement of the major system, including the consequences of such funding shortfalls on the major system and all other programs of the National Foreign Intelligence Program; and

(D) such other information on the funding of the major system as the President considers appropriate.

(d) Inclusion of estimates in budget justification materials

The budget justification materials submitted to Congress in support of the budget of the President shall include the most current independent cost estimate under this section for each major system for which appropriations are requested in such budget for any fiscal year.

(e) Definitions

In this section:

(1) The term “budget of the President” means the budget of the President for a fiscal year as submitted to Congress under section 1105(a) of title 31.

(2) The term “independent cost estimate” means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with the acquisition of a major system, which shall be based on programmatic and technical specifications provided by the office within the element of the intelligence community with primary responsibility for the development, procurement, or operation of the major system.

(3) The term “major system” means any significant program of an element of the intelligence community with projected total development and procurement costs exceeding $500,000,000 (based on fiscal year 2010 constant dollars), which costs shall include all end-to-end program costs, including costs associated with the development and procurement of the program and any other costs associated with the development and procurement of systems required to support or utilize the program.

(July 26, 1947, ch. 343, title V, § 506A, as added Pub. L. 108–177, title III, § 312(b)(1), Dec. 13, 2003,
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2010—Subsec. (e)(3). Pub. L. 111–259 substituted “(based on fiscal year 2010 constant dollars)” for “(in current fiscal year dollars)”.


EFFECTIVE DATE OF 2004 AMENDMENT


EFFECTIVE DATE

Pub. L. 108–177, title III, §312(c), Dec. 13, 2003, 117 Stat. 2609, provided that: “The amendments made by subsection (b) [enacting this section] shall take effect on the date of the enactment of this Act [Dec. 13, 2003].”

CONGRESSIONAL FINDINGS

Pub. L. 108–177, title III, §312(a), Dec. 13, 2003, 117 Stat. 2606, provided that: “Congress makes the following findings:

(1) Funds within the National Foreign Intelligence Program often must be shifted from program to program and from fiscal year to fiscal year to address funding shortfalls caused by significant increases in the costs of acquisition of major systems by the intelligence community.

(2) While some increases in the costs of acquisition of major systems by the intelligence community are unavoidable, the magnitude of growth in the costs of acquisition of many major systems indicates a systemic bias within the intelligence community to underestimate the costs of such acquisition, particularly in the preliminary stages of development and production.

(3) Decisions by Congress to fund the acquisition of major systems by the intelligence community rely significantly upon initial estimates of the affordability of acquiring such major systems and occur within a context in which funds can be allocated for a variety of alternative programs. Thus, substantial increases in costs of acquisition of major systems place significant burdens on the availability of funds for other programs and new proposals within the National Foreign Intelligence Program.

(4) Independent cost estimates, prepared by independent offices, have historically represented a more accurate projection of the costs of acquisition of major systems.

(5) Recognizing the benefits associated with independent cost estimates for the acquisition of major systems, the Secretary of Defense has built upon the statutory requirement in section 2444 of title 10, United States Code, to develop and consider independent cost estimates for the acquisition of such systems by mandating the use of such estimates in budget requests of the Department of Defense.

(6) The mandatory use throughout the intelligence community of independent cost estimates for the acquisition of major systems will assist the President and Congress in the development and funding of budgets which more accurately reflect the requirements and priorities of the United States Government for intelligence and intelligence-related activities.”

LIMITATIONS ON MAJOR SYSTEM PROCUREMENT, ACQUISITION, AND DEVELOPMENT


(1) For each major system for which funds have been authorized for a fiscal year before fiscal year 2005, or for which funds are sought in the budget of the President for fiscal year 2005, as submitted to Congress pursuant to section 1106(a) of title 31, United States Code, and for which no independent cost estimate has been provided to Congress, no contract, or option to contract, for the procurement or acquisition of such major system may be entered into, or option to contract be exercised, before the date of the enactment of an Act to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government.

(2) Subparagraph (A) shall not affect any contract for procurement or acquisition that was entered into before the date of the enactment of this Act [Dec. 13, 2003].

(3) In this subsection, the terms ‘independent cost estimate’ and ‘major system’ have the meaning given in paragraphs (1) and (2) as described in the Department of Defense Financial Management Regulation with the congressional budget justification books.

§ 415a–2. Exhibits for inclusion with budget justification books

Beginning with the fiscal year 2010 budget request, the Director of National Intelligence shall include the budget exhibits identified in paragraphs (1) and (2) as described in the Department of Defense Financial Management Regulation with the congressional budget justification books.

For procurement programs requesting more than $20,000,000 in any fiscal year, the P-1, Procurement Program; P-5, Cost Analysis; P-5a, Procurement History and Planning; P-21, Production Schedule; and P-401 Budget Item Justification.

For research, development, test and evaluation projects requesting more than $10,000,000 in any fiscal year, the R-1, RDT&E Program; R-2, RDT&E Budget Item Justification; R-3, RDT&E Project Cost Analysis; and R-4, RDT&E Program Schedule Profile.


CODIFICATION

Section was enacted as part of the Department of Defense Appropriations Act, 2009, and also as part of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, and not as part of the National Security Act of 1947 which comprises this chapter.

1 So in original. Probably should be followed by a comma.

Similar provisions were contained in the following appropriation act:

Similar provisions were contained in the following appropriation act:

§ 415a–4. Annual personnel level assessments for the intelligence community

(a) Requirement to provide
The Director of National Intelligence shall, in consultation with the head of each element of the intelligence community, prepare an annual personnel level assessment for each element that assesses the personnel levels for such element for the fiscal year following the fiscal year in which the assessment is submitted.

(b) Schedule
Each assessment required by subsection (a) shall be submitted to the congressional intelligence committees each year at the time that the President submits to Congress the budget for a fiscal year pursuant to section 1105 of title 31.

(c) Contents
Each assessment required by subsection (a) submitted during a fiscal year shall contain the following information for the element of the intelligence community concerned:

1. The budget submission for personnel costs for the upcoming fiscal year.
2. The dollar and percentage increase or decrease of such costs as compared to the personnel costs of the current fiscal year.
3. The dollar and percentage increase or decrease of such costs as compared to the personnel costs during the prior 5 fiscal years.
4. The number of full-time equivalent positions that is the basis for which personnel funds are requested for the upcoming fiscal year.
5. The numerical and percentage increase or decrease of the number referred to in paragraph (4) as compared to the number of full-time equivalent positions of the current fiscal year.
6. The numerical and percentage increase or decrease of the number referred to in paragraph (4) as compared to the number of full-time equivalent positions during the prior 5 fiscal years.
7. The best estimate of the number and costs of core contract personnel to be funded by the element for the upcoming fiscal year.
8. The numerical and percentage increase or decrease of such costs of core contract personnel as compared to the best estimate of the costs of core contract personnel of the current fiscal year.
9. The numerical and percentage increase or decrease of such number and such costs of core contract personnel as compared to the number and cost of core contract personnel during the prior 5 fiscal years.
10. A justification for the requested personnel and core contract personnel levels.
11. The best estimate of the number of intelligence collectors and analysts employed or contracted by each element of the intelligence community.
12. A statement by the Director of National Intelligence that, based on current and projected funding, the element concerned will have sufficient—
   A) internal infrastructure to support the requested personnel and core contract personnel levels;
   B) training resources to support the requested personnel levels; and
   C) funding to support the administrative and operational activities of the requested personnel levels.


Implementation
Pub. L. 111–259, title III, § 305(b), Oct. 7, 2010, 124 Stat. 2661, provided that: "The first assessment required to be submitted under section 506B(b) of the National Security Act of 1947 [50 U.S.C. 415a–4(b)], as added by subsection (a), shall be submitted to the congressional intelligence committees at the time that the President submits to Congress the budget for fiscal year 2012 pursuant to section 1105 of title 31, United States Code."
[For definition of "congressional intelligence committees" as used in section 305(b) of Pub. L. 111–259, see surviving section 401a of this title.]

§ 415a–5. Vulnerability assessments of major systems

(a) Initial vulnerability assessments

1. (A) Except as provided in subparagraph (B), the Director of National Intelligence shall conduct and submit to the congressional intelligence committees an initial vulnerability assessment for each major system and its significant items of supply—
   i) except as provided in clause (ii), prior to the completion of Milestone B or an equivalent acquisition decision for the major system; or
   ii) prior to the date that is 1 year after October 7, 2010, in the case of a major system for which Milestone B or an equivalent acquisition decision—
      I) was completed prior to such date; or
      II) is completed on a date during the 180-day period following such date.

2. (B) The Director may submit to the congressional intelligence committees an initial vulnerability assessment required by clause (ii) of subparagraph (A) not later than 180 days after the date such assessment is required to be submitted under such clause if the Director notifies the congressional intelligence committees of the extension of the submission date under this subparagraph and provides a justification for such extension.
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(C) The initial vulnerability assessment of a major system and its significant items of supply shall include use of an analysis-based approach to—

(i) identify vulnerabilities;

(ii) define exploitation potential;

(iii) examine the system's potential effectiveness;

(iv) determine overall vulnerability; and

(v) make recommendations for risk reduction.

(2) If an initial vulnerability assessment for a major system is not submitted to the congressional intelligence committees as required by paragraph (1), funds appropriated for the acquisition of the major system may not be obligated for a major contract related to the major system. Such prohibition on the obligation of funds for the acquisition of the major system shall cease to apply on the date on which the congressional intelligence committees receive the initial vulnerability assessment.

(b) Subsequent vulnerability assessments

(1) The Director of National Intelligence shall, periodically throughout the procurement of a major system or if the Director determines that a change in circumstances warrants the issuance of a subsequent vulnerability assessment, conduct a subsequent vulnerability assessment of each major system and its significant items of supply within the National Intelligence Program.

(2) Upon the request of a congressional intelligence committee, the Director of National Intelligence may, if appropriate, recertify the previous vulnerability assessment or may conduct a subsequent vulnerability assessment of a particular major system and its significant items of supply within the National Intelligence Program.

(3) Any subsequent vulnerability assessment of a major system and its significant items of supply shall include use of an analysis-based approach and, if applicable, a testing-based approach, to monitor the exploitation potential of such system and reexamine the factors described in clauses (i) through (v) of subsection (a)(1)(C).

(c) Major system management

The Director of National Intelligence shall give due consideration to the vulnerability assessment prepared for a given major system when developing and determining the National Intelligence Program budget.

(d) Congressional oversight

(1) The Director of National Intelligence shall provide to the congressional intelligence committees a copy of each vulnerability assessment conducted under subsection (a) or (b) not later than 10 days after the date of the completion of such assessment.

(2) The Director of National Intelligence shall provide the congressional intelligence committees with a proposed schedule for subsequent periodic vulnerability assessments of a major system under subsection (b)(1) when providing such committees with the initial vulnerability assessment under subsection (a) of such system as required by paragraph (1).

(e) Definitions

In this section:

(1) The term ‘‘item of supply’’ has the meaning given that term in section 4(10) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(10)).

(2) The term ‘‘major contract’’ means each of the 6 largest prime, associate, or Government-furnished equipment contracts under a major system that is in excess of $40,000,000 and that is not a firm, fixed price contract.

(3) The term ‘‘major system’’ has the meaning given that term in section 415a–1(e) of this title.

(4) The term ‘‘Milestone B’’ means a decision to enter into major system development and demonstration pursuant to guidance prescribed by the Director of National Intelligence.

(5) The term ‘‘vulnerability assessment’’ means the process of identifying and quantifying vulnerabilities in a major system and its significant items of supply.

(7) Any subsequent vulnerability assessment

(1) The pursuant to paragraph (3), no funds appropriated to any element of the intelligence community may be obligated for an intelligence community business system transformation that will have a total cost in excess of $3,000,000 unless—

(A) the Director of the Office of Business Transformation of the Office of the Director of National Intelligence makes a certification described in paragraph (2) with respect to such intelligence community business system transformation; and

(B) such certification is approved by the board established under subsection (f).

(2) The certification described in this paragraph for an intelligence community business system transformation is a certification made by the Director of the Office of Business Transformation of the Office of the Director of National Intelligence that the intelligence community business system transformation—

(A) complies with the enterprise architecture under subsection (b) and such other policies and standards that the Director of National Intelligence considers appropriate; or

(B) is necessary—

(i) to achieve a critical national security capability or address a critical requirement; or

(ii) to prevent a significant adverse effect on a project that is needed to achieve an essential capability, taking into consideration

1 See References in Text note below.
any alternative solutions for preventing such adverse effect.

(3) With respect to a fiscal year after fiscal year 2010, the amount referred to in paragraph (1) in the matter preceding subparagraph (A) shall be equal to the sum of—

(A) the amount in effect under such paragraph (1) for the preceding fiscal year (determined after application of this paragraph), plus

(B) such amount multiplied by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of the previous fiscal year.

(b) Enterprise architecture for intelligence community business systems

(1) The Director of National Intelligence shall, acting through the board established under subsection (f), develop and implement an enterprise architecture to cover all intelligence community business systems, and the functions and activities supported by such business systems. The enterprise architecture shall be sufficiently defined to effectively guide, constrain, and permit implementation of interoperable intelligence community business system solutions, consistent with applicable policies and procedures established by the Director of the Office of Management and Budget.

(2) The enterprise architecture under paragraph (1) shall include the following:

(A) An information infrastructure that will enable the intelligence community to—

(i) comply with all Federal accounting, financial management, and reporting requirements;

(ii) routinely produce timely, accurate, and reliable financial information for management purposes;

(iii) integrate budget, accounting, and program information and systems; and

(iv) provide for the measurement of performance, including the ability to produce timely, relevant, and reliable cost information.

(B) Policies, procedures, data standards, and system interface requirements that apply uniformly throughout the intelligence community.

c) Responsibilities for intelligence community business system transformation

The Director of National Intelligence shall be responsible for the entire life cycle of an intelligence community business system transformation, including review, approval, and oversight of the planning, design, acquisition, deployment, operation, and maintenance of the business system transformation.

d) Intelligence community business system investment review

(1) The Director of the Office of Business Transformation of the Office of the Director of National Intelligence shall establish and implement, not later than 60 days after October 7, 2010, an investment review process for the intelligence community business systems for which the Director of the Office of Business Transformation is responsible.

(2) The investment review process under paragraph (1) shall—

(A) meet the requirements of section 11312 of title 40; and

(B) specifically set forth the responsibilities of the Director of the Office of Business Transformation under such review process.

e) Budget information

For each fiscal year after fiscal year 2011, the Director of National Intelligence shall include in the materials the Director submits to Congress in support of the budget for such fiscal year that is submitted to Congress under section 1105 of title 31 the following information:

(A) An identification of each intelligence community business system for which funding is proposed in such budget.

(B) An identification of all funds, by appropriation, proposed in such budget for each such system, including—

(A) funds for current services to operate and maintain such system;

(B) funds for business systems modernization identified for each specific appropriation; and

(C) funds for associated business process improvement or reengineering efforts.

(3) The certification, if any, made under subsection (a)(2) with respect to each such system.

(f) Intelligence community business system transformation governance board

(1) The Director of National Intelligence shall establish a board within the intelligence community business system transformation governance structure (in this subsection referred to as the “Board”).

(2) The Board shall—

(A) recommend to the Director policies and procedures necessary to effectively integrate all business activities and any transformation, reform, reorganization, or process improvement initiatives undertaken within the intelligence community;

(B) review and approve any major update of—

(i) the enterprise architecture developed under subsection (b); and

(ii) any plans for an intelligence community business systems modernization;
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(C) manage cross-domain integration consistent with such enterprise architecture;
(D) coordinate initiatives for intelligence community business system transformation to maximize benefits and minimize costs for the intelligence community, and periodically report to the Director on the status of efforts to carry out an intelligence community business system transformation;
(E) ensure that funds are obligated for intelligence community business system transformation in a manner consistent with subsection (a); and
(F) carry out such other duties as the Director shall specify.

(g) Relation to annual registration requirements
Nothing in this section shall be construed to alter the requirements of section 8083 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 989), with regard to information technology systems (as defined in subsection (d) of such section).

(h) Relationship to defense business enterprise architecture
Nothing in this section shall be construed to exempt funds authorized to be appropriated to the Department of Defense from the requirements of section 2222 of title 10 to the extent that such requirements are otherwise applicable.

(i) Relation to Clinger-Cohen Act
(1) Executive agency responsibilities in chapter 133 of title 40 for any intelligence community business system transformation shall be exercised jointly by—
(A) the Director of National Intelligence and the Chief Information Officer of the Intelligence Community; and
(B) the head of the executive agency that contains the element of the intelligence community involved and the chief information officer of that executive agency.
(2) The Director of National Intelligence and the head of the executive agency referred to in paragraph (1)(B) shall enter into a Memorandum of Understanding to carry out the requirements of this section in a manner that best meets the needs of the intelligence community and the executive agency.

(j) Reports
Not later than March 31 of each of the years 2011 through 2015, the Director of National Intelligence shall submit to the congressional intelligence committees a report on the compliance of the intelligence community with the requirements of this section. Each such report shall—
(1) describe actions taken and proposed for meeting the requirements of subsection (a), including—
(A) specific milestones and actual performance against specified performance measures, and any revision of such milestones and performance measures; and
(B) specific actions on the intelligence community business system transformations submitted for certification under such subsection;
(2) identify the number of intelligence community business system transformations that received a certification described in subsection (a)(2); and
(3) describe specific improvements in business operations and cost savings resulting from successful intelligence community business systems transformation efforts.

(k) Definitions
In this section:
(1) The term “enterprise architecture” has the meaning given that term in section 3601(4) of title 44.
(2) The terms “information system” and “information technology” have the meanings given those terms in section 11101 of title 40.
(3) The term “intelligence community business system” means an information system, including a national security system, that is operated by, for, or on behalf of an element of the intelligence community, including a financial system, mixed system, financial data feeder system, and the business infrastructure capabilities shared by the systems of the business enterprise architecture, including people, process, and technology, that build upon the core infrastructure used to support business activities, such as acquisition, financial management, logistics, strategic planning and budgeting, installations and environment, and human resource management.
(4) The term “intelligence community business system transformation” means—
(A) the acquisition or development of a new intelligence community business system; or
(B) any significant modification or enhancement of an existing intelligence community business system (other than necessary to maintain current services).
(5) The term “national security system” has the meaning given that term in section 3542 of title 44.
(6) The term “Office of Business Transformation of the Office of the Director of National Intelligence” includes any successor office that assumes the functions of the Office of Business Transformation of the Office of the Director of National Intelligence as carried out by the Office of Business Transformation on October 7, 2010.


REFERENCES IN TEXT

IMPLEMENTATION
“(1) Certain duties.—Not later than 60 days after the date of the enactment of this Act (Oct. 7, 2010), the Director of National Intelligence shall designate a chair and other members to serve on the board established under subsection (f) of such section 506D of the National Security Act of 1947 (50 U.S.C. 415a–6(f)) (as added by subsection (a)).
“(2) Enterprise Architecture.—
“(A) Schedule for development.—The Director shall develop the enterprise architecture required by
§ 415a–7. Reports on the acquisition of major systems.

(a) Definitions

In this section:

(1) The term “cost estimate”—

(A) means an assessment and quantification of all costs and risks associated with the acquisition of a major system based upon reasonably available information at the time the Director establishes the 2010 adjusted total acquisition cost for such system pursuant to subsection (h) or restructures such system pursuant to section 415a–8(c) of this title; and

(B) does not mean an “independent cost estimate”.

(2) The term “critical cost growth threshold” means a percentage increase in the total acquisition cost for a major system of at least 25 percent over the total acquisition cost for the major system as shown in the current Baseline Estimate for the major system.

(3)(A) The term “current Baseline Estimate” means the projected total acquisition cost of a major system that is—

(i) approved by the Director, or a designee of the Director, at Milestone B or an equivalent acquisition decision for the development, procurement, and construction of such system;

(ii) approved by the Director at the time such system is restructured pursuant to section 415a–8(c) of this title; or

(iii) the 2010 adjusted total acquisition cost determined pursuant to subsection (h).

(B) A current Baseline Estimate may be in the form of an independent cost estimate.

(4) Except as otherwise specifically provided, the term “Director” means the Director of National Intelligence.

(5) The term “independent cost estimate” has the meaning given that term in section 415a–1(e) of this title.

(6) The term “major contract” means each of the 6 largest prime, associate, or Government-furnished equipment contracts under a major system that is in excess of $40,000,000 and that is not a firm, fixed price contract.

(7) The term “major system” has the meaning given that term in section 415a–1(e) of this title.

(8) The term “Milestone B” means a decision to enter into major system development and demonstration pursuant to guidance prescribed by the Director.

(9) The term “program manager” means—

(A) the head of the element of the intelligence community that is responsible for the budget, cost, schedule, and performance of a major system; or

(B) in the case of a major system within the Office of the Director of National Intelligence, the deputy who is responsible for the budget, cost, schedule, and performance of the major system.

(10) The term “significant cost growth threshold” means the percentage increase in the total acquisition cost for a major system of at least 15 percent over the total acquisition cost for such system as shown in the current Baseline Estimate for such system.

(11) The term “total acquisition cost” means the amount equal to the total cost for development and procurement of, and system-specific construction for, a major system.

(b) Major system cost reports

(1) The program manager for a major system shall, on a quarterly basis, submit to the Director a major system cost report as described in paragraph (2).

(2) A major system cost report shall include the following information (as of the last day of the quarter for which the report is made):

(A) The total acquisition cost for the major system.

(B) Any cost variance or schedule variance in a major contract for the major system since the contract was entered into.

(C) Any changes from a major system schedule milestones or performances that are known, expected, or anticipated by the program manager.

(D) Any significant changes in the total acquisition cost for development and procurement of any software component of the major system, schedule milestones for such software component of the major system, or expected performance of such software component of the major system that are known, expected, or anticipated by the program manager.

(3) Each major system cost report required by paragraph (1) shall be submitted not more than 30 days after the end of the reporting quarter.

(c) Reports for breach of significant or critical cost growth thresholds

If the program manager of a major system for which a report has previously been submitted...
under subsection (b) determines at any time during a quarter that there is reasonable cause to believe that the total acquisition cost for the major system has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold and if a report indicating an increase of such percentage or more has not previously been submitted to the Director, then the program manager shall immediately submit to the Director a major system cost report containing the information, determined as of the date of the report, required under subsection (b).

(d) Notification to Congress of cost growth

(1) Whenever a major system cost report is submitted to the Director, the Director shall determine whether the current acquisition cost for the major system has increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold.

(2) If the Director determines that the current total acquisition cost has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold, the Director shall submit to Congress a Major System Congressional Report pursuant to subsection (e).

(e) Requirement for Major System Congressional Report

(1) Whenever the Director determines under subsection (d) that the total acquisition cost of a major system has increased by a percentage equal to or greater than the significant cost growth threshold for the major system, a Major System Congressional Report shall be submitted to Congress not later than 45 days after the date on which the Director receives the major system cost report for such major system.

(2) If the total acquisition cost of a major system (as determined by the Director under subsection (d)) increases by a percentage equal to or greater than the critical cost growth threshold or critical cost growth threshold, the Director shall take actions consistent with the requirements of section 415a-8 of this title.

(f) Major System Congressional Report elements

(1) Except as provided in paragraph (2), each Major System Congressional Report shall include the following:

(A) The name of the major system.

(B) The date of the preparation of the report.

(C) The program phase of the major system as of the date of the preparation of the report.

(D) The estimate of the total acquisition cost for the major system expressed in constant base-year dollars and in current dollars.

(E) The current Baseline Estimate for the major system in constant base-year dollars and in current dollars.

(F) A statement of the reasons for any increase in total acquisition cost for the major system.

(G) The completion status of the major system—

(i) expressed as the percentage that the number of years for which funds have been appropriated for the major system is of the number of years for which it is planned that funds will be appropriated for the major system; and

(ii) expressed as the percentage that the amount of funds that have been appropriated for the major system is of the total amount of funds which it is planned will be appropriated for the major system.

(H) The fiscal year in which the major system was first authorized and in which funds for such system were first appropriated by Congress.

(I) The current change and the total change, in dollars and expressed as a percentage, in the total acquisition cost for the major system, stated both in constant base-year dollars and in current dollars.

(J) The quantity of end items to be acquired under the major system and the current change and total change, if any, in that quantity.

(K) The identities of the officers responsible for management and cost control of the major system.

(L) The action taken and proposed to be taken to control future cost growth of the major system.

(M) Any changes made in the performance or schedule milestones of the major system and the extent to which such changes have contributed to the increase in total acquisition cost for the major system.

(N) The following contract performance assessment information with respect to each major contract under the major system:

(i) The name of the contractor.

(ii) The phase that the contract is in at the time of the preparation of the report.

(iii) The percentage of work under the contract that has been completed.

(iv) Any current change and the total change, in dollars and expressed as a percentage, in the contract cost.

(v) The percentage by which the contract is currently ahead of or behind schedule.

(vi) A narrative providing a summary explanation of the most significant occurrences, including cost and schedule variances under major contracts of the major system, contributing to the changes identified and a discussion of the effect these occurrences will have on the future costs and schedule of the major system.

(O) In any case in which one or more problems with a software component of the major system significantly contributed to the increase in costs of the major system, the action taken and proposed to be taken to solve such problems.

(2) A Major System Congressional Report prepared for a major system for which the increase in the total acquisition cost is due to termination or cancellation of the entire major system shall include only—

(A) the information described in subparagraphs (A) through (F) of paragraph (1); and

(B) the total percentage change in total acquisition cost for such system.

(g) Prohibition on obligation of funds

If a determination of an increase by a percentage equal to or greater than the significant cost
growth threshold is made by the Director under subsection (d) and a Major System Congressional Report containing the information described in subsection (f) is not submitted to Congress under subsection (e)(1), or if a determination of increase by a percentage equal to or greater than the critical cost growth threshold is made by the Director under subsection (d) and the Major System Congressional Report containing the information described in subsection (f) and section 415a–8(b)(3) of this title and the certification required by section 415a–8(b)(2) of this title are not submitted to Congress under subsection (e)(2), funds appropriated for construction, research, development, test, evaluation, and procurement may not be obligated for a major contract under the major system. The prohibition on the obligation of funds for a major system shall cease to apply at the end of the 45-day period that begins on the date—

(1) on which Congress receives the Major System Congressional Report under subsection (e)(1) with respect to that major system, in the case of a determination of an increase by a percentage equal to or greater than the significant cost growth threshold (as determined in subsection (d)); or

(2) on which Congress receives both the Major System Congressional Report under subsection (e)(2) and the certification of the Director under section 415a–8(b)(2) of this title with respect to that major system, in the case of an increase by a percentage equal to or greater than the critical cost growth threshold (as determined under subsection (d)).

(b) Treatment of cost increases prior to October 7, 2010

(1) Not later than 180 days after October 7, 2010, the Director—

(A) shall, for each major system, determine if the total acquisition cost of such major system increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold prior to such date;

(B) shall establish for each major system for which the total acquisition cost has increased by a percentage equal to or greater than the significant cost growth threshold or the critical cost growth threshold prior to such date a revised current Baseline Estimate based upon an updated cost estimate;

(C) may, for a major system not described in subparagraph (B), establish a revised current Baseline Estimate based upon an updated cost estimate; and

(D) shall submit to Congress a report describing—

(i) each determination made under subparagraph (A);

(ii) each revised current Baseline Estimate established for a major system under subparagraph (B); and

(iii) each revised current Baseline Estimate established for a major system under subparagraph (C), including the percentage increase of the total acquisition cost of such major system that occurred prior to October 7, 2010.

(2) The revised current Baseline Estimate established for a major system under subparagraph (B) or (C) of paragraph (1) shall be the 2010 adjusted total acquisition cost for the major system and may include the estimated cost of conducting any vulnerability assessments for such major system required under section 415a–5 of this title.

(i) Requirements to use base year dollars

Any determination of a percentage increase under this section shall be stated in terms of constant base year dollars.

(j) Form of report

Any report required to be submitted under this section may be submitted in a classified form.

Applicability Date of Quarterly Reports

Pub. L. 111–259, title III, § 323(a)(2), Oct. 7, 2010, 124 Stat. 2678, provided that: “The first report required to be submitted under subsection (b) of section 506E of the National security [Security] Act of 1947 [50 U.S.C. 415a–7(b)], as added by paragraph (1) of this subsection, shall be submitted with respect to the first fiscal quarter that begins on a date that is not less than 180 days after the date of the enactment of this Act [Oct. 7, 2010].”

Major Defense Acquisition Programs

Pub. L. 111–259, title III, § 323(b), Oct. 7, 2010, 124 Stat. 2678, provided that: “Nothing in this section [enacting this section and provisions set out as a note under this section], section 324 [enacting section 415a–8 of this title], or an amendment made by this section or section 324, shall be construed to exempt an acquisition program of the Department of Defense from the requirements of chapter 144 of title 10, United States Code[.] or Department of Defense Directive 5000, to the extent that such requirements are otherwise applicable.”

§ 415a–8. Critical cost growth in major systems

(a) Reassessment of major system

If the Director of National Intelligence determines under section 415a–7(d) of this title that the total acquisition cost of a major system has increased by a percentage equal to or greater than the critical cost growth threshold for the major system, the Director shall—

(1) determine the root cause or causes of the critical cost growth, in accordance with applicable statutory requirements, policies, procedures, and guidance; and

(2) carry out an assessment of—

(A) the projected cost of completing the major system if current requirements are not modified;

(B) the projected cost of completing the major system based on reasonable modification of such requirements;

(C) the rough order of magnitude of the costs of any reasonable alternative system or capability; and

(D) the need to reduce funding for other systems due to the growth in cost of the major system.

(b) Presumption of termination

(1) After conducting the reassessment required by subsection (a) with respect to a major system, the Director shall terminate the major sys-
tem unless the Director submits to Congress a Major System Congressional Report containing a certification in accordance with paragraph (2) and the information described in paragraph (3). The Director shall submit such Major System Congressional Report and certification not later than 90 days after the date the Director receives the relevant major system cost report under subsection (b) or (c) of section 415a–7 of this title.

(2) A certification described by this paragraph with respect to a major system is a written certification that—

(A) the continuation of the major system is essential to the national security;

(B) there are no alternatives to the major system that will provide acceptable capability to meet the intelligence requirement at less cost;

(C) the new estimates of the total acquisition cost have been determined by the Director to be reasonable;

(D) the major system is a higher priority than other systems whose funding must be reduced to accommodate the growth in cost of the major system; and

(E) the management structure for the major system is adequate to manage and control the total acquisition cost.

(3) A Major System Congressional Report accompanying a written certification under paragraph (2) shall include, in addition to the requirements of section 415a–7(e) of this title, the root cause analysis and assessment carried out pursuant to subsection (a), the basis for each determination made in accordance with subparagraphs (A) through (E) of paragraph (2), and a description of all funding changes made as a result of the growth in the cost of the major system, including reductions made in funding for other systems to accommodate such cost growth, together with supporting documentation.

c) Actions if major system not terminated

If the Director elects not to terminate a major system pursuant to subsection (b), the Director shall—

(1) restructure the major system in a manner that addresses the root cause or causes of the critical cost growth, as identified pursuant to subsection (a), and ensures that the system has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E);

(2) rescind the most recent Milestone approval for the major system;

(3) require a new Milestone approval for the major system before taking any action to enter a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the system, except to the extent determined necessary by the Milestone Decision Authority, on a nondelegable basis, to ensure that the system may be restructured as intended by the Director without unnecessarily wasting resources;

(4) establish a revised current Baseline Estimate for the major system based upon an updated cost estimate; and

(5) conduct regular reviews of the major system.

d) Actions if major system terminated

If a major system is terminated pursuant to subsection (b), the Director shall submit to Congress a written report setting forth—

(1) an explanation of the reasons for terminating the major system;

(2) the alternatives considered to address any problems in the major system; and

(3) the course the Director plans to pursue to meet any intelligence requirements otherwise intended to be met by the major system.

e) Form of report

Any report or certification required to be submitted under this section may be submitted in a classified form.

f) Waiver

(1) The Director may waive the requirements of subsections (d)(2), (e), and (g) of section 415a–7 of this title and subsections (a)(2), (b)(3), and (d)(2) of this section with respect to a major system if the Director determines that at least 90 percent of the amount of the current Baseline Estimate for the major system has been expended.

(2) (A) If the Director grants a waiver under paragraph (1) with respect to a major system, the Director shall submit to the congressional intelligence committees written notice of the waiver that includes—

(i) the information described in section 415a–7(f) of this title; and

(ii) if the current total acquisition cost of the major system has increased by a percentage equal to or greater than the critical cost growth threshold—

(I) a determination of the root cause or causes of the critical cost growth, as described in subsection (a)(1); and

(II) a certification that includes the elements described in subparagraphs (A), (B), and (E) of subsection (b)(2).

(B) The Director shall submit the written notice required by subparagraph (A) not later than 90 days after the date that the Director receives a major system cost report under subsection (b) or (c) of section 415a–7 of this title that indicates that the total acquisition cost for the major system has increased by a percentage equal to or greater than the significant cost growth threshold or critical cost growth threshold.

g) Definitions

In this section, the terms “cost estimate”, “critical cost growth threshold”, “current Baseline Estimate”, “major system”, and “total acquisition cost” have the meaning given those terms in section 415a–7(a) of this title.


§ 415a–9. Future budget projections

(a) Future Year Intelligence Plans

(1) The Director of National Intelligence, with the concurrence of the Director of the Office of
Management and Budget, shall provide to the congressional intelligence committees a Future Year Intelligence Plan, as described in paragraph (2), for—

(A) each expenditure center in the National Intelligence Program; and

(B) each major system in the National Intelligence Program.

(2)(A) A Future Year Intelligence Plan submitted under this subsection shall include the year-by-year proposed funding for each center or system referred to in subparagraph (A) or (B) of paragraph (1), for the budget year for which the Plan is submitted and not less than the 4 subsequent fiscal years.

(B) A Future Year Intelligence Plan submitted under subparagraph (B) of paragraph (1) for a major system shall include—

(i) the estimated total life-cycle cost of such major system; and

(ii) major milestones that have significant resource implications for such major system.

(b) Long-term Budget Projections

(1) The Director of National Intelligence, with the concurrence of the Director of the Office of Management and Budget, shall provide to the congressional intelligence committees a Long-term Budget Projection for each element of the intelligence community funded under the National Intelligence Program acquiring a major system that includes the budget for such element for the 5-year period that begins on the day after the end of the last fiscal year for which year-by-year proposed funding is included in a Future Year Intelligence Plan for such major system in accordance with subsection (a)(2)(A).

(2) A Long-term Budget Projection submitted under paragraph (1) shall include—

(A) projections for the appropriate element of the intelligence community for—

(i) pay and benefits of officers and employees of such element;

(ii) other operating and support costs and minor acquisitions of such element;

(iii) research and technology required by such element;

(iv) current and planned major system acquisitions for such element;

(v) any future major system acquisitions for such element; and

(vi) any additional funding projections that the Director of National Intelligence considers appropriate;

(B) a budget projection based on effective cost and schedule execution of current or planned major system acquisitions and application of Office of Management and Budget inflation estimates to future major system acquisitions;

(C) any additional assumptions and projections that the Director of National Intelligence considers appropriate; and

(D) a description of whether, and to what extent, such acquisition, if developed, procured, and operated, is projected to cause an increase in the most recent Future Year Intelligence Plan and Long-term Budget Projection submitted under this section for an element of the intelligence community.

(2) The report on such major system shall include an assessment of whether, and to what extent, such acquisition, if developed, procured, and operated, is projected to cause an increase in the most recent Future Year Intelligence Plan for such element; and

(i) the estimated total life-cycle cost of such major system; and

(ii) major milestones that have significant resource implications for such major system.

(e) Definitions

In this section:

(1) Budget year

The term “budget year” means the next fiscal year for which the President is required to submit to Congress a budget pursuant to section 1105 of title 31.

(2) Independent cost estimate; major system

The terms “independent cost estimate” and “major system” have the meaning given those terms in section 415a–1(e) of this title.

(4) The Director of National Intelligence shall submit each report required by this subsection at the time that the President submits to Congress the budget for a fiscal year pursuant to section 1105 of title 31.
§ 415a–10. Reports on security clearances

(a) Quadrennial audit of position requirements

(1) The President shall every four years conduct an audit of the manner in which the executive branch determines whether a security clearance is required for a particular position in the United States Government.

(2) Not later than 30 days after the completion of an audit conducted under paragraph (1), the President shall submit to Congress the results of such audit.

(b) Report on security clearance determinations

(1) Not later than February 1 of each year, the President shall submit to Congress a report on the security clearance process. Such report shall include, for each security clearance level—

(A) the number of employees of the United States Government who—

(i) held a security clearance at such level as of October 1 of the preceding year; and

(ii) were approved for a security clearance at such level during the preceding fiscal year;

(B) the number of contractors to the United States Government who—

(i) held a security clearance at such level as of October 1 of the preceding year; and

(ii) were approved for a security clearance at such level during the preceding fiscal year; and

(C) for each element of the intelligence community—

(i) the total amount of time it took to process the security clearance determination for such level that—

(I) was among the 80 percent of security clearance determinations made during the preceding fiscal year that took the shortest amount of time to complete; and

(II) took the longest amount of time to complete;

(ii) the total amount of time it took to process the security clearance determination for such level that—

(I) was among the 90 percent of security clearance determinations made during the preceding fiscal year that took the shortest amount of time to complete; and

(II) took the longest amount of time to complete;

(iii) the number of pending security clearance investigations for such level as of October 1 of the preceding year that have remained pending for—

(I) 4 months or less;

(II) between 4 months and 8 months;

(III) between 8 months and one year; and

(IV) more than one year;

(iv) the percentage of reviews during the preceding fiscal year that resulted in a denial or revocation of a security clearance;

(v) the percentage of investigations during the preceding fiscal year that resulted in incomplete information;

(vi) the percentage of investigations during the preceding fiscal year that did not result in enough information to make a decision on potentially adverse information; and

(vii) for security clearance determinations completed or pending during the preceding fiscal year that have taken longer than one year to complete—

(I) the number of security clearance determinations for positions as employees of the United States Government that required more than one year to complete;

(II) the number of security clearance determinations for contractors that required more than one year to complete;

(III) the agencies that investigated and adjudicated such determinations; and

(IV) the cause of significant delays in such determinations.

(2) For purposes of paragraph (1), the President may consider—

(A) security clearances at the level of confidential and secret as one security clearance level; and

(B) security clearances at the level of top secret or higher as one security clearance level.

(c) Form

The results required under subsection (a)(2) and the reports required under subsection (b)(1) shall be submitted in unclassified form, but may include a classified annex.


INITIAL AUDIT


§ 415b. Dates for submittal of various annual and semiannual reports to the congressional intelligence committees

(a) Annual reports

(1) The date for the submittal to the congressional intelligence committees of the following annual reports shall be the date each year provided in subsection (c)(1)(A) of this section:

(A) The annual report on the protection of the identities of covert agents required by section 423 of this title.

(B) The annual report of the Inspectors Generals of the intelligence community on proposed resources and activities of their offices required by section 8H(g) of the Inspector General Act of 1978.

(C) The annual report on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions required by section 2366 of this title.

(D) The annual report on commercial activities as security for intelligence collection required by section 437(c) of title 10.

(E) The annual report on certifications for immunity in interdiction of aircraft engaged in illicit drug trafficking required by section 2291–4(c)(2) of title 22.

U.S.C. 1901 et seq.) required by section 806(a) of that Act (50 U.S.C. 1906(a)).

(G) The annual report on hiring and retention of minority employees in the intelligence community required by section 404i(c) of this title.

(H) The annual report on outside employment of employees of elements of the intelligence community required by section 403–1(u)(2) of this title.

(I) The annual report on financial intelligence on terrorist assets required by section 404m of this title.

(2) The date for the submittal to the congressional intelligence committees of the following annual reports shall be the dates each year provided in subsection (c)(1)(B) of this section:

(A) The annual report on the safety and security of Russian nuclear facilities and nuclear military forces required by section 404i(a) of this title.

(B) The annual report on the threat of attack on the United States from weapons of mass destruction required by section 404i(c) of this title.

(b) Semiannual reports

The dates for the submittal to the congressional intelligence committees of the following semiannual reports shall be the dates each year provided in subsection (c)(2) of this section:

(1) The semiannual reports on the Office of the Inspector General of the Central Intelligence Agency required by section 403g(d)(1) of this title.

(2) The semiannual reports on decisions not to prosecute certain violations of law under the Classified Information Procedures Act (18 U.S.C. App.) as required by section 13 of that Act.

(3) The semiannual reports on the disclosure of information and consumer reports to the Federal Bureau of Investigation for counterintelligence purposes required by section 1681u(h)(2) of title 15.1

(4) The semiannual provision of information on requests for financial information for foreign counterintelligence purposes required by section 3414(a)(5)(C) of title 12.

(c) Submittal dates for reports

(1) (A) Except as provided in subsection (d) of this section, each annual report listed in subsection (a)(1) of this section shall be submitted not later than February 1.

(B) Except as provided in subsection (d) of this section, each annual report listed in subsection (a)(2) of this section shall be submitted not later than December 1.

(2) Except as provided in subsection (d) of this section, each semiannual report listed in subsection (b) of this section shall be submitted not later than February 1 and August 1.

(d) Postponement of submittal

(1) Subject to paragraph (3), the date for the submittal of

(A) an annual report listed in subsection (a)(1) of this section may be postponed until March 1;

(B) an annual report listed in subsection (a)(2) of this section may be postponed until January 1; and

(C) a semiannual report listed in subsection (b) of this section may be postponed until March 1 or September 1, as the case may be, if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

(2)(A) Notwithstanding any other provision of law and subject to paragraph (3), the date for the submittal to the congressional intelligence committees of any report described in subparagraph (B) may be postponed by not more than 30 days from the date otherwise specified in the provision of law for the submittal of such report if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

(B) A report described in this subparagraph is any report on intelligence or intelligence-related activities of the United States Government that is submitted under a provision of law requiring the submittal of only a single report.

(3)(A) The date for the submittal of a report whose submittal is postponed under paragraph (1) or (2) may be postponed beyond the time provided for the submittal of such report under such paragraph if the official required to submit such report submits to the congressional intelligence committees a written certification that preparation and submittal of such report at such time will impede the work of officers or employees of the intelligence community in a manner that will be detrimental to the national security of the United States.

(B) A certification with respect to a report under subparagraph (A) shall include a proposed submittal date for such report, and such report shall be submitted not later than that date.


REFERENCES IN TEXT

Section 8H(g) of the Inspector General Act of 1978, referred to in subsec. (a)(1)(B), is section 8Hg of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.


Section 624(h)(2) of the Fair Credit Reporting Act, referred to in subsec. (b)(3), was in the original "section 624(h)(2) of the Fair Credit Reporting Act", which was translated as reading "section 625(h)(2) of the Fair Credit Reporting Act", to reflect the probable intent of Congress and the renumbering of section 624 as 625 by section 358(g)(1)(A) of Pub. L. 107–56.

1See References in Text note below.
AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–259, §349(1)(A), added subpars. (H) and (I), redesignated former subpars. (C to (F), (H), (I), and (N) as (A) to (G), respectively, and struck out former subpars. (A), (B), and (G) which read as follows:

“(A) The annual report on intelligence required by section 404d of this title.

“(B) The annual report on intelligence provided to the United Nations required by section 404g(b)(1) of this title.

“(G) The annual update on foreign industrial espionage required by section 2170b(b) of the Appendix to title 22.

“Subsec. (a)(2)(C), (D). Pub. L. 111–259, §349(1)(B), struck out subpars. (C) and (D) which read as follows:

“(C) The annual report on improvements of the financial statements of the intelligence community for auditing purposes required by section 404–1 of this title.


Subsec. (a)(2)(E), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: “The annual evaluation of the performance and responsiveness of certain elements of the intelligence community required by section 403–5(d) of this title.”

Subsec. (b), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: “The annual report on terrorist assets required by section 404m of this title.”

2003—Subsec. (a)(1)(A). Pub. L. 108–177, §361(i)(1)(A)(ii), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: “The annual update on foreign industrial espionage required by section 2170b(b) of the Appendix to title 22.”

Subsec. (a)(1)(B), redesignated subpar. (E) redesignated (A).

Subsec. (a)(1)(C), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: “The annual report on the acquisition of technology relating to mass destruction and advanced conventional munitions required by section 2366(b) of this title.”

Subsec. (a)(1)(D), redesignated subpar. (E) as (D). Former subpar. (D) redesignated (C).


Subsec. (a)(1)(F). Pub. L. 108–177, §361(i)(1)(A)(ii), redesignated subpar. (H) as (G) and struck out former subpar. (G) which read as follows: “The annual report on the acquisition of technology relating to mass destruction and advanced conventional munitions required by section 2366(b) of this title.”

Subsec. (a)(1)(H), redesignated subpar. (K) as (H). Former subpar. (H) redesignated (G).

Subsec. (a)(1)(I). Pub. L. 108–177, §361(i)(1)(A)(i), redesignated subpar. (M) as (I) and struck out former subpar. (I) which read as follows: “The annual report on coordination of counterintelligence matters with the Federal Bureau of Investigation required by section 402ac(c)(5) of this title.”

Subsec. (a)(1)(J). Pub. L. 108–177, §361(i)(1)(A)(i), struck out subpar. (J) which read as follows: “The annual report on the acquisition of technology relating to mass destruction and advanced conventional munitions required by section 2366(b) of this title.”


Subsec. (a)(1)(N). Pub. L. 108–177, §361(i)(1)(A)(i), which directed that subpar. (N) be redesignated, could not be executed because there was no corresponding subpar. provided for such redesignation.

Subsec. (a)(2). Pub. L. 108–177, §361(i)(1)(B)(iii), (iv), redesignated subpars. (D) and (G) as (C) and (D), respectively, and struck out subpars. (C), (E), and (F) which read as follows:

“(C) The annual report on covert leases required by section 404(e) of this title.

“(E) The annual report on activities of personnel of the Federal Bureau of Investigation outside the United States required by section 540(c)(2) of title 28.”


Subsec. (b). Pub. L. 108–177, §361(i)(2), redesignated subpars. (2), (3), (5), (6), (7), and (8) as (1), (2), (3), (4), (5), and (6), respectively, and struck out former subpar. (4) which read as follows:

“(1) The periodic reports on intelligence provided to the United Nations required by section 404g(b) of this title.

“(4) The semiannual reports on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions required by section 2366(b) of this title.”

EFFECTIVE DATE OF 2003 AMENDMENT


PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO INTELLIGENCE ACTIVITIES OF DEPARTMENT OF DEFENSE OR DEPARTMENT OF ENERGY


“(a) CONSULTATION IN PREPARATION.—(1) The Director of National Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of this Act [see Tables for classification], including a provision of the classified Schedule of Authorizations referred to in section 102(a) [118 Stat. 3940] or the classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense or the Department of Energy is prepared or conducted in consultation with the Secretary of Defense or the Secretary of Energy, as appropriate.

“(2) The Secretary of Defense or the Secretary of Energy may carry out any consultation required by this subsection through an official of the Department of Defense or the Department of Energy, as the case may be, designated by such Secretary for that purpose.

“(b) SUBMITTAL.—Any report, review, study, or plan referred to in subsection (a) shall be submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees or subcommittees of Congress, as appropriate:

“(1) The Committee on Armed Services, the Subcommittee on Defense of the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.

“(2) The Committee on Armed Services, the Subcommittee on Defense of the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.”
§ 415c. Availability to public of certain intelligence funding information

(a) Budget request

At the time that the President submits to Congress the budget for a fiscal year pursuant to section 1105 of title 31, the President shall disclose to the public the aggregate amount of appropriations requested for that fiscal year for the National Intelligence Program.

(b) Amounts appropriated each fiscal year

Not later than 30 days after the end of each fiscal year, the Director of National Intelligence shall disclose to the public the aggregate amount of funds appropriated by Congress for the National Intelligence Program for such fiscal year.

(c) Waiver

(1) In general

The President may waive or postpone the disclosure required by subsection (a) or (b) for a fiscal year by submitting to the Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives—

(A) a statement, in unclassified form, that the disclosure required in subsection (a) or (b) for that fiscal year would damage national security; and

(B) a statement detailing the reasons for the waiver or postponement, which may be submitted in classified form.

(2) Submission dates

The President shall submit the statements required under paragraph (1)—

(A) in the case of a waiver or postponement of a disclosure required under subsection (a), at the time of the submission of the budget for the fiscal year for which such disclosure is waived or postponed; and

(B) in the case of a waiver or postponement of a disclosure required under subsection (b), not later than 30 days after the date of the end of the fiscal year for which such disclosure is waived or postponed.

(d) Definition

As used in this section, the term “National Intelligence Program” has the meaning given the term in section 401a(6) of this title.
covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent’s intelligence relationship to the United States, shall be fined under title 18 or imprisoned not more than 15 years, or both.

(b) Disclosure of information by persons who learn identity of covert agents as result of having access to classified information

Whoever, as a result of having authorized access to classified information, learns the identity of a covert agent and intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent’s intelligence relationship to the United States, shall be fined under title 18 or imprisoned not more than 15 years, or both.

(c) Disclosure of information by persons in course of pattern of activities intended to identify and expose covert agents

Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual’s classified intelligence relationship to the United States, shall be fined under title 18 or imprisoned not more than three years, or both.

(d) Imposition of consecutive sentences

A term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment.


2010—Subsec. (a). Pub. L. 111–259, § 363(a)(1), substituted “18 years” for “ten years”.


AMENDMENTS

2010—Subsec. (a). Pub. L. 111–259, § 363(a)(1), substituted “18 years” for “ten years”.

Subsec. (b). Pub. L. 111–259, § 363(a)(2), substituted “10 years” for “five years”.


SHORT TITLE

For short title of this subchapter as the “Intelligence Identities Protection Act of 1982”, see section 1 of Pub. L. 97–200, set out as a Short Title of 1982 Amendment note under section 401 of this title.

§ 422. Defenses and exceptions

(a) Disclosure by United States of identity of covert agent

It is a defense to a prosecution under section 421 of this title that before the commission of the offense with which the defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.

(b) Conspiracy, misprision of felony, aiding and abetting, etc.

(1) Subject to paragraph (2), no person other than a person committing an offense under section 421 of this title shall be subject to prosecution under such section by virtue of section 2 or 4 of title 18 or shall be subject to prosecution for conspiracy to commit an offense under such section.

(2) Paragraph (1) shall not apply (A) in the case of a person who acted in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, or (B) in the case of a person who has authorized access to classified information.

(c) Disclosure to select Congressional committees on intelligence

It shall not be an offense under section 421 of this title to transmit information described in such section directly to either congressional intelligence committee.

(d) Disclosure by agent of own identity

It shall not be an offense under section 421 of this title for an individual to disclose information that solely identifies himself as a covert agent.

2002—Subsec. (c). Pub. L. 107–306 substituted “either congressional intelligence committee” for “the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives”.

§ 423. Report

(a) Annual report by President to Congress on measures to protect identities of covert agents

The President, after receiving information from the Director of National Intelligence, shall submit to the congressional intelligence committees an annual report on measures to protect the identities of covert agents, including an assessment of the need, if any, for modification of this subchapter for the purpose of improving legal protections for covert agents, and on any other matter relevant to the protection of the identities of covert agents. The date for the sub-
(b) Exemption from disclosure

The report described in subsection (a) of this section shall be exempt from any requirement for publication or disclosure.


AMENDMENTS

2010—Subsec. (a). Pub. L. 111–259 inserted “including an assessment of the need, if any, for modification of this subchapter for the purpose of improving legal protections for covert agents,” after “measures to protect the identities of covert agents,”.

2002—Subsec. (a). Pub. L. 107–306, §811(b)(1)(E)(i), inserted at end “The date for the submittal of the report shall be the date provided in section 415b of this title.” Pub. L. 107–306, §353(b)(1)(B), substituted “congressional intelligence committees” for “Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives”.


EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 8th item on page 156 identifies a reporting provision which, as subsequently amended, is contained in subsec. (a) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 424. Extraterritorial jurisdiction

There is jurisdiction over an offense under section 421 of this title committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 1101(a)(20) of title 8).


§ 425. Providing information to Congress

Nothing in this subchapter may be construed as authority to withhold information from the Congress or from a committee of either House of Congress.


§ 426. Definitions

For the purposes of this subchapter:

(1) The term “classified information” means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

(2) The term “authorized”, when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, order of any United States court, or provisions of any Rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.

(3) The term “disclose” means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.

(4) The term “covert agent” means—

(A) a present or retired officer or employee of an intelligence agency or a present or retired member of the Armed Forces assigned to duty with an intelligence agency—

(i) whose identity as such an officer, employee, or member is classified information, and

(ii) who is serving outside the United States or has within the last five years served outside the United States; or

(B) a United States citizen whose intelligence relationship to the United States is classified information, and—

(i) who resides and acts outside the United States as an agent of, or informant or source of operational assistance to, an intelligence agency, or

(ii) who is at the time of the disclosure acting as an agent of, or informant to, the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation; or

(C) an individual, other than a United States citizen, whose past or present intelligence relationship to the United States is classified information and who is a present or former agent of, or a present or former informant or source of operational assistance to, an intelligence agency.

(5) The term “intelligence agency” means the Central Intelligence Agency, a foreign intelligence component of the Department of Defense, or the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation.

(6) The term “informant” means any individual who furnishes information to an intelligence agency in the course of a confidential
relationship protecting the identity of such individual from public disclosure.

(7) The terms "officer" and "employee" have the meanings given such terms by section 2104 and 2105, respectively, of title 5.

(8) The term "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(9) The term "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(10) The term "pattern of activities" requires a series of acts with a common purpose or objective.


AMENDMENTS

1999—Par. (4)(A). Pub. L. 106–120 substituted "a present or retired officer or employee" for "an officer or employee" and "a present or retired member" for "a member".

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER V—PROTECTION OF OPERATIONAL FILES

§ 431. Operational files of the Central Intelligence Agency

(a) Exemption by Director of Central Intelligence Agency

The Director of the Central Intelligence Agency, with the coordination of the Director of National Intelligence, may exempt operational files of the Central Intelligence Agency from the provisions of section 552 of title 5 (Freedom of Information Act) which require publication or disclosure, or search or review in connection therewith.

(b) "Operational files" defined

In this section, the term "operational files" means—

(1) files of the National Clandestine Service which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services; and

(2) files of the Directorate for Science and Technology which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems; and

(3) files of the Office of Personnel Security which document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources, except that files which are the sole repository of disseminated intelligence are not operational files.

(c) Search and review for information

Notwithstanding subsection (a) of this section, exempted operational files shall continue to be subject to search and review for information concerning—

(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 of title 5 (Freedom of Information Act) or section 552a of title 5 (Privacy Act of 1974);

(2) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5 (Freedom of Information Act); or

(3) the specific subject matter of an investigation by the congressional intelligence committees, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of National Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

(d) Information derived or disseminated from exempted operational files

(1) Files that are not exempted under subsection (a) of this section which contain information derived or disseminated from exempted operational files shall be subject to search and review.

(2) The inclusion of information from exempted operational files in files that are not exempted under subsection (a) of this section shall not affect the exemption under subsection (a) of this section of the originating operational files from search, review, publication, or disclosure.

(3) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under subsection (a) of this section and which have been returned to exempted operational files for sole retention shall be subject to search and review.

(e) Supersede of prior law

The provisions of subsection (a) of this section shall not be superseded except by a provision of law which is enacted after October 15, 1984, and which specifically cites and repeals or modifies its provisions.

(f) Allegation; improper withholding of records; judicial review

Whenever any person who has requested agency records under section 552 of title 5 (Freedom of Information Act), alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with any provision of this section, judicial review shall be
available under the terms set forth in section 552(a)(4)(B) of title 5, except that—

(1) in any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign relations which is filed with, or produced for, the court by the Central Intelligence Agency, such information shall be examined ex parte, in camera by the court;

(2) the court shall, to the fullest extent practicable, determine issues of fact based on sworn written submissions of the parties;

(3) when a complaint alleges that requested records were improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission, based upon personal knowledge or otherwise admissible evidence;

(4)(A) when a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Central Intelligence Agency shall make its burden under section 552(a)(4)(B) of title 5 by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsive records currently perform the functions set forth in subsection (b) of this section; and

(B) the court may not order the Central Intelligence Agency to review the content of any exempted operational file or files in order to make the demonstration required under subparagraph (A) of this paragraph, unless the complainant disputes the Central Intelligence Agency’s showing with a sworn written submission based on personal knowledge or otherwise admissible evidence;

(5) in proceedings under paragraphs (3) and (4) of this subsection, the parties shall not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admission may be made pursuant to rules 26 and 36;

(6) if the court finds under this subsection that the Central Intelligence Agency has improperly withheld requested records because of failure to comply with any provision of this section, the court shall order the Central Intelligence Agency to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5 (Freedom of Information Act), and such order shall be the exclusive remedy for failure to comply with this section; and

(7) if at any time following the filing of a complaint pursuant to this subsection the Central Intelligence Agency agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

(g) Decennial review of exempted operational files

Not less than once every ten years, the Director of the Central Intelligence Agency and the Director of National Intelligence shall review the exemptions in force under subsection (a) of this section to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.

The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

A complainant who alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court’s review shall be limited to determining the following:

(A) Whether the Central Intelligence Agency has conducted the review required by paragraph (1) before October 15, 1994, or before the expiration of the 10-year period beginning on the date of the most recent review.

(B) Whether the Central Intelligence Agency, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.


REFERENCES IN TEXT


CODIFICATION

The text of section 432 of this title, which was transferred to this section and redesignated as subsec. (g) by Pub. L. 108–136, §922(b)(2)(B), was based on act July 26, 1947, ch. 343, title VII, §702, as added Pub. L. 98–477, §2(a), Oct. 15, 1984, 98 Stat. 2211.

AMENDMENTS


2000—Pub. L. 106–554, §922(b)(1), substituted “Operational files of the Central Intelligence Agency” for “For purposes of this section,” for “For purposes
of this title’’, was executed by making the substitution for “For the purposes of this title’’, to reflect the probable intent of Congress.


Pub. L. 108–136, §922(b)(2)(B), transferred text of section 432 of this title to this section, redesignated it as subsec. (g), and redesignated subsecs. (a) to (c) of that text as pars. (1) to (3), respectively, of subsec. (g).

Subsec. (g)(1). Pub. L. 108–136, §922(b)(2)(D), substituted “of this section’’ for “of section 431 of this title’’.

Subsec. (g)(2). Pub. L. 108–136, §922(b)(2)(E), which directed the substitution of “paragraph (1)’’ for “of subsection (a) of this section’’ was executed by making the substitution for “subsection (a) of this section’’, to reflect the probable intent of Congress.

Subsec. (g)(3). Pub. L. 108–136, §922(b)(2)(F)(ii), substituted “to determining the following:’’ and subpars. (A) and (B) for “to determining (1) whether the Central Intelligence Agency has conducted the review required by subsection (a) of this section within ten years of enactment of this title or within ten years after the last review, and (2) whether the Central Intelligence Agency, in fact, considered the criteria set forth in subsection (b) of this section in conducting the required review. ’’


Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out as a note under section 401 of this title.

2003—Subsec. (g). Pub. L. 108–136, §922(b)(2)(E), which directed the substitution of “paragraph (1)’’ for “subsection (a) of this section’’ was executed by making the substitution for “subsection (a) of this section’’, to reflect the probable intent of Congress.

Subsec. (g)(2). Pub. L. 108–136, §922(b)(2)(F)(ii), substituted “to determining the following:’’ and subpars. (A) and (B) for “to determining (1) whether the Central Intelligence Agency has conducted the review required by subsection (a) of this section within ten years of enactment of this title or within ten years after the last review, and (2) whether the Central Intelligence Agency, in fact, considered the criteria set forth in subsection (b) of this section in conducting the required review. ’’


Effective Date

Section 4 of Pub. L. 98–477 provided that: “The amendments made by subsections (a) and (b) of section 2 [enacting this subchapter and amending section 552a of Title 5, Government Organization and Employees] shall be effective upon enactment of this Act [Oct. 15, 1984] and shall apply with respect to any requests for records, whether or not such request was made prior to such enactment, and shall apply to all civil actions not commenced prior to February 7, 1984. ’’

§432. Operational files of the National Geospatial-Intelligence Agency

(a) Exemption of certain operational files from search, review, publication, or disclosure

(1) The Director of the National Geospatial-Intelligence Agency, with the coordination of the Director of National Intelligence, may exempt operational files of the National Geospatial-Intelligence Agency from the provisions of section 552 of title 5 which require publication, disclosure, search, or review in connection therewith.

(2)(A) Subject to subparagraph (B), for the purposes of this section, the term “operational files’’ means files of the National Geospatial-Intelligence Agency (hereafter in this section referred to as “NGA’’) concerning the activities of NGA that before the establishment of NGA were performed by the National Photographic Interpretation Center of the Central Intelligence Agency (NPIC), that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

(B) Files which are the sole repository of disseminated intelligence are not operational files.

(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5;

(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5; or

(C) the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

(i) The congressional intelligence committees.

(ii) The Intelligence Oversight Board.

(iii) The Department of Justice.

(iv) The Office of the General Counsel of NGA.

(v) The Office of the Director of NGA.


(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review, publication, or disclosure.

(C) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1) and which have been returned to exempted operational files for sole retention shall be subject to search and review.

(5) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after December 3, 1999, and which specifically cites and repeals or modifies its provisions.

(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5 alleges that NGA has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552a(4)(B) of title 5.

(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

(i) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NGA, such information shall be examined ex parte, in camera by the court.
(ii) The court shall, to the fullest extent practicable, determine the issues of fact based on sworn written submissions of the parties.

(iii) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Director of National Intelligence shall review the exemptions in force under subsection (a)(1) of this section to determine whether such exemptions may be removed.

(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NGA shall meet its burden under section 552(a)(4)(B) of title 5 by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsive records currently perform the functions set forth in paragraph (2).

(ii) The court may not order NGA to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NGA’s showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

(vi) If the court finds under this provision that NGA has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NGA to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, and such order shall be the exclusive remedy for failure to comply with this subsection.

(vii) If at any time following the filing of a complaint pursuant to this paragraph NGA agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of National Intelligence prior to submission to the court.

(b) Decennial review of exempted operational files

(1) Not less than once every 10 years, the Director of the National Geospatial-Intelligence Agency and the Director of National Intelligence shall review the exemptions in force under subsection (a)(1) of this section to determine whether such exemptions may be removed from the category of exempted files or any portion thereof. The Director of National Intelligence must approve any determination to remove such exemptions.

(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

(3) A complainant that alleges that NGA has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court’s review shall be limited to determining the following:

(A) Whether NGA has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on December 3, 1999, or before the expiration of the 10-year period beginning on the date of the most recent review.

(B) Whether NGA, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

(4) If NGA does all of the following:

(B) Determination made, or affidavits filed with the court, or both, of the Director of National Intelligence, that the records or portions thereof are not exempted for reasons specified in section 552(b)(1) of title 5.

(E)(i) Whether NGA has conducted the review required by paragraph (1) before the expiration of the period beginning on December 3, 1999, or before the expiration of the period beginning on the date of the most recent review.

(E)(ii) Whether NGA, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

(5) If the court finds under this provision that NGA has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NGA to search and review the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim in accordance with section 552 of title 5, and such order shall be the exclusive remedy for failure to comply with this subsection.

Amendments


References in Text


CODIFICATION

Section was formerly classified to section 432-5c of this title prior to renumbering by Pub. L. 108–136, and to section 403-5b of this title prior to renumbering by Pub. L. 107–56.

PRIOR PROVISIONS


2002—Subsec. (a)(3)(C), Pub. L. 107–396 added cl. (i), redesignated cls. (ii) to (vi) as (i) to (v), respectively, and struck out former cls. (i) and (ii) which read as follows:

“(i) The Permanent Select Committee on Intelligence of the House of Representatives.

(ii) The Select Committee on Intelligence of the Senate.”

Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


Treatment of Certain Transferred Records


§ 432a. Operational files of the National Reconnaissance Office

(a) Exemption of certain operational files from search, review, publication, or disclosure

The Director of the National Reconnaissance Office, with the coordination of the Director of National Intelligence, may exempt operational files of the National Reconnaissance Office from the provisions of section 552 of title 5 which require publication, disclosure, search, or review in connection therewith.

(2) Subject to subparagraph (B), for the purposes of this section, the term “operational files” means files of the National Reconnaissance Office (hereafter in this section referred to as “NRO”) that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

(B) Files which are the sole repository of disseminated intelligence are not operational files.

(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5;

(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5; or

(C) the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

(i) The Permanent Select Committee on Intelligence of the House of Representatives.

(ii) The Select Committee on Intelligence of the Senate.

(iii) The Intelligence Oversight Board.

(iv) The Department of Justice.

(v) The Office of General Counsel of NRO.

(vi) The Office of the Director of NRO.

(vii) The Office of the Inspector General of the NRO.

(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review, publication, or disclosure.

(C) The declassification of some of the information contained in exempted operational files shall not affect the status of the operational file as being exempt from search, review, publication, or disclosure.

(D) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1) may not be superseded except by a provision of law which is enacted after November 27, 2002, and which specifically cites and repeals or modifies its provisions.

(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5 alleges that NRO has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5.

(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

(i) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NRO, such information shall be examined ex parte, in camera by the court.

(ii) The court shall, to the fullest extent practicable, determine the issues of fact based on sworn written submissions of the parties.
(iii) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

(iv)(1) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NRO shall meet its burden under section 552(a)(4)(B) of title 5 by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsive records currently perform the functions set forth in paragraph (2).

(ii) The court may not order NRO to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NRO’s showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

(vi) If the court finds under this paragraph that NRO has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NRO to search, review, publish, or disclose the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5 and the provisions of section 555 of title 5.

(vii) If at any time following the filing of a complaint pursuant to this paragraph NRO agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

(b) Decennial review of exempted operational files

(1) Not less than once every 10 years, the Director of the National Reconnaissance Office and the Director of National Intelligence shall review the exemptions in force under subsection (a)(1) of this section to determine whether such exemptions may be removed from the category of exempted files or any portion thereof. The Director of National Intelligence must approve any determination to remove such exemptions.

(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

(3) A complainant that alleges that NRO has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court’s review shall be limited to determining the following:

(A) Whether NRO has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on November 27, 2002, or before the expiration of the 10-year period beginning on the date of the most recent review.

(B) Whether NRO, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.


REFERENCES IN TEXT


AMENDMENTS


EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


§ 432b. Operational files of the National Security Agency

(a) Exemption of certain operational files from search, review, publication, or disclosure

The Director of the National Security Agency, in coordination with the Director of National Intelligence, may exempt operational files of
the National Security Agency from the provisions of section 552 of title 5 which require publication, disclosure, search, or review in connection therewith. 

(b) Operational files defined

(1) In this section, the term “operational files” means—

(A) files of the Signals Intelligence Directorate of the National Security Agency (and any successor organization of that directorate) that document the means by which foreign intelligence or counterintelligence is collected through technical systems; and

(B) files of the Research Associate Directorate of the National Security Agency (and any successor organization of that directorate) that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

(2) Files that are the sole repository of disseminated intelligence, and files that have been accessioned into the National Security Agency Archives (or any successor organization) are not operational files.

(c) Search and review for information

Notwithstanding subsection (a) of this section, exempted operational files shall continue to be subject to search and review for information concerning any of the following:

(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5.

(2) Any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5.

(3) The specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

(A) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(B) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(C) The Intelligence Oversight Board.

(D) The Department of Justice.

(E) The Office of General Counsel of the National Security Agency.


(G) The Office of the Director of the National Security Agency.


(d) Information derived or disseminated from exempted operational files

(1) Files that are not exempted under subsection (a) of this section that contain information derived or disseminated from exempted operational files shall be subject to search and review.

(2) The inclusion of information from exempted operational files in files that are not exempted under subsection (a) of this section shall not affect the exemption under subsection (a) of this section of the originating operational files from search, review, publication, or disclosure.

(3) The declassification of some of the information contained in exempted operational files shall not affect the status of the operational file as being exempt from search, review, publication, or disclosure.

(4) Records from exempted operational files that have been disseminated to and referenced in files that are not exempted under subsection (a) of this section and that have been returned to exempted operational files for sole retention shall be subject to search and review.

(e) Supersedure of other laws

The provisions of subsection (a) of this section may not be superseded except by a provision of law that is enacted after November 24, 2003, and that specifically cites and repeals or modifies such provisions.

(f) Allegation; improper withholding of records; judicial review

(1) Except as provided in paragraph (2), whenever any person who has requested agency records under section 552 of title 5 alleges that the National Security Agency has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5.

(2) Judicial review shall not be available in the manner provided for under paragraph (1) as follows:

(A) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by the National Security Agency, such information shall be examined ex parte, in camera by the court.

(B) The court shall determine, to the fullest extent practicable, the issues of fact based on sworn written submissions of the parties.

(C) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

(D)(i) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the National Security Agency shall meet its burden under section 552(a)(4)(B) of title 5 by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsive records currently perform the functions set forth in subsection (b) of this section.

(ii) The court may not order the National Security Agency to review the content of any exempted operational file or files in order to make the demonstration required under clause (i), unless the complainant disputes the National Security Agency’s showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

(E) In proceedings under subparagraphs (C) and (D), the parties may not obtain discovery
pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

(F) If the court finds under this subsection that the National Security Agency has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order the Agency to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, and such order shall be the exclusive remedy for failure to comply with this section (other than subsection (g) of this section).

(G) If at any time following the filing of a complaint pursuant to this paragraph the National Security Agency agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

(H) Any information filed with, or produced for the court pursuant to subparagraphs (A) and (D) shall be coordinated with the Director of National Intelligence before submission to the court.

(g) Decennial review of exempted operational files

(1) Not less than once every 10 years, the Director of the National Security Agency and the Director of National Intelligence shall review the exemptions in force under subsection (a) of this section to determine whether such exemptions may be removed from a category of exempted files or any portion thereof. The Director of National Intelligence must approve any determination to remove such exemptions.

(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of a particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

(3) A complainant that alleges that the National Security Agency has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining the following:

(A) Whether the National Security Agency has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on November 24, 2003, or before the expiration of the 10-year period beginning on the date of the most recent review.

(B) Whether the National Security Agency, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.

(b) Effect of providing files to ODNI

Notwithstanding any other provision of this subchapter, an exempted operational file that is provided to the Office by an element of the intelligence community shall not be subject to the provisions of section 552 of title 5 that require search, review, publication, or disclosure of a record solely because such element provides such exempted operational file to the Office.

c) Search and review for certain purposes

Notwithstanding subsection (a) or (b), an exempted operational file shall continue to be subject to search and review for information concerning any of the following:

(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5.

(2) Any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5.

(3) The specific subject matter of an investigation for any improper or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity by any of the following:

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

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

(C) The Intelligence Oversight Board.

(D) The Department of Justice.

(E) The Office of the Director of National Intelligence.

(F) The Office of the Inspector General of the Intelligence Community.

d) Decennial review of exempted operational files

(1) Not less than once every 10 years, the Director of National Intelligence shall review the exemptions in force under subsection (a) to determine whether such exemptions may be removed from any category of exempted files or any portion thereof:

(ii) The court may not order the Office to review the content of any exempted file in order to make the demonstration required under clause (i), unless the complainant disputes the Office’s showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

(D) In proceedings under subparagraph (C), a party may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36 of the Federal Rules of Civil Procedure.

(E) If the court finds under this subsection that the Office has improperly withheld requested records because of failure to comply with any provision of this section, the court shall order the Office to search and review each appropriate exempted file for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5 (commonly referred to as the Freedom of Information Act), and such order shall be the exclusive remedy for failure to comply with this section.

(F) If at any time following the filing of a complaint pursuant to this paragraph the Office agrees to search each appropriate exempted file for the requested records, the court
shall dismiss the claim based upon such complaint.

(g) Definitions
In this section:

(1) The term “exempted operational file” means a file of an element of the intelligence community that, in accordance with this subchapter, is exempted from the provisions of section 552 of title 5 that require search, review, publication, or disclosure of such file.

(2) Except as otherwise specifically provided, the term “Office” means the Office of the Director of National Intelligence.


REFERENCES IN TEXT

SUBCHAPTER VI—ACCESS TO CLASSIFIED INFORMATION

§ 435. Procedures
(a) Not later than 180 days after October 14, 1994, the President shall, by Executive order or regulation, establish procedures to govern access to classified information which shall be binding upon all departments, agencies, and offices of the executive branch of Government. Such procedures shall, at a minimum—

(1) provide that, except as may be permitted by the President, no employee in the executive branch of Government may be given access to classified information by any department, agency, or office of the executive branch of Government unless, based upon an appropriate background investigation, such access is determined to be clearly consistent with the national security interests of the United States;

(2) establish uniform minimum requirements governing the scope and frequency of background investigations and reinvestigations for all employees in the executive branch of Government who require access to classified information as part of their official responsibilities;

(3) provide that all employees in the executive branch of Government who require access to classified information shall be required as a condition of such access to provide to the employing department or agency written consent which permits access by an authorized investigative agency to relevant financial records, other financial information, consumer reports, travel records, and computers used in the performance of Government duties, as determined by the President, in accordance with section 436 of this title, during the period of access to classified information and for a period of three years thereafter;

(4) provide that all employees in the executive branch of Government who require access to particularly sensitive classified information, as determined by the President, shall be required, as a condition of maintaining access to such information, to submit to the employing department or agency, during the period of such access, relevant information concerning their financial condition and foreign travel, as determined by the President, as may be necessary to ensure appropriate security; and

(5) establish uniform minimum standards to ensure that employees in the executive branch of Government whose access to classified information is being denied or terminated under this subchapter are appropriately advised of the reasons for such denial or termination and are provided an adequate opportunity to respond to all adverse information which forms the basis for such denial or termination before final action by the department or agency concerned.

(b)(1) Subsection (a) of this section shall not be deemed to limit or affect the responsibility and power of an agency head pursuant to other law or Executive order to deny or terminate access to classified information if the national security so requires. Such responsibility and power may be exercised only when the agency head determines that the procedures prescribed by subsection (a) of this section cannot be invoked in a manner that is consistent with the national security.

(2) Upon the exercise of such responsibility, the agency head shall submit a report to the congressional intelligence committees.


AMENDMENTS
2002—Subsec. (b)(2). Pub. L. 107–306 substituted “congressional intelligence committees” for “Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate”.


EFFECTIVE DATE OF 1999 AMENDMENT
Pub. L. 106–120, title III, § 305(c), Dec. 3, 1999, 113 Stat. 1612, provided that: “The President shall modify the procedures required by section 801(a)(3) of the National Security Act of 1947 [50 U.S.C. § 435(a)(3)] to take into account the amendment to that section made by subsection (a) of this section not later than 90 days after the date of the enactment of this Act [Dec. 3, 1999].”

EFFECTIVE DATE
Section 802(c) of Pub. L. 103–359 provided that: “The amendments made by subsections (a) and (b) [enacting this subchapter] shall take effect 180 days after the date of enactment of this Act [Oct. 14, 1994].”

CLASSIFICATION REVIEW OF EXECUTIVE BRANCH MATERIALS IN THE POSSESSION OF THE CONGRESSIONAL INTELLIGENCE COMMITTEES
Pub. L. 111–259, title VII, § 702, Oct. 7, 2010, 124 Stat. 2745, provided that: “The Director of National Intelligence is authorized to conduct, at the request of one of the congressional intelligence committees and in accordance with procedures established by that committee, a classification review of materials in the possession of that committee that—

(1) are not less than 25 years old; and

(2) were created, or provided to that committee, by an entity in the executive branch.”
§ 435

[For definition of "congressional intelligence committees" as used in section 702 of Pub. L. 111–259, set out above, see section 2 of Pub. L. 111–259, set out as a note under section 401a of this title.]

PROMOTION OF ACCURATE CLASSIFICATION OF INFORMATION


"(a) Incentives for Accurate Classifications.—In making cash awards under section 45 of title 5, United States Code, the President, the head of an Executive agency with an officer or employee who is authorized to make original classification decisions or derivative classification decisions, or who is in a position to effectively make a significant impact on the accurate classification of information, shall grant a portion of the amount of the award, not to exceed 5 percent of the amount of the award, to any such officer or employee who, as part of the performance of his duties, is able to (i) make original classification decisions or derivative classification decisions without relying on the assistance of another officer or employee to avoid misclassification; (ii) identify policies, procedures, rules, or regulations that have been adopted, followed, and effectively administered within such department, agency, or component; and (iii) make recommendations as a result of such policies, procedures, rules, or regulations.

"(b) Inspector General Evaluations.—

"(1) Requirement for Evaluations.—Not later than December 31, 2010, the inspector general of each department or agency of the United States with an officer or employee who is authorized to make original classification decisions or derivative classification decisions shall, in consultation with the Information Security Oversight Office, carry out no less than two evaluations of such department or agency or component of the department or agency—

"(i) to determine whether applicable classification policies, procedures, rules, and regulations have been adopted, followed, and effectively administered within such department, agency, or component; and

"(ii) to make recommendations, to the extent practicable, with respect to actions to be taken to ensure that such policies, procedures, rules, or regulations have been adopted, followed, and effectively administered within such department, agency, or component.

"(2) Deadlines for Evaluations.—

"(A) Initial Evaluations.—Each initial evaluation required by paragraph (1) shall be completed no later than September 30, 2011.

"(B) Subsequent Evaluations.—Each evaluation required by paragraph (1) shall review progress made pursuant to the results of the first evaluation and shall be completed no later than September 30, 2016.

"(3) Reports.—

"(A) Requirement.—Each inspector general who is required to carry out an evaluation under paragraph (1) shall submit to the appropriate authorities a report on each such evaluation with the Information Security Oversight Office.

"(B) Content.—Each report submitted under subparagraph (A) shall include a description of—

"(i) the policies, procedures, rules, or regulations, or management practices, if any, identified by the inspector general under paragraph (1)(B); and

"(ii) the recommendations, if any, of the inspector general to address any such identified policies, procedures, rules, or regulations, or management practices.

"(C) Coordination.—The inspector general who is required to carry out evaluations under paragraph (1) shall coordinate with the Information Security Oversight Office to ensure that evaluations follow a consistent methodology, as appropriate, that allows for cross-agency comparisons.

"(4) Appropriate Entities Defined.—In this subsection, the term 'appropriate entities' means—

"(A) the Committee on Homeland Security and Governmental Affairs and the Select Committee on Intelligence of the Senate;

"(B) the Committee on Homeland Security, the Committee on Oversight and Government Reform, and the Permanent Select Committee on Intelligence of the House of Representatives;

"(C) any other committee of Congress with jurisdiction over a department or agency referred to in paragraph (1);

"(D) the head of a department or agency referred to in paragraph (1); and

"(E) the Director of the Information Security Oversight Office.''

[For definitions of terms used in section 6 of Pub. L. 111–258, set out above, see section 3 of Pub. L. 111–258, set out as a note under section 433d of this title.]

DECLARATION OF INFORMATION


"(A) Establishment.—(1) There is established within the executive branch of the United States a board to be known as the 'Public Interest Declassification Board' (hereafter referred to as the 'Board').

"(2) The Board shall report directly to the President or, upon designation by the President, the Vice President, the Attorney General, or other designee of the President. The other designee of the President under this paragraph may not be an agency head or official authorized to classify information under Executive Order 12958 [formerly set out below], or any successor order.

"(B) Purposes.—The purposes of the Board are as follows:

"(1) To advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and the Director of the Office of Management and Budget, and such other executive branch officials as the Board considers appropriate on the systematic, thorough, coordinated, and comprehensive identification, collection, review for declassification, and release to Congress, interested agencies, and the public of declassified records and materials that are of archival value, including records and materials of extraordinary public interest.

"(2) To promote the fullest possible public access to a thorough, accurate, and reliable documentary record of significant United States national security decisions and significant United States national security activities in order to—

"(A) support the oversight and legislative functions of Congress;

"(B) support the policymaking role of the executive branch;

"(C) respond to the interest of the public in national security matters; and

"(D) promote reliable historical analysis and new avenues of historical study in national security matters.

"(3) To provide recommendations to the President for the identification, collection, and review for declassification of information of extraordinary public interest that does not undermine the national security of the United States, to be undertaken in accordance with a declassification program that has been..."
established or may be established by the President by Executive order.

(4) To advise the President, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and such other executive branch officials as the Board considers appropriate on policies derived from the issuance by the President of Executive orders regarding the classification and declassification of national security information.

(5) To review and make recommendations to the President in a timely manner with respect to any congressional request, made by the committee of jurisdiction or by a member of the committee, to declassify certain records, to evaluate the proper classification of certain records, or to reconsider a declination to declassify specific records.

(c) Membership.—(1) The Board shall be composed of nine individuals appointed from among citizens of the United States who are proficient in the fields of history, national security, foreign policy, intelligence policy, social science, law, or archives, including individuals who have served in Congress or otherwise in the Federal Government or have otherwise engaged in research, scholarship, or publication in such fields on matters relating to the national security of the United States, whom:

(A) five shall be appointed by the President;

(B) one shall be appointed by the Speaker of the House of Representatives;

(C) one shall be appointed by the majority leader of the Senate;

(D) one shall be appointed by the minority leader of the Senate; and

(E) one shall be appointed by the minority leader of the House of Representatives.

(2) Of the members initially appointed to the Board by the President—

(i) three shall be appointed for a term of years;

(ii) one shall be appointed for a term of years; and

(iii) one shall be appointed for a term of years.

(B) The members initially appointed to the Board by the Speaker of the House of Representatives or by the majority leader of the Senate shall be appointed for a term of years.

(C) The members initially appointed to the Board by the minority leader of the House of Representatives or by the minority leader of the Senate shall be appointed for a term of years.

(D) Any subsequent appointment to the Board shall be for a term of years.

(3) A vacancy in the Board shall be filled in the same manner as the original appointment. A member of the Board initially appointed to fill a vacancy before the expiration of the term shall serve for the remainder of the term.

(4) A member of the Board may be appointed to a new term on the Board upon the expiration of the member’s term on the Board, except that no member may serve more than three full terms on the Board.

(d) Chairperson; Executive Secretary.—(1) The President shall designate one of the members of the Board as the Chairperson of the Board.

(2) The term of service as Chairperson of the Board shall be years.

(3) A member serving as Chairperson of the Board may be redesignated as Chairperson of the Board upon the expiration of the member’s term as Chairperson of the Board, except that no member shall serve as Chairperson of the Board for more than years.

(2) The Director of the Information Security Oversight Office shall serve as the Executive Secretary of the Board.

(e) Meetings.—The Board shall meet as needed to accomplish its mission, consistent with the availability of funds. A majority of the members of the Board shall constitute a quorum.

(f) Staff.—Any employee of the Federal Government may be detailed to the Board, with the agreement of and without reimbursement to the detailing agency, and such detail shall be without interruption or loss of civil, military, or foreign service status or privleges.

(g) Security.—(1) The members and staff of the Board shall, as a condition of appointment to or employment with the Board, hold appropriate security clearances for access to the classified records and materials to be reviewed by the Board or its staff, and shall follow the guidance and practices on security under applicable Executive orders and Presidential or agency directives.

(2) The head of an agency shall, as a condition of granting access to a member of the Board, the Executive Secretary of the Board, or a member of the staff of the Board to classified records or materials of the agency under this title, require the member, the Executive Secretary, or the member of the staff, as the case may be, to—

(A) execute an agreement regarding the security of such records or materials that is approved by the head of the agency; and

(B) hold an appropriate security clearance granted or recognized under the standard procedures and eligibility criteria of the agency, including any special access approval required for access to such records or materials.

(3) The members of the Board, the Executive Secretary of the Board, and the staff of the Board may not use any information acquired in the course of their official activities on the Board for nonofficial purposes.

(4) For purposes of any law or regulation governing access to classified information that pertains to the national security of the United States, and subject to any limitations on access arising under section 706(b), and to facilitate the advisory functions of the Board under this title, a member of the Board seeking access to a record or material under this title shall be deemed for purposes of this subsection to have a need to know the contents of the record or material.

(h) Compensation.—(1) Each member of the Board shall receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay payable for positions at ES-1 of the Senior Executive Service under section 5382 of title 5, United States Code, for each day such member is engaged in the actual performance of duties of the Board.

(2) Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of the duties of the Board.

(i) Guidance; Annual Budget.—(1) On behalf of the President, the Assistant to the President for National Security Affairs shall provide guidance on policy to the Board.

(2) The Executive Secretary of the Board, under the direction of the Chairperson of the Board and the Board, and acting in consultation with the Archivist of the United States, the Assistant to the President for National Security Affairs, and the Director of the Office of Management and Budget, shall prepare the annual budget of the Board.

(j) Support.—The Information Security Oversight Office may support the activities of the Board under this title. Such support shall be provided on a reimbursable basis.

(k) Public Availability of Records and Reports.—(1) The Board shall make available for public inspection records of its proceedings and reports prepared in the course of its activities under this title to the extent such records and reports are not classified and would not be exempt from release under the provisions of section 552 of title 5, United States Code.

(2) In making records and reports available under paragraph (1), the Board shall coordinate the release of such records and reports with appropriate officials from agencies with expertise in classified information in order to ensure that such records and reports do not inadvertently contain classified information.
"(i) Applicability of Certain Administrative Laws.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Board under this title. However, the records of the Board shall be governed by the provisions of the Federal Records Act of 1950 (see References in Text note under section 450) of Title 25, Indians.

"SEC. 704. IDENTIFICATION, COLLECTION, AND REVIEW FOR DECLASSIFICATION OF INFORMATION OF ARCHIVAL VALUE OR EXTRAORDINARY PUBLIC INTEREST.

"(a) Briefings on Agency Declassification Programs.—(1) As requested by the Board, or by the Select Committee on Intelligence of the Senate or the Permanent Select Committee on Intelligence of the House of Representatives, the head of any agency with the authority under an Executive order to classify information shall provide to the Board, the Select Committee on Intelligence of the Senate, or the Permanent Select Committee on Intelligence of the House of Representatives, on an annual basis, a summary briefing and report on such agency’s progress and plans in the declassification of national security information. Such briefing shall cover the declassification goals set by statute, regulation, or policy, the agency’s progress with respect to such goals, and the agency’s planned goals and priorities for its declassification activities over the next 2 fiscal years. Agency briefings and reports shall give particular attention to progress on the declassification of records and materials that are of archival value or extraordinary public interest to the people of the United States.

"(B) In this paragraph, the term ‘elements of the intelligence community’ means the elements of the intelligence community specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

"(b) Recommendations on Agency Declassification Programs.—(1) Upon reviewing and discussing declassification plans and progress with an agency, the Board shall provide to the head of the agency the written recommendations of the Board as to how the agency’s declassification program could be improved. A copy of each recommendation shall also be submitted to the Assistant to the President for National Security Affairs and the Director of the Office of Management and Budget.

"(2) Consistent with the provisions of section 703(k), the Board’s recommendations to the head of an agency under paragraph (1) shall become public 60 days after such recommendations are sent to the head of the agency under that paragraph.

"(c) Recommendations on Special Searches for Records of Extraordinary Public Interest.—(1) The Board shall also make recommendations to the President regarding proposed initiatives to identify, collect, and review for declassification classified records and materials of extraordinary public interest.

"(2) In making recommendations under paragraph (1), the Board shall consider the following:

"(A) The opinions and requests of Members of Congress, including opinions and requests expressed or embodied in letters or legislative proposals, and also including specific requests for the declassification of certain records or for the reconsideration of declassification specific records.

"(B) The opinions and requests of the National Security Council, the Director of National Intelligence, and the heads of other agencies.

"(C) The opinions of United States citizens.

"(D) The opinions of members of the Board.

"(E) The impact of special searches on systematic and other on-going declassification programs.

"(F) The costs (including budgetary costs) and the impact that complying with the recommendations would have on agency budgets, programs, and operations.

"(G) The benefits of the recommendations.

"(H) The impact of compliance with the recommendations on the national security of the United States.

"(d) President’s Declassification Priorities.—(1) Concurrent with the submission to Congress of the budget of the President each fiscal year under section 1105 of title 31, United States Code, the Director of the Office of Management and Budget shall publish a description of the President’s declassification program and priorities, together with a listing of the funds requested to implement that program.

"(2) Nothing in this title shall be construed to substitute or supersede, or establish a funding process for, any declassification program that has been established or may be established by the President by Executive order.

"(e) Declassification Reviews.—(1) In general.—If requested by the President, the Board shall review in a timely manner certain records or declinations to declassify specific records, the declassification of which has been the subject of specific congressional request described in section 703(b)(5).

"(2) Authority of Board.—Upon receiving a congressional request described in section 703(b)(5), the Board may conduct the review and make the recommendations described in that section, regardless of whether such a review is requested by the President.

"(3) Reporting.—Any recommendations submitted to the President by the Board under section 703(b)(5), [ sic] shall be submitted to the chairman and ranking minority member of the committee of Congress that made the request relating to such recommendations.

"SEC. 705. PROTECTION OF NATIONAL SECURITY INFORMATION AND OTHER INFORMATION.

"(a) In general.—Nothing in this title shall be construed to limit the authority of the head of an agency to classify information or to continue the classification of information previously classified by that agency.

"(b) Special Access Programs.—Nothing in this title shall be construed to limit the authority of the head of an agency to grant or deny access to a special access program.

"(c) Authorities of Director of National Intelligence.—Nothing in this title shall be construed to limit the authorities of the Director of National Intelligence as the head of the intelligence community, including the Director’s responsibility to protect intelligence sources and methods from unauthorized disclosure as required by section 1540(h)(4) of the National Security Act of 1947 (former 50 U.S.C. 403(c)(4)).

"(d) Exemptions to Release of Information.—Nothing in this title shall be construed to limit any exemption or exception to the public release under this title of information that is protected under subsection (b) of section 552 of title 5, United States Code (commonly referred to as the ‘Freedom of Information Act’), or section 552a of title 5, United States Code (commonly referred to as the ‘Privacy Act’).

"(e) Withholding Information From Congress.—Nothing in this title shall be construed to authorize the withholding of information from Congress.

"SEC. 706. STANDARDS AND PROCEDURES.

"(a) Liaison.—(1) The head of each agency with the authority under an Executive order to classify information and the head of each Federal Presidential library shall designate an employee of such agency or library to act as liaison to the Board for purposes of this title.

"(2) The Board may establish liaison and otherwise consult with such other historical and advisory committees as the Board considers appropriate for purposes of this title.

"(b) Limitations on Access.—(1)(A) Except as provided in paragraph (2), if the head of an agency or the head of a Federal Presidential library determines it necessary to deny or restrict access of the Board, or of the agency or library liaison to the Board, to informa—
tion contained in a record or material, in whole or in part, the head of the agency or the head of the library shall promptly notify the Board in writing of such determination.

"(B) Each notice to the Board under subparagraph (A) shall include a description of the nature of the records or materials, and a justification for the determination, covered by such notice.

"(2) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(c) DISCRETION TO DISCLOSE.—At the conclusion of a declassification review, the head of an agency may, in the discretion of the head of the agency, determine that the public's interest in the disclosure of records or materials of the agency covered by such review, and still properly classified, outweighs the Government's need to protect such records or materials, and may release such records or materials in accordance with the provisions of Executive Order No. 12958 [set out below] or any successor order to such Executive order.

"(d) DISCRETION TO PROTECT.—At the conclusion of a declassification review, the head of an agency may, in the discretion of the head of the agency, determine that the interest of the agency in the protection of records or materials of the agency covered by such review, and still properly classified, outweighs the public's need for access to such records or materials, and may deny release of such records or materials in accordance with the provisions of Executive Order No. 12958 or any successor order to such Executive order.

"(e) REPORTS.—(1)(A) Except as provided in paragraph (2), the Board shall annually submit to the appropriate congressional committees a report on the activities of the Board under this title, including summary information regarding any denials to the Board by the head of an agency or the head of a Federal Presidential library of access to records or materials under this title.

"(B) In this paragraph, the term 'appropriate congressional committees' means the Select Committee on Intelligence and the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Permanent Select Committee on Intelligence and the Committee on Government Reform [now Committee on Homeland Security and Government Reform] of the House of Representatives.

"(2) Notwithstanding paragraph (1), notice that the Board has been denied access to records and materials, and a justification for the determination in support of the denial, shall be submitted by the agency denying that access as follows:

"(A) In the case of the denial of access to a special access program created by the Secretary of Defense, to the Committees on Armed Services and Appropriations of the Senate and to the Committees on Armed Services and Appropriations of the House of Representatives.

"(B) In the case of the denial of access to a special access program created by the Director of National Intelligence, or by the head of any other agency (including the Department of Defense) if the special access program pertains to intelligence activities, or of access to any information and materials relating to intelligence sources and methods, to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

"(C) In the case of the denial of access to a special access program created by the Secretary of Energy or the Administrator for Nuclear Security, to the Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate and to the Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

"(D) In the case of the denial of access to a special access program created by the Director of the Federal Bureau of Investigation or the Director of the Federal Bureau of Investigation, to the Committees on the Judiciary and Appropriations of the House of Representatives and the Senate.

"(E) In the case of the denial of access to a special access program created by the National Geospatial-Intelligence Agency, to the Senate Committee on Armed Services.

"(F) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(G) In the case of the denial of access to a special access program created by the Secretary of Energy or the Administrator for Nuclear Security, to the Committees on the Judiciary and Appropriations and the Select Committee on Intelligence of the Senate and to the Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

"(H) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Director of National Intelligence, or the head of any other agency (including the Department of Defense) if the special access program pertains to intelligence activities, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(1) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(2) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(3) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(4) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(5) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(6) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(7) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(8) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(9) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(10) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(11) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(12) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(13) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(14) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.

"(15) In the case of a determination referred to in paragraph (1) with respect to a special access program created by the Secretary of Defense, the Director of National Intelligence, or the head of any other agency, or of the notification of denial of access under paragraph (1), including a description of the nature of the Board's request for access, shall be submitted to the Assistant to the President for National Security Affairs rather than to the Board.
“(1) policies, events, actions, and decisions which led to significant national security outcomes; and

“(2) the development and evolution of significant United States national security policies, actions, and decisions;

“(B) will provide a significantly different perspective in general from records and materials publicly available in other historical sources; and

“(C) would need to be addressed through ad hoc record searches outside any systematic declassification program established under Executive order.

“(8) RECORDS OF ARCHIVAL VALUE.—The term ‘record of archival value’ means records that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government.

“(a) EFFECTIVE DATE: SUNSET.

“(1) EFFECTIVE DATE.—This title shall take effect on the date that is 120 days after the date of the enactment of this Act [Dec. 27, 2000].

“(b) SUNSET.—The provisions of this title shall expire on December 31, 2012.

COMPILED AND ORGANIZED OF PREVIOUSLY DECLASSIFIED RECORDS


“(c) COMPILED AND ORGANIZED OF RECORDS.—The Department of Defense may not be required, when conducting a special search, to compile or organize records that have already been declassified and placed into the public domain.

“(d) SPECIAL SEARCHES.—For the purpose of this section, the term ‘special search’ means the response of the Department of Defense to any of the following:

“(1) A statutory requirement to conduct a declassification review on a specified set of agency records.

“(2) An estimate of the length of time by which any such date would need to be extended to avoid the automatic declassification of records that have not yet been reviewed as of such date.”

SUPPLEMENT TO PLAN FOR DECLASSIFICATION OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA


IDENTIFICATION IN BUDGET MATERIALS OF AMOUNTS FOR DECLASSIFICATION ACTIVITIES AND LIMITATION ON EXPENDITURES FOR SUCH ACTIVITIES


PROTECTION AGAINST INADVERTENT RELEASE OF RESTRICTED DATA AND FORMERLY RESTRICTED DATA


SECURITY AGREEMENTS USED IN INTELLIGENCE ACTIVITIES

Pub. L. 104–93, title III, §396, Jan. 6, 1996, 109 Stat. 966. provided that: “Notwithstanding any other provision of law not specifically referencing this section, a non-disclosure policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum:

“(1) require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government; and

“(2) provide that the form or agreement does not bar:

“(A) disclosures to Congress; or

“(B) disclosures to an authorized official of an executive agency that are deemed essential to reporting a violation of United States law.”

VOLUNTARY SERVICE PROGRAM

Pub. L. 104–93, title IV, §492, Jan. 6, 1996, 109 Stat. 969, authorized the Director of Central Intelligence to establish and maintain a program from fiscal years 1996 through 2001 to utilize the services contributed by not more than 500 volunteers who served without compensation as volunteers in aid of the review of declassification or downgrading of classified information by the Central Intelligence Agency under applicable Executive orders governing the classification and declassification of national security information and Pub. L. 103–231 (34 U.S.C. 2107 note).

COMMISSION ON PROTECTING AND REDUCING GOVERNMENT SECRECY

Pub. L. 103–236, title IX, Apr. 30, 1994, 108 Stat. 525, provided that: 

on national security of the automatic declassification of those records.

“(4) An estimate of the length of time by which any such date would need to be extended to avoid the automatic declassification of records that have not yet been reviewed as of such date.”
"SEC. 901. SHORT TITLE.
This title may be cited as the 'Protection and Reduction of Government Secrecy Act'.

"SEC. 902. FINDINGS.
The Congress makes the following findings:

"(1) During the Cold War an extensive secrecy system developed which limited public access to information and reduced the ability of the public to participate with full knowledge in the process of governmental decisionmaking.

"(2) In 1992 alone 6,349,532 documents were classified and approximately three million persons held some form of security clearance.

"(3) The burden of managing more than 6 million newly classified documents every year has led to tremendous administrative expense, reduced communication within the government and within the scientific community, reduced communication between the government and the people of the United States, and the selective and unauthorized public disclosure of classified information.

"(4) It has been estimated that private businesses spend more than $14 billion each year implementing government mandated regulations for protecting classified information.

"(5) If a smaller amount of truly sensitive information were classified the information could be held more securely.

"(6) In 1970 a Task Force organized by the Defense Science Board and headed by Dr. Frederick Seitz concluded that 'more might be gained than lost if our Nation were to adopt—unilaterally, if necessary—a policy of complete openness in all areas of information'.

"(7) The procedures for granting security clearances have themselves become an expensive and inefficient part of the secrecy system and should be closely examined.

"(8) A bipartisan study commission specially constituted for the purpose of examining the consequences of the secrecy system will be able to offer comprehensive proposals for reform.

"SEC. 903. PURPOSE.
It is the purpose of this title to establish for a two-year period a Commission on Protecting and Reducing Government Secrecy—

"(1) to examine the implications of the extensive classification of information and to make recommendations to reduce the volume of information classified and thereby to strengthen the protection of legitimately classified information; and

"(2) to examine and make recommendations concerning current procedures relating to the granting of security clearances.

"SEC. 904. COMPOSITION OF THE COMMISSION.
"(a) Establishment.—To carry out the purposes of this title, there is established a Commission on Protecting and Reducing Government Secrecy (in this title referred to as the 'Commission').

"(b) Composition.—The Commission shall be composed of twelve members, as follows:

"(1) Four members appointed by the President, of whom two shall be appointed from the executive branch of the Government and two shall be appointed from private life.

"(2) Two members appointed by the Majority Leader of the Senate, of whom one shall be a Member of the Senate and one shall be appointed from private life.

"(3) Two members appointed by the Minority Leader of the Senate, of whom one shall be a Member of the Senate and one shall be appointed from private life.

"(4) Two members appointed by the Speaker of the House of Representatives, of whom one shall be a Member of the House and one shall be appointed from private life.

"(5) Two members appointed by the Minority Leader of the House of Representatives, of whom one shall be a Member of the House and one shall be appointed from private life.

"(6) If after 60 days from the date of enactment of this Act seven or more members of the Commission have been appointed, those members who have been appointed may meet and select a Chairman who thereafter shall have authority to begin the operations of the Commission, including the hiring of staff.

"SEC. 905. FUNCTIONS OF THE COMMISSION.
The functions of the Commission shall be—

"(1) to conduct, for a period of 2 years from the date of its first meeting, an investigation into all matters in any way related to any legislation, executive order, regulation, practice, or procedure relating to classified information or granting security clearances; and

"(2) to submit to the Congress a final report containing such recommendations concerning the classification of national security information and the granting of security clearances as the Commission shall determine, including proposing new procedures, rules, regulations, or legislation.

"SEC. 906. POWERS OF THE COMMISSION.
"(a) In General.—(1) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title—

"(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths, and

"(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may deem advisable.

"(2) Subpoenas issued under paragraph (1)(B) may be issued under the signature of the Chairman of the Commission, the chairman of any designated subcommittee, or any designated member, and may be served by any person designated by such Chairman, subcommittee chairman, or member. The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192-194) shall apply in the case of such subpoenas, and the failure of any witness to comply with any subpoena or to testify when summoned under authority of this section.

"(b) Contracting.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

"(c) Information From Federal Agencies.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each such department, bureau, agency, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman.

"(d) Assistance From Federal Agencies.—(1) The Secretary of State is authorized on a reimbursable or non-reimbursable basis to provide the Commission with administrative services, funds, facilities, staff, and
other support services for the performance of the Commission's functions.

(2) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(3) In addition to the assistance set forth in paragraphs (1) and (2), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may deem advisable and as may be authorized by law.

(4) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(5) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 907. STAFF OF THE COMMISSION.

(a) IN GENERAL.—The Chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(b) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level V of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 908. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—(1) Except as provided in paragraph (2), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay on account of their service on the Commission.

(b) TRAVEL EXPENSES.—While away from their home or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5702(b) of title 5, United States Code.

SEC. 909. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information pursuant to this section who would not otherwise qualify for such security clearance.

SEC. 910. FINAL REPORT OF COMMISSION; TERMINATION.

(a) FINAL REPORT.—Not later than two years after the date of the first meeting of the Commission, the Commission shall submit to the Congress its final report, as described in section 905(2).

(b) TERMINATION.—(1) The Commission, and all the authorities of this title, shall terminate on the date which is 60 days after the date on which a final report is required to be transmitted under subsection (a).

(2) The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its final report and disseminating that report.

REPORTS RELATING TO CERTAIN SPECIAL ACCESS PROGRAMS AND SIMILAR PROGRAMS


(a) IN GENERAL.—(1) Not later than February 1 of each year, the head of each covered department or agency shall submit to Congress a report on each special access program carried out in the department or agency.

(2) Each such report shall set forth—

(A) the total amount requested by the department or agency for special access programs within the budget submitted under section 1105 of title 31, United States Code, for the fiscal year following the fiscal year in which the report is submitted; and

(B) for each program in such budget that is a special access program—

(i) a brief description of the program;

(ii) in the case of a procurement program, a brief discussion of the major milestones established for the program;

(iii) the actual cost of the program for each fiscal year during which the program has been conducted before the fiscal year during which that budget is submitted; and

(iv) the estimated total cost of the program and the estimated cost of the program for (I) the current fiscal year, (II) the fiscal year for which the budget is submitted, and (III) each of the four succeeding fiscal years during which the program is expected to be conducted.

(b) NEWLY DESIGNATED PROGRAMS.—(1) Not later than February 1 of each year, the head of each covered department or agency shall submit to Congress a report that, with respect to each new special access program of that department or agency, provides—

(A) notice of the designation of the program as a special access program; and

(B) justification for such designation.

(2) A report under paragraph (1) with respect to a program shall include—

(A) the current estimate of the total program cost for the program; and

(B) an identification, as applicable, of existing programs or technologies that are similar to the technology, or that have a mission similar to the technology, or that have a mission similar to the mission, of the program that is the subject of the notice.

(3) In this subsection, the term ‘new special access program’ means a special access program that has not previously been covered in a notice and justification under this subsection.

(c) REVISION IN CLASSIFICATION OF PROGRAMS.—(1) Whenever a change in the classification of a special access program of a covered department or agency is planned to be made or whenever classified information concerning a special access program of a covered department or agency is to be declassified and made public, the head of the department or agency shall submit to Congress a report containing a description of the proposed change or the information to be declassified, the reasons for the proposed change or declassification, and notice of any public announcement planned to be made with respect to the proposed change or declassification.
“(2) Except as provided in paragraph (3), a report referred to in paragraph (1) shall be submitted not less than 14 days before the date on which the proposed change, declassification, or public announcement is to occur.

“(3) If the head of the department or agency determines that because of exceptional circumstances the requirement of paragraph (2) cannot be met with respect to the proposed change, declassification, or public announcement concerning a special access program of the department or agency, the head of the department or agency may submit the report required by paragraph (1) regarding the proposed change, declassification, or public announcement at any time before the proposed change, declassification, or public announcement is made and shall include in the report an explanation of the exceptional circumstances.

“(d) REVISION OF CRITERIA FOR DESIGNATING PROGRAMS.—Whenever there is a modification or termination of the policy and criteria used for designating a program of a covered department or agency as a special access program, the head of the department or agency shall promptly notify Congress of such modification or termination. Any such notification shall contain the reasons for the modification or termination and, in the case of a modification, the provisions of the policy as modified.

“(1) Waiver of Reporting Requirement.—(1) The head of a covered department or agency may waive any requirement under subsection (a), (b), or (c) that certain information be included in a report under that subsection if the head of the department or agency determines that inclusion of that information in the report would adversely affect the national security. Any such waiver shall be made on a case-by-case basis.

“(2) If the head of a department or agency exercises the authority provided under paragraph (1), the head of the department or agency shall provide the information described in that subsection with respect to the special access program concerned, and the justification for the waiver, to Congress.

“(f) INITIATION OF PROGRAMS.—A special access program may not be initiated by a covered department or agency until—

“(1) the appropriate oversight committees are notified of the program; and

“(2) a period of 30 days elapses after such notification is received.

“(g) Definitions.—For purposes of this section:

“(1) COVERED DEPARTMENT OR AGENCY.—(A) Except as provided in subparagraph (B), the term ‘covered department or agency’ means any department or agency of the Federal Government that carries out a special access program.

“(B) Such term does not include—

“(i) the Department of Defense (which is required to submit reports on special access programs under section 119 of title 10, United States Code);

“(ii) the National Nuclear Security Administration (which is required to submit reports on special access programs under section 3236 of the National Nuclear Security Administration Act (50 U.S.C. 2426)); or

“(iii) an agency in the Intelligence Community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a)).

“(2) SPECIAL ACCESS PROGRAM.—The term ‘special access program’ means any program that, under the authority of Executive Order 13256 (formerly set out below) or any successor Executive order, is established by the head of a department or agency whom the President has designated in the Federal Register as an original ‘secret’ or ‘top secret’ classification authority that imposes ‘need-to-know’ controls on access controls beyond those controls normally required by regulations applicable to such department or agency) for access to information classified as ‘confidential’, ‘secret’, or ‘top secret’.”

DISCLOSURE OF INFORMATION CONCERNING UNACCOUNTED FOR UNITED STATES PERSONNEL OF COLD WAR, KOREAN CONFLICT, AND VIETNAM ERA


“(a) PUBLIC AVAILABILITY OF INFORMATION.—(1) Except as provided in subsection (b), the Secretary of Defense shall, with respect to any information referred to in paragraph (2), place the information in a suitable library-like location within a facility within the National Capital region for public review and photocopying.

“(2) Paragraph (1) applies to any record, live-sighting report, or other information in the custody of the official custodian referred to in subsection (d)(3) that may pertain to the location, treatment, or condition of (A) United States personnel who remain accounted for as a result of service in the Armed Forces or other Federal Government service during the Korean conflict, the Vietnam era, or the Cold War, or (B) their remains.

“(b) EXCEPTIONS.—(1) The Secretary of Defense may not make a record or other information available to the public pursuant to subsection (a) if—

“(A) the record or other information is exempt from the disclosure requirement of section 552 of title 5, United States Code, by reason of subsection (b) of that section; or

“(B) the record or other information is in a system of records exempt from the requirements of subsection (d) of section 525a of such title pursuant to subsection (j) or (k) of that section.

“(2) The Secretary of Defense may not make a record or other information available to the public pursuant to subsection (a) if the record or other information specifically mentions a person by name unless—

“(A) in the case of a person who is alive (and not incapacitated) and whose whereabouts are known, that person expressly consents in writing to the disclosure of the record or other information; or

“(B) in the case of a person who is dead or incapacitated or whose whereabouts are unknown, a family member or family members of that person determined by the Secretary of Defense to be appropriate for such purpose expressly consent in writing to the disclosure of the record or other information;

“(3)(A) The limitation on disclosure in paragraph (2) does not apply in the case of a person who is dead or incapacitated or whose whereabouts are unknown if the family member or members of that person determined pursuant to subparagraph (B) of that paragraph cannot be located by the Secretary of Defense—

“(i) in the case of a person missing from the Vietnam era, after a reasonable effort; and

“(ii) in the case of a person missing from the Korean Conflict or Cold War, after a period of 90 days from the date on which any record or other information referred to in paragraph (2) is received by the Department of Defense for disclosure review from the Archivist of the United States, the Library of Congress, or the Joint United States-Russian Commission on POW/MIA.

“(B) Paragraph (2) does not apply to the access of an adult member of the family of a person to any record or other information to the extent that the record or other information relates to that person.

“(C) The authority of a person to consent to disclosure of a record or other information for the purposes of paragraph (2) may be delegated to another person or an organization only by means of an express legal power of attorney granted by the person authorized by that paragraph to consent to the disclosure.

“(c) DEADLINES.—(1) In the case of records or other information originated by the Department of Defense, the official custodian shall make such records and
other information available to the public pursuant to this section not later than January 2, 1996. Such record or other information shall be made available as soon as a review carried out for the purposes of subsection (b) is completed.

“(2) Whenever a department or agency of the Federal Government receives any record or other information referred to in subsection (a) that is required by this section to be made available to the public, the head of that department or agency shall ensure that such record or other information is provided to the Secretary of Defense, and the Secretary shall make such record or other information available in accordance with subsection (a) as soon as possible and, in any event, not later than one year after the date on which the record or information is received by the department or agency of the Federal Government.

“(3) If the Secretary of Defense determines that the disclosure of any record or other information referred to in subsection (a) by the date required by paragraph (1) or (2) may compromise the safety of any United States personnel referred to in subsection (a)(2) who remain not accounted for but who may still be alive in captivity, then the Secretary may withhold that record or other information from the disclosure otherwise required by this section. Whenever the Secretary makes a determination under the preceding sentence, the Secretary shall immediately notify the President and the Congress of that determination.

“(d) Definitions.—For purposes of this section:

“(1) The terms ‘Korean conflict’ and ‘Vietnam era’ have the meanings given those terms in section 101 of title 38, United States Code.

“(2) The term ‘Cold War’ means the period from the end of World War II to the beginning of the Korean conflict and the period from the end of the Korean conflict to the beginning of the Vietnam era.

“(3) The term ‘official custodian’ means—

“(A) in the case of records, reports, and information relating to the Korean conflict, the Archivist of the United States; and

“(B) in the case of records, reports, and information relating to the Vietnam era, the Secretary of Defense.

DISCLOSURE OF INFORMATION CONCERNING AMERICAN PERSONNEL LISTED AS PRISONERS, MISSING, OR UNACCOUNTED FOR IN SOUTHEAST ASIA

Pub. L. 100–453, title IV, § 404, Sept. 29, 1988, 102 Stat. 1908, provided that:

“(a) This section is enacted to ensure that current disclosure policy is incorporated in new law.

“(b) Except as provided in subsection (c), the head of each department or agency—

“(1) with respect to which funds are authorized under this Act [see Tables for classification], and

“(2) which holds or receives live sighting reports of any United States citizen reported missing in action, prisoner of war, or unaccounted for from the Vietnam Conflict, shall make available to the next-of-kin of that United States citizen all reports, or portions thereof, held by that department or agency which have been correlated or possibly correlated to that citizen.

“(c) Subsection (b) does not apply with respect to—

“(1) information that would reveal or compromise sources and methods of intelligence collection; or

“(2) specific information that previously has been made available to the next-of-kin.

“(d) The head of each department or agency covered by subsection (a) shall make information available under this section in a timely manner.

EXECUTIVE ORDER NO. 11652


EX. ORD. NO. 10865. SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY


WHEREAS it is mandatory that the United States protect itself against hostile or destructive activities by preventing unauthorized disclosures of classified information relating to the national defense; and

WHEREAS it is a fundamental principle of our Government to protect the interests of individuals against unreasonable or unwarranted searches and seizures; and

WHEREAS I find that the provisions and procedures prescribed by this order are necessary to assure the preservation of the integrity of classified defense information and to protect the national interest; and

WHEREAS I find that those provisions and procedures recognize the interest of individuals affected thereby and provide maximum possible safeguards to protect such interests:

NOW, THEREFORE, under and by virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States and as Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

Sic. 1. When used in this order, the term ‘head of a department’ means the Secretary of State, the Secretary of Defense, the Secretary of Transportation, the Secretary of Energy, the Secretary of Homeland Security, the Nuclear Regulatory Commission, the Administrator of the National Aeronautics and Space Administration, and, in section 4, the Attorney General. The term ‘head of a department’ also means the head of any department or agency, including but not limited to, those referenced above with whom the Department of Defense makes an agreement to extend regulations prescribed by the Secretary of Defense concerning authorizations for access to classified information pursuant to Executive Order No. 12829 [set out below].

Sic. 2. An authorization for access to classified information pursuant to Executive Order No. 12829 [set out below] may be granted by the head of a department or his designee, including but not limited to, those officials named in section 8 of this order, to an individual, hereinafter termed an ‘applicant’, for a specific classification category only upon a finding that it is clearly consistent with the national interest to do so.

Sic. 3. Except as provided in section 9 of this order, an authorization for access to a specific classification category may not be finally denied or revoked pursuant to Executive Order No. 12829 [set out below] by the head of a department or his designee, including, but not limited to, those officials named in section 8 of this order, unless the applicant has been given the following:

(1) A written statement of the reasons why his access authorization may be denied or revoked, which shall be as comprehensive and detailed as the national security permits.

(2) A reasonable opportunity to reply in writing under oath or affirmation to the statement of reasons.

(3) After he has filed under oath or affirmation a written reply to the statement of reasons, the form and sufficiency of which may be prescribed by regulations issued by the head of the department concerned, an opportunity to appear personally before the head of the department concerned or his designee including, but not limited to, those officials named in section 8 of this order for the purpose of supporting his eligibility for access authorization and to present evidence on his behalf.

(4) A reasonable time to prepare for that appearance.

(5) An opportunity to be represented by counsel.

(6) An opportunity to cross-examine persons either orally or through written interrogatories in accordance
with section 4 on matters not relating to the characterization in the statement of reasons of any organization or individual other than the applicant. A written notice of the final decision in his case which, if adverse, shall specify whether the head of the department or his designee, including, but not limited to, those officials named in section 6 of this order, favored or opposed the applicant relating to a controverted issue except that any such statement may be received and considered without affording such opportunity in the circumstances described in either of the following paragraphs:

1. The head of the department supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his identity would be substantially harmful to the national interest.

2. The head of the department concerned or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency involved as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and the head of the department determines that the procedures prescribed in paragraphs (a) or (b) of this section are used (1) the applicant shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits, (2) appropriate consideration shall be accorded to the fact that the applicant did not have an opportunity to cross-examine such person or persons, and (3) a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

SISC. 5. (a) Records compiled in the regular course of business, or other physical evidence other than investiga-
tive reports, relating to a controverted issue which, because they are classified, may not be inspected by the applicant, may be received and considered provided that: (1) the head of the department concerned or his special designee for that purpose has made a preliminary determination that such physical evidence appears to be material, (2) the head of the department concerned or such designee has made a determination that failure to receive and consider such physical evidence would, in view of the level of access sought, be substantially harmful to the national security, and (3) to the extent that the national security permits, a summary or description of such physical evidence is made available to the applicant. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency involved shall be considered. In such instances a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

SISC. 6. The head of a department of the United States or his representative, may issue, in appropriate cases, invitations and requests to appear and testify in order that the applicant may have the opportunity to cross-examine as provided by this order. Whenever a witness is so invited or requested to appear and testify at a proceeding and the witness is an officer or employee of the executive branch of the Government, or a member of the armed forces of the United States, and the proceeding involves the activity in connection with which the witness is employed, travel expenses and per diem are authorized as provided by the Standardized Government Travel Regulations or the Joint Travel Regulations, as appropriate. In all other cases (including non-Government employees as well as officers or employees of the executive branch of the Government or members of the armed forces of the United States not covered by the foregoing sentence), transportation in kind and reimbursement for actual expenses are authorized in an amount not to exceed the amount payable under Standardized Government Travel Regulations. An officer or employee of the executive branch of the Government or a member of the armed forces of the United States who is invited or requested to appear pursuant to this paragraph shall be deemed to be in the performance of his official duties. So far as the national security permits, the head of the investigative agency involved shall cooperate with the Secretary, the Administrator, the head of the other department or agency, as the case may be, in identifying persons who have made statements adverse to the applicant and in assisting him in making them available for cross-examination. If a person so invited is an officer or employee of the executive branch of the Government or a member of the armed forces of the United States, the head of the department or agency concerned shall cooperate in making that person available for cross-examination.

SISC. 7. Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.

SISC. 8. Except as otherwise specified in the preceding provisions of this order, any authority vested in the head of a department by this order may be delegated to the the [sic] deputy of that department, or the principal assistant to the head of that department, as the case may be.

SISC. 9. Nothing contained in this order shall be deemed to limit or affect the responsibility and powers of the head of a department to deny or revoke access to a specific classification category if the security of the nation so requires. Such authority may not be delegated and may be exercised only when the head of a department determines that the procedures prescribed in sections 3, 4, and 5 cannot be invoked consistently with the national security and such determination shall be conclusive.

MODIFICATION OF EXECUTIVE ORDER No. 10865


EXECUTIVE ORDER No. 10865

Ex. Ord. No. 10865, Jan. 12, 1962, 27 F.R. 439, which amended Executive Order No. 10501, which related to safeguarding official information, was superseded by Ex. Ord. No. 11662, Mar. 8, 1972, 37 F.R. 5209, formerly set out below.

EXECUTIVE ORDER No. 11807

Ex. Ord. No. 11807, Feb. 28, 1963, 28 F.R. 2225, which amended Executive Order No. 10501, which related to safeguarding official information, was superseded by
§ 435  TITLE 50—WAR AND NATIONAL DEFENSE

Ex. Ord. No. 11652, Mar. 8, 1972, 37 F.R. 5209, formerly set out below.

EXECUTIVE ORDER No. 11652

EX. ORD. NO. 11932. CLASSIFICATION OF CERTAIN INFORMATION AND MATERIAL OBTAINED FROM ADVISORY BODIES CREATED TO IMPLEMENT THE INTERNATIONAL ENERGY PROGRAM
Ex. Ord. No. 11932, Aug. 4, 1976, 41 F.R. 32691, provided: The United States has entered into the Agreement on an International Energy Program of November 18, 1974, which created the International Energy Agency. This program is a substantial factor in the conduct of our foreign relations and an important element of our national security. The effectiveness of the Agreement depends significantly upon the provision and exchange of information and material by participants in advisory bodies created by the International Energy Agency. Confidentiality is essential to assure the free and open discussion necessary to accomplish the tasks assigned to those bodies. I have consulted with the Secretary of State, the Attorney General and the Administrator of the Federal Energy Administration concerning the handling and safeguarding of information and material in the possession of the United States which has been obtained pursuant to the program, and I find that some of such information and material requires protection as provided in Executive Order No. 11652 of March 8, 1972, as amended (formerly set out above).

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States, it is hereby ordered as follows:

SECTION 1. Information and material obtained pursuant to the International Energy Program and which require protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States shall be classified pursuant to Executive Order No. 11652 of March 8, 1972, as amended (formerly set out above). The Secretary of State shall have the responsibility for the classification, declassification and safeguarding of information and material in the possession of the United States Government which has been obtained pursuant to:

(a) Section 252(c)(3), (d)(2), or (e)(3) of the Energy Policy and Conservation Act (89 Stat. 781; 42 U.S.C. 6572(c)(3), d(2), (e)(3)); or

(b) The Voluntary Agreement and Program relating to the International Energy Program (40 F.R. 16041, April 8, 1975), or

(c) Any similar Voluntary Agreement and Program entered into under the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.) after the date of this Order.

Sec. 2. Information or material classified pursuant to Section 1 of this Order may be exempted from the General Declassification Schedule established by Section 5 of Executive Order No. 11652 (formerly set out above) if it was obtained by the United States on the understanding that it be kept in confidence, or if it might otherwise be exempted under Section 5(b) of such Order.

Sec. 3. (a) Within 60 days of the date of this Order, the Secretary of State shall promulgate regulations which implement his responsibilities under this Order.

(b) The directives issued under Section 6 of Executive Order No. 11652 (formerly set out above) shall not apply to information and material classified under this Order. However, the regulations promulgated by the Secretary of State shall:

(1) conform, to the extent practicable, to the policies set forth in Section 6 of Executive Order No. 11652 (formerly set out above), and

(2) provide that he may take such measures as he deems necessary and appropriate to ensure the confidentiality of any information and material classified under this Order that may remain in the custody or control of any person outside the United States Government.

GERALD R. FORD.

EXECUTIVE ORDER No. 12065

EXECUTIVE ORDER No. 12356
Ex. Ord. No. 12356, Apr. 2, 1982, 47 F.R. 14874, 15557, which prescribed a uniform system for classifying, declassifying, and safeguarding national security information, was revoked by Ex. Ord. No. 12958, § 6.1(d), Apr. 17, 1995, 60 F.R. 19843, formerly set out below.

EX. ORD. NO. 12812. DECLASSIFICATION AND RELEASE OF MATERIALS PERTAINING TO PRISONERS OF WAR AND MISSING IN ACTION
Ex. Ord. No. 12812, July 22, 1992, 57 F.R. 32879, provided:

WHEREAS, the Senate, by S. Res. 324 of July 2, 1992, has asked that I ‘expeditiously issue an Executive order requiring all executive branch departments and agencies to declassify and publicly release without compromising United States national security all documents, files, and other materials pertaining to POWs and MIAs;’ and

WHEREAS, indiscriminate release of classified material could jeopardize continuing United States Government efforts to achieve the fullest possible accounting of Vietnam-era POWs and MIAs; and

WHEREAS, I have concluded that the public interest would be served by the declassification and public release of materials pertaining to Vietnam-era POWs and MIAs as provided below;

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

SECTION 1. All executive departments and agencies shall expeditiously review all documents, files, and other materials pertaining to American POWs and MIAs lost in Southeast Asia for the purposes of declassification in accordance with the standards and procedures of Executive Order No. 12356 (formerly set out above).

Sec. 2. All executive departments and agencies shall make publicly available documents, files, and other materials declassified pursuant to section 1, except for those the disclosure of which would constitute a clearly unwarranted invasion of personal privacy of returnees, family members of POWs and MIAs, or other persons, or would impair the deliberative processes of the executive branch.

Sec. 3. This order is not intended to create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE BUSH.

EX. ORD. NO. 12829. NATIONAL INDUSTRIAL SECURITY PROGRAM

This order establishes a National Industrial Security Program to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. To pro-
mote our national interests, the United States Government issues contracts, licenses, and grants to non-government organizations. When these arrangements require access to classified information, the national security requires that this information be safeguarded in a manner equivalent to its protection within the executive branch of Government. The national security also requires that our industries promote the economic and technological interests of the United States. Redundant, overlapping, or unnecessary requirements impede those interests. Therefore, the National Industrial Security Program shall serve as a single, integrated, cohesive industrial security program to protect classified information and to preserve our Nation's economic and technological interests.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011-2236) [42 U.S.C. 2011 et seq.], the National Security Act of 1947, as amended (codified as amended in scattered sections of the United States Code) [see Short Title note set out under section 401 of this title], and the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2) [5 U.S.C. App.], it is hereby ordered as follows:

PART I. ESTABLISHMENT AND POLICY

SECTION 101. Establishment. (a) There is established a National Industrial Security Program. The purpose of this program is to safeguard classified information that may be released or has been released to current, prospective, or former contractors, licensees, or grantees of United States agencies. For the purposes of this order, the terms "contractor, licensee, or grantee" means current, prospective, or former contractors, licensees, or grantees of United States agencies. The National Industrial Security Program shall be applicable to all executive branch departments and agencies.

(b) The National Industrial Security Program shall provide for the protection of information classified pursuant to Executive Order No. 12356 of April 2, 1982 [formerly set out above], or its successor, and the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].

(c) For the purposes of this order, the term "contractor" does not include individuals engaged under personal services contracts.


(b) The Director of the Information Security Oversight Office, established under Executive Order No. 12356 of April 2, 1982 [formerly set out above], shall be responsible for implementing and monitoring the National Industrial Security Program, including recommending changes to the policies as reflected in this order, its implementing directives, or the operating manual established under this order, and serve as a forum to discuss policy issues in dispute.

(c) The Committee shall meet at the request of the Chairman, but at least twice during the calendar year.

(d) Members of the Committee shall serve without compensation for their work on the Committee. However, nongovernment members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707).

(2) To the extent permitted by law and subject to the availability of funds, the Administrator of General Services shall provide the Committee with administrative services, facilities, staff, and other support services necessary for the performance of its functions.

(d) General. Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [5 U.S.C. App.], except that of reporting to the Congress, which are applicable to the Committee, shall be performed by the Administrator of General Services in accordance with the guidelines and procedures established by the General Services Administration.
(b) The Director of Central Intelligence retains authority over access to intelligence sources and methods, including Sensitive Compartmented Information. The Director of Central Intelligence may inspect and monitor [sic] contractor, licensee, and grantee programs and facilities that involve access to such information or may enter into written agreements with the Secretary of Defense, as Executive Agent, to inspect and monitor these programs or facilities, in whole or in part, on the Director’s behalf.

(c) The Secretary of Energy and the Nuclear Regulatory Commission retain authority over access to information under their respective programs classified under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.]. The Secretary or the Commission may inspect and monitor contractor, licensee, and grantee programs and facilities that involve access to such information or may enter into written agreements with the Secretary of Defense, as Executive Agent, to inspect and monitor these programs or facilities, in whole or in part, on behalf of the Secretary or the Commission, respectively.

(d) The Executive Agent shall have the authority to issue, after consultation with affected agencies, standard forms or other standardization that will promote the implementation of the National Industrial Security Program.

PART 2. OPERATIONS

Sic. 201. National Industrial Security Program Operating Manual. (a) The Secretary of Defense, in consultation with all affected agencies and with the concurrence of the Secretary of Energy, the Nuclear Regulatory Commission, and the Director of Central Intelligence, shall issue and maintain a National Industrial Security Program Operating Manual (“Manual”). The Secretary of Energy and the Nuclear Regulatory Commission shall prescribe and issue that portion of the Manual that pertains to information classified under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.]. The Director of Central Intelligence shall prescribe and issue that portion of the Manual that pertains to intelligence sources and methods, including Sensitive Compartmented Information.

(b) The Manual shall prescribe specific requirements, restrictions, and other safeguards that are necessary to preclude unauthorized disclosure and control authorized disclosure of classified information to contractors, licensees, or grantees. The Manual shall apply to the release of classified information during all phases of the contracting process including bidding, negotiation, award, performance, and termination of contracts, the licensing process, or the grant process, with or under the control of departments or agencies.

(c) The Manual shall also prescribe requirements, restrictions, and other safeguards that are necessary to protect special classes of classified information, including Restricted Data, Formerly Restricted Data, intelligence sources and methods information, Sensitive Compartmented Information, and Special Access Program information.

(d) In establishing particular requirements, restrictions, and other safeguards within the Manual, the Secretary of Defense, the Secretary of Energy, the Nuclear Regulatory Commission, and the Director of Central Intelligence shall take into account these factors: (i) the damage to the national security that reasonably could be expected to result from an unauthorized disclosure; (ii) the existing or anticipated threat to the disclosure of information; and (iii) the short- and long-term costs of the requirements, restrictions, and other safeguards.

(e) To the extent that is practicable and reasonable, the requirements, restrictions, and safeguards that the Manual establishes for the protection of classified information by contractors, licensees, and grantees shall be consistent with the requirements, restrictions, and safeguards that directives implementing Executive Order No. 12356 of April 2, 1982 [formerly set out above], or the Atomic Energy Act of 1954, as amended, establish for the protection of classified information by agencies. Upon request by the Chairman of the Committee, the Secretary of Defense shall provide an explanation and justification for any requirement, restriction, or safeguard that results in a standard for the protection of classified information by contractors, licensees, and grantees that differs from the standard that applies to agencies.

(f) The Manual shall be issued to correspond as closely as possible to pertinent decisions of the Secretary of Defense and the Director of Central Intelligence made pursuant to the recommendations of the Joint Security Review Commission and to revisions to the security classification system that result from Presidential Review Directive 29, but in any event no later than June 30, 1994.

Sic. 202. Operational Oversight. (a) The Secretary of Defense shall serve as Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to, or who store or will store classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The heads of agencies shall enter into agreements with the Secretary of Defense that establish the terms of the Secretary’s responsibilities on behalf of these agency heads.

(b) The Director of Central Intelligence retains authority over access to intelligence sources and methods, including Sensitive Compartmented Information. The Director of Central Intelligence may inspect and monitor [sic] contractor, licensee, and grantee programs and facilities that involve access to such information or may enter into written agreements with the Secretary of Defense, as Executive Agent, to inspect and monitor these programs or facilities, in whole or in part, on the Director’s behalf.

(c) The Secretary of Energy and the Nuclear Regulatory Commission retain authority over access to information under their respective programs classified under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.]. The Secretary or the Commission may inspect and monitor contractor, licensee, and grantee programs and facilities that involve access to such information or may enter into written agreements with the Secretary of Defense, as Executive Agent, to inspect and monitor these programs or facilities, in whole or in part, on behalf of the Secretary or the Commission, respectively.

(d) The Executive Agent shall have the authority to issue, after consultation with affected agencies, standard forms or other standardization that will promote the implementation of the National Industrial Security Program.

Sic. 203. Implementation. (a) The head of each agency that enters into classified contracts, licenses, or grants, or that may incorporate all or portions of the Manual by reference, who require or will require access to, or who store or will store classified information for operation under the National Industrial Security Program. Any direct inspection or monitoring of contractor, licensee, or grantee programs and facilities that involve access to classified information for operation under the National Industrial Security Program. Any direct inspection or monitoring of contractor, licensee, or grantee programs and facilities that involve access to classified information for operation under the National Industrial Security Program.

(b) Agency implementing regulations, internal rules, or guidelines shall be consistent with this order, its implementing directives, and the Manual. Agencies shall issue these regulations, rules, or guidelines no later than 180 days from the issuance of the Manual. They may incorporate all or portions of the Manual by reference.

(c) Each agency head or the senior official designated under paragraph (a) above shall be responsible for prompt corrective action whenever a violation of this order, its implementing directives, or the Manual occurs.

(d) The senior agency official designated under paragraph (a) above shall account each year for the costs within the agency associated with the implementation of the National Industrial Security Program. These costs shall be reported to the Director of the Information Security Oversight Office, who shall include them in the reports to the President prescribed by this order.

(e) The Secretary of Defense, with the concurrence of the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, and such other agency heads or officials who may be responsible, shall amend the Federal Acquisition Regulation to be consistent with the implementation of the National Industrial Security Program.

(f) All contracts, licenses, or grants that involve access to classified information and that are advertised or proposed following the issuance of agency regulations, rules, or guidelines described in paragraph (b) above shall comply with the National Industrial Security Program. To the extent that is feasible, economical, and permitted by law, agencies shall amend, modify, or convert preexisting contracts, licenses, or grants, or previously advertised or proposed contracts, licenses, or grants, that involve access to classified information for operation under the National Industrial Security Program. Any direct inspection or monitoring of contractor, licensee, or grantee programs and facilities that involve access to classified information for operation under the National Industrial Security Program shall be carried out pursuant to the terms of a contract, license, grant, or regulation.

(g) Executive Order No. 10859 of February 20, 1960 [set out above], as amended by Executive Order No. 10969 of January 17, 1961, and Executive Order No. 11382 of November 27, 1967, is hereby amended as follows:

(1) Section 1(a) and (b) are revoked as of the effective date of this order.

(2) Section 1(c) is renumbered as Section 1 and is amended to read as follows:
“SECTION I. When used in this order, the term ‘head of a department’ means the Secretary of State, the Secretary of Defense, the Secretary of Energy, the Nuclear Regulatory Commission, the Administrator of the National Aeronautics and Space Administration, and, in section 4, the Attorney General. The term ‘head of a department’ also means the head of any department or agency, including but not limited to those referenced above with whom the Department of Defense makes an agreement to extend regulations prescribed by the Secretary of Defense concerning authorizations for access to classified information pursuant to Executive Order No. 12829.”

(3) Section 2 is amended by inserting the words “pursuant to Executive Order No. 12829” after the word “information.”

(4) Section 3 is amended by inserting the words “pursuant to Executive Order No. 12829” between the words “revoked” and “by” in the second clause of that section.

(5) Section 6 is amended by striking out the words “The Secretary of State, the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation, or his representative, or the head of any other department or agency of the United States with which the Department of Defense makes an agreement under section (1)(b),” at the beginning of the first sentence, and inserting in their place “The head of a department of the United States . . . .”

(6) Section 8 is amended by striking out paragraphs (1) through (7) and inserting in their place “the deputy of that department, or the principal assistant to the head of that department, as the case may be.”

(b) All delegations, rules, regulations, orders, directives, agreements, contracts, licenses, and grants issued under preexisting authorities, including section 1(a) and (b) of Executive Order No. 10865 of February 20, 1961, and Executive Order No. 11382 of November 27, 1967, shall remain in full force and effect until the date of this Order, except to the extent that the Department of Defense makes an agreement to extend regulations prescribed by the Secretary of Defense concerning authorizations for access to classified information pursuant to Executive Order No. 12829.”

(3) Section 2 is amended by inserting the words “pursuant to Executive Order No. 12829” after the word “information.”

(4) Section 3 is amended by inserting the words “pursuant to Executive Order No. 12829” between the words “revoked” and “by” in the second clause of that section.

(5) Section 6 is amended by striking out the words “The Secretary of State, the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation, or his representative, or the head of any other department or agency of the United States with which the Department of Defense makes an agreement under section (1)(b),” at the beginning of the first sentence, and inserting in their place “The head of a department of the United States . . . .”

(6) Section 8 is amended by striking out paragraphs (1) through (7) and inserting in their place “the deputy of that department, or the principal assistant to the head of that department, as the case may be.”

(b) All delegations, rules, regulations, orders, directives, agreements, contracts, licenses, and grants issued under preexisting authorities, including section 1(a) and (b) of Executive Order No. 10865 of February 20, 1960, as amended, by Executive Order No. 10909 of January 17, 1961, and Executive Order No. 11362 of November 27, 1967, shall remain in full force and effect until amended, modified, or terminated pursuant to authority of this order.

(i) This order shall be effective immediately.

EX. ORD. No. 12937. DECLASSIFICATION OF SELECTED RECORDS WITHIN NATIONAL ARCHIVES OF UNITED STATES
Ex.Ord. No.12937, Nov. 10, 1994, 59 F.R. 59097, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:
SECTION 1. The records in the National Archives of the United States referenced in the list accompanying this order are hereby declassified.
Sic. 2. The Archivist of the United States shall take such actions as are necessary to make such records available for public research no later than 30 days from the date of this Order, except to the extent that the head of an affected agency and the Archivist have determined that specific information within such records must be protected from disclosure pursuant to an authorized exemption to the Freedom of Information Act, 5 U.S.C. 552, other than the exemption that pertains to national security information.
Sic. 3. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.
Records in the following record groups (“RG”) in the National Archives of the United States shall be declassified. Page numbers are approximate. A complete list of the selected records is available from the Archivist of the United States.

I. All unreviewed World War II and earlier records, including:
A. RG 18, Army Air Forces 1,722,400 pp.
C. RG 127, United States Marine Corps 195,000 pp.
E. RG 226, Office of Strategic Services 415,000 pp.
F. RG 69, United States Occupation Headquarters 4,422,500 pp.
H. RG 332, United States Theaters of War, World War II 1,182,500 pp.
Subtotal for World War II and earlier 21.0 million pp.

II. Post-1945 Collections (Military and Civil)
A. RG 19, Bureau of Ships, Pre-1969 General Correspondence (selected records) 1,732,500 pp.
C. RG 72, Bureau of Aeronautics (Navy) (selected records) 5,655,000 pp.
E. RG 313, Naval Operating Forces (selected records) 407,500 pp.
F. RG 319, Office of the Chief of Military History Manuscripts and Background Papers (selected records) 933,000 pp.
G. RG 337, Headquarters, Army Ground Forces (selected records) 1,269,700 pp.
H. RG 341, Headquarters, United States Air Force (selected records) 4,870,000 pp.
I. RG 389, Office of the Provost Marshal General (selected records) 448,000 pp.
J. RG 391, United States Army Regular Army Mobil Units 240,000 pp.
K. RG 429, General Records of the Department of the Navy (selected records) 31,250 pp.
L. RG 472, Army Vietnam Collection (selected records) 5,864,000 pp.
Subtotal for Other 22.9 million pp.
TOTAL 43.9 million pp.

EX. ORD. No. 12951. RELEASE OF IMAGERY ACQUIRED BY SPACE-BASED NATIONAL INTELLIGENCE RECONNAISSANCE SYSTEMS
Ex.Ord. No.12951, Feb. 22, 1995, 60 F.R. 10789, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to release certain scientifically or environmentally useful imagery acquired by space-based national intelligence reconnaissance systems, consistent with the national security, it is hereby ordered as follows:
SECTION 1. Public Release of Historical Intelligence Imagery. Imagery acquired by the space-based national intelligence reconnaissance systems known as the Corona, Argon, and Lanyard missions shall, within 18 months of the date of this order, be declassified and transferred to the National Archives and Records Administration with a copy sent to the United States Geological Survey of the Department of the Interior consistent with procedures approved by the Director of Central Intelligence and the Archivist of the United States.

A. RG 18, Army Air Forces 1,722,400 pp.
C. RG 127, United States Marine Corps 195,000 pp.
E. RG 226, Office of Strategic Services 415,000 pp.
F. RG 69, United States Occupation Headquarters 4,422,500 pp.
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L. RG 472, Army Vietnam Collection (selected records) 5,864,000 pp.
Subtotal for Other 22.9 million pp.
TOTAL 43.9 million pp.
States. Upon transfer, such imagery shall be deemed declassified and shall be made available to the public.

SNC. 2. Review for Future Public Release of Intelligence Imagery. (a) All information that meets the criteria in section 2(b) of this order shall be kept secret in the interests of national defense and foreign policy until deemed otherwise by the Director of Central Intelligence. In consultation with the Secretaries of State and Defense, the Director of Central Intelligence shall establish a comprehensive program for the periodic review of imagery from systems other than the Corona, Argon, and Lanyard missions, with the objective of making available to the public as much imagery as possible consistent with the interests of national defense and foreign policy. For imagery from obsolete broad-area film-return systems other than Corona, Argon, and Lanyard missions, this review shall be completed within 5 years of the date of this order. Review of imagery from any other system that the Director of Central Intelligence deems to be obsolete shall be accomplished according to a timetable established by the Director of Central Intelligence. The Director of Central Intelligence shall report annually to the President on the implementation of this order.

(b) The criteria referred to in section 2(a) of this order consist of the following: imagery acquired by a space-based national intelligence reconnaissance system other than the Corona, Argon, and Lanyard missions.

SNC. 3. General Provisions. (a) This order prescribes a comprehensive and exclusive system for the public release of imagery acquired by space-based national intelligence reconnaissance systems. This order is the exclusive Executive order governing the public release of imagery for purposes of section 552(b)(1) of the Freedom of Information Act [5 U.S.C. 552(b)(1)].

(b) Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

SNC. 4. Definition. As used herein, "imagery" means the product acquired by space-based national intelligence reconnaissance systems that provides a likeness or representation of any natural or man-made feature or related objective or activities and satellite positional data acquired at the same time the likeness or representation was acquired.

WILLIAM J. CLINTON.

EXECUTIVE ORDER No. 12968


Ex. Ord. No. 12968. Access to Classified Information

Ex. Ord. No. 12968, Aug. 2, 1995, 60 F.R. 49245, as amended by Ex. Ord. No. 13467, § 3(b), June 30, 2008, 73 F.R. 38107, provided:

The national interest requires that certain information be maintained in confidence through a system of classification in order to protect our citizens, our democratic institutions, and our participation within the community of nations. The unauthorized disclosure of information classified in the national interest can cause irreparable damage to the national security and loss of human life.

Security policies designed to protect classified information must ensure consistent, cost effective, and efficient protection of our Nation's classified information, while providing fair and equitable treatment to those Americans upon whom we rely to guard our national security.

This order establishes a uniform Federal personnel security program for employees who will be considered for initial or continued access to classified information.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

PART 1—DEFINITIONS, ACCESS TO CLASSIFIED INFORMATION, FINANCIAL DISCLOSURE, AND OTHER ITEMS

SECTION 1. Definitions. For the purposes of this order:

(a) "Agency" means any "Executive agency," as defined in 5 U.S.C. 105, the "military departments," as defined in 5 U.S.C. 102, and any other entity within the executive branch that comes into the possession of classified information, including the Defense Intelligence Agency, National Security Agency, and the National Reconnaissance Office.

(b) "Applicant" means a person other than an employee who has received an authorized conditional offer of employment for a position that requires access to classified information.

(c) "Authorized investigative agency" means an agency authorized by law or regulation 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.

(d) "Classified information" means information that has been determined pursuant to Executive Order No. 12958 [formerly set out above], or any successor order, Executive Order No. 12961 [set out above], or any successor order, or the Atomic Energy Act of 1946 (as amended by Ex. Ord. No. 12951 [set out above], or any successor order, has been determined pursuant to Executive Order No. 12958 [formerly set out above], or any successor order, Ex. Ord. No. 12961 [set out above], or any successor order, or the Atomic Energy Act of 1946 (as amended by Ex. Ord. No. 12951 [set out above], or any successor order, to require protection against unauthorized disclosure.

(e) "Employee" means a person, other than the President and Vice President, employed by, detailed or assigned to, an agency, including members of the Armed Forces; an expert or consultant to an agency; an industrial or commercial contractor, licensee, certificate holder, or grantee of an agency, including all subcontractors; a personal services contractor; or any other category of person who acts for or on behalf of an agency as determined by the appropriate agency head.

(f) "Foreign power" and "agent of a foreign power" have the meaning provided in 50 U.S.C. 1801.

(g) "Need for access" means a determination that an employee requires access to a particular level of classified information in order to perform or assist in a lawful and authorized governmental function.

(h) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(i) "Overseas Security Executive Agent" means the Board established by the President to consider, develop, coordinate and promote policies, standards and agreements on overseas security operations, programs and projects that affect all United States Government agencies under the authority of a Chief of Mission.

(j) "Security Executive Agent" means the Security Executive Agent established by the President to consider, coordinate, and recommend policy directives for U.S. security policies, procedures, and practices.

(k) "Special access program" has the meaning provided in section 4.1 of Executive Order No. 12958 [formerly set out above], or any successor order.

SNC. 2. Access to Classified Information. (a) No employee shall be granted access to classified information unless that employee has been determined to be eligible in accordance with this order and to possess a need-to-know.

(b) Agency heads shall be responsible for establishing and maintaining an effective program to ensure that access to classified information by each employee is clearly consistent with the interests of the national security.

(c) Employees shall not be granted access to classified information unless they:...
(1) have been determined to be eligible for access under section 3.1 of this order by agency heads or designated officials based upon a favorable adjudication of an appropriate investigation of the employee’s background;

(2) have a demonstrated need-to-know; and

(3) have signed an approved nondisclosure agreement.

(d) All employees shall be subject to investigation by an appropriate government authority prior to being granted access to classified information and at any time during the period of access to ascertain whether they continue to meet the requirements for access.

(e)(1) All employees granted access to classified information shall be required as a condition of such access to provide to the employing agency written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of 3 years thereafter, to:

(A) relevant financial records that are maintained by a financial institution as defined in 31 U.S.C. 5312(a) or by a holding company as defined in section 1101(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(b));

(B) consumer reports pertaining to the employee under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); and

(C) records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States.

(2) Information may be requested pursuant to employee consent under this section where:

(A) there are reasonable grounds to believe, based on credible information, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(B) information the employing agency deems credible indicates the employee or former employee has incurred excessive indebtedness or has acquired a level of affluence that cannot be explained by other information; or

(C) circumstances indicate the employee or former employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised to a foreign power or an agent of a foreign power;

(3) Nothing in this section shall be construed to affect the authority of an investigative agency to obtain information pursuant to the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), or any other applicable law.

Sec. 1.3. Financial Disclosure. (a) Not later than 180 days after the effective date of this order, the head of each agency that originates, handles, transmits, or possesses classified information shall designate each employee, by position or category where possible, who has a regular need for access to classified information that, in the discretion of the agency head, would reveal:

(1) the identity of covert agents as defined in the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.);

(2) technical or specialized national intelligence collection and processing systems that, if disclosed in an unauthorized manner, would substantially negate or impair the effectiveness of the system;

(3) the details of:

(A) the nature, contents, algorithm, preparation, or use of any code, cipher, or cryptographic system or

(B) design, construction, functioning, maintenance, or repair of any cryptographic equipment; but not including information concerning the use of cryptographic equipment and services;

(4) particularly sensitive special access programs, the disclosure of which would substantially negate or impair the effectiveness of the information or activity involved; or

(5) especially sensitive nuclear weapons design information (but only for those positions that have been certified as being of a high degree of importance or sensitivity, as described in section 145(r) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2156(r)).

(b) An employee may not be granted access, or hold a position designated as requiring access, to information described in subsection (a) unless, as a condition of access to such information, the employee:

(1) files with the head of the agency a financial disclosure report, including information with respect to the spouse and dependent children of the employee, as part of all background investigations or reinvestigations;

(2) is subject to annual financial disclosure requirements, if selected by the agency head; and

(3) files relevant information concerning foreign travel, as determined by the Security Executive Agent.

(c) Not later than 180 days after the effective date of this order, the Security Executive Agent shall develop procedures for the implementation of this section, including a standard financial disclosure form for use by employees under subsection (b) of this section, and agency heads shall identify certain employees, by position or category, who are subject to annual financial disclosure.

Sec. 1.4. Use of Automated Financial Record Data Bases. As part of all investigations and reinvestigations described in section 1.2(d) of this order, agencies may request the Department of the Treasury, under terms and conditions prescribed by the Secretary of the Treasury, to search automated data bases consisting of reports of currency transactions by financial institutions, instruments of foreign transportation of currency or monetary instruments, foreign bank and financial accounts, transactions under $10,000 that are reported as possible money laundering violations, and records of foreign travel.

Sec. 1.5. Employee Education and Assistance. The head of each agency that grants access to classified information shall establish a program for employees with access to classified information to: (a) educate employees about individual responsibilities under this order; and (b) inform employees about guidance and assistance available concerning issues that may affect their eligibility for access to classified information, including sources of assistance for employees who have questions or concerns about financial matters, mental health, or substance abuse.

PART 2—ACCESS ELIGIBILITY POLICY AND PROCEDURE

Sec. 2.1. Eligibility Determinations. (a) Determinations of eligibility for access to classified information shall be based on criteria established under this order. Such determinations are separate from suitability determinations with respect to the hiring or retention of persons for employment by the government or any other personnel actions.

(b) The number of employees that each agency determines are eligible for access to classified information shall be kept to the minimum required for the conduct of agency functions.

(1) Eligibility for access to classified information shall not be requested or granted solely to permit entry to, or ease of movement within, controlled areas when the employee has no need for access and access to classified information may reasonably be prevented. Where circumstances indicate employees may be inadvertently exposed to classified information in the course of their duties, agencies are authorized to grant or deny, in their discretion, facility access approvals to such employees based on an appropriate level of investigation as determined by each agency.

(2) Except in agencies where eligibility for access is a mandatory condition of employment, eligibility for access to classified information shall only be requested or granted based on a demonstrated, foreseeable need for access. Requesting or approving eligibility in excess of actual requirements is prohibited.

(3) Eligibility for access to classified information may be granted where there is a temporary need for access, such as one-time participation in a classified
project, provided the investigative standards established under this order have been satisfied. In such cases, a fixed date or event for expiration shall be identified. Access to classified information shall be limited to information related to the particular project or assignment.

(4) Access to classified information shall be terminated when an employee no longer has a need for access.

SISC. 2.2. Level of Access Approval. (a) The level at which an access approval is granted for an employee shall be limited, and relate directly, to the level of classified information for which there is a need for access. Eligibility for access to a higher level of classified information includes eligibility for access to information classified at a lower level.

(b) Access to classified information relating to a special access program shall be granted in accordance with procedures established by the head of the agency that created the program or, for programs pertaining to intelligence activities (including special activities but not including military operational, strategic, and tactical programs) or intelligence sources and methods, by the Director of Central Intelligence. To the extent possible and consistent with the national security interests of the United States, such procedures shall be consistent with the standards and procedures established by and under this order.

SISC. 2.3. Temporary Access to Higher Levels. (a) An employee who has been determined to be eligible for access to classified information based on favorable adjudication of a completed investigation may be granted temporary access to a higher level where security personnel authorized by the agency head to make access eligibility determinations find that such access:

1. is necessary to meet operational or contractual exigencies not expected to be of a recurring nature;
2. will not exceed 180 days; and
3. is limited to specific, identifiable information that is the subject of a written access record.

(b) Where the access granted under subsection (a) of this section involves another agency's classified information, that agency must concur before access to its information is granted.

SISC. 2.4. Reciprocal Acceptance of Access Eligibility Determinations. (a) Except when an agency has substantial information indicating that an employee may not satisfy the standards in section 3.1 of this order, background investigations and eligibility determinations conducted under this order shall be mutually and reciprocally accepted by all agencies.

(b) Except where there is substantial information indicating that the employee may not satisfy the standards in section 3.1 of this order, an employee with existing access to a special access program shall not be denied eligibility for access to another special access program at the same sensitivity level as determined personally by the agency head or deputy agency head, or have an existing access eligibility readjudicated, so long as the employee has a need for access to the information involved.

(c) This section shall not preclude agency heads from establishing additional, but not duplicative, investigative or adjudicative procedures for a special access program or for candidates for detail or assignment to their agencies, where such procedures are required in exceptional circumstances to protect the national security.

(d) Where temporary eligibility for access is granted under sections 2.3 or 3.3 of this order or where the determination of eligibility for access is conditional, the fact of such temporary or conditional access shall be conveyed to any other agency that considers affording the employee access to its information.

SISC. 2.5. Specific Access Requirements. (a) Employees who have been determined to be eligible for access to classified information shall be given access to classified information only where there is a need-to-know that classification.

(b) It is the responsibility of employees who are authorized holders of classified information to verify that a prospective recipient's eligibility for access has been granted by an authorized agency official and to ensure that a need-to-know exists prior to allowing such access, and to challenge requests for access that do not appear well-founded.

SISC. 2.6. Access by Non-United States Citizens. (a) Where there are compelling reasons in furtherance of an agency mission, immigrant alien and foreign national employees who possess a special expertise may, in the discretion of the agency, be granted limited access to classified information only for specific programs, projects, contracts, licenses, certificates, or grants for which there is a need for access. Such individuals shall not be eligible for access to any greater level of classified information than the United States Government has determined may be releasable to the country of which the subject is currently a citizen, and such limited access may be approved only if the prior 10 years of the subject's life can be appropriately investigated. If there are any doubts concerning granting access, additional investigative procedures shall be fully pursued.

(b) Exceptions to these requirements may be permitted only by the agency head or the senior agency official designated under section 6.1 of this order to further substantial national security interests.

PART 3—ACCESS ELIGIBILITY STANDARDS

SISC. 3.1. Standards. (a) No employee shall be deemed to be eligible for access to classified information merely by reason of Federal service or contracting, licensee, certificate holder, or grantee status, or as a matter of right or privilege, or as a result of any particular title, rank, position, or affiliation.

(b) Except as provided in sections 2.6 and 3.3 of this order, eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel or appropriate automated procedures. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.

(c) The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information.

(d) In determining eligibility for access under this order, agencies may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No inference concerning the standards in this section may be raised solely on the basis of the sexual orientation of the employee.

(e) No negative inference concerning the standards in this section may be raised solely on the basis of mental health counseling. Such counseling can be a positive factor in eligibility determinations. However, mental health counseling, where relevant to the adjudication of access to classified information, may justify further inquiry to determine whether the standards of subsection (b) of this section are satisfied, and mental health may be considered where it directly relates to those standards.

(f) Not later than 180 days after the effective date of this order, the Security Executive Agent shall develop a common set of adjudicative guidelines for determining eligibility for access to classified information, including access to special access programs.
Sect. 3.2. Basis for Eligibility Approval. (a) Eligibility determinations for access to classified information shall be based on information concerning the applicant or employee that is acquired through the investigation conducted pursuant to this order or otherwise available to security officials and shall be made part of the applicant’s or employee’s security record. Applicants or employees shall be required to provide relevant information pertaining to their background and character for use in investigating and adjudicating their eligibility for access.

(b) Not later than 180 days after the effective date of this order, the Security Executive Agent shall develop a common set of investigative standards for background investigations for access to classified information. These standards may vary for the various levels of access.

(c) Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to those set forth in this order and its implementing regulations to resolve issues that may arise during the course of a background investigation or reinvestigation.

Sect. 3.3. Special Circumstances. (a) In exceptional circumstances where official functions must be performed prior to the completion of the investigative and adjudicative processes, temporary eligibility for access to classified information may be granted to an employee while the initial investigation is underway. When such eligibility is granted, the initial investigation shall be expedited.

1. Temporary eligibility for access under this section shall include a justification, and the employee must be notified in writing that further access is expressly conditioned on the favorable completion of the investigation and issuance of an access eligibility approval. Access will be immediately terminated, along with any assignment requiring an access eligibility approval, if such approval is not granted.

2. Temporary eligibility for access may be granted only by security personnel authorized by the agency head to make access eligibility determinations and shall be based on minimum investigative standards developed by the Security Executive Agent not later than 180 days after the effective date of this order.

3. Temporary eligibility for access may be granted only to particular, identified categories of classified information necessary to perform the lawful and authorized functions that are the basis for the granting of temporary access.

(b) Nothing in subsection (a) shall be construed as altering the authority of an agency head to waive requirements for granting access to classified information pursuant to statutory authority.

(c) Where access has been terminated under section 2.1(b)(4) of this order and a new need for access arises, access eligibility up to the same level shall be reapproved without further investigation as to employees who were determined to be eligible based on a favorable adjudication of an investigation completed within the prior 5 years, provided they have remained employed by the same employer during the period in question, the employee certifies in writing that there has been no change in the relevant information provided by the employee for the last background investigation, and there is no information that would tend to indicate the employee may no longer satisfy the standards established by this order for access to classified information.

(d) Access eligibility shall be reapproved for individuals who were determined to be eligible based on a favorable adjudication of an investigation completed within the prior 5 years and who have been retired or otherwise separated from United States Government employment for not more than 2 years, provided there is no indication the individual may no longer satisfy the standards of this order, the individual certifies in writing that there has been no change in the relevant information provided by the employee for the last background investigation, and an appropriate record check reveals no unfavorable information.

Sect. 3.4. Reinvestigation Requirements. (a) Because circumstances and characteristics may change dramatically over time and thereby alter the eligibility of employees for continued access to classified information, reinvestigations shall be conducted with the same priority and care as initial investigations.

(b) Employees who are eligible for access to classified information shall be the subject of periodic reinvestigations and may also be reinvestigated if, at any time, there is reason to believe that they may no longer meet the standards for access established in this order.

(c) Not later than 180 days after the effective date of this order, the Security Executive Agent shall develop a common set of reinvestigative standards, including the frequency of reinvestigations.

Sect. 3.5. Continuous Evaluations. An individual who has been determined to be eligible for or who currently has access to classified information shall be subject to continuous evaluation under standards (including, but not limited to, the basis for that conclusion as determined by the Director of National Intelligence).

PART 4—INVESTIGATIONS FOR FOREIGN GOVERNMENTS

Sect. 4. Authority. Agencies that conduct background investigations, including the Federal Bureau of Investigation and the Department of State, are authorized to conduct personnel security investigations in the United States when requested by a foreign government as part of its own personnel security program and with the consent of the individual.

PART 5—REVIEW OF ACCESS DETERMINATIONS

Sect. 5.1. Determinations of Need for Access. A determination under section 2.1(b)(4) of this order that an employee does not have, or no longer has, a need for access is a discretionary determination and shall be conclusive.

Sect. 5.2. Review Proceedings for Denials or Revocations of Eligibility for Access. (a) Applicants and employees who are determined to not meet the standards for access to classified information established in section 3.1 of this order shall be:

1. provided as comprehensive and detailed a written explanation of the basis for that conclusion as the national security interests of the United States and other applicable law permit;

2. provided within 30 days, upon request and to the extent the documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (3 U.S.C. 552a), as applicable, any documents, records, and reports upon which a denial or revocation is based;

3. informed of their right to be represented by counsel or other representative at their own expense; to request any documents, records, and reports as described in section 5.2(a)(2) upon which a denial or revocation is based; and to request the entire investigative file, as permitted by the national security and other applicable law, which, if requested, shall be promptly provided prior to the time set for a written reply.

4. provided a reasonable opportunity to reply in writing to, and to request a review of, the determination;

5. provided written notice of and reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal;

6. provided an opportunity to appeal in writing to a high level panel, appointed by the agency head, which shall be comprised of at least three members, two of whom shall be selected from outside the security field. Decisions of the panel shall be in writing, and final except as provided in subsection (b) of this section; and

7. provided an opportunity to appear personally and to present relevant documents, materials, and information at some point in the process before an adjudicator or other authority, other than the investigating entity, as determined by the agency head. A written summary or recording of such appearance shall be made part of
the applicant’s or employee’s security record, unless such appearance occurs in the presence of the appeals panel described in subsection (a)(6) of this section.

(b) Nothing in this section shall prohibit an agency head from personally exercising the appeal authority in subsection (a)(6) of this section based upon recommendations from an appeals panel. In such case, the decision of the agency head shall be final.

(c) Agency heads shall promulgate regulations to implement this section and, at their sole discretion and as resources and national security considerations permit, may provide additional review proceedings beyond those required by subsection (a) of this section. This section does not require additional proceedings, however, and creates no procedural or substantive rights.

(d) When the head of an agency or principal deputy personally certifies that a procedure set forth in this section cannot be made available in a particular case without damaging the national security, the particular procedure shall not be made available. This certification shall be conclusive.

(e) This section shall not be deemed to limit or affect the responsibility and power of an agency head pursuant to any law or other Executive order to deny or terminate access to classified information in the interests of national security. The power and responsibility to deny or terminate access to classified information pursuant to any law or other Executive order may be exercised only where the agency head determines that the procedures prescribed in subsection (a) of this section cannot be invoked in a manner that is consistent with national security. This determination shall be conclusive.

(f) (1) This section shall not be deemed to limit or affect the responsibility and power of an agency head to make determinations of suitability for employment.

(2) Nothing in this section shall require that an agency provide the procedures prescribed in subsection (a) of this section to an applicant where a conditional offer of employment is withdrawn for reasons of suitability or any other reason other than denial of eligibility for access to classified information.

(3) A suitability determination shall not be used for the purpose of denying an applicant or employee the review proceedings of this section where there has been a denial or revocation of eligibility for access to classified information.

PART 6—IMPLEMENTATION

Sisc. 6.1. Agency Implementing Responsibilities. Heads of agencies that grant employees access to classified information shall: (a) designate a senior agency official to direct and administer the agency’s personnel security program established by this order. All such programs shall include active oversight and continuing security education and awareness programs to ensure effective implementation of this order; (b) cooperate, under the guidance of the Security Executive Agent, with other agencies to achieve practical, consistent, and effective adjudicative training and guidelines; and (c) conduct periodic evaluations of the agency’s implementation and administration of this order, including the implementation of section 1.3(a) of this order. Copies of each report shall be provided to the Security Executive Agent.

Sisc. 6.2. Employee Responsibilities. (a) Employees who are granted eligibility for access to classified information shall: (1) protect classified information in their custody from unauthorized disclosure; (2) report all contacts with persons, including foreign nationals, who seek in any way to obtain unauthorized access to classified information; (3) report all violations of security regulations to the appropriate security officials; and (4) comply with all other security requirements set forth in this order and its implementing regulations.

(b) Employees are encouraged and expected to report any information that raises doubts as to whether another employee’s continued eligibility for access to classified information is clearly consistent with the national security.

Sisc. 6.3. Security Executive Agent Responsibilities and Implementation. (a) With respect to actions taken by the Security Executive Agent pursuant to sections 1.3(c), 3.1(f), 3.2(b), 3.3(a)(2), and 3.4(c) of this order, the Director of National Intelligence shall serve as the final authority for implementation.

(b) Any guidelines, standards, or procedures developed by the Security Executive Agent pursuant to this order shall be consistent with those guidelines issued by the Federal Bureau of Investigation in March 1994 on Background Investigations Policy/Guidelines Regarding Sexual Orientation.

(c) In carrying out its responsibilities under this order, the Security Executive Agent shall consult where appropriate with the Overseas Security Executive Agent. In carrying out its responsibilities under section 1.3(c) of this order, the Security Executive Agent shall obtain the concurrence of the Director of the Office of Management and Budget.

Sisc. 6.4. Sanctions. Employees shall be subject to appropriate sanctions if they knowingly and willfully grant eligibility for, or allow access to, classified information in violation of this order or its implementing regulations. Sanctions may include reprimand, suspension without pay, removal, and other actions in accordance with applicable law and agency regulations.

PART 7—GENERAL PROVISIONS

Sisc. 7.1. Classified Information Procedures Act. Nothing in this order is intended to alter the procedures established under the Classified Information Procedures Act (18 U.S.C. App.).

Sisc. 7.2. General. (a) Information obtained by an agency under sections 1.2(e) or 1.3 of this order may not be disseminated outside the agency, except to: (1) the agency employing the employee who is the subject of the records or information; (2) the Department of Justice for law enforcement or counterintelligence purposes; or (3) any agency if such information is clearly relevant to the authorized responsibilities of such agency.

(b) The Attorney General, at the request of the head of an agency, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(c) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control, except that this order shall not diminish or otherwise affect the requirements of Executive Order No. 10865, as amended [set out above], or access by historical researchers and former presidential appointees under Executive Order No. 12989 (formerly set out above) or any successor order.

(d) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order shall not be affected.

(e) This Executive order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(f) This order is effective immediately.


By the authority vested in me as President by the Constitution and the laws of the United States of America, and as Commander in Chief of the National Defense, I hereby establish a system for reforming processes related to suitability for government employment, fitness for contractor employees, and eligibility for access to classified national security information.
America, and in order to ensure an efficient, practical, reciprocal, and aligned system for investigating and determining suitability for Government employment, contractor employee fitness, eligibility for access to classified information, while taking appropriate account of title III of Public Law 108–458, it is hereby ordered as follows:

PART 1—POLICY, APPLICABILITY, AND DEFINITIONS

SECTION 1.1. Policy. Executive branch policies and procedures relating to suitability, contractor employee fitness, eligibility for access to classified information, and, as appropriate, contractor employee fitness, shall be aligned by using consistent standards to the extent possible, provide for reciprocal recognition, and shall ensure cost-effective, timely, and efficient protection of the national interest, while providing fair treatment to those upon whom the Federal Government relies to conduct our Nation’s business and protect national security.

SEC. 1.2. Applicability. (a) This order applies to all covered individuals as defined in section 1.3(g), except that:

(i) the provisions regarding eligibility for physical access to federally controlled facilities and logical access to federally controlled information systems do not apply to individuals exempted in accordance with guidance pursuant to the Federal Information Security Management Act (title III of Public Law 107–347) and Homeland Security Presidential Directive 12; and

(ii) the qualification standards for enlistment, appointment, and induction into the Armed Forces pursuant to title 10, United States Code, are unaffected by this order.

(b) This order also applies to investigations and determinations of eligibility for access to classified information for employees of agencies working in or for the legislative or judicial branches when those investigations or determinations are conducted by the executive branch.

SEC. 1.3. Definitions. For the purpose of this order:

(a) “Adjudication” means the evaluation of pertinent data available information that is relevant and reliable, to determine whether a covered individual is:

(i) suitable for Government employment;

(ii) eligible for logical and physical access;

(iii) eligible for access to classified information;

(iv) eligible to hold a sensitive position; or

(v) fit to perform work for or on behalf of the Government as a contractor employee.

(b) “Agency” means any “Executive agency” as defined in section 105 of title 5, United States Code, including the “military departments,” as defined in section 102 of title 5, United States Code, and any other entity within the executive branch that has possession of classified information or has designated positions as sensitive, except such an entity headed by an officer who is not a covered individual.

(c) “Classified information” means information that has been determined pursuant to Executive Order 12938 of April 17, 1995, as amended, or a successor or predecessor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) to require protection against unauthorized disclosure.

(d) “Continuous evaluation” means reviewing the background of an individual who has been determined to be eligible for access to classified information (including additional or new checks of commercial databases, Government databases, and other information lawfully available to security officials) at any time during the period of eligibility to determine whether that individual continues to meet the requirements for eligibility for access to classified information.

(e) “Contractor” means an expert or consultant (not appointed under section 3109 of title 5, United States Code) to an agency; an industrial or commercial contractor, licensee, certificate holder, or grantee of any agency, including all subcontractors; a personal services contractor; or any other category of person who performs work for or on behalf of an agency (but not a Federal employee).

(f) “Contractor employee fitness” means fitness based on character and conduct for work for or on behalf of the Government as a contractor employee.

(g) “Covered individual” means a person who performs work for or on behalf of the executive branch, or who seeks to perform work for or on behalf of the executive branch, but does not include:

(i) the President or (except to the extent otherwise directed by the President) employees of the President under section 106 or 107 of title 3, United States Code;

(ii) the Vice President or (except to the extent otherwise directed by the Vice President) employees of the Vice President under section 108 or 109 of title 3, United States Code; or

(h) “End-to-end automation” means an executive branch-wide federated system that uses automation to manage and monitor cases and maintain relevant documentation of the application (but not an employment application), investigation, adjudication, and continuous evaluation processes.

(i) “Federally controlled facilities” and “federally controlled information systems” have the meanings prescribed in guidance pursuant to the Federal Information Security Management Act (title III of Public Law 107–347) and Homeland Security Presidential Directive 12.

(j) “Logical and physical access” means access other than occasional or intermittent access to federally controlled facilities or information systems.

(k) “Sensitive position” means any position so designated under Executive Order 10430 of April 27, 1963, as amended.

(l) “Suitability” has the meaning and coverage provided in 5 CFR Part 731.

PART 2—ALIGNMENT, RECIPROCITY, AND GOVERNANCE

SEC. 2.1. Aligned System. (a) Investigations and adjudications of covered individuals who require a determination of suitability, eligibility for logical and physical access, eligibility to hold a sensitive position, eligibility for access to classified information, and, as appropriate, contractor employee fitness, shall be aligned using consistent standards to the extent possible. Each successively higher level of investigation and adjudication shall build upon, but not duplicate, the ones below it.

(b) The aligned system shall employ updated and consistent standards and methods, enable innovations with enterprise information technology capabilities and end-to-end automation to the extent practicable, and ensure that relevant information maintained by agencies can be accessed and shared rapidly across the executive branch, while protecting national security, privacy-related information, ensuring resulting decisions are in the national interest, and providing the Federal Government with an effective workforce.

(c) Except as otherwise authorized by law, background investigations and adjudications shall be mutually and reciprocally accepted by all agencies. An agency may not establish additional investigative or adjudicative requirements (other than requirements for the conduct of a polygraph examination consistent with law, directive, or regulation) that exceed the requirements for suitability, contractor employee fitness, eligibility for logical or physical access, eligibility to hold a sensitive position, or eligibility for access to classified information without the approval of the Suitability Executive Agent or Security Executive Agent, as appropriate, and provided that approval to establish additional requirements shall be limited to circumstances where additional requirements are necessary to address significant needs unique to the agency involved or to protect national security.

SEC. 2.2. Establishment and Functions of Performance Accountability Council. (a) There is hereby established a
Suitability and Security Clearance Performance Accountability Council (Council).

(b) The Deputy Director for Management, Office of Management and Budget, shall serve as Chair of the Council and shall have authority, direction, and control over the Council’s functions. Membership on the Council shall include the Suitability Executive Agent and the Security Executive Agent. The Chair shall select a Vice Chair to act in the Chair’s absence. The Chair shall have authority to designate officials from additional agencies who shall serve as members of the Council. Council membership shall be limited to Federal Government employees and shall include suitability and security professionals.

(c) The Council shall be accountable to the President to achieve, consistent with this order, the goals of reform, and is responsible for driving implementation of the reform effort, ensuring accountability by agencies, ensuring the Suitability Executive Agent and the Security Executive Agent’s oversight and adjudicative processes, and sustaining reform momentum.

(d) The Council shall:

(i) ensure alignment of suitability, security, and, as appropriate, contractor employee fitness investigative and adjudicative processes;
(ii) hold agencies accountable for the implementation of suitability, security, and, as appropriate, contractor employee fitness processes and procedures;
(iii) establish requirements for enterprise information technology;
(iv) establish annual goals and progress metrics and prepare annual reports on results;
(v) ensure and oversee the development of tools and techniques for enhancing background investigations and the making of eligibility determinations;
(vi) arbitrate disparities in procedures between the Suitability Executive Agent and the Security Executive Agent;
(vii) ensure sharing of best practices; and
(viii) advise the Suitability Executive Agent and the Security Executive Agent on policies affecting the alignment of investigations and adjudications.

(e) The Chair may, to ensure the effective implementation of the policy set forth in section 1.1 of this order and to the extent consistent with law, assign, in whole or in part, to the head of any agency (solely or jointly) any function within the Council’s responsibility relating to alignment and improvement of investigations and determinations of suitability, contractor employee fitness, eligibility for logical and physical access, eligibility for access to classified information, or eligibility to hold a sensitive position.

SEC. 2.3. Establishment, Designation, and Functions of Executive Agents. (a) There is hereby established a Suitability Executive Agent and a Security Executive Agent.

(b) The Director of the Office of Personnel Management shall serve as the Suitability Executive Agent. As the Suitability Executive Agent, the Director of Personnel Management will continue to be responsible for developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of investigations and adjudications relating to determinations of suitability and eligibility for logical and physical access.

(c) The Director of National Intelligence shall serve as the Security Executive Agent. The Security Executive Agent:

(i) shall direct the oversight of investigations and determinations of eligibility for access to classified information or eligibility to hold a sensitive position made by any agency;
(ii) shall be responsible for developing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of investigations and adjudications relating to determinations of eligibility for access to classified information or eligibility to hold a sensitive position;
(iii) may issue guidelines and instructions to the heads of agencies to ensure appropriate uniformity, centralization, efficiency, effectiveness, and timeliness in processes relating to determinations by agencies of eligibility for access to classified information or eligibility to hold a sensitive position;
(iv) shall serve as the final authority to designate an agency or agencies to conduct investigations of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to classified information or eligibility to hold a sensitive position;
(v) shall serve as the final authority to designate an agency or agencies to determine eligibility for access to classified information in accordance with Executive Order 12968 of August 2, 1995;
(vi) shall ensure reciprocal recognition of eligibility for access to classified information among the agencies, including acting as the final authority to arbitrate and resolve disputes among the agencies involving the reciprocity of investigations and determinations of eligibility for access to classified information or eligibility to hold a sensitive position; and
(vii) may assign, in whole or in part, to the head of any agency (solely or jointly) any of the functions detailed in (i) through (vi), above, with the agency’s exercise of such assigned functions to be subject to the Security Executive Agent’s oversight and with such terms and conditions (including approval by the Security Executive Agent) as the Security Executive Agent determines appropriate.

(d) Nothing in this order shall be construed in a manner that would limit the authorities of the Director of the Office of Personnel Management or the Director of National Intelligence under law.

Succ. 2.4. Additional Functions. (a) The duties assigned to the Security Policy Board by Executive Order 12968 of August 2, 1995, to consider, coordinate, and recommend policy directives for executive branch security policies, procedures, and practices are reassigned to the Security Executive Agent.

(b) Heads of agencies shall:

(i) carry out any function assigned to the agency head by the Chair, and shall assist the Chair, the Council, the Suitability Executive Agent, and the Security Executive Agent in carrying out any function under sections 2.2 and 2.3 of this order;
(ii) implement any policy or procedure developed pursuant to this order;
(iii) to the extent permitted by law, make available to the Performance Accountability Council, the Suitability Executive Agent, or the Security Executive Agent such information as may be requested to implement this order;
(iv) ensure that all actions taken under this order take account of the counterintelligence interests of the United States, as appropriate; and
(v) ensure that actions taken under this order are consistent with the President’s constitutional authority to:

(A) conduct the foreign affairs of the United States;
(B) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive’s constitutional duties;
(C) recommend for congressional consideration such measures as the President may judge necessary or expedient; and
(D) supervise the unitary executive branch.

PART 3—MISCELLANEOUS

Succ. 3. General Provisions. (a) Executive Order 13381 of June 27, 2005, as amended, is revoked. Nothing in this order shall:

(i) supersede, impede, or otherwise affect:

(A) Executive Order 10450 of April 27, 1953, as amended;
(B) Executive Order 10877 of November 23, 1954, as amended;
(C) Executive Order 12333 of December 4, 1981, as amended;
(D) Executive Order 12829 of January 6, 1993, as amended; or

(E) Executive Order 12958 of April 17, 1995, as amended; or

(ii) diminish or otherwise affect the denial and revocation procedures provided to individuals covered by Executive Order 10865 of February 28, 1963, as amended.

(b) [Amended Ex. Ord. No. 12968, set out above.]

(c) Nothing in this order shall supersede, impede, or otherwise affect the remainder of Executive Order 12968 of August 2, 1995, as amended.

(d) [Amended Ex. Ord. No. 12171, set out as a note under section 7103 of Title 5, Government Organization and Employees.]

(e) Nothing in this order shall be construed to impair or otherwise affect the

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(f) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(g) Existing delegations of authority made pursuant to Executive Order 13381 of June 27, 2005, as amended, to any agency relating to granting eligibility for access to classified information and conducting investigations, shall 13 [sic] remain in effect, subject to the exercise of authorities pursuant to this order to revise or revoke such delegation.

(h) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order shall not be affected.

(i) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13526. CLASSIFIED NATIONAL SECURITY INFORMATION

Ex. Ord. No. 13526, Dec. 29, 2009, 75 F.R. 707, 1013, provided:

This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism. Our democratic principles require that the American people be informed of the activities of the Executive Branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers or employees, or any other person.

NOW, THEREFORE, I, BARACK OBAMA, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

PART 1—ORIGINAL CLASSIFICATION

SECTION 1.1. Classification Standards. (a) Information may be originally classified under the terms of this order only if all of the following conditions are met:

1. The information is owned by, produced by or for, or is under the control of the United States Government;

2. The information falls within one or more of the categories of information listed in section 1.4 of this order; and

3. The information is classified at one of the following three levels:

(a) The authority to classify information originally may be exercised only by:

(1) the President and the Vice President;

(2) agency heads and officials designated by the President; and

(3) United States Government officials delegated this authority pursuant to paragraph (c) of this section.

(b) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level.

(c) Delegation of original classification authority.

(1) Delegations of original classification authority shall be limited to the minimum required to administer this order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.

(2) "Top Secret" original classification authority may be delegated only by the President, the Vice President, an agency head or official designated pursuant to paragraph (a)(2) of this section.

(3) "Secret" or "Confidential" original classification authority may be delegated only by the President, the Vice President, an agency head or official designated pursuant to paragraph (a)(2) of this section.

(4) Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this order. Each delegation shall identify the official by name or position.

(5) Delegations of original classification authority shall be reported or made available by name or position.

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to the Director of the Information Security Oversight Office.

(d) All original classification authorities must re-
classify information in proper classification (including the
avoidance of over-classification) and declassify as provided
in this order and its implementing directives at least once
a calendar year. Such training must in-
corporate instruction on the proper safeguarding of classi-
fied information and on the sanctions in section 5.5 of
this order that may be brought against an individual
who fails to classify information properly or protect
classified information from unauthorized disclosure.

Original classification authorities who do not receive
such mandatory training at least once within a cal-
endar year shall have their classification authority sus-
pended by the agency head or the senior agency official
designated under section 5.4(d) of this order until such
training has taken place. A waiver may be granted by
the agency head, the deputy agency head, or the senior
agency official if an individual is unable to receive such
training due to unavoidable circumstances. Whenever a
waiver is granted, the individual shall receive such
training as soon as practicable.

(e) Exceptional cases. When an employee, government
contractor, licensee, certificate holder, or grantee of
an agency who does not have original classification au-
thority originates information believed by that person
to require classification, the information shall be pro-
tected in a manner consistent with this order and its
implementing directives. The information shall be
transmitted promptly as provided under this order or it
may be transmitted directly to the agency that has ap-
propriate subject matter interest and classification au-
thority with respect to this information. That agency
shall decide within 30 days whether to classify this in-
formation.

S 1.5. Duration of Classification. Information shall
not be considered for classification unless it is unau-
thorized disclosure could reasonably be expected to cause
identifiable or describable damage to the national secu-
rity in accordance with section 1.2 of this order, and it
certain to one or more of the following:

(a) military plans, weapons systems, or operations;

(b) foreign government information;

(c) intelligence activities (including covert action),
intelligence sources or methods, or cryptography;

(d) foreign relations or foreign activities of the
United States, including confidential sources;

(e) scientific, technological, or economic matters re-
lated to the national security;

(f) United States Government programs for safe-
eguarding nuclear materials or facilities;

(g) vulnerabilities or capabilities of systems, installa-
tion infrastructures, or processes or protective
services relating to the national security; or

(h) the de-
velopment, production, or use of weapons of mass
destruction.

S 1.6. Identification and Markings. (a) At the time of
original classification, the following shall be indicated
one of the following:

(1) one of the three classification levels defined in
section 1.2 of this order;

(2) the identity, by name and position, or by personal
identifier, of the original classification authority;

(3) the agency and office of origin, if not otherwise
evident;

(4) declassification instructions, which shall indicate
one of the following:

(A) the date or event for declassification, as pre-
scribed in section 1.6(a);

(B) the date that is 10 years from the date of origi-
nal classification, as prescribed in section 1.5(b);

(C) the date that is up to 25 years from the date of
original classification, as prescribed in section 1.6(b);

or

(D) in the case of information that should clearly and
demonstrably be expected to reveal the identity of a
confidential human source or a human intel-
ligence source or key design concepts of weapons of
mass destruction, the marking prescribed in imple-
menting directives issued pursuant to this order; and

(5) a concise reason for classification that, at a mini-
num, cites the applicable classification categories in
section 1.4 of this order.

(b) Specific information required in paragraph (a) of
this section may be excluded if it would reveal addi-
tional classified information.

(c) With respect to each classified document, the
agency originating the document shall, by marking or
other means, indicate which portions are classified,
with the applicable classification level, and which por-
tions are unclassified. In accordance with standards
prescribed in directives issued under this order, the Di-
rector of the Information Security Oversight Office
may grant and revoke temporary waivers of this re-
quirement. The Director shall revoke any waiver upon
a finding of abuse.

(d) Markings or other indicia implementing the pro-
visions of this order, including abbreviations and re-
quirements to safeguard classified working papers,
shall conform to the standards prescribed in imple-
menting directives issued pursuant to this order.

(e) Foreign government information shall retain its
original classification markings or shall be assigned a
U.S. classification that provides a degree of protection
at least equivalent to that required by the entity that
furnished the information. Foreign government infor-
mation retaining its original classification markings
may not be assigned a U.S. classification marking pro-
vided that the responsible agency determines that the
foreign government markings are adequate to meet the
purposes served by U.S. classification markings.

(f) Information assigned a level of classification under
this or predecessor orders shall be considered as
classified at that level of classification despite the
omission of other required markings. Whenever such
information is used in the derivative classification
process or is reviewed for possible declassification,
holders of such information shall coordinate with an
appropriate classification authority for the application of
omitted markings.

(g) The classification authority shall, whenever prac-
ticable, use a classified addendum whenever classified
information constitutes a small portion of an otherwise
unclassified document or prepare a product to allow for
dissemination at the lowest level of classification possible or in unclassified form.

(h) Prior to public release, all declassified records shall be appropriately marked to reflect their declass-

ification.

SIC 1.7. Classification Prohibitions and Limitations. (a) In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to:

(1) conceal violations of law, inefficiency, or adminis-

trative error;

(2) prevent embarrassment to a person, organization,
or agency;

(3) restrain competition; or

(4) prevent or delay the release of information that
does not require protection in the interest of the na-
tional security.

(b) Basic scientific research information not clearly related to the national security shall not be classified.

(c) Information may not be reclassified after declass-
sification and release to the public under proper au-

thority unless:

(1) the reclassification is personally approved in writ-
ing by the agency head based on a document-by-docu-

ment determination by the agency that reclassification is required to prevent significant and demonstrable damage to the national security;

(2) the information may be reasonably recovered

without bringing undue attention to the information;

(3) the reclassification action is reported promptly to

the Assistant to the President for National Security
Affairs (National Security Advisor) and the Director
of the Information Security Oversight Office; and

(4) for documents in the physical and legal custody
of the National Archives and Records Administration (Na-
tional Archives) that have been available for public
use, the agency head has, after making the determina-
tions required by this paragraph, notified the Archivist
of the United States (Archivist), who shall suspend pub-
lic access pending approval of the reclassification ac-
tion by the Director of the Information Security Over-
sight Office. Any such decision by the Director may be
appealed by the agency head to the President through the National Security Advisor. Public access shall re-

main suspended pending a prompt decision on the ap-

peal.

(d) Information that has not previously been disclo-
sed to the public under proper authority may be
classified or reclassified after an agency has received a
request for it under the Freedom of Information Act (5
U.S.C. 552), the Presidential Records Act, 44 U.S.C.
2204(c)(1), the Privacy Act of 1974 (5 U.S.C. 552a), or
the mandatory review provisions of section 3.5 of this order
only if such classification meets the requirements of
this order and is accomplished on a document-by-docu-
ment basis with the personal participation or under the
direction of the agency head, the deputy agency head,
or the senior agency official designated under section
5.4 of this order. The requirements in this paragraph
also apply to those situations in which information has
been declassified in accordance with a specific date or
event determined by an original classification author-
ity in accordance with section 1.5 of this order.

(e) Compilations of items of information that are in-
dividually unclassified may be classified if the com-
piled information reveals an additional association or
relationship that:

(1) meets the standards for classification under this
order; and

(2) is not otherwise revealed in the individual items
of information.

SIC 1.8. Classification Challenges. (a) Authorized hold-

ers of information who, in good faith, believe that its
classification status is improper are encouraged and ex-
pected to challenge the classification status of the in-
formation in accordance with agency procedures estab-
lished under paragraph (b) of this section.

(b) In accordance with impaired security directives is-

sued pursuant to this order, an agency head or senior
agency official shall establish procedures under which
authorized holders of information, including authorized
holders outside the classifying agency, are encouraged
and expected to challenge the classification of informa-
tion that they believe is improperly classified or un-
classified. These procedures shall ensure that:

(1) individuals are not subject to retribution for

bringing such actions;

(2) an opportunity is provided for review by an impar-

tial official or panel; and

(3) individuals are advised of their right to appeal

agency decisions to the Interagency Security Classi-
fication Appeals Panel (Panel) established by section
5.3 of this order.

(c) Documents required to be submitted for pre-
publication review or other administrative process pur-
suant to an approved nondisclosure agreement are not
covered by this section.

SIC 1.9. Fundamental Classification Guidance Review.

(a) Agency heads shall complete on a periodic basis a
comprehensive review of the agency’s classification
guidance, particularly classification guides, to ensure
the guidance reflects current circumstances and to
determine if reclassification information no longer requires
protection and can be declassified. The initial funda-
mental classification guidance review shall be com-
pleted within 2 years of the effective date of this order.

(b) The classification guidance review shall include
an evaluation of classified information to determine if it
meets the standards for classification under section
1.4 of this order, taking into account an up-to-date as-
essment of likely damage as described under section
1.2 of this order.

(c) The classification guidance review shall include
original classification authorities and agency subject
matter experts to ensure a broad range of perspectives.

(d) Agency heads shall provide a report summarizing
the results of the classification guidance review to the
Director of the Information Security Oversight Office
and shall release an unclassified version of this report
to the public.

PART 2—DERIVATIVE CLASSIFICATION

SIC 2.1. Use of Derivative Classification. (a) Persons who reproduce, extract, or summarize classified
information, or who apply classification markings derived
from source material or as directed by a classification
guide, need not possess original classification author-

ity.

(b) Persons who apply derivative classification mark-

ings shall:

(1) be identified by name and position, or by personal

identifier, in a manner that is immediately apparent
for each derivative classification action;

(2) observe and respect original classification deci-

sions; and

(3) carry forward to any newly created documents the
pertinent classification markings. For information de-

rivatively classified based on multiple sources, the der-

ivative classifier shall carry forward:

(A) the date or event for declassification that corre-

sponds to the longest period of classification among
the sources, or the marking established pursuant to
section 1.6(a)(4)(D) of this order; and

(B) a listing of the source materials.

(c) Derivative classifiers shall, whenever practicable,
use a classified addendum whenever classified informa-

tion constitutes a small portion of an otherwise unclas-
sified document or prepare a product to allow for dis-

semination at the lowest level of classification possible
or in unclassified form.

(d) Persons who apply derivative classification mark-

ings shall receive training in the proper application of
the derivative classification principles of the order,

with an emphasis on avoiding over-classification, at
least once every 2 years. Derivative classifiers who do
not receive such training at least once every 2 years
shall have their authority to apply derivative classi-

cification markings suspended until they have received
such training. A waiver may be granted by the agency
head, the deputy agency head, or the senior agency offi-
cifal if an individual is unable to receive such training due to unavoidable circumstances. Whenever a waiver is granted, the individual shall receive such training as soon as practicable.

**SISC. 2.2. Classification Guides.** (a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification. These guides shall conform to standards contained in directives issued under this order.

(b) Each guide shall be approved personally and in writing by an official who:

1. has program or supervisory responsibility over the information or is the senior agency official; and

2. is authorized to classify information originally at the highest level of classification prescribed in the guide.

(c) Agencies shall establish procedures to ensure that classification guides are reviewed and updated as provided in directives issued under this order.

(d) Agencies shall incorporate original classification decisions into classification guides on a timely basis and in accordance with directives issued under this order.

(e) Agencies may incorporate exemptions from automatic declassification approved pursuant to section 3.3(g) of this order into classification guides, provided that the Panel is notified of the intent to take such action for specific information in advance of approval and the information remains in active use.

(f) The duration of classification of a document classified by a derivative classifier using a classification guide shall not exceed 25 years from the date of the origin of the document, except for:

1. information that should clearly and demonstrably be expected to reveal the identity of a confidential human source or a human intelligence source or key design concepts of weapons of mass destruction; and

2. specific information incorporated into classification guides in accordance with section 2.2(e) of this order.

**PART 3—DECLASSIFICATION AND DOWNGRADING**

**SISC. 3.1. Authority for Declassification.** (a) Information shall be declassified as soon as it no longer meets the standards for classification under this order.

(b) Information shall be declassified or downgraded by:

1. the official who authorized the original classification, if that official is still serving in the same position and has original classification authority;

2. the originator’s current successor in function, if that individual has original classification authority;

3. a supervisory official of either the originator or his or her successor in function, if the supervisory official has original classification authority; or

4. officials delegated classification authority in writing by the agency head or the senior agency official of the originating agency.

(c) The Director of National Intelligence (or, if delegated by the Director of National Intelligence, the Principal Deputy Director of National Intelligence) may, with respect to the Intelligence Community, after consultation with the head of the originating Intelligence Community element or department, declassify, downgrade, or direct the declassification or downgrading of information or intelligence relating to intelligence sources, methods, or activities.

(d) It is presumed that information that continues to meet the classification requirements under this order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure. This provision does not:

1. amplify or modify the substantive criteria or procedures for classification; or

2. create any substantive or procedural rights subject to judicial review.

(e) If the Director of the Information Security Oversight Office determines that information is classified in violation of this order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the President through the National Security Advisor. The information shall remain classified pending a prompt decision on the appeal.

(f) The provisions of this section shall also apply to agencies that, under the terms of this order, do not have original classification authority, but had such authority under predecessor orders.

(g) No information may be excluded from declassification under section 3.3 of this order based solely on the type of document or record in which it is found. Rather, the classified information must be considered on the basis of its content.

(h) Classified nonrecord materials, including artifacts, shall be declassified as soon as they no longer meet the standards for classification under this order.

(i) When making decisions under sections 3.3, 3.4, and 3.5 of this order, agencies shall consider the final decisions of the Panel.

**SISC. 3.2. Transferred Records.** (a) In the case of classified records transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this order.

(b) In the case of classified records that are not officially transferred as described in paragraph (a) of this section, but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such records shall be deemed to be the originating agency for purposes of this order. Such records may be declassified or downgraded by the agency in possession of the records after consultation with any other agency that has an interest in the subject matter of the records.

(c) Classified records accessioned into the National Archives shall be declassified or downgraded by the Archivist in accordance with this order, the directives issued pursuant to this order, agency declassification guides, and any existing procedural agreement between the Archivist and the relevant agency head.

(d) The originating agency shall take all reasonable steps to declassify classified information contained in records determined to have permanent historical value before they are accessioned into the National Archives. However, the Archivist may require that classified records be accessioned into the National Archives in order to comply with the provisions of the Federal Records Act. This provision does not apply to records transferred to the Archivist pursuant to section 2203 of title 44, United States Code, or records for which the National Archives serves as the custodian of the records of an agency or organization that has gone out of existence.

(e) To the extent practicable, agencies shall adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified pursuant to the provisions for automatic declassification in section 3.3 of this order.

**SISC. 3.3 Automatic Declassification.** (a) Subject to paragraphs (b)–(d) and (g)–(j) of this section, all classified records that (1) are more than 25 years old and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. All classified records shall be automatically declassified on December 31 of the year that is 25 years from the date of origin, except as provided in paragraphs (b)–(d) and (g)–(j) of this section. If the date of origin of an individual record cannot be readily determined, the date of original classification shall be used instead.
(b) An agency head may exempt from automatic declassification under paragraph (a) of this section specific information, the release of which should clearly and demonstrably be expected to:

(1) reveal the identity of a confidential human source, a human intelligence source, a relationship with an intelligence or security service of a foreign government or international organization, or a nonhuman intelligence source; or impair the effectiveness of an intelligence method currently in use, available for use, or under development, that would assist in the development, production, or use of weapons of mass destruction;

(2) reveal information that would impair U.S. cryptologic systems or activities;

(3) reveal information that would impair the application of state-of-the-art technology within a U.S. weapons system;

(4) reveal formally named or numbered U.S. military war plans that remain in effect, or reveal operational or tactical elements of prior plans that are contained in such active plans;

(5) reveal information, including foreign government information, that would cause serious harm to relations between the United States and a foreign government, or to ongoing diplomatic activities of the United States;

(6) reveal information that would impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, or infrastructures relating to the national security;

(7) violate a statute, treaty, or international agreement that does not permit the automatic or unilateral declassification of information contained in records at 25 years.

(c) (1) An agency head shall notify the Panel of any specific file series of records for which a review or assessment has determined that the information within that file series almost invariably falls within one or more of the exemption categories listed in paragraph (b) of this section and that the agency proposes to exempt from automatic declassification at 25 years.

(2) The notification shall include:

(A) a description of the file series;

(B) an explanation of why the information within the file series is almost invariably exempt from automatic declassification and why the information must remain classified for a longer period of time; and

(C) except when the information within the file series is formally named or numbered and in that case the identity of the confidential human source or a human intelligence source or key design concepts of weapons of mass destruction, a specific date or event for declassification of the information, not to exceed December 31 of the year that is 50 years from the date of origin of the records.

(3) The Panel may direct the agency not to exempt a designated file series or to declassify the information contained in that series at an earlier date than recommended. The agency head may appeal such a decision to the President through the National Security Advisor.

(4) File series exemptions approved by the President prior to December 31, 2008, shall remain valid without any additional agency action pending Panel review by the later of December 31, 2018, or December 31 of the year that is 10 years from the date of previous approval.

(5) The following provisions shall apply to the onset of automatic declassification:

(1) Classified records within an integral file block, as defined in this order, that are otherwise subject to automatic declassification under this section shall not be automatically declassified until December 31 of the year that is 25 years from the date of the most recent record within the file block.

(2) After consultation with the Director of the National Declassification Center (the Center) established by section 3.7 of this order and before the records are subject to automatic declassification, an agency head or senior agency official may delay automatic declassification for up to five additional years for classified information contained in media that make a review for possible declassification exemptions more difficult or costly.

(3) Other than for records that are properly exempted from automatic declassification, records containing classified information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies with respect to the classified information and could reasonably be expected to fall under one or more of the exemptions in paragraph (b) of this section shall be identified prior to the onset of automatic declassification for later referral to those agencies.

(A) The information of concern shall be referred by the Center established by section 3.7 of this order, or by the centralized facilities referred to in section 3.7(e) of this order, in a prioritized and scheduled manner determined by the Center.

(B) If an agency fails to provide a final determination on a referral made by the Center within 1 year of referral, or by the centralized facilities referred to in section 3.7(e) of this order within 3 years of referral, its equities in the referred records shall be automatically declassified.

(C) If any disagreement arises between affected agencies and the Center regarding the referral review period, the Director of the Information Security Oversight Office shall determine the appropriate period of review of referred records.

(D) Referrals identified prior to the establishment of the Center by section 3.7 of this order shall be subject to automatic declassification only in accordance with subparagraphs (d)(3)(A)–(C) of this section.

(4) After consultation with the Director of the Information Security Oversight Office, an agency head may delay automatic declassification for up to 3 years from the date of discovery of classified records that were inadvertently not reviewed prior to the effective date of automatic declassification.

(e) Information exempted from automatic declassification under this section shall remain subject to the mandatory and systematic declassification review provisions of this order.

(f) The Secretary of State shall determine when the United States should commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information contained in records affected by this section for a period longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that must otherwise remain classified beyond 25 years under this section.

(g) The Secretary of Energy shall determine when information concerning foreign nuclear programs that was removed from the Restricted Data category in order to carry out provisions of the National Security Act of 1947, as amended, may be declassified. Unless otherwise determined, such information shall be declassified when comparable information concerning the United States nuclear program is declassified.

(h) Not later than 3 years from the effective date of this order, all records exempted from automatic declassification under paragraphs (b) and (c) of this section shall be automatically declassified on December 31 of a year that is no more than 50 years from the date of origin, subject to the following:

(1) Records that contain information the release of which should clearly and demonstrably be expected to reveal the following are exempt from automatic declassification at 50 years:

(A) the identity of a confidential human source or a human intelligence source; or
(B) key design concepts of weapons of mass destruction.

(2) In extraordinary cases, agency heads may, within 5 years of the onset of automatic declassification, propose to exempt additional specific information from declassification at 50 years.

(3) Records exempted from automatic declassification under this paragraph shall be automatically declassified on December 31 of a year that is no more than 75 years from the date of origin unless an agency head, within 5 years of that date, proposes to exempt specific information from declassification at 75 years and the proposal is formally approved by the Panel.

(i) Specific records exempted from automatic declassification prior to the establishment of the Center described in section 3.7 of this order shall be subject to the provisions of paragraph (h) of this section in a scheduled and prioritized manner determined by the Center.

(ii) At least 1 year before information is subject to automatic declassification under this section, an agency head or senior agency official shall notify the Director of the Information Security Oversight Office, serving as Executive Secretary of the Panel, of any specific information that the agency proposes to exempt from automatic declassification under paragraphs (b) and (h) of this section.

(1) The notification shall include:

(A) a detailed description of the information, either by reference to information in specific records or in the form of a declassification guide;

(B) an explanation of why the information should be exempt from automatic declassification and must remain classified for a longer period of time; and

(C) a specific date or a specific and independently verifiable event for automatic declassification of specific records that contain the information proposed for exemption.

(2) The Panel may direct the agency not to exempt the information or to declassify it at an earlier date than recommended. An agency head may appeal such a decision to the President through the National Security Advisor. The information will remain classified while such an appeal is pending.

(k) For information in a file series of records determined not to have permanent historical value, the duration of classification beyond 25 years shall be the same as the disposition (destruction) date of those records in each Agency Records Control Schedule or Records Schedule, although the duration of classification shall be extended and information retained for business reasons beyond the scheduled disposition date.

Sic. 3.5 Systematic Declassification Review.

(a) Each agency that has originated classified information under this order or its predecessors shall establish and conduct a program for systematic declassification review for records of permanent historical value exempted from automatic declassification under section 3.3 of this order. Agencies shall prioritize their review of such records in accordance with priorities established by the Center.

(b) The Archivist shall conduct a systematic declassification review program for classified records:

(1) accessioned into the National Archives;
(2) transferred to the Archivist pursuant to 44 U.S.C. 2203; and
(3) for which the National Archives serves as the custodian for an agency or organization that has gone out of existence.

Sic. 3.5. Mandatory Declassification Review.

(a) Except as provided in paragraph (b) of this section, all information classified under this order or predecessor orders shall be subject to a review for declassification by the originating agency if:

(1) the request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;

(2) the document or material containing the information responsive to the request is not contained within an operational file exempted from search and review, publication, and disclosure under 5 U.S.C. 552 in accordance with law; and

(3) the information is not the subject of pending litigation.

(b) Information originated by the incumbent President or the incumbent Vice President; the incumbent President’s White House Staff; committees, commissions, or boards appointed by the incumbent President; or other entities that are made by a person other than an individual as that term is defined by 5 U.S.C. 552a(a)(2), or by a foreign government entity or any representative thereof.

Sic. 3.6. Processing Requests and Reviews. Notwithstanding section 4.1(i) of this order, in response to a request for information under the Freedom of Information Act, the Presidential Records Act, the Privacy Act of 1974, or the mandatory review provisions of this order:

(a) An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors.

(b) When an agency receives any request for documents in its custody that contain classified information that originated with other agencies or the disclo-
sure of which would affect the interests or activities of other agencies with respect to the classified information, or identifies such documents in the process of implementing sections 3.3 or 3.4 of this order, it shall refer copies of any request and the pertinent documents to the originating agency for processing and may, after consultation with the originating agency, inform any recipients of the referral unless such association is itself classified under this order or its predecessors. In cases in which the originating agency determines in writing that a response under paragraph (a) of this section is required, the referring agency shall respond to the requester in accordance with that paragraph.

(c) Agencies may extend the classification of information in records determined not to have permanent historical value or nonrecord materials, including artifacts, beyond the time frames established in sections 1.5(b) and 2.2(f) of this order, provided:

(1) the specific information has been approved pursuant to section 3.3(j) of this order for exemption from automatic declassification; and

(2) the extension does not exceed the date established in section 3.3(j) of this order.

SIC. 3.7. National Declassification Center. (a) There is established within the National Archives a National Declassification Center to streamline declassification processes, facilitate quality-assurance measures, and implement standardized training regarding the declassification of records determined to have permanent historical value. There shall be a Director of the Center who shall be appointed or removed by the Archivist in consultation with the Secretaries of State, Defense, Energy, and Homeland Security, the Attorney General, and the Director of National Intelligence.

(b) Under the administration of the Director, the Center shall coordinate:

(1) timely and appropriate processing of referrals in accordance with section 3.3(d)(3) of this order for accessioned Federal records and transferred presidential records;

(2) general interagency declassification activities necessary to fulfill the requirements of sections 3.3 and 3.4 of this order;

(3) the exchange among agencies of detailed declassification guidance to enable the referral of records in accordance with section 3.3(d)(3) of this order;

(4) the development of effective, transparent, and standard declassification work processes, training, and quality assurance measures;

(5) the development of solutions to declassification challenges posed by electronic records, special media, and emerging technologies;

(6) the linkage and effective utilization of existing agency information systems, the use of new technologies to document and make public declassification review decisions and support declassification activities under the purview of the Center; and

storage and related services, on a reimbursable basis, for Federal records containing classified national security information.

(c) Agency heads shall fully cooperate with the Archivist in the activities of the Center and shall:

(1) provide the Director with adequate and current declassification guidance to enable the referral of records in accordance with section 3.3(d)(3) of this order; and

(2) upon request of the Archivist, assign agency personnel to the Center who shall be delegated authority by the agency head to review and exempt or declassify information originated by their agency contained in records accessioned into the National Archives, after consultation with subject-matter experts as necessary.

(d) The Archivist, in consultation with representatives of the participants in the Center and after input from the general public, shall develop priorities for declassification activities under the purview of the Center that take into account the degree of researcher interest in the information and the likelihood of researcher interest in the information.

(e) Agency heads may establish such centralized facilities and internal operations to conduct internal declassification reviews as appropriate to achieve optimized records management and declassification business processes. Once established, all referral processing of accessioned records shall take place at the Center, and such agency facilities and operations shall be coordinated with the Center to ensure the maximum degree of consistency in policies and procedures that relate to records determined to have permanent historical value.

(f) Agency heads may exempt from automatic declassification or continue the classification of their own originally classified information under section 3.3(a) of this order except that in the case of the Director of National Intelligence, the Director shall also retain such authority with respect to the Intelligence Community.

(g) The Archivist shall, in consultation with the Secretaries of State, Defense, Energy, and Homeland Security, the Attorney General, the Director of National Intelligence, the Director of the Central Intelligence Agency, and the Director of the Information Security Oversight Office, provide the National Security Advisor with a detailed concept of operations for the Center and a proposed implementing directive under section 5.1 of this order that reflects the coordinated views of the aforementioned agencies.

PART 4—SAFEGUARDING


(a) A person may have access to classified information provided that:

(1) a favorable determination of eligibility for access has been made by an agency head or the agency head’s designee;

(2) the person has signed an approved nondisclosure agreement; and

(3) the person has a need-to-know the information.

(b) Every person who has met the standards for access to classified information in paragraph (a) of this section shall receive contemporaneous training on the proper safeguarding of classified information and on the criminal, civil, and administrative sanctions that may be imposed on an individual who fails to protect classified information from unauthorized disclosure.

(c) An official or employee leaving agency service may not remove classified information from the agency’s control or direct that information be declassified in order to remove it from agency control.

(d) Classified information may not be removed from official premises without proper authorization.

(e) Persons authorized to disseminate classified information outside the executive branch shall ensure the protection of the information in a manner equivalent to that provided within the executive branch.

(f) Consistent with law, executive orders, directives, and regulations, an agency head or senior agency official or, with respect to the Intelligence Community, the Director of National Intelligence, shall establish uniform procedures to ensure that automated information systems, including networks and telecommunications systems, that collect, create, communicate, compute, disseminate, process, or store classified information:

(1) prevent access by unauthorized persons;

(2) ensure the integrity of the information; and

(3) to the maximum extent practicable, use:

(A) common information technology standards, protocols, and interfaces that maximize the availability of, and access to, the information in a form and manner that facilitates its authorized use; and

(B) standardized electronic formats to maximize the accessibility of information to persons who meet the criteria set forth in section 4.1(a) of this order.

(g) Consistent with law, executive orders, directives, and regulations, each agency head or senior agency official, or with respect to the Intelligence Community, the Director of National Intelligence, shall establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed under conditions that provide adequate protection and prevent access by unauthorized persons.

(h) Consistent with directives issued pursuant to this order, an agency shall safeguard foreign government
information under standards that provide a degree of protection at least equivalent to that required by the government or international organization of governments that furnished the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to U.S. ‘Confidential’ information, including modified handling, transmission and allowing access to individuals with a need-to-know who have not otherwise been cleared for access to classified information or executed an approved nondisclosure agreement.

(i)(1) Classified information originating in one agency may be disseminated to another agency or U.S. entity by any agency to which it has been made available without the consent of the originating agency, as long as the criteria for access under section 4.1(a) of this order are met, unless the originating agency has determined that prior authorization is required for such dissemination and has marked or indicated such requirement on the medium containing the classified information in accordance with implementing directives issued pursuant to this order.

(ii) Special access programs shall be subject to the oversight program established under section 5.4(d) of this order. In addition, the Director of the Information Security Oversight Office shall be afforded access to these programs, in accordance with the security requirements of each program, in order to perform the functions assigned to the Information Security Oversight Office under this order. An agency head may limit access to a special access program to the Director of the Information Security Oversight Office or, for special access programs that are extraordinarily sensitive and vulnerable, to the Director only.

(j) Nothing in this order shall supersede any requirement made by or under 10 U.S.C. 119.

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Sic. 4.3. Special Access Programs

(a) The requirement in section 4.1(a)(3) of this order that access to classified information may be granted only to individuals who have a need-to-know the information may be waived for persons who:

(1) are engaged in historical research projects;

(2) previously have occupied senior policy-making positions to which they were appointed or designated by the President or the Vice President; or

(3) served as President or Vice President.

(b) Waivers under this section may be granted only if the agency head or senior agency official of the originating agency:

(1) determines in writing that access is consistent with the interest of the national security;

(2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order; and

(c) Nothing in this order shall supersede any requirement made by or under 10 U.S.C. 119.

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Sic. 4.3. Special Access Programs

(a) The requirement in section 4.1(a)(3) of this order that access to classified information may be granted only to individuals who have a need-to-know the information may be waived for persons who:

(1) are engaged in historical research projects;

(2) previously have occupied senior policy-making positions to which they were appointed or designated by the President or the Vice President; or

(3) served as President or Vice President.

(b) Waivers under this section may be granted only if the agency head or senior agency official of the originating agency:

(1) determines in writing that access is consistent with the interest of the national security;

(2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order; and

(c) Nothing in this order shall supersede any requirement made by or under 10 U.S.C. 119.
limits the access granted to former Presidential appointees or designees and Vice Presidential appointees or designees to items that the person originated, reviewed, signed, or received while serving as a Presidential or Vice Presidential appointee or designee.

PART 5—IMPLEMENTATION AND REVIEW

5.1 Program Direction. (a) The Director of the Information Security Oversight Office, under the direction of the Archivist and in consultation with the National Security Advisor, shall issue such directives as are necessary to implement this order. These directives shall be binding on the agencies. Directives issued by the Director of the Information Security Oversight Office shall establish standards for:

(1) classification, declassification, and marking principles;
(2) safeguarding classified information, which shall pertain to the handling, storage, distribution, transmission, and destruction of and accounting for classified information;
(3) agency security education and training programs;
(4) agency self-inspection programs; and
(5) classification and declassification guides.

(b) The Archivist shall delegate the implementation and monitoring functions of this program to the Director of the Information Security Oversight Office.

(c) The Director of National Intelligence, after consultation with the heads of affected agencies and the Director of the Information Security Oversight Office, may issue directives to implement this order with respect to the protection of intelligence sources, methods, and activities. Such directives shall be consistent with this order and directives issued under paragraph (a) of this section.

5.2 Information Security Oversight Office. (a) There is established within the National Archives an Information Security Oversight Office. The Archivist shall appoint the Director of the Information Security Oversight Office, subject to the approval of the President.

(b) Under the direction of the Archivist, acting in consultation with the National Security Advisor, the Director of the Information Security Oversight Office shall:

(1) develop directives for the implementation of this order;
(2) oversee agency actions to ensure compliance with this order and its implementing directives;
(3) review and approve agency implementing regulations prior to their issuance to ensure their consistency with this order and directives issued under section 5.1 of this order;
(4) have the authority to conduct on-site reviews of each agency’s program established under this order, and to require of each agency those reports and information and other cooperation that may be necessary to fulfill its responsibilities. If granting access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior agency official shall submit a written justification recommending the denial of access to the President through the National Security Advisor within 60 days of the request for access. Access shall be denied pending the response;
(5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend Presidential approval through the National Security Advisor;
(6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the program established under this order;
(7) have the authority to prescribe, after consultation with affected agencies, standardization of forms or procedures that will promote the implementation of the program established under this order;
(8) report at least annually to the President on the implementation of this order; and
(9) convene and chair interagency meetings to discuss matters pertaining to the program established by this order.

5.3 Interagency Security Classification Appeals Panel.

(a) Establishment and administration. (1) There is established an Interagency Security Classification Appeals Panel. The Departments of State, Defense, and Justice, the National Archives, the Office of the Director of National Intelligence, and the National Security Advisor shall each be represented by a senior-level representative who is a full-time or permanent part-time Federal officer or employee designated to serve as a member of the Panel by the respective agency head. The President shall designate a Chair from among the members of the Panel.

(2) Additionally, the Director of the Central Intelligence Agency may appoint a temporary representative who meets the criteria in paragraph (a)(1) of this section to participate as a voting member in all Panel deliberations and associated support activities concerning classified information originated by the Central Intelligence Agency.

(b) A vacancy on the Panel shall be filled as quickly as possible as provided in paragraph (a)(1) of this section.

(c) The Director of the Information Security Oversight Office shall serve as the Executive Secretary of the Panel. The staff of the Information Security Oversight Office shall provide program and administrative support for the Panel.

(d) The members and staff of the Panel shall be required to meet eligibility for access standards in order to fulfill the Panel’s functions.

(e) The Panel shall meet at the call of the Chair. The Chair shall schedule meetings as may be necessary for the Panel to fulfill its functions in a timely manner.

(f) The Information Security Oversight Office shall include in its reports to the President a summary of the Panel’s activities.

(b) Functions. The Panel shall:

(1) decide on appeals by persons who have filed classification challenges under section 1.8 of this order;
(2) approve, deny, or amend agency exemptions from automatic declassification as provided in section 3.3 of this order;
(3) decide on appeals by persons or entities who have filed requests for mandatory declassification review under section 3.5 of this order; and
(4) appropriately inform senior agency officials and the public of final Panel decisions on appeals under sections 1.8 and 3.5 of this order.

(c) Rules and procedures. The Panel shall issue bylaws, which shall be published in the Federal Register. The bylaws shall establish the rules and procedures that the Panel will follow in accepting, considering, and issuing decisions on appeals. The rules and procedures of the Panel shall provide that the Panel will consider appeals only on actions in which:

(1) the appellant has exhausted his or her administrative remedies within the responsible agency;
(2) there is no current action pending on the issue within the Federal courts; and
(3) the information has not been the subject of review by the Federal courts or the Panel within the past 2 years.

(d) Agency heads shall cooperate fully with the Panel so that it can fulfill its functions in a timely and fully informed manner. The Panel shall report to the President through the National Security Advisor any instance in which it believes that an agency head is not cooperating fully with the Panel.

(e) The Panel is established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States. Panel decisions are committed to the discretion of the President, unless changed by the President.

(f) An agency head may appeal a decision of the Panel to the President through the National Security Advis-
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sor. The information shall remain classified pending a decision on the appeal.

SIC. 5.4. General Responsibilities. Heads of agencies that originate or handle classified information shall:
(a) demonstrate personal commitment and commit senior management to the successful implementation of the program established under this order;
(b) ensure necessary resources are made available to the effective implementation of the program established under this order;
(c) ensure that agency records systems are designed and maintained to optimize the appropriate sharing and safeguarding of classified information, and to facilitate its declassification under the terms of this order; and
(d) designate a senior agency official to direct and administer the program, whose responsibilities shall include:
(1) overseeing the agency's program established under this order, provided an agency head may designate a separate official to oversee special access programs authorized under this order. This official shall provide a full accounting of the agency's special access programs at least annually;
(2) promulgating implementing regulations, which shall be published in the Federal Register to the extent that they affect members of the public;
(3) establishing and maintaining security education and training programs;
(4) establishing and maintaining an ongoing self-inspection program, which shall include the regular reviews of representative samples of the agency's original and derivative classification actions, and shall authorize appropriate agency officials to correct misclassification actions not covered by sections 1.7(c) and 1.7(d) of this order; and reporting annually to the Director of the Information Security Oversight Office on the agency's self-inspection program;
(b) establishing procedures consistent with directives issued pursuant to an order to prevent unnecessary access to classified information, including procedures that:
(A) require that a need for access to classified information be established before initiating administrative clearance procedures; and
(B) ensure that the number of persons granted access to classified information meets the mission needs of the agency while also satisfying operational and security requirements and needs;
(6) developing special contingency plans for the safeguarding of classified information used in or near hostile or potentially hostile areas;
(7) ensuring that the performance contract or other system used to rate civilian or military personnel performance includes the designation and management of classified information as a critical element or item to be evaluated in the rating of:
(A) original classification authorities;
(B) security managers or security specialists; and
(C) all other personnel whose duties significantly involve the creation or handling of classified information, including personnel who regularly apply derivative classification markings;
(8) accounting for the costs associated with the implementation of this order, which shall be reported to the Director of the Information Security Oversight Office for publication;
(9) assigning in a prompt manner agency personnel to respond to any request, appeal, challenge, complaint, or suggestion arising out of this order that pertains to classified information that originated in a component of the agency that no longer exists and for which there is no clear successor in function; and
(10) establishing a secure capability to receive information, allegations, or complaints regarding over-classification or incorrect classification within the agency and to provide guidance to personnel on proper classification as needed.

SIC. 5.5. Sanctions. (a) If the Director of the Information Security Oversight Office finds that a violation of this order or its implementing directives has occurred, the Director shall make a report to the head of the agency or to the senior agency official so that corrective steps, if appropriate, may be taken.
(b) Officers and employees of the United States Government, and its contractors, licensees, certificate holders, and grantees shall be subject to appropriate sanctions if they knowingly, willfully, or negligently:
(1) disclose to unauthorized persons information properly classified under this order or predecessor orders;
(2) classify or continue the classification of information in violation of this order or any implementing directive; or
(3) create or continue a special access program contrary to the requirements of this order; or
(4) contravene any other provision of this order or its implementing directives.
(c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.
(d) The agency head, senior agency official, or other supervisory official shall, at a minimum, promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of this order.
(e) The agency head or senior agency official shall:
(1) take appropriate and prompt corrective action when a violation or infraction under paragraph (b) occurs; and
(2) notify the Director of the Information Security Oversight Office when a violation under paragraph (b)(1), (2), (3) of this section occurs.

PART 6—GENERAL PROVISIONS

SIC. 6.1. Definitions. For purposes of this order:
(a) “Access” means the ability or opportunity to gain knowledge of classified information.
(b) “Agency” means any “Executive agency,” as defined in 5 U.S.C. 105; any “Military department” as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into the possession of classified information.
(c) “Authorized holder” of classified information means anyone who satisfies the conditions for access stated in section 4.1(a) of this order.
(d) “Automated information system” means an assembly of computer hardware, software, or firmware configured to collect, create, communicate, compute, store, disseminate, process, store, or control data or information.
(e) “Automatic declassification” means the declas-

ination of information based upon:
(1) the occurrence of a specific date or event as determined by the original classification authority; or
(2) the expiration of a maximum time frame for duration of classification established under this order.
(f) “Classification” means the act or process by which information is determined to be classified information.
(g) “Classification guidance” means any instruction or source that prescribes the classification of specific information.
(h) “Classification guide” means a documentary form of classification guidance issued by an original classification authority that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.
(i) “Classified national security information” or “classified information” means information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.
(j) “Compilation” means an aggregation of preexisting unclassified items of information.
(k) “Confidential source” means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United
States on matters pertaining to the national security with the expectation that the information or relation-
ship, or both, are to be held in confidence.

(i) “Damage to the national security” means harm to
the national defense or foreign relations of the United
States from the unauthorized disclosure of informa-
tion, taking into consideration such aspects of the in-
formation as the sensitivity, value, utility, and prove-
nance of that information.

(m) “Declassification” means the authorized change
in the status of information from classified informa-
tion to unclassified information.

(n) “Declassification guide” means written instruc-
tions issued by a declassification authority that de-
scribes the elements of information regarding a specific
subject that may be declassified and the elements that
must remain classified.

(o) “Derivative classification” means the incorporat-
ing, paraphrasing, restating, or generating in new form
information that is already classified, and marking the
newly developed material consistent with the classi-

cification markings that apply to the source informa-
tion. Derivative classification includes the classifica-
tion of information based on classification guidance.
The duplication or reproduction of existing classified
information is not derivative classification.

(p) “Document” means any recorded information, re-
gardless of the nature of the medium or the method or
circumstances of recording.

(q) “Downgrading” means a determination by a de-
classification authority that information classified and
safeguarded at a specified level shall be classified and
safeguarded at a lower level.

(r) “File series” means file units or documents ar-
ranged according to a filing system or kept together
because they relate to a particular subject or function,
result from the same activity, document a specific kind
of transaction, take a particular physical form, or have
some other relationship arising out of their creation,
receipt, or use, such as restrictions on access or use.

(s) “Foreign government information” means:
(1) information provided to the United States Govern-
ment by a foreign government or governments, an
international organization of governments, or any ele-
ment thereof, with the expectation that the informa-
tion, the source of the information, or both, are to be
held in confidence;

(2) information produced by the United States Gov-
ernment pursuant to or as a result of a joint arrange-
ment with a foreign government or governments, or an
international organization of governments, or any ele-
ment thereof, requiring that the information, the ar-
rangement, or both, are to be held in confidence;

(t) “Information” means any knowledge that can be
classified or documentary material, regardless of
its physical form or characteristics, that is owned by,
produced by or for, or is under the control of the
United States Government.

(u) “Infraction” means any knowing, willful, or neg-
ligent action contrary to the requirements of this order
or its implementing directives that does not constitute
a “violation,” as defined below.

(v) “Integral file block” means a distinct component
of a file series, as defined in this section, that should
be maintained as a separate unit in order to ensure the
integrity of the records. An integral file block may
consist of a set of records covering either a specific
topic or a range of time, such as a Presidential admin-
istration or a 5-year retirement schedule within a spe-
cific file series that is retired from active use as a
group. For purposes of automatic declassification, inte-

ginal file blocks shall contain only records dated within
10 years of the oldest record in the file block.

(w) “Integrity” means the state that exists when in-
formation is unchanged from its source and has not
been accidentally or intentionally modified, altered, or
destroyed.

(x) “Intelligence” includes foreign intelligence and

counterintelligence as defined by Executive Order 12333
of December 4, 1981, as amended, or by a successor
order.

(y) “Intelligence activities” means all activities that
elements of the Intelligence Community are authorized
to conduct pursuant to law or Executive Order 12333,
as amended, or by a successor order.

(z) “Intelligence Community” means an element or
agency of the U.S. Government identified in or des-
gnated pursuant to section 3(4) of the National Secu-

rity Act of 1947, as amended, or section 3.5(h) of Execu-

tive Order 12333, as amended.

(aa) “Mandatory declassification review” means the
review for declassification of classified information in
response to a request for declassification that meets the
requirements under section 3.5 of this order.

(bb) “Multiple sources” means two or more source
documents, classification guides, or a combination of
both.

(cc) “National security” means the national defense
or foreign relations of the United States.

(dd) “Need-to-know” means a determination within
the executive branch in accordance with directives is-
sued pursuant to this order that a prospective recipient
requires access to specific classified information in
order to perform or assist in a lawful and authorized
governmental function.

(ee) “Network” means a system of two or more com-
puters that can exchange data or information.

(ff) “Original classification” means an initial deter-
mination that information requires, in the interest of
the national security, protection against unauthorized
disclosure.

(gg) “Original classification authority” means an in-
dividual authorized in writing, either by the President,
the Vice President, or by agency heads or other offi-
cials designated by the President, to classify informa-
tion in the first instance.

(hh) “Records” means the records of an agency and
Presidential papers or Presidential records, as those
terms are defined in title 44, United States Code, in-
cluding those created or maintained by a government
contractor, licensee, certificate holder, or grantee that
are subject to the sponsoring agency’s control under
the terms of the contract, license, certificate, or grant.

(i) “Records management” means the planning, con-

trolling, directing, organizing, training, promoting, and
other managerial activities involved with respect to
records creation, records maintenance and use, and
records disposition in order to achieve adequate and
proper documentation of the policies and transactions
of the Federal Government and effective and economi-

cal management of agency operations.

(kk) “Safeguarding” means measures and controls
that are prescribed to protect classified information.

(ll) “Self-inspection” means the internal review and
evaluation of individual agency activities and the agen-
cy as a whole with respect to the implementation of
the program established under this order and its imple-
menting directives.

(mm) “Senior agency official” means the official des-
gnated by the agency head under section 5.4(d) of this
order to direct and administer the agency’s program
under which information is classified, safeguarded, and
declassified.

(nn) “Source document” means an existing document
that contains classified information that is incor-
porated, paraphrased, restated, or generated in new
form into a new document.

(oo) “Special access program” means a program es-

tablished for a specific class of classified information
that imposes safeguarding and access requirements
that exceed those normally required for information at
the same classification level.
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The course of its administration.

to have permanent historical value in accordance with title 44, United States Code.

this order with respect to any question arising in the enforcement of an agency or the Director of the Information Security Oversight Office under section 5.1(a) of this order.

forbidden any information by other provisions of law, in -excluding the Constitution, Freedom of Information Act

stantive or procedural, enforceable at law by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

provisions set forth in sections 1.1(b), 3.1(c) and 5.3(e) of this order.

Nothing in this order shall be construed to obligate action or otherwise affect functions by the Direc-
tor of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

This order shall be implemented subject to the availability of appropriations.

Executive Order 12958 of April 17, 1995, and amend-ments thereto, including Executive Order 13292 of March 25, 2003, are hereby revoked as of the effective date of this order.

SIC. 6.3. Effective Date. This order is effective 180 days from the date of this order, except for sections 1.7, 3.3, and 3.7, which are effective immediately.

SIC. 6.4. Publication. The Archivist of the United States shall publish this Executive Order in the Federal Register.

BARACK OBAMA.

EX. ORD. No. 13549, CLASSIFIED NATIONAL SECURITY INFORMATION PROGRAM FOR STATE, LOCAL, TRIBAL, AND PRIVATE SECTOR ENTITIES

Ex. Ord. No. 13549, Aug. 18, 2010, 75 F.R. 51609, pro-

vided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to ensure the proper safeguarding of information shared with State, local, tribal, and private sector entities, it is hereby ordered as follows: SIC. 1.1. There is established a Classified National Security Information Program (Program) designed to safeguard and govern access to classified national security information shared by the Federal Government with State, local, tribal, and private sector (SLTPS) entities.

SIC. 1.2. The purpose of this order is to ensure that security standards governing access to and safeguarding of classified material are applied in accordance with Executive Order 13326 of December 29, 2009 ("Classified National Security Information"), Executive Order 12968 of August 2, 1995, as amended ("Access to Classified Information"), Executive Order 13467 of June 30, 2008 ("Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information"), and Executive Order 12629 of January 6, 1993, as amended ("National Industrial Security Program"). Procedures for uniform implementation of these standards by SLTPS entities shall be set forth in an implementing directive to be issued by the Secretary of Homeland Security within 180 days of the date of this order, in consultation with affected executive departments and agencies (agencies), and with the concurrence of the Secretary of Defense, the Attorney General, the Director of National Intelligence, and the Director of the Information Security Oversight Office.

SIC. 1.3. Additional policy provisions for access to and safeguarding of classified information shared with SLTPS personnel include the following:

(a) Eligibility for access to classified information by SLTPS personnel shall be determined by a sponsoring agency. The level of access granted shall not exceed the secret level, unless the sponsoring agency determines on a case-by-case basis that the applicant has a demonstrated and foreseeable need for access to Top Secret, Special Access Program, or Sensitive Compartmented Information.

(b) Upon the execution of a non-disclosure agreement prescribed by the Information Security Oversight Office or the Director of National Intelligence, and absent disqualifying conduct as determined by the clearance granting official, a duly elected or appointed Governor of a State or territory, or an official who has succeeded to that office under applicable law, may be granted access to classified information without a back- ground investigation in accordance with the implementing directive for this order. This authorization of access may not be further delegated by the Governor to any other person.

(c) All clearances granted to SLTPS personnel, as well as accreditations granted to SLTPS facilities
without a waiver, shall be accepted reciprocally by all agencies and SLTPS entities.

(d) Physical custody of classified information by State, local, and tribal (SLT) entities shall be limited to Secret information unless the location housing the information is under the full-time management, control, and operation of the Department of Homeland Security or another agency. A standard security agreement, established by the Department of Homeland Security in consultation with the SLT Security Advisory Committee, shall be executed between the head of the SLT entity and the U.S. Government. For those locations where the SLT entity will maintain physical custody of classified information:

(e) State, local, and tribal facilities where classified information is or will be used or stored shall be inspected, accredited, and monitored for compliance with established standards, in accordance with Executive Order 13526 and the implementing directive for this order, by the Department of Homeland Security or another agency that has entered into an agreement with the Department of Homeland Security to perform such inspection, accreditation, and monitoring.

(f) Private sector facilities where classified information is or will be used or stored shall be inspected, accredited, and monitored for compliance with standards established pursuant to Executive Order 12829, as amended, by the Department of Defense or the cognizant security agency under Executive Order 12829, as amended.

(g) Access to information systems that store, process, or transmit classified information shall be enforced by the rules established by the agency that controls the system and consistent with approved dissemination and handling markings applied by originators, separate from and in addition to criteria for determining eligibility for access to classified information. Access to information within restricted portals shall be based on criteria applied by the agency that controls the portal and consistent with approved dissemination and handling markings applied by originators.

(h) The National Industrial Security Program established in Executive Order 12829, as amended, shall govern the access to and safeguarding of classified information that is released to contractors, licensees, and grantees of SLT entities.

(i) All access eligibility determinations and facility security clearances granted prior to the date of this order that do not meet the standards set forth in this order or its implementing directive shall be reconciled with those standards within a reasonable period.

(j) Pursuant to section 4.1(3) of Executive Order 13526, documents created prior to the effective date of Executive Order 13526 shall not be re-disseminated to other entities without the consent of the originating agency. An agency head or senior agency official may waive this requirement for specific information that originates within that agency.

Sic. 2. Policy Direction. With policy guidance from the National Security Advisor and in consultation with the Director of the Information Security Oversight Office, the Director of the Office of Management and Budget, and the heads of affected agencies, the Secretary of Homeland Security shall serve as the Executive Agent for the Program. This order does not displace any authorities provided by law or Executive Order and the Executive Agent shall, to the extent practicable, make use of existing structures and authorities to preclude duplication and to ensure efficiency.

Sic. 3. SLTPS Policy Advisory Committee. (a) There is established an SLTPS Policy Advisory Committee (Committee) to discuss Program-related policy issues in dispute in order to facilitate their resolution and to otherwise recommend changes to policies and procedures that are designed to remove undue impediments to the sharing of information under the Program. The Director of the Information Security Oversight Office shall serve as Chair of the Committee. An official designated by the Secretary of Homeland Security and a representative of SLTPS entities shall serve as Vice Chairs of the Committee. Members of the Committee shall include designees of the heads of the Departments of State, Defense, Justice, Transportation, and Energy, the Nuclear Regulatory Commission, the Office of the Director of National Intelligence, the Central Intelligence Agency, and the Federal Bureau of Investigation. Members shall also include employees of other agencies and representatives of SLT entities nominated by any Committee member and approved by the Chair.

(b) Members of the Committee shall serve without compensation for their work on the Committee, except that any representatives of SLTPS entities may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) The Information Security Oversight Office shall provide staff support to the Committee.

(d) Insofar as the Federal Advisory Committee Act, as amended (5 App. U.S.C.) (the “Act”) may apply to this order, any functions of the President under that Act, except that of reporting to the Congress, which are applicable to the Committee, shall be performed by the Administrator of General Services in accordance with guidelines and procedures established by the General Services Administration.

Sic. 4. Operations and Oversight. (a) The Executive Agent for the Program shall perform the following responsibilities:

(1) overall program management and oversight;
(2) accreditation, periodic inspection, and monitoring of all facilities owned or operated by SLT entities that have access to classified information, except when another agency has entered into an agreement with the Department of Homeland Security to perform some or all of these functions;
(3) processing of security clearance applications by SLTPS personnel, when requested by a sponsoring agency, on a reimbursable basis unless otherwise determined by the Department of Homeland Security and the sponsoring agency;
(4) documenting and tracking the final status of security clearances for all SLTPS personnel in consultation with the Office of Personnel Management, the Department of Defense, and the Office of the Director of National Intelligence;
(5) developing and maintaining a security profile of SLT facilities that have access to classified information;
(6) developing training, in consultation with the Committee, for all SLTPS personnel who have been determined eligible for access to classified information, which shall cover the proper safeguarding of classified information and sanctions for unauthorized disclosure of classified information.

(b) The Secretary of Defense, or the cognizant security agency under Executive Order 12829, as amended, shall provide program management, oversight, inspection, accreditation, and monitoring of all private sector facilities that have access to classified information.

(c) The Director of National Intelligence may inspect and monitor SLTPS programs and facilities that involve access to information regarding intelligence sources, methods, and activities.

(d) Heads of agencies that sponsor SLTPS personnel and facilities for access to and storage of classified information under section 1.3(a) of this order shall:

(1) ensure on a periodic basis that there is a demonstrated, foreseeable need for such access; and
(2) provide the Secretary of Homeland Security with information, as requested by the Secretary, about SLTPS personnel sponsored for security clearances and SLT facilities approved for use of classified information prior to and after the date of this order, except when the disclosure of the association of a specific individual with an intelligence or law enforcement agency is determined by the intelligence or law enforcement agency.
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Sosc. 5. Definitions. For purposes of this order:

(a) “Access” means the ability or opportunity to gain knowledge of classified information.

(b) “Agency” means any “Executive agency” as defined in 5 U.S.C. 105; any military department as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into possession of classified information.

(c) “Classified National Security Information” or “classified information” means information that has been determined pursuant to Executive Order 13526, or any predecessor or successor order, to require protection against unauthorized disclosure, and is marked to indicate its classified status when in documentary form.

(d) “Information” means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(e) “Intelligence activities” means all activities that elements of the Intelligence Community are authorized to conduct pursuant to law or Executive Order 12333, as amended, or a successor order.

(f) “Local” entities refers to “(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency, as defined by a local government; and (B) a rural community, unincorporated town or village, or other public entity” as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101(1)).

(g) “Private sector” means persons outside government who are critically involved in ensuring that public and private preparedness and response efforts are integrated as part of the Nation’s Critical Infrastructure or Key Resources (CIKR), including:

(1) corporate owners and operators determined by the Secretary of Homeland Security to be part of the CIKR;

(2) subject matter experts selected to assist the Federal or State CIKR;

(3) personnel serving in specific leadership positions of CIKR coordination, operations, and oversight;

(4) employees of corporate entities relating to the protection of CIKR; or

(5) other persons not otherwise eligible for the grant of personnel security clearance pursuant to Executive Order 12629, as amended, who are determined by the Secretary of Homeland Security to require a personnel security clearance.

(h) “Restricted portal” means a protected community of interest or similar area housed within an information system and to which access is controlled by a host agency different from the agency that controls the information system.

(i) “Sponsoring Agency” means an agency that recommends access to or possession of classified information by SLT/PS personnel.

(j) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States, as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101(15)).

(k) “State, local, and tribal personnel” means any of the following persons:

(1) Governors, mayors, tribal leaders, and other elected or appointed officials of a State, local government, or tribe;

(2) State, local, and tribal law enforcement personnel and firefighters;

(3) public health, radiological health, and medical professionals of a State, local government, or tribe; and

(4) regional, State, local, and tribal emergency management agency personnel, including State Adjutants General and other appropriate public safety personnel and those personnel providing support to a Federal CIKR mission.

(l) “Tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe as defined in the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

(m) “United States” when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States and any waters within the territorial jurisdiction of the United States.

Sosc. 6. General Provisions. (a) This order does not change the requirements of Executive Orders 13526, 12698, 13467, or 12629, as amended, and their successor orders and directives.

(b) Nothing in this order shall be construed to supersede or change the authorities of the Secretary of Energy or the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), the Secretary of Defense under Executive Order 12639, as amended; the Director of the Information Security Oversight Office under Executive Order 13526, as amended; Executive Order 12829, as amended; the Attorney General under title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.); the Secretary of State under title 22, United States Code, and the Omnibus Diplomatic Security and Antiterrorism Act of 1986; the Director of National Intelligence under the National Security Act of 1947, as amended, Executive Order 12333, as amended, Executive Order 12968, as amended, Executive Order 13467, and Executive Order 13526.

(c) Nothing in this order shall limit the authority of an agency head, or the agency head’s designee, to authorize in an emergency and when necessary to respond to an imminent threat to life or in defense of the homeland, in accordance with section 4.2(b) of Executive Order 13526, the disclosure of classified information to an individual or individuals who are otherwise not eligible for access in accordance with the provisions of Executive Order 12968.

(d) Consistent with section 802(a)(4) of the Homeland Security Act of 2002 (6 U.S.C. 482a(4)), nothing in this order shall be interpreted as changing the requirements and authorities to protect sources and methods.

(e) Nothing in this order shall supersede measures established under the authority of an Executive Order to protect the security and integrity of specific activities and associations that are in direct support of intelligence operations.

(f) Pursuant to section 802(e) of the Homeland Security Act of 2002 (6 U.S.C. 482(e)), all information provided to an SLT/PS entity from an agency shall remain under the control of the Federal Government. Any State or local law authorizing or requiring disclosure shall not apply to such information.

(g) Nothing in this order limits the protection afforded any classified information by other provisions of law. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(h) Nothing in this order shall be construed to obligate action or otherwise affect functions by the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(i) This order shall be implemented subject to the availability of appropriations and consistent with procedures approved by the Attorney General pursuant to Executive Order 12333, as amended.

Sosc. 7. Effective Date. This order is effective 180 days from the date of this order with the exception of section 3, which is effective immediately.

Barack Obama.
IMPLEMENTATION OF THE EXECUTIVE ORDER, “CLASSIFIED NATIONAL SECURITY INFORMATION”

Memorandum of President of the United States, Dec. 29, 2009, 75 F.R. 733, provided:

Memorandum for the Heads of Executive Departments and Agencies

Today I have signed an executive order [Ex. Ord. No. 13526, set out above] entitled, “Classification National Security Information” (the “order”), which substantially advances my goals for reforming the security classification and declassification processes. I expect that the order will produce measurable progress toward greater openness and transparency in the Government’s classification and declassification programs while protecting the Government’s legitimate interests, and I will closely monitor the results. I also look forward to the goal of measurable progress toward greater openness classification system. To further assist in fulfilling the goal of measurable progress toward greater openness and transparency, I hereby direct the following actions.

1. Initial Implementation Efforts.

Successful implementation of the order requires personal commitment from the heads of departments and agencies, as well as their senior officials. It also requires effective security education and training programs, self-inspection programs, and measures designed to hold personnel accountable.

In accordance with section 5.4 of the order, the head of each department and agency that creates or handles classified information shall provide the Director of the Information Security Oversight Office (ISOO) a copy of the department or agency regulations implementing the requirements of the order. Such regulations shall be issued in final form within 180 days of ISOO’s publication of its implementing directive for the order. The Director of ISOO shall consider agency actions to implement the requirements of section 5.4 of the order as a key element in planning oversight of agencies. Each agency official designated under section 5.4(c) of the order shall provide ISOO with updates concerning agency plans and other actions to implement the requirements of the order. The Director of ISOO shall publish a periodic status report on agency implementation.

2. Declassification of Records of Permanent Historical Value.

Under the direction of the National Declassification Center (NDC), and utilizing recommendations of an ongoing Business Process Review in support of the NDC, referrals and quality assurance problems within a backlog of more than 400 million pages of accessioned Federal records previously subject to automatic declassification shall be addressed in a manner that will permit public access to all declassified records from this backlog no later than December 31, 2013. In order to promote the efficient and effective utilization of finite resources available for declassification, further referrals of these records are not required except for those containing information that would clearly and demonstrably reveal: (a) the identity of a confidential human source or a human intelligence source; or (b) key design concepts of weapons of mass destruction.

The Secretaries of State, Defense, and Energy, and the Director of National Intelligence shall provide the Archivist of the United States with sufficient guidance to complete this task. The Archivist shall make public a report on the status of the backlog every 6 months.

3. Delegation of Original Classification Authority.

Delegations of original classification authority shall be limited to the minimum necessary to implement the order and only those individuals or positions with a demonstrable and continuing need to exercise such authority shall be delegated original classification authority.

Accordingly, heads of departments and agencies with original classification authority shall commence a review to ensure that all delegations of original classification authority are so limited and otherwise in accordance with section 1.3(c) of the order. Each department and agency shall submit a report on the results of this review to the Director of ISOO within 120 days of the date of this memorandum.


Striking the critical balance between openness and secrecy is a difficult but necessary part of our democratic form of government. Striking this balance becomes more difficult as the volume and complexity of the information increases. Improving the capability of departments and agencies to identify still-sensitive information and to make declassified information available to the public are integral parts of the classification system.

Therefore, I am directing that the Secretary of Defense and the Director of National Intelligence each support research to assist the NDC in addressing the cross-agency challenges associated with declassification.

5. Publication. The Archivist of the United States is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

ORGINAL CLASSIFICATION AUTHORITY

Order of President of the United States, dated Dec. 29, 2009, 75 F.R. 733, provided:

Pursuant to the provisions of section 1.3 of the Executive Order issued today [Ex. Ord. No. 13526, set out above], entitled “Classification National Security Information” (Executive Order), I hereby designate the following officials to classify information originally as “Top Secret” or “Secret”:

TOP SECRET

Executive Office of the President:
The Assistant to the President for National Security Affairs (National Security Advisor)
The Assistant to the President for Homeland Security and Counterterrorism
The Director of National Drug Control Policy
The Director, Office of Science and Technology Policy
The Chair or Co-Chairs, President’s Intelligence Advisory Board
Departments and Agencies:
The Secretary of State
The Secretary of Defense
The Secretary of the Treasury
The Secretary of Energy
The Secretary of Homeland Security
The Director of National Intelligence
The Secretary of the Army
The Secretary of the Navy
The Chairman, Nuclear Regulatory Commission
The Director of the Central Intelligence Agency
The Administrator of the National Aeronautics and Space Administration
The Director, Information Security Oversight Office

SECRET

Executive Office of the President:
The United States Trade Representative
Departments and Agencies:
The Secretary of Agriculture
The Secretary of Commerce
The Secretary of Health and Human Services
The Secretary of Transportation
The Administrator of the United States Agency for International Development
The Administrator of the Environmental Protection Agency
Any delegation of this authority shall be in accordance with section 1.3(c) of the Executive Order, except
that the Director of the Information Security Oversight Office, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency may not delegate the authority under this order. If an agency head without original classification authority under this order, or otherwise delegated in accordance with section 1.3(c) of the Executive Order, has an exceptional need to classify information originated by their agency, the matter shall be referred to the agency head with appropriate subject matter interest and classification authority in accordance with section 1.3(e) of the Executive Order. If the agency with appropriate subject matter interest and classification authority cannot readily be determined, the matter shall be referred to the Director of the Information Security Oversight Office.

Presidential designations ordered prior to the issuance of the Executive Order are revoked as of the date of this order. However, delegations of authority to classify information originally that were made in accordance with the provisions of section 1.4 of Executive Order 12958 of April 17, 1995, as amended, by officials designated under this order shall continue in effect, provided that the authority of such officials is delegable under this order.

This order shall be published in the Federal Register.

Barack Obama.

Prior Presidential Designations to Classify National Security Information Were Contained in the Following:


Order of President of the United States, dated Oct. 13, 1995, 60 F.R. 53845, formerly set out as a note under this section.

Order of President of the United States, dated Feb. 27, 1996, 61 F.R. 7977, formerly set out as a note under this section.

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. 31189, 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 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.


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 Central 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 National Intelligence. 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 1.1(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 1.14(y) of title 42), 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 en-
sure 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 of the executive branch to conduct, to the maximum extent practicable, security clearance investigations of employees and contractor personnel of the United States Government who require access to classified information and to provide and maintain all security clearances of such employees and contractor personnel. The head of the entity selected pursuant to subsection (b) of this section may designate other agencies to conduct such investigations if the head of the entity selected pursuant to subsection (b) of this section considers it appropriate for national security and efficiency purposes.

(2) The agency selected under paragraph (1) shall—

(A) take all necessary actions to carry out the requirements of this section, including entering into a memorandum of understanding with any agency carrying out responsibilities relating to security clearances or security clearance investigations before December 17, 2004;

(B) as soon as practicable, integrate reporting of security clearance applications, security clearance investigations, and determinations of eligibility for security clearances, with the database required by subsection (e) of this section; and

(C) ensure that security clearance investigations are conducted in accordance with uniform standards and requirements established under subsection (b) of this section, including uniform security questionnaires and financial disclosure requirements.

(d) Reciprocity of security clearance and access determinations

(1) All security clearance background investigations and determinations completed by an authorized investigative agency or authorized adjudicative agency shall be accepted by all agencies.

(2) All security clearance background investigations initiated by an authorized investigative agency shall be transferable to any other authorized investigative agency.

(3)(A) An authorized investigative agency or authorized adjudicative agency may not establish additional investigative or adjudicative requirements (other than requirements for the conduct of a polygraph examination) that exceed requirements specified in Executive Orders establishing security requirements for access to classified information without the approval of the head of the entity selected pursuant to subsection (b) of this section.

(B) Notwithstanding subparagraph (A), the head of the entity selected pursuant to subsection (b) of this section may establish such additional requirements as the head of such entity considers necessary for national security purposes.

(4) An authorized investigative agency or authorized adjudicative agency may not conduct an investigation for purposes of determining whether to grant a security clearance to an individual where a current investigation or clearance of equal level already exists or has been granted by another authorized adjudicative agency.

(5) The head of the entity selected pursuant to subsection (b) of this section may disallow the reciprocal recognition of an individual security clearance by an agency under this section on a case-by-case basis if the head of the entity selected pursuant to subsection (b) of this section determines that such action is necessary for national security purposes.

(6) The head of the entity selected pursuant to subsection (b) of this section shall establish a review procedure by which agencies can seek review of actions required under this section.

(e) Database on security clearances

(1) Not later than 12 months after December 17, 2004, the Director of the Office of Personnel Management shall, in cooperation with the heads of the entities selected pursuant to subsections (b) and (c) of this section, establish and commence operating and maintaining an integrated, secure, database into which appropriate data relevant to the granting, denial, or revocation of a security clearance or access pertaining to military, civilian, or government contractor personnel shall be entered from all authorized investigative and adjudicative agencies.

(2) The database under this subsection shall function to integrate information from existing Federal clearance tracking systems from other authorized investigative and adjudicative agencies into a single consolidated database.

(3) Each authorized investigative or adjudicative agency shall check the database under this subsection to determine whether an individual the agency has identified as requiring a security clearance has already been granted or denied a
security clearance, or has had a security clearance revoked, by any other authorized investigative or adjudicative agency.

(4) The head of the entity selected pursuant to subsection (b) of this section shall evaluate the extent to which an agency is submitting information to, and requesting information from, the database under this subsection as part of a determination of whether to certify the agency as an authorized investigative agency or authorized adjudicative agency.

(5) The head of the entity selected pursuant to subsection (b) of this section may authorize an agency to withhold information about certain individuals from the database under this subsection if the head of the entity considers it necessary for national security purposes.

(f) Evaluation of use of available technology in clearance investigations and adjudications

(1) The head of the entity selected pursuant to subsection (b) of this section shall evaluate the use of available information technology and databases to expedite investigative and adjudicative processes for all and to verify standard databases to expedite investigative and adjudicative processes for all and to verify standard information submitted as part of an application for a security clearance.

(2) The evaluation shall assess the application of the technologies described in paragraph (1) for—

(A) granting interim clearances to applicants at the secret, top secret, and special access program levels before the completion of the appropriate full investigation;

(B) expediting investigations and adjudications of security clearances, including verification of information submitted by the applicant;

(C) ongoing verification of suitability of personnel with security clearances in effect for continued access to classified information;

(D) use of such technologies to augment periodic reinvestigations;

(E) assessing the impact of the use of such technologies on the rights of applicants to verify, correct, or challenge information obtained through such technologies; and

(F) such other purposes as the head of the entity selected pursuant to subsection (b) of this section considers appropriate.

(3) An individual subject to verification utilizing the technology described in paragraph (1) shall be notified of such verification, shall provide consent to such use, and shall have access to data being verified in order to correct errors or challenge information the individual believes is incorrect.

(4) Not later than one year after December 17, 2004, the head of the entity selected pursuant to subsection (b) of this section shall submit to the President and the appropriate committees of Congress a report on the results of the evaluation, including recommendations on the use of technologies described in paragraph (1).

(g) Reduction in length of personnel security clearance process

(1) The head of the entity selected pursuant to subsection (b) of this section shall, within 90 days of selection under that subsection, develop, in consultation with the appropriate commit-tees of Congress and each authorized adjudicative agency, a plan to reduce the length of the personnel security clearance process.

(2)(A) To the extent practical the plan under paragraph (1) shall require that each authorized adjudicative agency make a determination on at least 90 percent of all applications for a personnel security clearance within an average of 60 days after the date of receipt of the completed application for a security clearance by an authorized investigative agency. Such 60-day average period shall include—

(i) a period of not longer than 40 days to complete the investigative phase of the clearance review; and

(ii) a period of not longer than 20 days to complete the adjudicative phase of the clearance review.

(B) Determinations on clearances not made within 60 days shall be made without delay.

(3)(A) The plan under paragraph (1) shall take effect 5 years after December 17, 2004.

(B) During the period beginning on a date not later than 2 years after December 17, 2004, and ending on the date on which the plan under paragraph (1) takes effect, each authorized adjudicative agency shall make a determination on at least 80 percent of all applications for a personnel security clearance pursuant to this section within an average of 120 days after the date of receipt of the application for a security clearance by an authorized investigative agency. Such 120-day average period shall include—

(i) a period of not longer than 90 days to complete the investigative phase of the clearance review; and

(ii) a period of not longer than 30 days to complete the adjudicative phase of the clearance review.

(h) Reports

(1) Not later than February 15, 2006, and annually thereafter through 2011, the head of the entity selected pursuant to subsection (b) of this section shall submit to the appropriate committees of Congress a report on the progress made during the preceding year toward meeting the requirements of this section.

(2) Each report shall include, for the period covered by such report—

(A) the periods of time required by the authorized investigative agencies and authorized adjudicative agencies for conducting investigations, adjudicating cases, and granting clearances, from date of submission to ultimate disposition and notification to the subject and the subject’s employer;

(B) a discussion of any impediments to the smooth and timely functioning of the requirements of this section; and

(C) such other information or recommendations as the head of the entity selected pursuant to subsection (b) of this section considers appropriate.

(i) Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary for fiscal year 2005 and each fiscal year thereafter for the implementation, maintenance, and operation of the database required by subsection (e) of this section.
§ 435c. Security clearances; limitations

(a) Definitions

In this section:

(1) Controlled substance

The term “controlled substance” has the meaning given that term in section 802 of title 21.

(2) Covered person

The term “covered person” means—

(A) an officer or employee of a Federal agency;

(B) a member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status; and

(C) an officer or employee of a contractor of a Federal agency.

(3) Restricted Data

The term “Restricted Data” has the meaning given that term in section 2014 of title 42.

(4) Special access program

The term “special access program” has the meaning given that term in section 4.1 of Executive Order No. 12858 (60 Fed. Reg. 19825).

(b) Prohibition

After January 1, 2008, the head of a Federal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict (as defined in section 802(1) of title 21).

(c) Disqualification

(1) In general

After January 1, 2008, absent an express written waiver granted in accordance with paragraph (2), the head of a Federal agency may not grant or renew a security clearance described in paragraph (3) for a covered person who—

(A) has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year;

(B) has been discharged or dismissed from the Armed Forces under dishonorable conditions; or

(C) is mentally incompetent, as determined by an adjudicating authority, based on an evaluation by a duly qualified mental health professional employed by, or acceptable to and approved by, the United States Government and in accordance with the adjudicative guidelines required by subsection (d).

(2) Waiver authority

In a meritorious case, an exception to the disqualification in this subsection may be authorized if there are mitigating factors. Any such waiver may be authorized only in accordance with—

(A) standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President; or

(B) the adjudicative guidelines required by subsection (d).

(3) Covered security clearances

This subsection applies to security clearances that provide for access to—

(A) special access programs;

(B) Restricted Data; or

(C) any other information commonly referred to as “sensitive compartmented information”.

(4) Annual report

(A) Requirement for report

Not later than February 1 of each year, the head of a Federal agency shall submit a report to the appropriate committees of Congress if such agency employs or employed a person for whom a waiver was granted in accordance with paragraph (2) during the preceding year. Such annual report shall not reveal the identity of such person, but shall include for each waiver issued the disqualifying factor under paragraph (1) and the reasons for the waiver of the disqualifying factor.

(B) Definitions

In this paragraph:

(i) Appropriate committees of Congress

The term “appropriate committees of Congress” means, with respect to a report...
§ 435d. Classification training program

(a) In general

The head of each Executive agency, in accordance with Executive Order 13526, shall require annual training for each employee who has original classification authority. For employees who perform derivative classification, or are responsible for analysis, dissemination, preparation, production, receipt, publication, or otherwise communication of classified information, training shall be provided at least every two years. Such training shall—

(1) educate the employee, as appropriate, regarding—

(A) the guidance established under subparagraph (G) of section 403–1(g)(1) of this title, as added by section 5(a)(3),\(^1\) regarding the formatting of finished intelligence products;

(B) the proper use of classification markings, including portion markings that indicate the classification of portions of information; and

(C) any incentives and penalties related to the proper classification of intelligence information; and

(2) ensure such training is a prerequisite, once completed successfully, as evidenced by an appropriate certificate or other record, for—

(A) obtaining original classification authority or derivatively classifying information; and

(B) maintaining such authority.

(b) Relationship to other programs

The head of each Executive agency shall ensure that the training required by subsection (a) is conducted efficiently and in conjunction with any other required security, intelligence, or other training programs to reduce the costs and administrative burdens associated with carrying out the training required by subsection (a).


REFERENCES IN TEXT

Executive Order 13526, referred to in subsec. (a), is set out as a note under section 435 of this title.


CODIFICATION

Section was enacted as part of the Reducing Over-Classification Act, and not as part of the National Security Act of 1947 which comprises this chapter.

DEFINITIONS


“(1) DERIVATIVE CLASSIFICATION AND ORIGINAL CLASSIFICATION.—The terms ‘derivative classification’ and ‘original classification’ have the meanings given those terms in Executive Order No. 13526 [50 U.S.C. 435 note].

“(2) EXECUTIVE AGENCY.—The term ‘Executive agency’ has the meaning given that term in section 101 of title 5, United States Code.

“(3) EXECUTIVE ORDER NO. 13526.—The term ‘Executive Order No. 13526’ means Executive Order No. 13526 (75 Fed. Reg. 707; relating to classified national security information) or any subsequent corresponding executive order.”

§ 436. Requests by authorized investigative agencies

(a) Generally

(1) Any authorized investigative agency may request from any financial agency, financial institution, or holding company, or from any consumer reporting agency, such financial records, other financial information, and consumer reports as may be necessary in order to conduct

\(^1\)See References in Text note below.
any authorized law enforcement investigation, counterintelligence inquiry, or security determination. Any authorized investigative agency may also request records maintained by any commercial entity within the United States pertaining to travel by an employee in the executive branch of Government outside the United States.

(2) Requests may be made under this section where—

(A) the records sought pertain to a person who is or was an employee in the executive branch of Government required by the President in an Executive order or regulation, as a condition of access to classified information, to provide consent, during a background investigation and for such time as access to the information is maintained, and for a period of not more than three years thereafter, permitting access to financial records, other financial information, consumer reports, and travel records; and

(B)(i) there are reasonable grounds to believe, based on credible information, that the person is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(ii) information the employing agency deems credible indicates the person has incurred excessive indebtedness or has acquired a level of affluence which cannot be explained by other information known to the agency; or

(iii) circumstances indicate the person had the capability and opportunity to disclose classified information which is known to have been lost or compromised to a foreign power or an agent of a foreign power.

(3) Each such request—

(A) shall be accompanied by a written certification signed by the department or agency head or deputy department or agency head concerned, or by a senior official designated for this purpose by the department or agency head concerned (whose rank shall be no lower than Assistant Secretary or Assistant Director) and shall certify that—

(i) the person concerned is or was an employee within the meaning of paragraph (2)(A);

(ii) the request is being made pursuant to an authorized inquiry or investigation and is authorized under this section; and

(iii) the records or information to be reviewed are records or information which the employee has previously agreed to make available to the authorized investigative agency for review;

(B) shall contain a copy of the agreement referred to in subparagraph (A)(ii);

(C) shall identify specifically or by category the records or information to be reviewed; and

(D) shall inform the recipient of the request of the prohibition described in subsection (b) of this section.

(b) Prohibition of certain disclosure

(1) If an authorized investigative agency described in subsection (a) certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no governmental or private entity, or officer, employee, or agent of such entity, may disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that such entity has received or satisfied a request made by an authorized investigative agency under this section.

(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

(4) If an authorized investigative agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized investigative agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request under subsection (a).

(c) Records or information; inspection or copying

(1) Notwithstanding any other provision of law (other than section 6103 of title 26), an entity receiving a request for records or information under subsection (a) of this section shall, if the request satisfies the requirements of this section, make available such records or information within 30 days for inspection or copying, as may be appropriate, by the agency requesting such records or information.

(2) Any entity (including any officer, employee, or agent thereof) that discloses records or information for inspection or copying pursuant to this section in good faith reliance upon the certifications made by an agency pursuant to this section shall not be liable for any such disclosure to any person under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(d) Reimbursement of costs

Any agency requesting records or information under this section may, subject to the availability of appropriations, reimburse a private entity for any cost reasonably incurred by such entity in responding to such request, including the cost of identifying, reproducing, or transporting records or other data.

(e) Dissemination of records or information received

An agency receiving records or information pursuant to a request under this section may
disseminate the records or information obtained pursuant to such request outside the agency only—

(1) to the agency employing the employee who is the subject of the records or information;

(2) to the Department of Justice for law enforcement or counterintelligence purposes; or

(3) with respect to dissemination to an agency of the United States, if such information is clearly relevant to the authorized responsibilities of such agency.

(f) Construction of section

Nothing in this section may be construed to affect the authority of an investigative agency to obtain information pursuant to the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).


REFERENCES IN TEXT


AMENDMENTS

2006—Subsec. (b). Pub. L. 109–177 amended subsec. (b) generally. Prior to amendment, text read as follows: "Notwithstanding any other provision of law, no governmental or private entity, or officer, employee, or agent of such entity, may disclose to any person, other than those officers, employees, or agents of such entity necessary to satisfy a request made under this section, that such entity has received or satisfied a request made by an authorized investigative agency under this section."

Subsec. (b)(4). Pub. L. 109–178 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "At the request of the authorized investigative agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized investigative agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform such official that the person intends to consult an attorney to obtain legal advice or legal assistance."

§ 437. Exceptions

Except as otherwise specifically provided, the provisions of this subchapter shall not apply to the President and Vice President, Members of the Congress, Justices of the Supreme Court, and Federal judges appointed by the President.


§ 438. Definitions

For purposes of this subchapter—

(1) the term "authorized investigative agency" means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigations 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;

(2) the term "classified information" means any information that has been determined pursuant to Executive Order No. 12356 of April 2, 1982, or successor orders, or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), to require protection against unauthorized disclosure and that is so designated;

(3) the term "consumer reporting agency" has the meaning given such term in section 1681a of title 15;

(4) the term "employee" includes any person who receives a salary or compensation of any kind from the United States Government, is a contractor of the United States Government or an employee thereof, is an unpaid consultant of the United States Government, or otherwise acts for or on behalf of the United States Government, except as otherwise determined by the President;

(5) the terms "financial agency" and "financial institution" have the meanings given to such terms in section 3321(a) of title 31 and the term "holding company" has the meaning given to such term in section 3401(b) of title 12;

(6) the terms "foreign power" and "agent of a foreign power" have the same meanings as set forth in sections 1801(a) and (b), respectively, of this title;

(7) the term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, and any other possession of the United States; and

(8) the term "computer" means any electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device and any data or other information stored or contained in such device.


REFERENCES IN TEXT

Executive Order No. 12356, referred to in par. (2), is set out as a note under section 435 of this title.

§ 441. Stay of sanctions

Notwithstanding any provision of law identified in section 441c of this title, the President may stay the imposition of an economic, cultural, diplomatic, or other sanction or related action by the United States Government concerning a foreign country, organization, or person when the President determines and reports to Congress in accordance with section 441b of this title that to proceed without delay would seriously risk the compromise of an ongoing criminal investigation directly related to the activities giving rise to the sanction or an intelligence source or method directly related to the activities giving rise to the sanction. Any such stay shall be effective for a period of time specified by the President, which period may not exceed 120 days, unless such period is extended in accordance with section 441a of this title.

(July 26, 1947, ch. 343, title IX, § 901, as added Pub. L. 104–93, title III, § 303(a), Jan. 6, 1996, 109 Stat. 964.)

§ 441a. Extension of stay

Whenever the President determines and reports to Congress in accordance with section 441b of this title that a stay of sanctions or related actions pursuant to section 441 of this title has not afforded sufficient time to obviate the risk to an ongoing criminal investigation or to an intelligence source or method that gave rise to the stay, he may extend such stay for a period of time specified by the President, which period may not exceed 120 days. The authority of this section may be used to extend the period of stay for an intelligence source or method that gave rise to the sanction. Any such stay shall be effective for a period of time specified by the President, which period may not exceed 120 days, unless such period is extended in accordance with section 441a of this title.


§ 441b. Reports

Reports to Congress pursuant to sections 441 and 441a of this title shall be submitted promptly upon determinations under this subchapter. Such reports shall be submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. With respect to determinations relating to intelligence sources and methods, reports shall also be submitted to the congressional intelligence committees. With respect to determinations relating to ongoing criminal investigations, reports shall also be submitted to the Committees on the Judiciary of the House of Representatives and the Senate.


References in Text


Title XVII of the National Defense Authorization Act for Fiscal Year 1991, referred to in text, is title XVII of div. A of Pub. L. 101–166, Nov. 5, 1990, 104 Stat. 1750, as amended, which enacted section 210b of the Appendix to this title and sections 2797 to 2797c of Title 22, Foreign Relations and Intercourse, amended section 2403 of the Appendix to this title, and enacted provisions set out as notes under section 2402 of the Appendix to this title and section 2797 of Title 22. For complete classification of title XVII to the Code, see Tables.


Section 573 of the Foreign Operations, Export Financing Related Programs Appropriations Act, 1994, re-


SUBCHAPTER VII–A—EDUCATION IN SUPPORT OF NATIONAL INTELLIGENCE

PART A—SCIENCE AND TECHNOLOGY

§ 441g. Scholarships and work-study for pursuit of graduate degrees in science and technology

(a) Program authorized

The Director of National Intelligence may carry out a program to provide scholarships and work-study for individuals who are pursuing graduate degrees in fields of study in science and technology that are identified by the Director as appropriate to meet the future needs of the intelligence community for qualified scientists and engineers.

(b) Administration

If the Director of National Intelligence carries out the program under subsection (a) of this section, the Director of National Intelligence shall administer the program through the Office of the Director of National Intelligence.

(c) Identification of fields of study

If the Director of National Intelligence carries out the program under subsection (a) of this section, the Director shall identify fields of study under subsection (a) or this section in consultation with the other heads of the elements of the intelligence community.

(d) Eligibility for participation

An individual eligible to participate in the program is any individual who—

(1) is an employee of the intelligence community; or

(2) is accepted in a graduate degree program in a field of study in science or technology identified under subsection (a) of this section; and

(3) is eligible for a security clearance at the level of Secret or above.

(e) Regulations

If the Director of National Intelligence carries out the program under subsection (a) of this section, the Director shall prescribe regulations for purposes of the administration of this section.


Prior Provisions

A prior section 1001 of act July 26, 1947, ch. 343, was renumbered section 1101 and is classified to section 422 of this title.

Amendments


Subsec. (b). Pub. L. 108–458, § 1071(a)(8), substituted “Office of the Director of National Intelligence” for “Assistant Director of Central Intelligence for Administration”.

Pub. L. 108–458, § 1071(a)(3)(C), which directed amendment of subsec. (b) by substituting “Director of National Intelligence” for “Director” each place it appeared, was executed by making the substitution the first two places it appeared to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 108–458, § 1071(a)(3)(D), substituted “If the Director of National Intelligence” for “If the Director”.


Subsec. (e). Pub. L. 108–458, § 1071(a)(3)(F), substituted “If the Director of National Intelligence” for “If the Director”.

Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


Pilot Program on Recruitment and Training of Intelligence Analysts


§ 441g–1. Framework for cross-disciplinary education and training

The Director of National Intelligence shall establish an integrated framework that brings together the educational components of the intelligence community in order to promote a more effective and productive intelligence community through cross-disciplinary education and joint training.


Section, act July 26, 1947, ch. 343, title X, § 1003, as added Pub. L. 108–458, title I, § 1043, Dec. 17, 2004, 118 Stat. 3955, provided that: "(a) In general—The Secretary of Defense and the Director of National Intelligence may jointly carry out a program to advance skills in foreign languages that are critical to the capability of the intelligence community to carry out the national security activities of the United States and to meet the long-term intelligence needs of the United States. (July 26, 1947, ch. 343, title X, § 1011, as added Pub. L. 108–487, title VI, § 612(a)(2), Dec. 23, 2004, 118 Stat. 3955.)

Pilot Program for Intensive Language Instruction in African Languages


"(a) ESTABLISHMENT.—The Director of National Intelligence, in consultation with the National Security Education Board established under section 803(a) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1903 et seq.), may establish a pilot program for intensive language instruction in African languages.

"(b) Program.—A pilot program established under subsection (a) shall provide scholarships for programs that provide intensive language instruction—

"(1) in any of the five highest priority African languages for which scholarships are not offered under the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.), as determined by the Director of National Intelligence; and

"(2) both in the United States and in a country in which the language is the native language of a significant portion of the population, as determined by the Director of National Intelligence.

"(c) TERMINATION.—A pilot program established under subsection (a) shall terminate on the date that is five years after the date on which such pilot program is established.

"(d) AUTHORIZATION OF APPROPRIATIONS.—

"(1) In general.—There is authorized to be appropriated to carry out this section $2,000,000.

"(2) AVAILABILITY.—Funds authorized to be appropriated under paragraph (1) shall remain available until the termination of the pilot program in accordance with subsection (c)."

§ 441j–1. Education partnerships

(a) In general

In carrying out the Foreign Languages Program, the head of a covered element of the intelligence community may enter into one or more education partnership agreements with educational institutions in the United States in order to encourage and enhance the study in such educational institutions of foreign languages that are critical to the capability of the intelligence community to carry out the national security activities of the United States.

(b) Assistance provided under educational partnership agreements

Under an educational partnership agreement entered into with an educational institution pursuant to this section, the head of a covered element of the intelligence community may provide the following assistance to the educational institution:

(1) The loan of equipment and instructional materials of the element of the intelligence community to the educational institution for any purpose and duration that the head of the element considers appropriate.

(2) Notwithstanding any other provision of law relating to the transfer of surplus property, the transfer to the educational institution of any computer equipment, or other equipment, that is—

(A) commonly used by educational institutions;

(B) surplus to the needs of the element of the intelligence community; and

(C) determined by the head of the element to be appropriate for support of such agreement.

(3) The provision of dedicated personnel to the educational institution—

(A) to teach courses in foreign languages that are critical to the capability of the intelligence community to carry out the national security activities of the United States; or

(B) to assist in the development for the educational institution of courses and materials on such languages.

(4) The involvement of faculty and students of the educational institution in research
§ 441j–2. Voluntary services

(a) Authority to accept services

Notwithstanding section 1342 of title 31 and subject to subsection (b) of this section, the Foreign Languages Program under section 441j of this title shall include authority for the head of a covered element of the intelligence community to accept from any dedicated personnel volunteer services in support of the activities authorized by this part.

(b) Requirements and limitations

(1) In accepting voluntary services from an individual under subsection (a) of this section, the head of a covered element of the intelligence community shall—

(A) supervise the individual to the same extent as the head of the element would supervise a compensated employee of that element providing similar services; and

(B) ensure that the individual is licensed, privileged, has appropriate educational or experiential credentials, or is otherwise qualified under applicable law or regulations to provide such services.

(2) In accepting voluntary services from an individual under subsection (a) of this section, the head of a covered element of the intelligence community may not—

(A) place the individual in a policymaking position, or other position performing inherently governmental functions; or

(B) compensate the individual for the provision of such services.

(c) Authority to recruit and train individuals providing services

The head of a covered element of the intelligence community may recruit and train individuals to provide voluntary services under subsection (a) of this section.

(d) Status of individuals providing services

(1) Subject to paragraph (2), while providing voluntary services under subsection (a) of this section or receiving training under subsection (c) of this section, an individual shall be considered to be an employee of the Federal Government only for purposes of the following provisions of law:

(A) Section 552a of title 5 (relating to maintenance of records on individuals).

(B) Chapter 11 of title 18 (relating to conflicts of interest).

(2)(A) With respect to voluntary services under paragraph (1) provided by an individual that are within the scope of the services accepted under that paragraph, the individual shall be deemed to be a volunteer of a governmental entity or nonprofit institution for purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.).

(B) In the case of any claim against such an individual with respect to the provision of such services, section 4(d) of such Act (42 U.S.C. 14503(d)) shall not apply.

(3) Acceptance of voluntary services under this section shall have no bearing on the issuance or renewal of a security clearance.

(e) Reimbursement of incidental expenses

(1) The head of a covered element of the intelligence community may reimburse an individual for incidental expenses incurred by the individual in providing voluntary services under subsection (a) of this section. The head of a covered element of the intelligence community shall determine which expenses are eligible for reimbursement under this subsection.

(2) Reimbursement under paragraph (1) may be made from appropriated or nonappropriated funds.

(f) Authority to install equipment

(1) The head of a covered element of the intelligence community may install telephone lines and any necessary telecommunication equipment in the private residences of individuals who provide voluntary services under subsection (a) of this section.

(2) The head of a covered element of the intelligence community may pay the charges incurred for the use of equipment installed under paragraph (1) for authorized purposes.

(3) Notwithstanding section 1348 of title 31, the head of a covered element of the intelligence community may use appropriated funds or nonappropriated funds of the element in carrying out this subsection.

(3) Acceptance of voluntary services under this section shall have no bearing on the issuance or renewal of a security clearance.

References in Text


§ 441j–3. Regulations

(a) In general

The Secretary of Defense and the Director of National Intelligence shall jointly prescribe regulations to carry out the Foreign Languages Program.

(b) Elements of the intelligence community

The head of each covered element of the intelligence community shall prescribe regulations to carry out sections 441j–1 and 441j–2 of this
§ 441j–4. Definitions

In this part:

(1) The term "covered element of the intelligence community" means an agency, office, bureau, or element referred to in subparagraphs (B) through (L) of section 401a(4) of this title.

(2) The term "educational institution" means—
   (A) a local educational agency (as that term is defined in section 7801(26) of title 20);
   (B) an institution of higher education (as defined in section 1002 of title 20, other than institutions referred to in subsection (a)(1) of such section); or
   (C) any other nonprofit institution that provides instruction of foreign languages in languages that are critical to the capability of the intelligence community to carry out national security activities of the United States.

(3) The term "dedicated personnel" means employees of the intelligence community and private citizens (including former civilian employees of the Federal Government who have been voluntarily separated, and members of the United States Armed Forces who have been honorably discharged, honorably separated, or generally discharged under honorable circumstances and rehired on a voluntary basis specifically to perform the activities authorized under this part).


PART C—ADDITIONAL EDUCATION PROVISIONS

§ 441m. Assignment of intelligence community personnel as language students

(a) In general

The Director of National Intelligence, acting through the heads of the elements of the intelligence community, may assign employees of such elements in analyst positions requiring foreign language expertise as students at accredited professional, technical, or other institutions of higher education for training at the graduate or undergraduate level in foreign languages required for the conduct of duties and responsibilities of such positions.

(b) Authority for reimbursement of costs of tuition and training

(1) The Director of National Intelligence may reimburse an employee assigned under subsection (a) of this section for the total cost of

(2) The authority under paragraph (1) shall apply to employees who are assigned on a full-time or part-time basis.

(3) Reimbursement under paragraph (1) may be made from appropriated or nonappropriated funds.

(c) Relationship to compensation as an analyst

Reimbursement under this section to an employee who is an analyst is in addition to any benefits, allowances, travel expenses, or other compensation the employee is entitled to by reason of serving in such an analyst position.


§ 441n. Program on recruitment and training

(a) Program

(1) The Director of National Intelligence shall carry out a program to ensure that selected students or former students are provided funds to continue academic training, or are reimbursed for academic training previously obtained, in areas of specialization that the Director, in consultation with the other heads of the elements of the intelligence community, identifies as areas in which the current capabilities of the intelligence community are deficient or in which future capabilities of the intelligence community are likely to be deficient.

(2) A student or former student selected for participation in the program shall commit to employment with an element of the intelligence community, following completion of appropriate academic training, under such terms and conditions as the Director considers appropriate.

(3) The program shall be known as the Pat Roberts Intelligence Scholars Program.

(b) Elements

In carrying out the program under subsection (a), the Director shall—

(1) establish such requirements relating to the academic training of participants as the Director considers appropriate to ensure that participants are prepared for employment as intelligence professionals; and

(2) periodically review the areas of specialization of the elements of the intelligence community to determine the areas in which such elements are, or are likely to be, deficient in capabilities.

(c) Use of funds

Funds made available for the program under subsection (a) shall be used—

(1) to provide a monthly stipend for each month that a student is pursuing a course of study;

(2) to pay the full tuition of a student or former student for the completion of such course of study;

(3) to pay for books and materials that the student or former student requires or required to complete such course of study;

(4) to pay the expenses of the student or former student for travel requested by an ele-
ment of the intelligence community in relation to such program; or

(5) for such other purposes the Director considers reasonably appropriate to carry out such program.


§ 441o. Educational scholarship program

The head of a department or agency containing an element of the intelligence community may establish an undergraduate or graduate training program with respect to civilian employees and prospective civilian employees of such element similar in purpose, conditions, content, and administration to the program that the Secretary of Defense is authorized to establish under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note).


§ 441p. Intelligence officer training program

(a) Programs

(1) The Director of National Intelligence may carry out grant programs in accordance with subsection (b) to enhance the recruitment and retention of an ethnically and culturally diverse intelligence community workforce with capabilities critical to the national security interests of the United States.

(2) In carrying out paragraph (1), the Director shall identify the skills necessary to meet current or emergent needs of the intelligence community and the educational disciplines that will provide individuals with such skills.

(b) Institutional grant program

(1) The Director may provide grants to institutions of higher education to support the establishment or continued development of programs of study in educational disciplines identified under subsection (a)(2).

(2) A grant provided under paragraph (1) may, with respect to the educational disciplines identified under subsection (a)(2), be used for the following purposes:

(A) Curriculum or program development.

(B) Faculty development.

(C) Laboratory equipment or improvements.

(D) Faculty research.

(c) Application

An institution of higher education seeking a grant under this section shall submit an application describing the proposed use of the grant at such time and in such manner as the Director may require.

(d) Reports

An institution of higher education that receives a grant under this section shall submit to the Director regular reports regarding the use of such grant, including—

(1) a description of the benefits to students who participate in the course of study funded by such grant;

(2) a description of the results and accomplishments related to such course of study; and

(3) any other information that the Director may require.

(e) Regulations

The Director shall prescribe such regulations as may be necessary to carry out this section.

(f) Definitions

In this section:

(1) The term “Director” means the Director of National Intelligence.

(2) The term “institution of higher education” has the meaning given the term in section 1001 of title 20.


SUBCHAPTER VIII—ADDITIONAL MISCELLANEOUS PROVISIONS

§ 442. Applicability to United States intelligence activities of Federal laws implementing international treaties and agreements

(a) In general

No Federal law enacted on or after December 27, 2000, that implements a treaty or other international agreement shall be construed as making unlawful an otherwise lawful and authorized intelligence activity of the United States Government or its employees, or any other person to the extent such other person is carrying out such activity on behalf of, and at the direction of, the United States, unless such Federal law specifically addresses such intelligence activity.

(b) Authorized intelligence activities

An intelligence activity shall be treated as authorized for purposes of subsection (a) of this section if the intelligence activity is authorized by an appropriate official of the United States Government, acting within the scope of the official duties of that official and in compliance with Federal law and any applicable Presidential directive.


§ 442a. Counterintelligence initiatives

(a) Inspection process

In order to protect intelligence sources and methods from unauthorized disclosure, the Director of National Intelligence shall establish and implement an inspection process for all agencies and departments of the United States that handle classified information relating to the national security of the United States intended to assure that those agencies and departments maintain effective operational security practices and programs directed against counterintelligence activities.
(b) Annual review of dissemination lists

The Director of National Intelligence shall establish and implement a process for all elements of the intelligence community to review, on an annual basis, individuals included on distribution lists for access to classified information. Such process shall ensure that only individuals who have a particularized "need to know" (as determined by the Director) are continued on such distribution lists.

(c) Completion of financial disclosure statements required for access to certain classified information

The Director of National Intelligence shall establish and implement a process by which each head of an element of the intelligence community directs that all employees of that element, in order to be granted access to classified information referred to in subsection (a) of section 1.3 of Executive Order No. 12968 (August 2, 1995; 60 Fed. Reg. 40245; 50 U.S.C. 435 note), submit financial disclosure forms as required under subsection (b) of such section.

(d) Arrangements to handle sensitive information

The Director of National Intelligence shall establish, for all elements of the intelligence community, programs and procedures by which sensitive classified information relating to human intelligence is safeguarded against unauthorized disclosure by employees of those elements.

2010—Subsec. (a). Pub. L. 111–259, § 409(1), struck out par. (1) designation before "In" and par. (2) which read as follows: "The Director shall carry out the process through the Office of the National Counterintelligence Executive."

Subsec. (b). Pub. L. 111–259, § 409(2), struck out par. (1) designation before "The Director" and par. (2) which read as follows: "(1) designation before "In" and par. (2) which read as follows: "The Director shall carry out the process through the Office of the National Counterintelligence Executive."

2004—Subsec. (a)(1). Pub. L. 108–458, § 1071(a)(1)(NN), substituted "Director of National Intelligence" for "Director of Central Intelligence".

Subsec. (b)(1). Pub. L. 108–458, § 1071(a)(1)(NN), substituted "Director of National Intelligence" for "Director of Central Intelligence".

Subsec. (c)(1). Pub. L. 108–458, § 1071(a)(1)(NN), substituted "Director of National Intelligence" for "Director of Central Intelligence".

Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memo-

§ 442b. Misuse of the Office of the Director of National Intelligence name, initials, or seal

(a) Prohibited acts

No person may, except with the written permission of the Director of National Intelligence, or a designee of the Director, knowingly use the words "Office of the Director of National Intelligence", the initials "ODNI", the seal of the Office of the Director of National Intelligence, or any colorable imitation of such words, initials, or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Director of National Intelligence.

(b) Injunction

Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

2010—Pub. L. 111–259, § 409(2), struck out par. (1) designation before "In" and par. (2) which read as follows: "The Director shall carry out the process through the Office of the National Counterintelligence Executive."

2004—Pub. L. 108–458, § 1071(a)(1)(NN), substituted "Director of National Intelligence" for "Director of Central Intelligence".

§§ 442b to 453. Transferred

Chapter 16—Defense Industrial Reserves

Sec. 451 to 454. Transferred or Repealed.


For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memo—
CHAPTER 17—ARMING AMERICAN VESSELS


Section, act June 29, 1948, ch. 715, § 1, 62 Stat. 1095, provided for arming of American vessels during a war or national emergency. See section 361 of Title 10, Armed Forces.

CHAPTER 18—AIR-WARNING SCREEN

Sec. 491. Establishment and development of land-based air warning and control installations and facilities; extent of appropriation; procurement of communication services

The Secretary of the Air Force is authorized to establish and develop within and without the continental limits of the United States in fulfilling the air defense responsibilities of the Department of the Air Force such land-based air warning and control installations and facilities, by the construction, installation, or equipment of temporary or permanent public works, including buildings, facilities, appurtenances, utilities, and access roads, and to provide for necessary administration and planning therefor, without regard to section 332(a) and (b) of title 31, as he may deem necessary in the interest of national security: Provided, That not to exceed $85,500,000 shall be appropriated for the construction of public works authorized by this section.

The Secretary of the Air Force is authorized to procure communication services required for the semiautomatic ground environment system. No contract for such services may be for a period of more than ten years from the date communication services are first furnished under such contract.

The aggregate contingent liability of the Government under the termination provisions of all contracts authorized hereunder may not exceed a total of $222,000,000 and the Government Accountability Office shall have access to such carrier records and accounts.

In procuring such services, the Secretary of the Air Force shall utilize to the fullest extent practicable the facilities and capabilities of communication common carriers, including rural telephone cooperatives, within their respective service areas and for power supply, shall utilize to the fullest extent practicable, the facilities and capabilities of public utilities and rural electric cooperatives within their respective service areas. Negotiations with communication common carriers, including cooperatives, and representation in proceedings involving such carriers before Federal and State regulatory bodies, shall be in accordance with the provisions of sections 501–505 of title 40.

CHAPTER 19—GUIDED MISSILES

§ 501. Establishment of long-range proving ground for guided missiles and other weapons; jurisdiction of Secretary of the Air Force; use by all Services.

501. Establishment of long-range proving ground for guided missiles and other weapons; jurisdiction of Secretary of the Air Force; use by all Services.

The Secretary of the Air Force is authorized to establish a joint long-range proving ground for guided missiles and other weapons by the construction, installation, or equipment of temporary or permanent public works, including buildings, facilities, appurtenances, and utilities, within or without the continental limits of the United States, for scientific study, testing, and training purposes by the Departments of the Army, Navy, and Air Force.

(May 11, 1949, ch. 98, §1, 63 Stat. 66.)

§ 502. Acquisition of land

502. Acquisition of land.

The Secretary of the Air Force is authorized in discharging the authority given in section 501 of this title to make surveys, to acquire lands and rights pertaining thereto or other interests therein, including the temporary use thereof, by donation, purchase, exchange of Government-owned lands, or otherwise, and to place permanent and temporary improvements thereon whether such lands are held in fee or under lease, or under other temporary tenure.

(May 11, 1949, ch. 98, §2, 63 Stat. 66.)

§ 503. Authorization of appropriations

503. Authorization of appropriations.

There is authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, such sums as may be necessary to carry out the purposes of this chapter, and when so specified in an appropriation Act such amounts shall remain available until expended.

(May 11, 1949, ch. 98, §3, 63 Stat. 66.)

CONCISE STATUTORY REFERENCES TO TITLE 50—WAR AND NATIONAL DEFENSE

References to Title 50 are from the United States Code, 2018 Edition.

§ 492. Acquisition of land

The provisions of this chapter shall be subject to the duties and authority of the Secretary of Defense and the departments and agencies of the Department of Defense as provided in the National Security Act of 1947.

(Mar. 30, 1949, ch. 41, §4, 63 Stat. 18; Aug. 10, 1949, ch. 422, §12(a), 63 Stat. 591.)

CONCISE STATUTORY REFERENCES TO TITLE 50—WAR AND NATIONAL DEFENSE

Chapter 19—Guided Missiles

§ 501. Establishment of long-range proving ground for guided missiles and other weapons; jurisdiction of Secretary of the Air Force; use by all Services.

In this chapter, 'Secretary of the Air Force' is used to refer to the Secretary of the Air Force, or the Assistant Secretary of the Air Force for Acquisition, Technology, and Logistics, as appropriate.

(Mar. 30, 1949, ch. 41, §12(a), 63 Stat. 591.)

CHANGES IN THE TITLE


RECENT STATUTORY HISTORY


CHANGE OF NAME

§ 504. Delegation of authority by Secretary of Defense; contributions for support

The Secretary of Defense is authorized, in his discretion, to transfer to the Secretary of the Army or the Secretary of the Navy, and to retransfer from either of such Secretaries to the other or to the Secretary of the Air Force, all, or any part of, the authority granted by sections 501 and 502 of this title; and, in connection with any such transfer or retransfer, to transfer all or any part of the funds available for the establishment and support of the joint long-range proving ground for guided missiles and other weapons. The Secretary of Defense is further authorized to permit, to the extent that he may deem appropriate, the Secretaries of the Army, the Navy, and the Air Force to contribute, with or without reimbursement, to the establishment and support of the joint long-range proving ground for guided missiles authorized by this chapter, by the loan, assignment, or transfer of personnel, supplies, equipment, and services. (May 11, 1949, ch. 98, § 4, 63 Stat. 66.)

CHAPTER 20—WIND TUNNELS

SUBCHAPTER I—CONSTRUCTION OF WIND-TUNNEL FACILITIES

Sec. 511. Joint development of unitary plan for construction of facilities; construction at educational institutions.

512. Limitation on cost of construction and equipment; vesting of title to facilities.

513. Expansion of existing facilities; appropriations; testing of models.

514. Expansion of facilities at Carderock, Maryland.

515. Reports to Congress.

SUBCHAPTER II—AIR ENGINEERING DEVELOPMENT CENTER

521. Establishment; construction, maintenance, and operation of public works and wind tunnels.

522. Acquisition of lands; advance payments for construction.

523. Employment of civilian personnel.

524. Authorization of appropriations.

SUBCHAPTER I—CONSTRUCTION OF WIND-TUNNEL FACILITIES

§ 511. Joint development of unitary plan for construction of facilities; construction at educational institutions

The Administrator of the National Aeronautics and Space Administration (hereinafter referred to as the “Administrator”) and the Secretary of Defense are authorized and directed jointly to develop a unitary plan for the construction of transsonic, supersonic, and hypersonic wind-tunnel facilities for the solution of research, development, and evaluation problems in aeronautics, including the construction of facilities at educational institutions within the continental limits of the United States for training and research in aeronautics, and to rewire the uncompleted portions of the unitary plan from time to time to accord with changes in national defense requirements and scientific and technical advances. The Administrator and the Secretaries of the Army, the Navy, and the Air Force are authorized to proceed with the construction and equipment of facilities in implementation of the unitary plan to the extent permitted by appropriations pursuant to existing authority and the authority contained in this chapter. Any further implementation of the unitary plan shall be subject to such additional authorizations as may be approved by Congress. (Oct. 27, 1949, ch. 766, title I, § 101, 63 Stat. 936; Pub. L. 85–568, title III, § 301(d)(1), (2), July 29, 1958, 72 Stat. 433; Pub. L. 106–391, title III, § 312(1), Oct. 30, 2000, 114 Stat. 1594.)

AMENDMENTS


EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–568 effective 90 days after July 29, 1958, or on any earlier date on which the Administrator of the National Aeronautics and Space Administration determines, and announces by proclamation, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it, see section 301(e) of Pub. L. 85–568, set out as a note under section 2302 of Title 10, Armed Forces.

SHORT TITLE

Section 106 of title I of act Oct. 27, 1949, provided that: “This title [enacting this subchapter] may be cited as the ‘Unitary Wind Tunnel Plan Act of 1949’.” Section 205 of title II of act Oct. 27, 1949, provided that: “This title [enacting subchapter II of this chapter] may be cited as the ‘Air Engineering Development Center Act of 1949’.”

§ 512. Limitation on cost of construction and equipment; vesting of title to facilities

The Administrator is authorized, in implementation of the unitary plan, to construct and equip transsonic or supersonic wind tunnels of a size, design and character adequate for the efficient conduct of experimental work in support of long-range fundamental research at educational institutions within the continental United States, to be selected by the Administrator, or to enter into contracts with such institutions to provide for such construction and equipment, at a total cost not to exceed $10,000,000: Provided, That the Administrator may, in his discretion, after consultation with the Committees on Armed Services of both Houses of the Congress, vest title to the facilities completed pursuant to this section in such educational institutions under such terms and conditions as may be deemed in the best interests of the United States. (Oct. 27, 1949, ch. 766, title I, § 102, 63 Stat. 936; Pub. L. 85–568, title III, § 301(d)(2), (3), July 29, 1958, 72 Stat. 433.)

AMENDMENTS

1958—Pub. L. 85–568 substituted “Administrator” for “Committee” in three places, and “his” for “its”.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–568 effective 90 days after July 29, 1958, or on any earlier date on which the Ad-
§ 513. Expansion of existing facilities; appropriations; testing of models

(a) The Administrator is authorized to expand the facilities at his existing laboratories and centers by the construction of additional transsonic, supersonic, and hypersonic wind tunnels, including buildings, equipment, and accessories, construction, and by the acquisition of land and installation of utilities.

(b) There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this section, but not to exceed $136,000,000.

(c) The facilities authorized by this section shall be operated and staffed by the Administrator but shall be available primarily to industry for testing experimental models in connection with the development of aircraft and missiles. Such tests shall be scheduled and conducted in accordance with industry's requirements and allocation of facility time shall be made in accordance with the public interest, with proper emphasis upon the requirements of each military service and due consideration of civilian needs.


AMENDMENTS

2000—Subsec. (a). Pub. L. 106–391, §312(2)(A), (B), substituted “laboratories and centers” for “laboratories” and “transsonic, supersonic, and hypersonic” for “supersonic”.

Subsec. (c). Pub. L. 106–391, §312(2)(C), substituted “facility” for “laboratory”.

1958—Subsecs. (a), (c). Pub. L. 85–568 substituted “Administrator” for “Committee” and “Administrator’s” for “Committee’s”.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–568 effective 90 days after July 29, 1958, or on any earlier date on which the Administrator of the National Aeronautics and Space Administration determines, and announces by proclamation, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it, see section 301(e) of Pub. L. 85–568, set out as a note under section 2302 of Title 10, Armed Forces.

SUBCHAPTER II—AIR ENGINEERING DEVELOPMENT CENTER

§ 521. Establishment; construction, maintenance, and operation of public works and wind tunnels

The Secretary of the Air Force is authorized to establish an Air Engineering Development Center, and to construct, install, and equip (1) temporary and permanent public works, including housing accommodations and community facilities for military and civilian personnel, buildings, facilities, appurtenances, and utilities; and (2) wind tunnels in implementation of the unitary plan referred to in subchapter I of this chapter; and to maintain and operate the public works and wind tunnels authorized by this subchapter.

(Oct. 27, 1949, ch. 766, title II, §201, 63 Stat. 937.)

§ 522. Acquisition of lands; advance payments for construction

To accomplish the purposes of this subchapter, the Secretary of the Air Force is authorized to acquire lands and rights pertaining thereto, or other interest therein, including the temporary use thereof, by donation, purchase, exchange of Government-owned lands, or otherwise, and construction under this subchapter may be prosecuted without regard to section 3224(a) and (b) of title 31.

(Oct. 27, 1949, ch. 766, title II, §202, 63 Stat. 937.)

CODIFICATION

“Section 3224(a) and (b) of title 31” substituted in text for “section 3648, Revised Statutes, as amended [31...
§ 523. Employment of civilian personnel

The Secretary of the Air Force is authorized to employ such civilian personnel as may be necessary to carry out the purposes of this subchapter without regard to the limitation on the maximum number of employees imposed by section 14(a) of the Federal Employees Pay Act of 1946 (5 U.S.C. 947(g)).

(Oct. 27, 1949, ch. 766, title II, § 203, 63 Stat. 937.)

REFERENCES IN TEXT

Section 14(a) of the Federal Employees Pay Act of 1946 (5 U.S.C. 947(g)), referred to in text, was repealed by act Sept. 12, 1950, ch. 946, title III, § 301(85), 64 Stat. 843.

§ 524. Authorization of appropriations

There is authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available until expended when so specified in the appropriation act concerned, (a) not to exceed $157,500,000 for the establishment and for initial construction, installation, and equipment of the Air Engineering Development Center authorized in this subchapter, including expenses for necessary surveys and acquisition of land, and (b) such sums as may be necessary to carry out the other purposes of this subchapter.

(Oct. 27, 1949, ch. 766, title II, § 204, 63 Stat. 937; Sept. 21, 1950, ch. 969, 64 Stat. 895.)

AMENDMENTS

1950—Act Sept. 21, 1950, substituted ‘‘$157,500,000’’ for ‘‘$100,000,000’’.

CHAPTER 21—ABACÁ PRODUCTION

§§ 541 to 546. Omitted

CODIFICATION

Sections 541 to 546, act Aug. 10, 1950, ch. 673, §§ 2–7, 64 Stat. 435–437, terminated not later than ten years after Apr. 1, 1950. See Effective and Termination Date note below.

Section 541 related to Congressional declaration of policy.

Section 542 related to production program of abacá.

Section 543 related to administration.

Section 544 related to financing.

Section 545 related to disposal of property.

Section 546 related to reports to Congress.

EFFECTIVE AND TERMINATION DATE

Act Aug. 10, 1950, ch. 673, § 8, 64 Stat. 437, provided that this chapter become effective Apr. 1, 1950, and remain effective for ten years thereafter, unless Congress or President direct earlier termination of operations, and for such further period as necessary to earliest practicable liquidation of operations under this chapter.

*See References in Text note below.*

Subchapter IV—Courts-Martial Jurisdiction


Section 576, act May 5, 1950, ch. 169, § 1, 64 Stat. 113, classified types of courts-martial. See section 818 of Title 10, Armed Forces.

Section 577, act May 5, 1950, ch. 169, § 1, 64 Stat. 114, related to jurisdiction of courts-martial in general. See section 817 of Title 10.

Section 578, act May 5, 1950, ch. 169, § 1, 64 Stat. 114, related to jurisdiction of general courts-martial. See section 818 of Title 10.

Section 579, act May 5, 1950, ch. 169, § 1, 64 Stat. 114, related to jurisdiction of special courts-martial. See section 819 of Title 10.

Section 580, act May 5, 1950, ch. 169, § 1, 64 Stat. 114, provided that jurisdiction of courts-martial was not exclusive. See section 821 of Title 10.

Effective Date of Repeal


Subchapter V—Appointment and Composition of Courts-Martial


Section 586, act May 5, 1950, ch. 169, § 1, 64 Stat. 115, prescribed persons who may convene general courts-martial. See section 822 of Title 10, Armed Forces.

Section 587, act May 5, 1950, ch. 169, § 1, 64 Stat. 115, prescribed persons who may convene special courts-martial. See section 823 of Title 10.

Section 588, act May 5, 1950, ch. 169, § 1, 64 Stat. 116, prescribed persons who may convene summary courts-martial. See section 824 of Title 10.

Section 589, act May 5, 1950, ch. 169, § 1, 64 Stat. 116, related to persons who may serve on courts-martial. See section 825 of Title 10.

Section 590, act May 5, 1950, ch. 169, § 1, 64 Stat. 117, provided for law officer of a general court-martial. See section 826 of Title 10.

Section 591, act May 5, 1950, ch. 169, § 1, 64 Stat. 117, related to appointment of trial counsel and defense counsel. See section 827 of Title 10.

Section 592, act May 5, 1950, ch. 169, § 1, 64 Stat. 117, provided for appointment of reporters and interpreters. See section 828 of Title 10.

Section 593, act May 5, 1950, ch. 169, § 1, 64 Stat. 117, related to absent and additional members of courts-martial. See section 829 of Title 10.

Effective Date of Repeal


Subchapter VI—Pretrial Procedure


Section 601, act May 5, 1950, ch. 169, § 1, 64 Stat. 118, related to charges and specifications. See section 830 of Title 10, Armed Forces.

Section 602, act May 5, 1950, ch. 169, § 1, 64 Stat. 118, prohibited compulsory self-incrimination. See section 831 of Title 10.

Section 603, act May 5, 1950, ch. 169, § 1, 64 Stat. 118, related to investigations. See section 832 of Title 10.

Section 604, act May 5, 1950, ch. 169, § 1, 64 Stat. 119, provided for forwarding of charges. See section 833 of Title 10.

Section 605, act May 5, 1950, ch. 169, § 1, 64 Stat. 119, related to advice of staff judge advocate and reference for trial. See section 834 of Title 10.

Effective Date of Repeal


Subchapter VIII—Sentences


Section 636, act May 5, 1950, ch. 169, § 1, 64 Stat. 126, prohibited cruel and unusual punishments. See section 856 of Title 10, Armed Forces.

Section 637, act May 5, 1950, ch. 169, § 1, 64 Stat. 126, related to maximum limits of punishment. See section 856 of Title 10.
Section 638, act May 5, 1950, ch. 169, § 1, 64 Stat. 126, provided for effective date of sentences. See section 857 of Title 10.

Section 638, act May 5, 1950, ch. 169, § 1, 64 Stat. 126, related to execution of confinement. See section 854 of Title 10.

**Effective Date of Repeal**


**SUBCHAPTER X—PUNITIVE ARTICLES**


Section 671, act May 5, 1950, ch. 169, § 1, 64 Stat. 134, defined “principal”. See section 877 of Title 10, Armed Forces.

Section 672, act May 5, 1950, ch. 169, § 1, 64 Stat. 134, related to accessories after the fact. See section 878 of Title 10.

Section 673, act May 5, 1950, ch. 169, § 1, 64 Stat. 134, authorized conviction of lesser included offense. See section 879 of Title 10.

Section 674, act May 5, 1950, ch. 169, § 1, 64 Stat. 138, related to attempts. See section 880 of Title 10.

Section 675, act May 5, 1950, ch. 169, § 1, 64 Stat. 138, related to conspiracy. See section 881 of Title 10.

Section 676, act May 5, 1950, ch. 169, § 1, 64 Stat. 134, related to solicitation. See section 882 of Title 10.

Section 677, act May 5, 1950, ch. 169, § 1, 64 Stat. 134, related to fraudulent enlistment, appointment, or separation. See section 883 of Title 10.

Section 678, act May 5, 1950, ch. 169, § 1, 64 Stat. 135, related to unlawful enlistment, appointment, or separation. See section 884 of Title 10.

Section 679, act May 5, 1950, ch. 169, § 1, 64 Stat. 135, provided for desertion. See section 885 of Title 10.

Section 680, act May 5, 1950, ch. 169, § 1, 64 Stat. 135, related to absence without leave. See section 886 of Title 10.

Section 681, act May 5, 1950, ch. 169, § 1, 64 Stat. 135, related to missing movement of a ship, aircraft, or unit. See section 887 of Title 10.

Section 682, act May 5, 1950, ch. 169, § 1, 64 Stat. 135, related to contempt towards officials. See section 888 of Title 10.

Section 683, act May 5, 1950, ch. 169, § 1, 64 Stat. 135, related to disrespect towards superior officer. See section 889 of Title 10.

Section 684, act May 5, 1950, ch. 169, § 1, 64 Stat. 135, related to assaulting or willfully disobeying officer. See section 890 of Title 10.

Section 685, act May 5, 1950, ch. 169, § 1, 64 Stat. 136, related to failure to obey order or regulation. See section 891 of Title 10.

Section 686, act May 5, 1950, ch. 169, § 1, 64 Stat. 136, related to cruelty and maltreatment. See section 892 of Title 10.

Section 687, act May 5, 1950, ch. 169, § 1, 64 Stat. 136, related to mutiny or sedition. See section 894 of Title 10.

Section 688, act May 5, 1950, ch. 169, § 1, 64 Stat. 136, related to arrest and confinement. See section 895 of Title 10.

Section 689, act May 5, 1950, ch. 169, § 1, 64 Stat. 136, related to releasing prisoner without proper authority. See section 896 of Title 10.

Section 690, act May 5, 1950, ch. 169, § 1, 64 Stat. 137, related to unlawful detention of another. See section 897 of Title 10.

Section 691, act May 5, 1950, ch. 169, § 1, 64 Stat. 137, related to noncompliance with procedural rules. See section 898 of Title 10.

Section 692, act May 5, 1950, ch. 169, § 1, 64 Stat. 137, related to subordinate compelling surrender. See section 900 of Title 10.

Section 693, act May 5, 1950, ch. 169, § 1, 64 Stat. 137, related to misbehavior before the enemy. See section 899 of Title 10.

Section 694, act May 5, 1950, ch. 169, § 1, 64 Stat. 137, related to improper use of countersign. See section 901 of Title 10.

Section 695, act May 5, 1950, ch. 169, § 1, 64 Stat. 137, related to forcing a safeguard. See section 902 of Title 10.

Section 696, act May 5, 1950, ch. 169, § 1, 64 Stat. 137, related to capturing or abandoned property. See section 903 of Title 10.


$§ 731 to 739$  

**TITLE 50—WAR AND NATIONAL DEFENSE**  

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**SUBCHAPTER XI—MISCELLANEOUS PROVISIONS**


Section 731, act May 5, 1950, ch. 169, §1, 64 Stat. 143, related to courts of inquiry. See section 935 of Title 10, Armed Forces.

Section 732, act May 5, 1950, ch. 169, §1, 64 Stat. 143, related to authority to administer oaths and to act as notary. See section 936 of Title 10.

Section 733, act May 5, 1950, ch. 169, §1, 64 Stat. 144, required reading and explanation of certain sections of this chapter. See section 937 of Title 10.

Section 734, act May 5, 1950, ch. 169, §1, 64 Stat. 144, related to complaints of wrongs. See section 938 of Title 10.

Section 735, act May 5, 1950, ch. 169, §1, 64 Stat. 144, related to redress of injuries to property. See section 939 of Title 10.

Section 736, act May 5, 1950, ch. 169, §1, 64 Stat. 145, authorized President to delegate his authority. See section 940 of Title 10.

Section 737, act May 5, 1950, ch. 169, §8, 64 Stat. 146, provided for oath of enlistment. See section 502 of Title 10.

Section 738, act May 5, 1950, ch. 169, §9, 64 Stat. 146, provided for removal of suits. See section 1442a of Title 28, Judiciary and Judicial Procedure.

Section 739, act May 5, 1950, ch. 169, §10, 64 Stat. 146, related to dismissal of officers. See sections 1161 and 6408 of Title 10.

**EFFECTIVE DATE OF REPEAL**


$§ 740. Omitted$

**CODIFICATION**

Section, act May 5, 1950, ch. 169, §12, 64 Stat. 147, which authorized the Judge Advocate General of any of the armed forces to grant a new trial, vacate a sentence, restore rights and property, and substitute an administrative discharge for a dismissal or for a dishonorable or bad-conduct discharge in any court-martial case for offenses committed during World War II upon application made within one year after termination of the war or after final disposition upon initial appellate review, whichever was the later, limited new trial applications to one as to any one case, and provided for oath of enlistment; see section 502 of Title 10.

**EXECUTIVE ORDER NO. 10190**

Ex. Ord. No. 10190, Dec. 6, 1950, 15 F.R. 8711, provided for the petition to the Judge Advocate General of the Navy or to the General Counsel of the Treasury Department, in respect to violations of Navy or Coast Guard disciplinary laws committed between Dec. 7, 1941 and May 30, 1951, for a new trial, the vacatur of sentence and restoration of rights and property, or the substitution of an administrative discharge for a dismissal, dishonorable discharge, or bad-conduct discharge; limited such petition to within one year after final disposition of the case upon initial appellate review or to any time before May 31, 1952 (whichever was the later date); prohibited submission of more than one such petition in any one case and submission after death of an accused; specified the ground for relief and the form and contents of the petition; permitted oral agreement; prescribed the rules for a hearing; authorized additional investigation; required the action granting or denying a remedy to be in writing and published; provided the procedure for a new trial; and specified the effect of a new trial upon the prior trial and sentence.

Section, act May 5, 1950, ch. 169, § 13, 64 Stat. 147, prescribed qualifications of Judge Advocate Generals of armed forces. See sections 3037, 5148, and 8072 of Title 10, Armed Forces.

EFFECTIVE DATE OF REPEAL

CHAPTER 22A—REPRESENTATION OF ARMED FORCES PERSONNEL BEFORE FOREIGN JUDICIAL TRIBUNALS


Section 751, act July 24, 1956, ch. 689, § 1, 70 Stat. 630, related to representation of members of the Armed Forces before foreign judicial tribunals and employment of counsel.

Section 752, act July 24, 1956, ch. 689, § 2, 70 Stat. 630, provided for enactment of regulations.

Section 753, act July 24, 1956, ch. 689, § 3, 70 Stat. 630, provided that sections 189 and 365 of the Revised Statutes not apply to action taken under this act.

Section 754, act July 24, 1956, ch. 689, § 4, 70 Stat. 630, related to claims for reimbursement.

Section 755, act July 24, 1956, ch. 689, § 5, 70 Stat. 630, related to appropriations.

CHAPTER 23—INTERNAL SECURITY

SUBCHAPTER I—CONTROL OF SUBVERSIVE ACTIVITIES

Sec. 781, 782. Repealed.

783. Offenses.

784 to 786. Repealed.

796. Effect of subchapter on other criminal laws.

797. Penalty for violation of security regulations and orders.

798. Repealed.

SUBCHAPTER II—EMERGENCY DETENTION OF SUSPECTED SECURITY RISKS

811 to 826. Repealed.

SUBCHAPTER III—PERSONNEL SECURITY PROCEDURES IN NATIONAL SECURITY AGENCY

831. Regulations for employment security.

832. Full field investigation and appraisal.

833. Repealed.

834. "Classified information" defined.

835. Nonapplicability of administrative procedure provisions.

SUBCHAPTER IV—COMMUNIST CONTROL

841. Findings and declarations of fact.

842. Proscription of Communist Party, its successors, and subsidiary organizations.

843. Application of Internal Security Act of 1950 to members of Communist Party and other subversive organizations; "Communist Party" defined.

844. Determination by jury of membership in Communist Party, participation, or knowledge of purpose.

SUBCHAPTER V—REGISTRATION OF CERTAIN PERSONS TRAINED IN FOREIGN ESPIONAGE SYSTEMS

851. Registration of certain persons; filing statement; regulations.

852. Exemption from registration.

853. Retention of registration statements; public examination; withdrawal.

Sec. 854. Rules, regulations, and forms.

855. Violations; penalties; deportation.

856. Continuing offense.

857. Compliance with other registration statutes.

858. Applicability to Canal Zone.

APPLICATION TO COMMunist PARTY MEMBERS

Application of subchapters I and II of this chapter and other provisions of the Internal Security Act of 1950, as amended, to members of the Communist Party and other subversive organizations, see section 843 of this title, and References in Text note set out under that section.

SUBCHAPTER I—CONTROL OF SUBVERSIVE ACTIVITIES

APPLICATION TO COMMunist PARTY MEMBERS

Application of this subchapter to members of the Communist Party and other subversive organizations, see section 843 of this title, and References in Text note set out under that section.


SHORT TITLE
Act Sept. 23, 1950, provided that: ‘‘This Act [enacting subchapters I to III of this chapter and section 1507 of Title 18, Crimes and Criminal Procedure, amending sections 137 to 137–8, 156, 456, 457, 704, 705, 725, 732, 733, 734, and 735 of Title 8, Aliens and Nationality, section 793 of Title 18, and sections 611 and 618 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under sections 781 and 811 of this title and section 792 of Title 18, and amending a provision set out as a note under section 462 of this title] may be cited as the ‘‘Internal Security Act of 1950’’.’’

Section 1(a) of act Sept. 23, 1950, which provided that title I of act Sept. 23, 1950, which enacted this subchapter and section 1507 of Title 18, Crimes and Criminal Procedure, amended sections 137 to 137–8, 156, 456, 457, 704, 705, 725, 732, 733, 734, and 735 of Title 8, Aliens and Nationality, section 793 of Title 18, and sections 611 and 618 of Title 22, Foreign Relations and Intercourse, and enacted provisions set out as notes under section 781 of this title and section 792 of Title 18, be cited as the ‘‘Subversive Activities Control Act of 1950’’, was repealed by Pub. L. 103–199, title VIII, § 803(1), Dec. 17, 1993, 107 Stat. 2329.

Act Aug. 24, 1954, ch. 886, § 1, 68 Stat. 775, provided: ‘‘That this Act [enacting sections 792a and subchapter IV of this chapter, amending sections 782, 784, 785, 789 to 792, and 793 of this title, and enacting a provision set out as a note under section 841 of this title] may be cited as the ‘‘Communist Control Act of 1954’’.’’

SEPARABILITY
Section 32 of title I of act Sept. 21, 1950, provided: ‘‘If any provision of this title [see Short Title note above] or the application thereof to any person or circumstances, is held invalid, the remaining provisions of this title, or the application of such provision to other persons or circumstances, shall not be affected thereby.’’


§ 783. Offenses

(a) Communication of classified information by Government officer or employee

It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information.

(b) Receipt of, or attempt to receive, by foreign agent or member of Communist organization, classified information

It shall be unlawful for any agent or representative of any foreign government knowingly to obtain or receive, or attempt to obtain or receive, directly or indirectly, from any officer or employee of the United States or of any department or agency thereof or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, unless special authorization for such communication shall first have been obtained from the head of the department, agency, or corporation having custody of or control over such information.

(c) Penalties for violation

Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than $10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

(d) Limitation period

Any person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after such person has ceased to be employed as such officer or employee.

(e) Forfeiture of property

(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(B) any of the person’s property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1).

(3) Except as provided in paragraph (4), the provisions of subsections (b), (c), and (e) through (p) of section 853 of title 21 shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property, if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund established under section 10601 of title 42 all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

(5) As used in this subsection, the term ‘‘State’’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.


Amendments


1993—Subsec. (a). Pub. L. 103–199, § 803(2)(A)–(C), redesignated subsec. (b) as (a), struck out ‘‘or an officer or member of any Communist organization as defined in paragraph (5) of section 782 of this title’’ after ‘‘foreign government’’, and struck out former subsec. (a) which read as follows: ‘‘It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship, as defined in paragraph (15) of section 782 of this title, the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual: Provided, however, That this subsection shall not apply to the proposal of a constitutional amendment.’’ Subsec. (b). Pub. L. 103–199, § 803(2)(B), (D), redesignated subsec. (c) as (b) and struck out ‘‘, or any officer
or member of any Communist organization as defined in paragraph (5) of section 782 of this title," after "foreign government.’’ Former subsec. (b) redesignated (a). Subsec. (c) to (e), Pub. L. 103–199, §803(2)(A), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsec. (f), Pub. L. 90–237 struck out prohibition against receiving the fact of the registration of any person under section 787 or 788 of this title as an officer or member of any Communist organization in evidence against such person in any prosecution for any alleged violation of subsection (a) or subsection (c) of this section or for any alleged violation of any other criminal statute.

**Termination of Trust Territory of the Pacific Islands**

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.


Section 786, acts Sept. 23, 1950, ch. 1024, title I, §7, 64 Stat. 990; July 29, 1954, ch. 646, 68 Stat. 586, related to registration of Communist-action and Communist-front organizations with the Attorney General, the preparation and filing of a registration statement and subsequent annual reports by such organizations, duty of such organizations to keep certain specified records and accounts, duty of Attorney General to notify individuals listed in any registration statement as an officer or member of such organization that such individual is so listed, investigation and determination of denials of membership and petition for relief in cases where Attorney General declines or fails to strike name where Attorney General declines or fails to strike name of any individual from an annual report or registration statement.

Section 787, act Sept. 23, 1950, ch. 1024, title I, §8, 64 Stat. 995, related to registration of members of Communist-action organizations with Attorney General and preparation and filing of a registration statement by such individuals.


Section 795, acts Sept. 23, 1950, ch. 1024, title I, §16, 64 Stat. 1003, related to applicability of administrative procedure provisions to Board.

**§ 796. Effect of subchapter on other criminal laws**

The foregoing provisions of this subchapter shall be construed as being in addition to and not in modification of existing criminal statutes.

(Sept. 23, 1950, ch. 1024, title I, §17, 64 Stat. 1003.)

**REFERENCES IN TEXT**

This subchapter, referred to in text, was in the original ‘‘this title’, meaning title I of act Sept. 23, 1950, ch. 1024, 64 Stat. 987, as amended, known as the Subversive Activities Control Act of 1950, which is classified principally to this subchapter. For complete classification of title I of such act to the Code, see Short Title note set out under section 781 of this title and Tables.

**§ 797. Penalty for violation of security regulations and orders**

(a) Misdeemeanor violation of defense property security regulations

(1) Misdeemeanor

Whoever willfully violates any defense property security regulation shall be fined under title 18 or imprisoned not more than one year, or both.

(2) Defense property security regulation described

For purposes of paragraph (1), a defense property security regulation is a property se-
security regulation that, pursuant to lawful authority—
(A) shall be or has been promulgated or approved by the Secretary of Defense (or by a military commander designated by the Secretary of Defense or by a military officer, or a civilian officer or employee of the Department of Defense, holding a senior Department of Defense director position designated by the Secretary of Defense) for the protection or security of Department of Defense property; or
(B) shall be or has been promulgated or approved by the Administrator of the National Aeronautics and Space Administration for the protection or security of NASA property.

(3) Property security regulation described

For purposes of paragraph (2), a property security regulation, with respect to any property, is a regulation—
(A) relating to fire hazards, fire protection, lighting, machinery, guard service, disrepair, disuse, or other unsatisfactory conditions on such property, or the ingress there to or egress or removal of persons therefrom; or
(B) otherwise providing for safeguarding such property against destruction, loss, or injury by accident or by enemy action, sabotage, or other subversive actions.

(4) Definitions

In this subsection:
(A) Department of Defense property

The term ‘Department of Defense property’ means covered property subject to the jurisdiction, administration, or in the custody of the Department of Defense, any Department or agency of which that Department consists, or any officer or employee of that Department or agency.

(B) NASA property

The term ‘NASA property’ means covered property subject to the jurisdiction, administration, or in the custody of the National Aeronautics and Space Administration or any officer or employee thereof.

(C) Covered property

The term ‘covered property’ means aircraft, airports, airport facilities, vessels, harbors, ports, piers, water-front facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places.

(D) Regulation as including order

The term ‘regulation’ includes an order.

(b) Posting

Any regulation or order covered by subsection (a) of this section shall be posted in conspicuous and appropriate places.


AMENDMENTS

Section 820, acts Sept. 23, 1950, ch. 1024, title II, §110, 64 Stat. 1027; Aug. 28, 1958, Pub. L. 85–791, §30(a), 72 Stat. 950, related to orders of Board, providing in subsec. (d), respectively, for revocation of detention order; orders sustaining or denying indemnity claims; dismissal of petition and confirmation of detention order; report and recommended order of hearing examiner and effectiveness after expiration of time period; and modification or setting aside by Board of its own findings or orders prior to court review.

Section 821, acts Sept. 23, 1950, ch. 1024, title II, §111, 64 Stat. 1028; Aug. 28, 1958, Pub. L. 85–791, §30(b), (c), 72 Stat. 950, 951, related to judicial review, providing in subsecs. (a) to (g), respectively, for rights of petitioner; orders granting indemnity and right of Attorney General; courts of appeals, place, petition, time, service, record, statement, powers of court, and conclusiveness of Board’s finding; additional evidence, modification of, or new, findings by Board, recommendations, exclusiveness of court jurisdiction, finality of judgment, and review by Supreme Court; commencement of review proceeding as stay of Board’s order; time of finality of Board’s order; and applicability of Administrative Procedure Act.

Section 822, act Sept. 23, 1950, ch. 1024, title II, §112, 64 Stat. 1029, related to resisting, disregarding, or evading apprehension, escape or attempts at escape, conspiracy, and to penalties.

Section 823, act Sept. 23, 1950, ch. 1024, title II, §113, 64 Stat. 1030, related to aiding evasion of apprehension or escape, concealment, conspiracy, and to penalties.

Section 824, act Sept. 23, 1950, ch. 1024, title II, §114, 64 Stat. 1030, related to resistance of, or interference with, Board members or agents and to penalties.

Section 825, act Sept. 23, 1950, ch. 1024, title II, §115, 64 Stat. 1030, related to definitions.

Section 826, act Sept. 23, 1950, ch. 1024, title II, §116, 64 Stat. 1030, related to preservation of privilege of habeas corpus.

SUBCHAPTER III—PERSONNEL SECURITY PROCEDURES IN NATIONAL SECURITY AGENCY

§ 831. Regulations for employment security

Subject to the provisions of this subchapter, the Secretary of Defense (hereafter in this subchapter referred to as the “Secretary”) shall prescribe such regulations relating to continuing security procedures as he considers necessary to assure—

(1) that no person shall be employed in, or detailed or assigned to, the National Security Agency (hereafter in this subchapter referred to as the “Agency”), or continue to be so employed, detailed, or assigned; and

(2) that no person so employed, detailed, or assigned shall have access to any classified information;

unless such employment, detail, assignment, or access to classified information is clearly consistent with the national security.


§ 832. Full field investigation and appraisal

(a) Conditional employment; other current security clearance; circumstances authorizing employment on temporary basis

No person shall be employed in, or detailed or assigned to, the Agency unless he has been the subject of a full field investigation in connection with such employment, detail, or assignment, and is cleared for access to classified information in accordance with the provisions of this subchapter; excepting that conditional employment without access to sensitive cryptographic information or material may be tendered any applicant, under such regulations as the Secretary may prescribe, pending the completion of such full field investigation: And provided further, That such full field investigation at the discretion of the Secretary need not be required in the case of persons assigned or detailed to the Agency who have a current security clearance for access to sensitive cryptographic information under equivalent standards of investigation and clearance. During any period of war declared by the Congress, or during any period when the Secretary determines that a national disaster exists, or in exceptional cases in which the Secretary (or his designee for such purpose) makes a determination in writing that his action is necessary or advisable in the national interest, he may authorize the employment of any person in, or the detail or assignment of any person to, the Agency, and may grant to any such person access to classified information, on a temporary basis, pending the completion of the full field investigation and the clearance for access to classified information required by this subsection, if the Secretary determines that such action is clearly consistent with the national security.

(b) Boards of appraisal; establishment; membership; appointment; appraisal in doubtful cases; report and recommendation; qualifications of members; Secretary’s clearance contrary to board’s recommendation

To assist the Secretary and the Director of the Agency in carrying out their personnel security responsibilities, one or more boards of appraisal of three members each, to be appointed by the Director of the Agency, shall be established in the Agency. Such a board shall appraise the loyalty and suitability of persons for access to classified information, in those cases in which the Director of the Agency determines that there is a doubt whether their access to that information would be clearly consistent with the national security, and shall submit a report and recommendation on each such case. However, appraisal by such a board is not required before action may be taken under sections 7512 and 7532 of title 5, or any other similar provision of law. Each member of such a board shall be specially qualified and trained for his duties as such a member, shall have been the subject of a full field investigation in connection with his appointment as such a member, and shall have been cleared by the Director for access to classified information at the time of his appointment as such a member. No person shall be cleared for access to classified information, contrary to the recommendations of any such board, unless the Secretary (or his designee for such purpose) shall make a determination in writing that such employment, detail, assignment, or access to classified information is in the national interest.


Codification

In subsec. (b), “sections 7512 and 7532 of title 5” substituted for “section 14 of the Act of June 27, 1944, chap-
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of August 26, 1950, chapter 803, as amended (5 U.S.C.

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thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party or any subsidiary organization by reason of the laws of the United States or any political subdivision thereof, are terminated: Provided, however, That nothing in this section shall be construed as amending the Internal Security Act of 1950, as amended [50 U.S.C. 781 et seq.]


REFERENCES IN TEXT

The Internal Security Act of 1950, as amended, referred to in text, is act Sept. 23, 1950, ch. 1024, 64 Stat. 987, as amended, which is classified principally to subchapters I to III of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 781 of this title and Tables.

CODIFICATION

Section was enacted as part of the Communist Control Act of 1954, and not part of the Internal Security Act of 1950 which comprises subchapters I to III of this chapter.

§843. Application of Internal Security Act of 1950 to members of Communist Party and other subversive organizations; "Communist Party" defined

(a) Whoever knowingly and willfully becomes or remains a member of (1) the Communist Party, or (2) any other organization having for one of its purposes or objectives the establishment, control, conduct, seizure, or overthrow of the Government of the United States, or the government of any State or political subdivision thereof, by the use of force or violence, with knowledge of the purpose or objective of such organization shall be subject to all the provisions and penalties of the Internal Security Act of 1950, as amended [50 U.S.C. 781 et seq.], as a member of a "Communist-action" organization.

(b) For the purposes of this section, the term "Communist Party" means the organization now known as the Communist Party of the United States of America, the Communist Party of any State or subdivision thereof, and any unit or subdivision of any such organization, whether or not any change is hereafter made in the name thereof.


REFERENCES IN TEXT

The Internal Security Act of 1950, as amended, referred to in subsec. (a), is act Sept. 23, 1950, ch. 1024, 64 Stat. 987, as amended, which is classified principally to subchapters I to III of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 781 of this title and Tables.

CODIFICATION

Section was enacted as part of the Communist Control Act of 1954, and not as part of the Internal Security Act of 1950 which comprises subchapters I to III of this chapter.

§844. Determination by jury of membership in Communist Party, participation, or knowledge of purpose

In determining membership or participation in the Communist Party or any other organization defined in this Act, or knowledge of the purpose or objective of such party or organization, the jury, under instructions from the court, shall consider evidence, if presented, as to whether the accused person:

(1) Has been listed to his knowledge as a member in any book or any of the lists, records, correspondence, or any other document of the organization;

(2) Has made financial contribution to the organization in dues, assessments, loans, or in any other form;

(3) Has made himself subject to the discipline of the organization in any form whatsoever;

(4) Has executed orders, plans, or directives of any kind of the organization;

(5) Has acted as an agent, courier, correspondent, organizer, or in any other capacity in behalf of the organization;

(6) Has conferred with officers or other members of the organization in behalf of any plan or enterprise of the organization;

(7) Has been accepted to his knowledge as an officer or member of the organization or as one to be called upon for services by other officers or members of the organization;

(8) Has written, spoken or in any other way communicated by signal, semaphore, sign, or in any other form of communication orders, directives, or plans of the organization;

(9) Has prepared documents, pamphlets, leaflets, books, or any other type of publication in behalf of the objectives and purposes of the organization;

(10) Has mailed, shipped, circulated, distributed, delivered, or in any other way sent or delivered to others material or propaganda of any kind in behalf of the organization;

(11) Has advised, counseled or in any other way imparted information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the objectives of the organization;

(12) Has indicated by word, action, conduct, writing or in any other way a willingness to carry out in any manner and to any degree the plans, designs, objectives, or purposes of the organization;

(13) Has in any other way participated in the activities, planning, actions, objectives, or purposes of the organization;

(14) The enumeration of the above subjects of evidence on membership or participation in the Communist Party or any other organization as above defined, shall not limit the inquiry into and consideration of any other subject of evidence on membership and participation as herein stated.


REFERENCES IN TEXT

This Act, referred to in the provision preceding par. (1), is act Aug. 24, 1954, ch. 886, 68 Stat. 775, known as the Communist Control Act of 1954, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 781 of this title and Tables.

CODIFICATION

Section was enacted as part of the Communist Control Act of 1954, and not as part of the Internal Security Act of 1950 which comprises subchapters I to III of this chapter.
Act of 1956 which comprises subchapters I to III of this chapter.

SUBCHAPTER V—REGISTRATION OF CERTAIN PERSONS TRAINED IN FOREIGN ESPIONAGE SYSTEMS

§ 851. Registration of certain persons; filing statement; regulations

Except as provided in section 852 of this title, every person who has knowledge of, or has received instruction or assignment in, the espionage, counter-espionage, or sabotage service or tactics of a government of a foreign country or of a foreign political party, shall register with the Attorney General by filing with the Attorney General a registration statement in duplicate, under oath, prepared and filed in such manner and form, and containing such statements, information, or documents pertinent to the purposes and objectives of this subchapter as the Attorney General, having due regard for the national security and the public interest, by regulations prescribes.

(Aug. 1, 1956, ch. 849, §2, 70 Stat. 899.)

CODIFICATION

Section was not enacted as part of the Internal Security Act of 1950 which comprises subchapters I to III of this chapter.

SEPARABILITY

Section 9 of act Aug. 1, 1956, provided: “If any provision of this Act [enacting this subchapter] or the application thereof to any persons or circumstances is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, is not affected thereby.”

§ 852. Exemption from registration

The registration requirements of section 851 of this title do not apply to any person—

(a) who has obtained knowledge of or received instruction or assignment in the espionage, counter-espionage, or sabotage service or tactics of a foreign government or foreign political party by reason of academic or personal interest not under the supervision of or in preparation for service with the government of a foreign country or a foreign political party;

(b) who has obtained such knowledge solely by reason of academic or personal interest not under the supervision of or in preparation for service with the government of a foreign country or a foreign political party;

(c) who has made full disclosure of such knowledge, instruction, or assignment to officials within an agency of the United States Government having responsibilities in the field of intelligence, which disclosure has been made a matter of record in the files of such agency, and concerning whom a written determination has been made by the Attorney General or the Director of Central Intelligence that registration would not be in the interest of national security;

(d) whose knowledge of, or receipt of instruction or assignment in, the espionage, counter-espionage, or sabotage service or tactics of a government of a foreign country or of a foreign political party, is a matter of record in the files of an agency of the United States Government having responsibilities in the field of intelligence and concerning whom a written determination is made by the Attorney General or the Director of Central Intelligence, based on all information available, that registration would not be in the interest of national security;

(e) who is a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State, while he is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official, and any member of his immediate family who resides with him;

(f) who is an official of a foreign government recognized by the United States, whose name and status and the character of whose duties as such official are of record in the Department of State, and while he is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official, and any member of his immediate family who resides with him;

(g) who is a member of the staff of or employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, and whose name and status and the character of whose duties as such member or employee are a matter of record in the Department of State, while he is engaged exclusively in the performance of activities recognized by the Department of State as being within the scope of the functions of such member or employee;

(h) Who is an officially acknowledged and sponsored representative of a foreign government and is in the United States on an official mission for the purpose of conferring or otherwise cooperating with United States intelligence or security personnel;

(i) who is a civilian or one of the military personnel of a foreign armed service coming to the United States pursuant to arrangements made under a mutual defense treaty or agreement, or who has been invited to the United States at the request of an agency of the United States Government;

(j) who is a person designated by a foreign government to serve as its representative in or to an international organization in which the United States participates or is an officer or employee of such an organization or who is a member of the immediate family of, and resides with, such a representative, officer, or employee.

(Aug. 1, 1956, ch. 849, §3, 70 Stat. 899.)

CODIFICATION

Section was not enacted as part of the Internal Security Act of 1950 which comprises subchapters I to III of this chapter.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the

1So in original. Probably should not be capitalized.
§ 853. Retention of registration statements; public examination; withdrawal

The Attorney General shall retain in permanent form one copy of all registration statements filed under this subchapter. They shall be public records and open to public examination at such reasonable hours and under such regulations as the Attorney General prescribes, except that the Attorney General, having due regard for the national security and public interest, may withdraw any registration statement from public examination.


Codification

Section was not enacted as part of the Internal Security Act of 1950 which comprises subchapters I to III of this chapter.

§ 854. Rules, regulations, and forms

The Attorney General may at any time, make, prescribe, amend, and rescind such rules, regulations and forms as he deems necessary to carry out the provisions of this subchapter.

(Aug. 1, 1956, ch. 849, §5, 70 Stat. 900.)

Codification

Section was not enacted as part of the Internal Security Act of 1950 which comprises subchapters I to III of this chapter.

§ 855. Violations; penalties; deportation

(a) Whoever willfully violates any provision of this subchapter or any regulation thereunder, or in any registration statement willfully makes a false statement of a material fact or willfully omits any material fact, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) Any alien convicted of a violation of this subchapter or any regulation thereunder is subject to deportation in the manner provided by chapter 5 of title II of the Immigration and Nationality Act [8 U.S.C. 1221 et seq.].


References in Text

The Immigration and Nationality Act, referred to in subsec. (b), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended. Chapter 4 of title II of the Act is classified generally to part IV (§1221 et seq.) of subchapter II of chapter 12 of title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Codification

Section was not enacted as part of the Internal Security Act of 1950 which comprises subchapters I to III of this chapter.

1 So in original. Probably should be “makes”.

Amendments


Effective Date of 1996 Amendment

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

§ 856. Continuing offense

Failure to file a registration statement as required by this subchapter is a continuing offense for as long as such failure exists, notwithstanding any statute of limitation or other statute to the contrary.

(Aug. 1, 1956, ch. 849, §7, 70 Stat. 900.)

Codification

Section was not enacted as part of the Internal Security Act of 1950 which comprises subchapters I to III of this chapter.

§ 857. Compliance with other registration statutes

Compliance with the registration provisions of this subchapter does not relieve any person from compliance with any other applicable registration statute.

(Aug. 1, 1956, ch. 849, §8, 70 Stat. 900.)

Codification

Section was not enacted as part of the Internal Security Act of 1950 which comprises subchapters I to III of this chapter.

§ 858. Applicability to Canal Zone

This subchapter applies to and within the Canal Zone.


References in Text

For definition of Canal Zone, referred to in text, see section 3692(b) of Title 22, Foreign Relations and Intercourse.

Codification

Section was not enacted as part of the Internal Security Act of 1950 which comprises subchapters I to III of this chapter.

Effective Date

Section effective Jan. 2, 1963, see section 25 of Pub. L. 87–845, set out as an Effective Date of 1962 Amendment note under section 104 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 24—NATIONAL DEFENSE FACILITIES


Section 881, act Sept. 11, 1950, ch. 945, §2, 64 Stat. 829, stated purpose of this chapter, which provided for national defense facilities. See section 18231 of Title 10, Armed Forces.

Section 882, acts Sept. 11, 1950, ch. 945, §3, 64 Stat. 830; Aug. 9, 1955, ch. 662, §1(a), (b), 69 Stat. 595; Aug. 3, 1956,
CHAPTER 25—ARMED FORCES RESERVE


Section 901, act July 9, 1952, ch. 608, pt. I, § 101, 66 Stat. 481, defined terms used in this chapter. See sections 101 and 102 of Title 10, Armed Forces, and section 1002 of Title 10, Air National Guard, and section 1003 of Title 10, Air National Guard, and section 1002 of Title 10, Armed Forces, and section 1003 of Title 10, Armed Forces.

Section 902, act July 9, 1952, ch. 608, pt. II, § 201, 66 Stat. 482, stated purpose of reserve components, and provided for maintenance of National Guard and Air National Guard. See sections 10102 and 10103 of Title 10, Armed Forces, and section 1002 of Title 10, National Guard.


Section 904, act July 9, 1952, ch. 608, pt. II, § 203, 66 Stat. 483, provided for maximum numerical strength of reserve components. See section 12001 of Title 10, Armed Forces, and section 702 of Title 14, Coast Guard.


Section 914, act July 9, 1952, ch. 608, pt. II, § 214, 66 Stat. 485, related to training categories for each reserve component. See section 10141(c) of Title 10.

Section 915, act July 9, 1952, ch. 608, pt. II, § 215, 66 Stat. 486, provided for officer candidates and for distribution of personnel in various ranks and grades. See sections 12001 and 12209 of Title 10, Armed Forces, and section 702 of Title 14, Coast Guard.


ADDITIONAL REPEAL

Section was also repealed by act Aug. 10, 1956, ch. 101, § 53, 70A Stat. 641.


Section 942, act July 9, 1952, ch. 608, pt. II, § 218, 66 Stat. 487, authorized the President, by and with the advice and consent of the Senate, to make appointments to general or flag officer grade. See section 12203 of Title 10.

Section 943, act July 9, 1952, ch. 608, pt. II, § 219, 66 Stat. 487, authorized the President to make appointments in commissioned grades below general or flag officer grades. See section 12203 of Title 10.


Section 947, act Aug. 9, 1955, ch. 665, § 2(b), 69 Stat. 599, provided for common Federal appointment for officers. See section 12201(a) of Title 10.


Section 982, act July 9, 1952, ch. 608, pt. II, § 247, 66 Stat. 495, authorized members of reserve components to accept employment with and compensation from any foreign government or any concern which is controlled in whole or in part by a foreign government. See section 1032 of Title 10, Armed Forces.


Section 991, act July 9, 1952, ch. 608, pt. II, § 248, 66 Stat. 495, provided for discharge of commissioned officers and other members of reserve components. See sections 12881 and 12982 of Title 10, Armed Forces.


Section 1002, act July 9, 1952, ch. 608, pt. II, § 251, 66 Stat. 495, authorized Secretaries of the Army, Navy, Air Force, and the Treasury, to make and publish regulations. See section 10202 of Title 10 and section 417(a) of Title 37, Pay and Allowances of the Uniformed Services.

Section 1003, act July 9, 1952, ch. 608, pt. II, § 252, 66 Stat. 496, provided for reserve participation in administration of policy and regulations. See section 10211 of Title 10, Armed Forces.


Section 1011, act July 9, 1952, ch. 608, pt. II, §264, as added Aug. 9, 1955, ch. 665, §2(1), 69 Stat. 600, provided for release from active duty in Armed Forces prior to receiving periods for which inducted or enlisted, expired for release from active duty in Armed Forces prior to training commission to advise President and Secretary of Defense and to report annually to Congress regarding welfare of trainees.

§1014. Omitted

Codification

Section, act July 9, 1952, ch. 608, pt. II, §264, as added Aug. 9, 1955, ch. 665, §2(1), 69 Stat. 600, which provided for release from active duty in Armed Forces prior to serving periods for which inducted or enlisted, expired by its own terms on July 1, 1957.


Section, act July 9, 1952, ch. 608, pt. II, §265, as added Aug. 9, 1955, ch. 665, §2(1), 69 Stat. 600, which provided for release from active duty in Armed Forces prior to receiving periods for which inducted or enlisted, expired by its own terms on July 1, 1957.


Section 1011, act July 9, 1952, ch. 608, pt. II, §267, as added Aug. 9, 1955, ch. 665, §2(1), 69 Stat. 600, which provided for compatibility of laws to women in United States Army, expired by its own terms on July 1, 1957.


Section 1041, act July 9, 1952, ch. 608, pt. IV, §401, 66 Stat. 498, established Naval Reserve as Reserve component of Navy. See section 10108 of Title 10, Armed Forces.


Section 1043, act July 9, 1952, ch. 608, pt. IV, §403, 66 Stat. 498, provided that Coast Guard Reserve is reserve component of Coast Guard. See section 701 of Title 14, Coast Guard.

Section 1044, act July 9, 1952, ch. 608, pt. IV, §404, 66 Stat. 498, provided for integration of Naval Reserve. See section 10108 of Title 10, Armed Forces.


Section 1046, act July 9, 1952, ch. 608, pt. IV, §406, 66 Stat. 499, provided for integration of Coast Guard Reserve. See section 701 of Title 14, Coast Guard.

Section 1047, act July 9, 1952, ch. 608, pt. IV, §407, 66 Stat. 499, provided for a Naval Reserve Policy Board, a Marine Corps Reserve Policy Board, a Coast Guard Policy Board, and for membership on such boards. See sections 10303 and 10309 of Title 10, Armed Forces, and section 703 of Title 14, Coast Guard.

Section 1048, act July 9, 1952, ch. 608, pt. IV, §409, 66 Stat. 499, authorized Secretary of Navy to prescribe a suitable flag to be known as Naval Reserve flag, and provided class of vessels which may fly such flag. See section 7225 of Title 10, Armed Forces.

Section 1049, act July 9, 1952, ch. 608, pt. IV, §410, 66 Stat. 499, authorized Secretary of Navy to prescribe a Marine Reserve yacht pennant and enumerated class of vessels which may fly such pennant. See section 7226 of Title 10.


Section 1052, act July 9, 1952, ch. 608, pt. IV, §413, 66 Stat. 499, provided for a Retired Reserve, membership, pay, recall to active duty. See sections 6327 and 6483 of Title 10.

Section 1053, act July 9, 1952, ch. 608, pt. IV, §414, 66 Stat. 500, related to applicability of laws to women in Navy National Reserve, Marine Corps Reserve, and Coast Guard Reserve. See section 762 of Title 14, Coast Guard.


Section 1111, act July 9, 1952, ch. 608, pt. VII, §701, 66 Stat. 501, provided that National Guard and Air National Guard are reserve components of Army and Air Force. See sections 10105 and 10111 of Title 10, Armed Forces.


Section 1114, act July 9, 1952, ch. 608, pt. VII, §704, 66 Stat. 502, related to temporary extension of Federal recognition to any officer of National Guard or Air National Guard. See sections 12211 and 12212 of Title 10, Armed Forces, and section 308 of Title 32, National Guard.

Section 1115, act July 9, 1952, ch. 608, pt. VII, §705, 66 Stat. 502, related to transfers from Army Reserve or Air Force Reserve to National Guard or Air National Guard. See sections 12107, 12211, and 12212 of Title 10, Armed Forces, and section 307 of Title 32, National Guard.

Section 1116, act July 9, 1952, ch. 608, pt. VII, §706, 66 Stat. 503, related to transfers from National Guard or Air National Guard to Army Reserve or Air Force Reserve. See sections 12103, 12213, and 12214 of Title 10, Armed Forces, and section 323 of Title 32, National Guard.


Section 1120, act July 9, 1952, ch. 608, pt. VII, §710, 66 Stat. 503, provided for relief from National Guard duty when ordered to active duty. See section 325 of Title 32, National Guard.


Section 1122, act July 9, 1952, ch. 608, pt. VII, §712, 66 Stat. 504, related to maintenance of integrity of units, and to return to State status. See section 12494 of Title 10, Armed Forces, and sections 325 and 706 of Title 32, National Guard.


Section 1124, act July 9, 1952, ch. 608, pt. VII, §714, 66 Stat. 504, related to benefits for members of National Guard of United States. See section 12602 of Title 10, Armed Forces, and section 501(c) of Title 37, Pay and Allowances of the Uniformed Services.


CHAPTER 26—GIFTS FOR DEFENSE PURPOSES


Section 1151, act July 27, 1954, ch. 582, §1, 68 Stat. 566, authorized Secretary of the Treasury and Administrator of General Services to accept gifts of money or property on behalf of the United States made on condition that such gifts be used for particular defense purposes. See section 2608 of Title 10, Armed Forces.

Section 1152, act July 27, 1954, ch. 582, §2, 68 Stat. 566, authorized Secretary of the Treasury and Administrator of General Services to convert into money any gifts of property.


Section 1154, act July 27, 1954, ch. 582, §4, 68 Stat. 566, directed Secretary of the Treasury to pay to various appropriations any moneys in the special account which in his judgment would best effectuate the purpose of the gifts.

Section 1155, act July 27, 1954, ch. 582, §5, 68 Stat. 566, directed Secretary of the Treasury and Administrator of General Services to consult with interested Federal agencies in carrying out this chapter.

Section 1156, act July 27, 1954, ch. 582, §6, 68 Stat. 566, provided that nothing in this chapter was to be construed to modify or repeal the authority to accept conditional gifts under any other provision of law.

TRANSFER OF FUNDS

Section 202(c) of Pub. L. 101–403 provided that: ‘‘Any money in the special account provided for in section 3 of the Act [former 50 U.S.C. 1153] referred to in subsection (b) [repealing this chapter] on the date of the enactment of this Act [Oct. 1, 1990] shall be credited to the Defense Cooperation Account provided for in section 2608(b) of title 10, United States Code, as added by subsection (a).’’

CHAPTER 27—RESERVE OFFICER PERSONNEL PROGRAM


Section 1181, act Sept. 3, 1954, ch. 1257, title I, §102, 68 Stat. 1149, defined terms used in the Reserve Officer Personnel Act of 1944. See sections 101(d)(4), 12003 to 12005, 12202, 12642, 12646, 12647, and 12772 of Title 10, Armed Forces, and section 720 of Title 14, Coast Guard.

Section 1182, act Sept. 3, 1954, ch. 1257, title VII, §703, 68 Stat. 1191, defined terms used in the Reserve Officer Act of 1950. See section 264 of Title 14, Coast Guard.


Section 1191, acts Sept. 3, 1954, ch. 1257, title II, §201, 68 Stat. 1150; June 30, 1955, ch. 347, §1(a), 68 Stat. 218, related to constructive service credit on initial appointment. See section 12217 of Title 10, Armed Forces, and section 727 of Title 14, Coast Guard.

Section 1192, act Sept. 3, 1954, ch. 1257, title II, §202, 68 Stat. 1150, related to eligibility for promotion and to standards and qualifications for active status. See sections 12642 and 14301 et seq. of Title 10, Armed Forces, and section 727 of Title 14, Coast Guard.

Section 1193, act Sept. 3, 1954, ch. 1257, title II, §203, 68 Stat. 1150, related to appointment, composition, duration of service, quorum, and oath of service of selection boards, and to communications by officers eligible for promotion. See section 14101 et seq. of Title 10, Armed Forces, and section 730 of Title 14, Coast Guard.

Section 1221, act Sept. 3, 1954, ch. 1257, title III, § 301, 68 Stat. 1153, provided that sections 1221 to 1221 should apply only to Reserve officers of the Army.


Section 1225, act Sept. 3, 1954, ch. 1257, title III, § 305, 68 Stat. 1154, related to constructive service credit. See section 12201 et seq. of Title 10, Armed Forces.


Section 1227, act Sept. 3, 1954, ch. 1257, title III, § 307, 68 Stat. 1155, prescribed the authorized number of officers and for distribution in grade. See sections 12302 to 12305, 12307, and 12308 of Title 10.


Section 1231, act Sept. 3, 1954, ch. 1257, title III, § 308, 68 Stat. 1155, provided for promotion to first lieutenant. See section 14301 et seq. of Title 10, Armed Forces.

Section 1232, act Sept. 3, 1954, ch. 1257, title III, § 309, 68 Stat. 1156, provided for promotion to captain, major, and lieutenant colonel to fill vacancies. See section 14301 et seq. of Title 10.

Section 1233, act Sept. 3, 1954, ch. 1257, title III, § 310, 68 Stat. 1156, related to promotion to captain, major, and lieutenant colonel regardless of vacancies. See sections 12309 and 14301 et seq. of Title 10.


Section 1235, act Sept. 3, 1954, ch. 1257, title III, § 312, 68 Stat. 1157, related to promotion to colonel and female major general to fill vacancies. See section 14301 et seq. of Title 10.

Section 1236, act Sept. 3, 1954, ch. 1257, title III, § 313, 68 Stat. 1157, provided for promotion to brigadier general and major general to fill vacancies. See section 14301 et seq. of Title 10.


Section 1238, act Sept. 3, 1954, ch. 1257, title III, § 315, 68 Stat. 1158, related to total years of service for first nonunit promotion.


Section 1241, act Sept. 3, 1954, ch. 1257, title III, § 316, 68 Stat. 1159, provided for promotion to first lieutenant. See section 14301 et seq. of Title 10, Armed Forces.

Section 1242, act Sept. 3, 1954, ch. 1257, title III, § 317, 68 Stat. 1159, provided for promotion to captain, major, lieutenant colonel, and colonel to fill unit vacancies. See section 14301 et seq. of Title 10.

Section 1243, act Sept. 3, 1954, ch. 1257, title III, § 318, 68 Stat. 1159, provided for promotion to brigadier general and major general to fill vacancies. See section 14315 of Title 10.


Section 1252, act Sept. 3, 1954, ch. 1257, title III, § 320, 68 Stat. 1160, related to extension of automatic Federal recognition to higher grade. See section 310 of Title 22.

Section 1253, act Sept. 3, 1954, ch. 1257, title III, § 321, 68 Stat. 1160, provided for promotion to higher grade upon recognition. See section 14301(b) of Title 10, Armed Forces.

Section 1254, act Sept. 3, 1954, ch. 1257, title III, § 322, 68 Stat. 1161, provided for promotion upon transfer to Army Reserve. See section 12211 of Title 10.

Section 1255, act Sept. 3, 1954, ch. 1257, title III, § 323, 68 Stat. 1161, provided for appointment of adjutants general and assistant adjutants general as Reserve officers. See section 12215(a) of Title 10.


Section 1261, act Sept. 3, 1954, ch. 1257, title III, § 324, 68 Stat. 1161, related to discharge of second lieutenants. See sections 14309 and 14307 of Title 10, Armed Forces, and section 323 of Title 32, National Guard.

Section 1262, acts Sept. 3, 1954, ch. 1257, title III, § 325, 68 Stat. 1161; June 30, 1955, ch. 247, § 9, 69 Stat. 222, provided for discharge or transfer to Retired Reserve of first lieutenants, captains, and majors. See section 14301 et seq. of Title 10, Armed Forces.

Section 1263, act Sept. 3, 1954, ch. 1257, title III, § 326, 68 Stat. 1161, prescribed maximum age for discharge or transfer to Retired Reserve. See sections 14308 to 14312 of Title 10.

Section 1264, act Sept. 3, 1954, ch. 1257, title III, § 327, 68 Stat. 1162, provided for discharge or transfer to Retired Reserve for length of service. See section 14501 et seq. of Title 10.
Section 1305, acts Sept. 3, 1954, ch. 1257, title IV, § 405, 68 Stat. 1168; June 30, 1955, ch. 247, § 3(c), (d), 69 Stat. 218, related to eligibility for promotion. See sections 14001 et seq., 14306, and 14501 et seq. of Title 10.

Section 1306, act Sept. 3, 1954, ch. 1257, title IV, § 406, 68 Stat. 1168, related to applicability of laws relating to eligibility for promotion of Regular officers. See sections 14001 et seq. of Title 10, Armed Forces, and section 209 of Title 37, Pay and Allowances of the Uniformed Services.

Section 1307, act Sept. 3, 1954, ch. 1257, title IV, § 407, 68 Stat. 1169, related to restriction on applicability of subchapter to officers on active status. See section 14301 et seq. of Title 10, Armed Forces.

Section 1308, act Sept. 3, 1954, ch. 1257, title IV, § 408, 68 Stat. 1169, provided for qualifications for promotion.

Section 1309, act Sept. 3, 1954, ch. 1257, title IV, § 409, 68 Stat. 1169, provided for removal from promotion list by the President. See section 14310 of Title 10.


Section 1311, act Sept. 3, 1954, ch. 1257, title IV, § 411, 68 Stat. 1169, provided for elimination from active status. See sections 6389 and 14512(b) of Title 10.

Section 1312, act Sept. 3, 1954, ch. 1257, title IV, § 412, 68 Stat. 1171, provided for transfer to Retired Reserve for age, and exempted certain flag and general officers. See section 14512(b) of Title 10.

Section 1313, act Sept. 3, 1954, ch. 1257, title IV, § 413, 68 Stat. 1171, provided for promotions under Secretary's regulations. See section 14301 et seq. of Title 10.


Section 1316, acts Sept. 3, 1954, ch. 1257, title VI, § 403, 68 Stat. 1172, provided for transfer to Retired Reserve for age, and exempted certain flag and general officers. See section 14512(b) of Title 10.

Section 1317, acts Sept. 3, 1954, ch. 1257, title VI, § 404, as added June 30, 1955, ch. 247, § 3(f), 69 Stat. 219, related to seniority for promotion purposes. See section 14301 et seq. of Title 10.

Section 1318, act Sept. 3, 1954, ch. 1257, title VI, § 405, 68 Stat. 1173, provided for constructive service credit on promotion. See section 12201 et seq. of Title 10.


Title 50—War and National Defense

CHAPTER 143—DEFENSE CONTRACTING AUTHORITY

§1431. Authorization; official approval; Congressional action: notification of committees of certain proposed obligations, resolution of disapproval, continuity of session, computation of period

The President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts herefore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this section shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein. The authority conferred by this section may not be utilized to obligate the United States in any amount in excess of $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees. For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die at the end of a Congress, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain, or because of an adjournment sine die out of session at the end of a Congress, are included in the computation of such 60-day period.


AMENDMENTS

1991—Pub. L. 102–25, §705(f)(1), inserted before period at end of third sentence “and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees”.

1989—Pub. L. 101–510 struck out before period at end of third sentence “and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such obligation”.

1973—Pub. L. 93–155 provided for notification of Congressional Committees with respect to certain proposed obligations, Congressional resolution of disapproval, continuity of Congressional session, and computation of period.

Effective Date of 1991 Amendment

Section 705(f)(1) of Pub. L. 102–25 provided that the amendment made by that section is effective as of Nov. 6, 1990.

Nonapplicability of National Emergencies Act

The provisions of the National Emergencies Act [see Short Title note set out under section 1601 of this title] shall not apply to the powers and authorities conferred by this section and actions taken hereunder, see section 1631(a)(4) of this title.

Obligations Entered Into Before November 16, 1973

Amendment by Pub. L. 93–155 not affecting the carrying out of any contract, loan, guarantee, commitment, or other obligation entered into prior to Nov. 16, 1973, see section 807(e) of Pub. L. 93–155, set out as a note under section 2307 of Title 10, Armed Forces.


By virtue of the authority vested in me by the act of August 28, 1958, 72 Stat. 972, hereinafter called the act (this chapter), and as President of the United States, and deeming that such action will facilitate the national defense, it is hereby ordered as follows:

PART I—DEPARTMENT OF DEFENSE

Under such regulations, which shall be uniform to the extent practicable, as may be prescribed or approved by the Secretary of Defense:

1. The Department of Defense is authorized, within the limits of the amounts appropriated and the contract authorization provided therefor, to enter into contracts and into amendments or modifications of contracts herefore or hereafter made, and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever, in the judgment of the Secretary of Defense, the national defense will be facilitated thereby.

2. (a) The limitation in paragraph 1 to amounts appropriated and the contract authorization provided therefor shall not apply to contractual provisions which provide that the United States will hold harmless and indemnify the contractor against any of the claims or losses set forth in subparagraph (b), whether resulting from the negligence or wrongful act or omission of the contractor or otherwise except as provided in subparagraph (b)(2). This exception from the limitations of paragraph 1 shall apply only to claims or losses arising out of or resulting from risks that the contract defines as unusually hazardous or nuclear in nature. Such a contractual provision shall be approved in advance by an official at a level not below that of the Secretary of a military department and may require each contractor so indemnified to provide and maintain financial protection of such type and in such amounts as is determined by the approving official to be appropriate under the circumstances. In deciding whether to approve the use of an indemnification provision and in determining the amount of financial protection to be provided and maintained by the indemnified contrac-
tor, the appropriate official shall take into account such factors as the availability, cost and terms of private insurance, self-insurance, other proof of financial responsibility and workmen's compensation insurance. Such approval and determination, as required by the preceding two sentences, shall be final.

(b)(1) Subparagraph (a) shall apply to claims (including expenses of litigation and settlement of claims) for losses, not compensated by insurance or otherwise, of the following types:

(A) Claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property;

(B) Loss of, damage to, or loss of use of property of the contractor;

(C) Loss of, damage to, or loss of use of property of the Government;

(D) Claims arising (i) from indemnification agreements between the contractor and a subcontractor or sub-subcontractor, or (ii) from such arrangements and further indemnification arrangements between subcontractors at any tier; provided that all such arrangements were entered into pursuant to regulations prescribed or approved by the Secretary of Defense, the Army, the Navy, or the Air Force.

(2) Indemnification and hold harmless agreements entered into pursuant to this subsection, whether between the United States and a contractor, or between a contractor and a subcontractor, or between two subcontractors, shall not cover claims or losses caused by the willful misconduct or lack of good faith on the part of any of the contractor's or subcontractor's directors or officers or principal officials which are (i) claims by the United States (other than those arising through subcontracts) against the contractor or subcontractor, or (ii) losses affecting the property of such contractor or subcontractor. Regulations to be prescribed or approved by the Secretary of Defense, the Army, the Navy or the Air Force shall define the scope of the term principal officials.

(3) The United States may discharge its obligation under a provision authorized by subparagraph (a) by making payments directly to subcontractors or to third persons to whom a contractor or subcontractor may be liable.

(c) A contractual provision made under subparagraph (a) that provides for indemnification must also provide for—

(1) notice to the United States of any claim or action against, or of any loss by, the contractor or subcontractor which is covered by such contractual provision; and

(2) control or assistance by the United States, at its election, in the settlement or defense of any such claim or action.

2. The Secretaries of Defense, the Army, the Navy, and the Air Force, respectively, may exercise the authority herein conferred and, in their discretion and by their direction, may delegate such authority to any other military or civilian officers or officials of their respective departments, and may confer upon any such military or civilian officers or officials the power to make further delegations of such authority within their respective commands or organizations: Provided, That the authority herein conferred shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or by a departmental Contract Adjustment Board.

3. The contracts hereby authorized to be made shall include agreements of all kinds (whether in the form of contracts, letters of intent, purchase orders, or otherwise) for all types and kinds of property or services necessary, appropriate, or convenient for the national defense, or for the prosecution, development, or production of, or research concerning, any such property or services, including, but not limited to, aircraft, missiles, buildings, vessels, arms, armament, equipment or supplies of any kind, or any portion thereof; materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment without any restriction of any kind as to type, character, location, or form.

4. The Department of Defense may by agreement modify or amend or settle any of its claims under contracts herebefore or hereafter made, may make advance payments upon such contracts of any portion of the contract price, and may enter into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds. Amendments or modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making, or the form, of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

5. Proper records of all actions taken under the authority of this act shall be maintained within the Department of Defense. The Secretaries of Defense, the Army, the Navy, and the Air Force shall make such records available for inspection at any time by the Comptroller General of the United States (other than those arising through subcontracts) against the contractor or subcontractor, or (ii) losses affecting the property of such contractor or subcontractor. Regulations to be prescribed or approved by the Secretaries of Defense, the Army, the Navy or the Air Force shall define the scope of the term principal officials.

6. The Department of Defense, the Army, the Navy, and the Air Force, respectively, may respectively deem the disclosure of information therein to be detrimental to the national security.

7. The Air Force, in the settlement or defense of any such claim or action.

8. No claim against the United States arising under any purchase or contract made under the authority of the act and this order shall be assigned except in accordance with the Act of September 27, 1966, 80 Stat. 850 [which amended section 1433 of this title, sections 2310 and 2313 of Title 10, Armed Forces, and section 254 of former Title 41, Public Contracts] other than those arising through subcontracts) against the contractor or subcontractor, or (ii) losses affecting the property of such contractor or subcontractor. Regulations to be prescribed or approved by the Secretaries of Defense, the Army, the Navy or the Air Force shall define the scope of the term principal officials.

9. Advance payments shall be made hereunder only upon obtaining adequate security.

10. Every contract entered into, amended, or modified pursuant to this order shall contain a warranty by the contractor in substantially the following terms: ‘The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.’
States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to, such contracts or subcontracts. Before exercising the authority provided in the Act of September 27, 1966, 80 Stat. 850 the Secretaries of Defense, the Army, the Navy, or the Air Force, or their designees, shall first determine that all reasonable efforts have been made to include the clause prescribed above and that alternate sources of supply are not reasonably available.

12. Nothing herein contained shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;
(b) any contract in violation of existing law relating to limitation of profits or fees;
(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;
(d) the waiver of any bid, payment, performance, or other bond required by law;
(e) the amendment of a contract negotiated under section 2304(a)(15) of Title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or
(f) the formalization of an informal commitment, unless the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, finds that at the time the commitment was made it was impracticable to use normal procurement procedures.

13. The provisions of the Walsh-Healey Act (49 Stat. 1001), as amended (now chapter 65 of Title 41, Public Contracts), the Davis-Bacon Act (49 Stat. 1011), as amended (now sections 3141-3144, 3146, and 3147 of Title 40, Public Buildings, Property, and Works), the Copeland Act (48 Stat. 948), as amended, and the Eight-Hour Law (37 Stat. 137), as amended (sections 321 to 323 of former Title 40, Public Buildings, Property, and Works), if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 1, 1951, or any amendments or extensions thereof, or the continuance in force of an action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

PART II—EXTENSION OF PROVISIONS OF PARAGRAPHS 1 TO 14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following-named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury.
Department of the Interior.
Department of Agriculture.
Department of Commerce.
Department of Health and Human Services.
Department of Transportation.
Atomic Energy Commission.
General Services Administration.
National Aeronautics and Space Administration.

Tennessee Valley Authority.

Government Printing Office.

Department of Homeland Security.

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to his agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part I of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained herein shall constitute authorization hereunder for the amendment of a contract negotiated under [former] section 322(c)(14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2(b) of the act of August 28, 1954, 72 Stat. 966, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

PART III—COORDINATION WITH OTHER AUTHORITIES

25. After March 1, 2003, no executive department or agency shall exercise authority granted under paragraph 1A of this order with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology as defined in section 865 of the Homeland Security Act of 2002 [6 U.S.C. 444], unless—

(a) in the case of the Department of Defense, the Secretary of Defense has, after consideration of the authority provided under subtitle G of title VIII of the Homeland Security Act of 2002 [6 U.S.C. 444] et seq., determined that the exercise of authority under this order is necessary for the timely and effective conduct of United States military or intelligence activities; and
(b) in the case of any other executive department or agency that has authority under this order, (i) the Secretary of Homeland Security has advised whether the use of the authority provided under subtitle G of title VIII of the Homeland Security Act of 2002 would be appropriate, and (ii) the Director of the Office and Management and Budget has approved the exercise of authority under this order.

§ 1432. Restrictions

Nothing in this chapter shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;
(b) any contract in violation of existing law relating to limitation of profits;
(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;
(d) the waiver of any bid, payment, performance, or other bond required by law;
(e) the amendment of a contract negotiated under section 2304(a)(15) of Title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or
(f) the formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.


1 See References in Text note below.
§ 1433. Public record; examination of records by Comptroller General; exemptions: exceptional conditions; reports to Congress

(a) All actions under the authority of this chapter shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this chapter shall include a clause to the effect that the Comptroller General of the United States or his designee is served by the omission of the clause.

1. where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination; and

2. where the agency head determines, after taking into account the price and availability of the property or services from United States sources, that the public interest would be best served by the omission of the clause.

If the clause is omitted based on a determination under clause (2), a written report shall be furnished to the Congress.


AMENDMENTS

1966—Subsec. (b). Pub. L. 89–607 provided for exemption of certain contracts with foreign contractors from the requirement for an examination-of-records clause, such determination to be reported to Congress.

EXEMPTION OF FUNCTIONS

Functions with respect to purchases authorized to be made outside the limits of the United States or the District of Columbia under the Foreign Assistance Act of 1961, as amended [see Short Title note set out under title 22, Foreign Relations and Intercourse], as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6638, set out under section 2303 of Title 22.
which related to State enactment of absentee voting legislation, was transferred to section 1973cc–21 of Title 42, The Public Health and Welfare.

Section 1452, act Aug. 9, 1955, ch. 656, title I, §102, 69 Stat. 584; June 18, 1968, Pub. L. 90–344, §1(1), 82 Stat. 181, which related to ballotting procedures, was transferred to section 1973cc–1 of Title 42.

Section 1453, act Aug. 9, 1955, ch. 656, title I, §103, 69 Stat. 584, which related to statistical data, was transferred to section 1973cc–2 of Title 42.

Section 1454, act Aug. 9, 1955, ch. 656, title I, §104, as added June 18, 1968, Pub. L. 90–344, §1(2), 82 Stat. 181, which related to personnel residing on military installations and acquisition of legal residence for voting purposes, was transferred to section 1973cc–3 of Title 42.

Sections 1451 to 1455 were formerly classified to sections 2171 to 2175 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

§§1461 to 1465. Transferred

CODIFICATION

Section 1461, act Aug. 9, 1955, ch. 656, title II, §201, 69 Stat. 585, which provided for a Presidential designee to coordinate and facilitate actions to discharge Federal responsibilities and to report on the programs submitted by the designee, was transferred to section 1973cc–11 of Title 42, The Public Health and Welfare.

Section 1462, act Aug. 9, 1955, ch. 656, title II, §202, 69 Stat. 586, which related to current absentee voting information, was transferred to section 1973cc–12 of Title 42.

Section 1463, acts Aug. 9, 1955, ch. 656, title II, §203, 69 Stat. 588; June 18, 1968, Pub. L. 90–344, §1(3), 82 Stat. 181, which related to cooperation of Government officials, drafts of state legislation, and printing and transmitting post cards, was transferred to section 1973cc–13 of Title 42.


Section 1465, act Aug. 9, 1955, ch. 656, title II, §205, 69 Stat. 588, which provided for use of post card for election of Members of Congress, was transferred to section 1973cc–15 of Title 42.

Sections 1461 to 1465 were formerly classified to sections 2181 to 2185 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

§§1471 to 1476. Transferred

CODIFICATION

Section 1471, act Aug. 9, 1955, ch. 656, title III, §301, 69 Stat. 586, which related to definitions, was transferred to section 1973cc–21 of Title 42, The Public Health and Welfare.

Section 1472, act Aug. 9, 1955, ch. 656, title III, §302, 69 Stat. 586, which related to free postage, was transferred to section 1973cc–22 of Title 42.

Section 1473, act Aug. 9, 1955, ch. 656, title III, §303, 69 Stat. 588, which related to prevention of fraud and coercion, was transferred to section 1973cc–23 of Title 42.

Section 1474, act Aug. 9, 1955, ch. 656, title III, §304, 69 Stat. 589, which related to acts done in good faith, was transferred to section 1973cc–24 of Title 42.

Section 1475, act Aug. 9, 1955, ch. 656, title III, §305, 69 Stat. 589, which related to undue influence and free discussion, was transferred to section 1973cc–25 of Title 42.

Section 1476, act Aug. 9, 1955, ch. 656, title III, §306, 69 Stat. 589, which authorized appropriations, was transferred to section 1973cc–26 of Title 42.

Sections 1471 to 1476 were formerly classified to sections 2191 to 2196 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

CHAPTER 31—ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

§§1501 to 1509. Transferred

CODIFICATION

Section 1501, Pub. L. 86–380, §1, Sept. 24, 1959, 73 Stat. 703, which related to establishment of the Advisory Commission on Intergovernmental Relations, was transferred to section 4271 of Title 42, The Public Health and Welfare.

Section 1502, Pub. L. 86–380, §2, Sept. 24, 1959, 73 Stat. 703, which related to declaration of purpose, was transferred to section 4272 of Title 42.

Section 1503, Pub. L. 86–380, §3, Sept. 24, 1959, 73 Stat. 704; Pub. L. 89–733, §§1, 2, Nov. 2, 1966, 80 Stat. 1162, which related to membership of Commission, was transferred to section 4273 of Title 42.

Section 1504, Pub. L. 86–380, §4, Sept. 24, 1959, 73 Stat. 705, which related to organization of Commission, was transferred to section 4274 of Title 42.

Section 1505, Pub. L. 86–380, §5, Sept. 24, 1959, 73 Stat. 705, which related to duties of Commission, was transferred to section 4275 of Title 42.


Section 1507, Pub. L. 86–380, §7, Sept. 24, 1959, 73 Stat. 706; Pub. L. 89–733, §§5, Nov. 2, 1966, 80 Stat. 1162, which related to compensation of members of Commission, was transferred to section 4277 of Title 42.

Section 1508, Pub. L. 86–380, §8, Sept. 24, 1959, 73 Stat. 706, which authorized appropriations, was transferred to section 4278 of Title 42.

Section 1509, Pub. L. 86–380, §9, as added Pub. L. 89–733, §6, Nov. 2, 1966, 80 Stat. 1162, which related to receipt of funds and to consideration of these funds by Congress in making appropriations for Commission, was transferred to section 4279 of Title 42.

CHAPTER 32—CHEMICAL AND BIOLOGICAL WARFARE PROGRAM

Sec. 1511. Repealed.

1512. Transportation, open air testing, and disposal; Presidential determination; report to Congress; notice to Congress and State Governors.

1512a. Transportation of chemical munitions.

1513. Deployment, storage, and disposal; notification to host country and Congress; international law violations; reports to Congress and international organizations.

1514. "United States" defined.

1515. Suspension; Presidential authorization.

1516. Delivery systems.

1517. Immediate disposal when health or safety are endangered.

1518. Disposal; detoxification; report to Congress; emergencies.

1519. Lethal binary chemical munitions.

1519a. Limitation on procurement of binary chemical weapons.

1520. Repealed.

1520a. Restrictions on use of human subjects for testing of chemical or biological agents.

1521. Destruction of existing stockpile of lethal chemical agents and munitions.

1521a. Destruction of existing stockpile of lethal chemical agents and munitions.

1522. Conduct of chemical and biological defense program.


§ 1512. Transportation, open air testing, and disposal; Presidential determination; report to Congress; notice to Congress and State Governors

None of the funds authorized to be appropriated by this Act or any other Act may be used for the transportation of any lethal chemical or any biological warfare agent to or from any military installation in the United States, or in the open air testing of any such agent within the United States, or in the transportation or disposal of any such agent within the United States until the following procedures have been implemented:

(1) the Secretary of Defense (hereafter referred to in this chapter as the “Secretary”) has determined that the transportation or testing proposed to be made is necessary in the interests of national security;

(2) the Secretary has brought the particulars of the proposed transportation, testing, or disposal to the attention of the Secretary of Health and Human Services, who in turn may direct the Surgeon General of the Public Health Service and other qualified persons to review such particulars with respect to any hazards to public health and safety which such transportation, testing, or disposal may pose and to recommend what precautionary measures are necessary to protect the public health and safety;

(3) the Secretary has implemented any precautionary measures recommended in accordance with paragraph (2) above (including, where practicable, the detoxification of any such agent, if such agent is to be transported to or from a military installation for disposal): Provided, however, That in the event the Secretary finds the recommendation submitted by the Surgeon General would have the effect of preventing the proposed transportation, testing, or disposal, the President may determine that overriding considerations of national security require such transportation, testing, or disposal be conducted. Any transportation, testing, or disposal conducted pursuant to such a Presidential determination shall be carried out in the safest practicable manner, and the President shall report his determination and an explanation thereof to the President of the Senate and the Speaker of the House of Representatives as far in advance as practicable; and

(4) the Secretary has provided notification that the transportation, testing, or disposal will take place, except where a Presidential determination has been made: (A) to the President of the Senate and the Speaker of the House of Representatives at least 10 weeks before any such transportation will be commenced and at least 30 days before any such testing or disposal will be commenced; (B) to the Governor of any State through which such agents will be transported, such notification to be provided appropriately in advance of any such transportation.


REFERENCES IN TEXT


AMENDMENTS


CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in par. (2), pursuant to section 509(b) of Pub. L. 96–98 which is classified to section 3508(b) of Title 20, Education.

RIOT CONTROL AGENTS


“(a) RESTATEMENT OF POLICY.—It is the policy of the United States that riot control agents are not chemical weapons and that the President may authorize their use as legitimate, legal, and non-lethal alternatives to the use of force that, as provided in Executive Order No. 11850 (40 Fed. Reg. 16187) [set out below] and consistent with the resolution of ratification of the Chemical Weapons Convention, may be employed by members of the Armed Forces in war in defensive military modes to save lives, including the illustrative purposes cited in Executive Order No. 11850.

“(b) REPORT REQUIRED.—

“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006], the President shall submit to Congress a report on the use of riot control agents by members of the Armed Forces.

“(2) CONTENT.—The report required by paragraph (1) shall include—

“(A) a description of all regulations, doctrines, training materials, and any other information related to the use of riot control agents by members of the Armed Forces;

“(B) a description of how the material described in subparagraph (A) is consistent with United States policy on the use of riot control agents;

“(C) a description of the availability of riot control agents, and the means to use them, to members of the Armed Forces, including members of the Armed Forces deployed in Iraq and Afghanistan;

“(D) a description of the frequency and circumstances of the use of riot control agents by members of the Armed Forces since January 1, 1992, and a summary of views held by commanders of United States combatant commands as to the utility of the use of riot control agents by members of the Armed Forces when compared with alternatives;
“(E) a general description of steps taken or planned to be taken by the Department of Defense to clarify the circumstances under which riot control agents may be used by members of the Armed Forces; and

“(F) a brief explanation of the continuing validity of Executive Order No. 11850 [set out below] under United States law.

“(3) FORM.—The report required by paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

“(o) DEFINITIONS.—In this section:


CHEMICAL MUNITIONS TRANSPORTATION FROM OKINAWA TO THE UNITED STATES

Pub. L. 91–672, § 13, Jan. 12, 1971, 84 Stat. 2655, provided that: “No funds authorized or appropriated pursuant to this or any other Act may be used to transport chemical munitions from the Island of Okinawa to the United States. Such funds as are necessary for the detoxification or destruction of the above described chemical munitions are hereby authorized and shall be used for the detoxification or destruction of chemical munitions only outside the United States. For purposes of this section, the term ‘United States’ means the several States and the District of Columbia.”

EX ORD. No. 11850. RENUNCIATION OF CERTAIN USES IN WAR OF CHEMICAL HEBRICIDES AND RIOT CONTROL AGENTS

Ex. Ord. No. 11850, Apr. 8, 1975, 40 F.R. 16187, provided: The United States renounces, as a matter of national policy, first use of herbicides in war except use, under regulations applicable to their domestic use, for control of vegetation within U.S. bases and installations or around their immediate defensive perimeters, and first use of riot control agents in war except in defensive military modes to save lives such as:

(a) Use of riot control agents in riot control situations in areas under direct and distinct U.S. military control, to include controlling rioting prisoners of war.

(b) Use of riot control agents in situations in which civilians are used to mask or screen attacks and civilian casualties can be reduced or avoided.

(c) Use of riot control agents in rescue missions in remotely isolated areas, of downed aircrews and passengers, and escaping prisoners.

(d) Use of riot control agents in rear echelon areas outside the zone of immediate combat to protect convoys from civil disturbances, terrorists and paramilitary organizations.

I have determined that the provisions and procedures prescribed by this Order are necessary to ensure proper implementation and observance of such national policy.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America by the Constitution and laws of the United States and as Commander-in-Chief of the Armed Forces of the United States, it is hereby ordered as follows:

Section 1. The Secretary of Defense shall take all necessary measures to ensure that the use by the Armed Forces of the United States of any riot control agents and chemical herbicides in war is prohibited unless such use has Presidential approval, in advance.

Sect. 2. The Secretary of Defense shall prescribe the rules and regulations he deems necessary to ensure that the national policy herein announced shall be observed by the Armed Forces of the United States.

GERALD R. FORD.

§ 1512a. Transportation of chemical munitions

(a) Prohibition of transportation across State lines

The Secretary of Defense may not transport any chemical munition that constitutes part of the chemical weapons stockpile out of the State in which that munition is located on October 5, 1994, and, in the case of any such chemical munition not located in a State on October 5, 1994, may not transport any such munition into a State.

(b) Transportation of chemical munitions not in chemical weapons stockpile

In the case of any chemical munitions that are discovered or otherwise come within the control of the Department of Defense and that do not constitute part of the chemical weapons stockpile, the Secretary of Defense may transport such munitions to the nearest chemical munitions stockpile storage facility that has necessary permits for receiving and storing such items if the transportation of such munitions to that facility—

(1) is considered by the Secretary of Defense to be necessary; and

(2) can be accomplished while protecting public health and safety.


CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1995, and not as part of Pub. L. 91–121, title IV, § 409, Nov. 19, 1968, 83 Stat. 209, which comprises this chapter.

§ 1513. Deployment, storage, and disposal; notification to host country and Congress; international law violations; reports to Congress and international organizations

(1) None of the funds authorized to be appropriated by this Act or any other Act may be used for the future deployment, storage, or disposal, at any place outside the United States of—

(A) any lethal chemical or any biological warfare agent, or

(B) any delivery system specifically designed to disseminate any such agent, unless prior notice of such deployment, storage, or disposal has been given to the country exercising jurisdiction over such place. In the case of any place outside the United States which is under the jurisdiction or control of the United States Government, no such action may be taken unless the Secretary gives prior notice of such action to the President of the Senate and the Speaker of the House of Representatives. As used in this paragraph, the term “United States” means the several States and the District of Columbia.

(2) None of the funds authorized by this Act or any other Act shall be used for the future testing, development, transportation, storage, or disposal of any lethal chemical or any biological
warfare agent outside the United States, or for the disposal of any munitions in international waters, if the Secretary of State, after appropriate notice by the Secretary whenever any such action is contemplated, determines that such testing, development, transportation, storage, or disposal will violate international law. The Secretary of State shall report all determinations made by him under this paragraph to the President of the Senate and the Speaker of the House of Representatives, and to all appropriate international organizations, or organs thereof, in the event such report is required by treaty or other international agreement.


REFERENCES IN TEXT
This Act, referred to in pars. (1) and (2), means Pub. L. 91–121, Nov. 19, 1969, 83 Stat. 204, as amended. Provisions authorizing the appropriation of funds are not classified to the Code. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

WITHDRAWAL OF EUROPEAN CHEMICAL STOCKPILE
Pub. L. 100–180, div. A, title I, §126, Dec. 4, 1987, 101 Stat. 1044, provided that: “Chemical munitions of the United States stored in Europe on the date of the enactment of the Act (Dec. 4, 1987) should not be removed from Europe unless such munitions are replaced contemporaneously with binary chemical munitions stationed on the soil of at least one European member nation of the North Atlantic Treaty Organization.’’

§ 1514. “United States” defined
Unless otherwise indicated, as used in this chapter the term “United States” means the several States the District of Columbia, and the territories and possessions of the United States.


§ 1515. Suspension; Presidential authorization
After November 19, 1969, the operation of this chapter, or any portion thereof, may be suspended by the President during the period of any war declared by Congress and during the period of any national emergency declared by Congress or by the President.


§ 1516. Delivery systems
None of the funds authorized to be appropriated by this Act shall be used for the procurement of delivery systems specifically designed to disseminate lethal chemical or any biological warfare agents, or for the procurement of delivery system parts or components specifically designed for such purpose, unless the President shall certify to the Congress that such procurement is essential to the safety and security of the United States.


REFERENCES IN TEXT

CODIFICATION
Section was not enacted as part of Pub. L. 91–121, title IV, §409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.


§ 1517. Immediate disposal when health or safety are endangered
Nothing contained in this chapter shall be deemed to restrict the transportation or disposal of research quantities of any lethal chemical or any biological warfare agent, or to delay or prevent, in emergency situations either within or outside the United States, the immediate disposal together with any necessary associated transportation, of any lethal chemical or any biological warfare agent when compliance with the procedures and requirements of this chapter would clearly endanger the health or safety of any person.


§ 1518. Disposal; detoxification; report to Congress; emergencies
On and after October 7, 1970, no chemical or biological warfare agent shall be disposed of within or outside the United States unless such agent has been detoxified or made harmless to man and his environment unless immediate disposal is clearly necessary, in an emergency, to safeguard human life. An immediate report should be made to Congress in the event of such disposal.


CODIFICATION
Section was not enacted as part of Pub. L. 91–121, title IV, §409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

§ 1519. Lethal binary chemical munitions
(a) Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this or any other Act shall be used for the purpose of production of lethal binary chemical munitions unless the President certifies to Congress that the production of such munitions is essential to the national interest and submits a full report thereon to the President of the Senate and the Speaker of the House of Representatives as far in advance of the production of such munitions as is practicable.

(b) For purposes of this section the term “lethal binary chemical munitions” means (1) any toxic chemical (solid, liquid, or gas) which,
through its chemical properties, is intended to be used to produce injury or death to human beings, and (2) any unique device, instrument, apparatus, or contrivance, including any components or accessories thereof, intended to be used to dispense or otherwise disseminate any such toxic chemical.


REFERENCES IN TEXT

CODIFICATION
Section was enacted as part of Pub. L. 91–121, title IV, § 409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

§ 1519a. Limitation on procurement of binary chemical weapons

(a) Notwithstanding any other provision of law, no funds may be obligated or expended after September 24, 1983, for the production of binary chemical weapons unless the President certifies to the Congress that for each 155-millimeter binary artillery shell or aircraft-delivered binary aerial bomb produced a serviceable unitary artillery shell from the existing arsenal shall be rendered permanently useless for military purposes.

(b)(1) Funds appropriated pursuant to the authorization of appropriations for the Army in section 101 of this Act may be used for the establishment of a production base for binary chemical munitions and for the procurement of components for 155-millimeter binary chemical artillery projectiles, but such funds may not be used for the actual production of binary chemical munitions before October 1, 1985.

(2) Notwithstanding the provisions of paragraph (1), before the production of binary chemical munitions may begin after September 30, 1985, the President must certify to Congress in writing that, in light of circumstances prevailing at the time the certification is made, the production of such munitions is essential to the national interest.

(3) For purposes of this subsection, “production of binary chemical munitions” means the final assembly of weapon components and the filling or loading of components with binary chemicals.


REFERENCES IN TEXT

CODIFICATION
Section was enacted as part of the Department of Defense Authorization Act, 1984, and not as part of Pub. L. 91–121, title IV, § 409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.


§ 1520a. Restrictions on use of human subjects for testing of chemical or biological agents

(a) Prohibited activities
The Secretary of Defense may not conduct (directly or by contract):

(1) any test or experiment involving the use of a chemical agent or biological agent on a civilian population; or

(2) any other testing of a chemical agent or biological agent on human subjects.

(b) Exceptions
Subject to subsections (c), (d), and (e) of this section, the prohibition in subsection (a) of this section does not apply to a test or experiment carried out for any of the following purposes:

(1) Any peaceful purpose that is related to a medical, therapeutic, pharmaceutical, agricultural, industrial, or research activity.

(2) Any purpose that is directly related to protection against toxic chemicals or biological weapons and agents.

(3) Any law enforcement purpose, including any purpose related to riot control.

(c) Informed consent required
The Secretary of Defense may conduct a test or experiment described in subsection (b) of this section only if informed consent to the testing was obtained from each human subject in advance of the testing on that subject.

(d) Prior notice to Congress
Not later than 30 days after the date of final approval within the Department of Defense of plans for any experiment or study to be conducted by the Department (whether directly or under contract) involving the use of human subjects for the testing of a chemical agent or a biological agent, the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a report setting forth a full accounting of those plans, and the experiment or study may then be conducted only after the end of the 30-day period beginning on the date such report is received by those committees.

(e) “Biological agent” defined
In this section, the term “biological agent” means any micro-organism (including bacteria, viruses, fungi, rickettsias, or protozoas), pathogen, or infectious substance, and any naturally occurring, bioengineered, or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method of production, that is capable of causing—

(1) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;
(2) deterioration of food, water, equipment, supplies, or materials of any kind; or
(3) deleterious alteration of the environment.


CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1998, and not as part of Pub. L. 91–121, title IV, §409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

AMENDMENTS
1999—Subsec. (d). Pub. L. 106–65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

§ 1521. Destruction of existing stockpile of lethal chemical agents and munitions

(a) In general
The Secretary of Defense shall, in accordance with the provisions of this section, carry out the destruction of the United States’ stockpile of lethal chemical agents and munitions that exists on November 8, 1985.

(b) Date for completion
(1) The destruction of such stockpile shall be completed by the stockpile elimination deadline.
(2) If the Secretary of Defense determines at any time that there will be a delay in meeting the requirement in paragraph (1) for the completion of the destruction of chemical weapons by the stockpile elimination deadline, the Secretary shall immediately notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of that projected delay.
(3) For purposes of this section, the term “stockpile elimination deadline” means the deadline established by the Chemical Weapons Convention, but not later than December 31, 2017.

(c) Initiation of demilitarization operations
The Secretary of Defense may not initiate destruction of the chemical munitions stockpile stored at a site until the following support measures are in place:
(1) Support measures that are required by Department of Defense and Army chemical surety and security program regulations.
(2) Support measures that are required by the general and site chemical munitions demilitarization plans specific to that installation.
(3) Support measures that are required by the permits required by the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.) for chemical munitions demilitarization operations at that installation, as approved by the appropriate State regulatory agencies.

(d) Environmental protection and use of facilities
(1) In carrying out the requirement of subsection (a), the Secretary of Defense shall provide for—
(A) maximum protection for the environment, the general public, and the personnel who are involved in the destruction of the lethal chemical agents and munitions referred to in subsection (a), including but not limited to the use of technologies and procedures that will minimize risk to the public at each site; and
(B) adequate and safe facilities designed solely for the destruction of lethal chemical agents and munitions.
(2) Facilities constructed to carry out this section shall, when no longer needed for the purposes for which they were constructed, be disposed of in accordance with applicable laws and regulations and mutual agreements between the Secretary of the Army and the Governor of the State in which the facility is located.
(3) Facilities constructed to carry out this section may not be used for a purpose other than the destruction of the stockpile of lethal chemical agents and munitions that exists on November 8, 1985.

(e) Grants and cooperative agreements
(1)(A) In order to carry out subsection (d)(1)(A), the Secretary of Defense may make grants to State and local governments and to tribal organizations (either directly or through the Federal Emergency Management Agency) to assist those governments and tribal organizations in carrying out functions relating to emergency preparedness and response in connection with the disposal of the lethal chemical agents and munitions referred to in subsection (a). Funds available to the Department of Defense for the purpose of carrying out this section may be used for such grants.
(B) Additionally, the Secretary may provide funds through cooperative agreements with State and local governments, and with tribal organizations, for the purpose of assisting them in processing, approving, and overseeing permits and licenses necessary for the construction and operation of facilities to carry out this section. The Secretary shall ensure that funds provided through such a cooperative agreement are used only for the purpose set forth in the preceding sentence.

(C) In this paragraph, the term “tribal organization” has the meaning given that term in section 460b(1) of title 25.
(2)(A) In coordination with the Secretary of the Army and in accordance with agreements between the Secretary of the Army and the Administrator of the Federal Emergency Management Agency, the Administrator shall carry out a program to provide assistance to State and
local governments in developing capabilities to respond to emergencies involving risks to
the public health or safety within their jurisdictions that are identified by the Secretary as being
risks resulting from—
(1) the storage of lethal chemical agents and munitions referred to in subsection (a) at mili-
tary installations in the continental United States; or
(ii) the destruction of such agents and munitions at facilities referred to in subsection
(d)(1)(B).
(B) Assistance may be provided under this paragraph for capabilities to respond to emer-
gencies involving an installation or facility as described in subparagraph (A) until the earlier
of the following:
(i) The date of the completion of all grants and cooperative agreements with respect to
the installation or facility for purposes of this paragraph between the Federal Emergency
Management Agency and the State and local governments concerned.
(ii) The date that is 180 days after the date of the completion of the destruction of lethal
chemical agents and munitions at the installation or facility.
(C) Not later than December 15 of each year, the Administrator shall transmit a report to
Congress on the activities carried out under this paragraph during the fiscal year preceding the
fiscal year in which the report is submitted.
(f) Requirement for strategic plan
(1) The Under Secretary of Defense for Acqui-
sition, Technology, and Logistics and the Sec-
retary of the Army shall jointly prepare, and
from time to time shall update as appropriate, a
strategic plan for future activities for destruc-
tion of the United States’ stockpile of lethal
chemical agents and munitions.
(2) The plan shall include, at a minimum, the
following considerations:
(A) Realistic budgeting for stockpile de-
struction and related support programs.
(B) Contingency planning for foreseeable or
anticipated problems.
(C) A management approach and associated
actions that address compliance with the obli-
gations of the United States under the Chemi-
cal Weapons Convention and that take full ad-
vantage of opportunities to accelerate destruc-
tion of the stockpile.
(3) The Secretary of Defense shall each year
submit to the Committee on the Armed Services
of the Senate and the Committee on Armed
Services of the House of Representatives the
strategic plan as most recently prepared and up-
dated under paragraph (1). Such submission
shall be made each year at the time of the sub-
mission to the Congress that year of the Presi-
dent’s budget for the next fiscal year.
(g) Management organization
(1) In carrying out this section, the Secretary
of Defense shall provide for a management orga-
nization within the Department of the Army.
The Secretary of the Army shall be responsible
for management of the destruction of agents and
munitions at all sites except Blue Grass Army
Depot, Kentucky, and Pueblo Chemical Depot,
Colorado.
(2) The program manager for the Assembled
Chemical Weapons Alternative Program shall be
responsible for management of the construction,
operation, and closure, and any contracting re-
ating thereto, of chemical demilitarization ac-
tivities at Blue Grass Army Depot, Kentucky,
and Pueblo Army Depot, Colorado, including
management of the pilot-scale facility phase of
the alternative technology selected for the de-
struction of lethal chemical munitions. In per-
forming such management, the program man-
ger shall act independently of the Army pro-
gram manager for Chemical Demilitarization
and shall report to the Under Secretary of De-
fense for Acquisition, Technology, and Logis-
tics.
(3) The Secretary of Defense shall designate a
general officer or civilian equivalent as the di-
rector of the management organization estab-
lished under paragraph (1). Such officer shall
have—
(A) experience in the acquisition, storage,
and destruction of chemical agents and muni-
tions; and
(B) outstanding qualifications regarding
safety in handling chemical agents and munitions.
(h) Identification of funds
(1) Funds for carrying out this section, includ-
ing funds for military construction projects nec-
essary to carry out this section, shall be set
forth in the budget of the Department of De-
fense for any fiscal year as a separate account.
Such funds shall not be included in the budget
accounts for any military department.
(2) Amounts appropriated to the Secretary of
Defense for the purpose of carrying out sub-
section (e) shall be promptly made available to
the Administrator of the Federal Emergency
Management Agency.
(i) Annual reports
(1) Except as provided by paragraph (3), the
Secretary of Defense shall transmit, by Decem-
ber 15 each year, a report to Congress on the ac-
tivities carried out under this section during the
fiscal year ending on September 30 of the cal-
endar year in which the report is to be made.
(2) Each annual report shall include the fol-
lowing:
(A) A site-by-site description of the con-
struction, equipment, operation, and disman-
tling of facilities (during the fiscal year for
which the report is made) used to carry out
the destruction of agents and munitions under
this section, including any accidents or other
unplanned occurrences associated with such
construction and operation.
(B) A site-by-site description of actions
taken to assist State and local governments
(either directly or through the Federal Emer-
gency Management Agency) in carrying out
functions relating to emergency preparedness
and response in accordance with subsection
(e).
(C) An accounting of all funds expended (dur-
ing such fiscal year) for activities carried out

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under this section, with a separate accounting for amounts expended for—

(i) the construction of and equipment for facilities used for the destruction of agents and munitions;

(ii) the operation of such facilities;

(iii) the dismantling or other closure of such facilities;

(iv) research and development;

(v) program management;

(vi) travel and associated travel costs for Citizens’ Advisory Commissioners under subsection (m)(7); and

(vii) grants to State and local governments to assist those governments in carrying out functions relating to emergency preparedness and response in accordance with subsection (e).

(D) An assessment of the safety status and the integrity of the stockpile of lethal chemical agents and munitions subject to this section, including—

(i) an estimate on how much longer that stockpile can continue to be stored safely;

(ii) a site-by-site assessment of the safety of those agents and munitions; and

(iii) a description of the steps taken (to the date of the report) to monitor the safety status of the stockpile and to mitigate any further deterioration of that status.

(3) The Secretary shall transmit the final report under paragraph (1) not later than 120 days following the completion of activities under this section.

(j) Semiannual reports

(1) Not later than March 1 and September 1 each year until the year in which the United States completes the destruction of its entire stockpile of chemical weapons under the terms of the Chemical Weapons Convention, the Secretary of Defense shall submit to the members and committees of Congress referred to in paragraph (m)(7); and

(2) Each report under paragraph (1) shall include the following:

(A) The anticipated schedule at the time of such report for the completion of destruction of chemical agents, munitions, and materiel at each chemical weapons demilitarization facility in the United States.

(B) A description of the options and alternatives for accelerating the completion of chemical weapons destruction at each such facility, particularly in time to meet the stockpile elimination deadline.

(C) A description of the funding required to achieve each of the options for destruction described under subparagraph (B), and a detailed life-cycle cost estimate for each of the affected facilities included in each such funding profile.

(D) A description of all actions being taken by the United States to accelerate the destruction of its entire stockpile of chemical weapons, agents, and materiel in order to meet the current stockpile elimination deadline under the Chemical Weapons Convention of April 29, 2012, or as soon thereafter as possible.

(3) The members and committees of Congress referred to in this paragraph are—

(A) the majority leader and the minority leader of the Senate and the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Speaker of the House of Representatives, the majority leader and the minority leader of the House of Representatives, and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(k) Authorized use of toxic chemicals

Consistent with United States obligations under the Chemical Weapons Convention, the Secretary of Defense may develop, produce, otherwise acquire, retain, transfer, and use toxic chemicals and their precursors for purposes not prohibited by the Chemical Weapons Convention if the types and quantities of such chemicals and precursors are consistent with such purposes, including for protective purposes such as protection against toxic chemicals and protection against chemical weapons.

(l) Surveillance and assessment program

The Secretary of Defense shall conduct an ongoing comprehensive program of—

(1) surveillance of the existing United States stockpile of chemical weapons; and

(2) assessment of the condition of the stockpile.

(m) Chemical demilitarization citizens’ advisory commissions

(1)(A) The Secretary of the Army shall establish a citizens’ commission for each State in which there is a chemical demilitarization facility under Army management.

(B) The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs shall establish a chemical demilitarization citizens’ commission in Colorado and in Kentucky.

(C) Each commission under this subsection shall be known as the “Chemical Demilitarization Citizens’ Advisory Commission” for the State concerned.

(2)(A) The Secretary of the Army, or the Department of Defense with respect to Colorado and Kentucky, shall provide for a representative to meet with each commission established under this subsection to receive citizen and State concerns regarding the ongoing program for the disposal of the lethal chemical agents and munitions in the stockpile referred to in subsection (a) at each of the sites with respect to which a commission is established pursuant to paragraph (1).

(B) The Secretary of the Army shall provide for a representative from the Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) to meet with each commission under Army management.

(C) The Department of Defense shall provide for a representative from the Office of the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs to meet
with the commissions in Colorado and Kentucky.

(3)(A) Each commission under this subsection shall be composed of nine members appointed by the Governor of the State. Seven of such members shall be citizens from the local affected areas in the State. The other two shall be representatives of State government who have direct responsibilities related to the chemical demilitarization program.

(B) For purposes of this paragraph, affected areas are those areas located within a 50-mile radius of a chemical weapons storage site.

(4) For a period of five years after the termination of any commission under this subsection, no corporation, partnership, or other organization in which a member of that commission, a spouse of a member of that commission, an officer and the contractor concerned. An incentives clause shall require a proportionate reduction in the maximum incentive payment amounts in the event that the contractor exceeds an agreed-upon target cost if such excess costs are the responsibility of the contractor.

(D) The amount of the incentive payment earned by a contractor for a chemical demilitarization facility under an incentives clause under this subsection shall be based upon the target incentive range specified in such clause destruction operations or facility closure activities, as the case may be, are completed.

(E) The provisions of any incentives clause under this subsection shall be consistent with the obligation of the Secretary of Defense under subsection (d)(1)(A), to provide for maximum protection for the environment, the general public, and the personnel who are involved in the destruction of the lethal chemical agents and munitions.

(F) In negotiating the inclusion of an incentives clause in a contract under this subsection, the Secretary may include in such clause such additional terms and conditions as the Secretary considers appropriate.

(3)(A) No payment may be made under an incentives clause under this subsection unless the Secretary determines that the contractor concerned has satisfactorily performed its duties under such incentives clause.

(B) An incentives clause under this subsection shall specify that the obligation of the Government to make payment under such incentives clause is subject to the availability of appropriations for that purpose. Amounts appropriated for Chemical Agents and Munitions Destruction,
Defense, shall be available for payments under incentives clauses under this subsection.

(o) Definitions

In this section:

(1) The term ‘‘chemical agent and munition’’ means an agent or munition that, through its chemical properties, produces lethal or other damaging effects on human beings, except that such term does not include riot control agents, chemical herbicides, smoke and other obscuration materials.


(3) The term ‘‘lethal chemical agent and munition’’ means a chemical agent or munition that is designed to cause death, through its chemical properties, to human beings in field concentrations.

(4) The term ‘‘destruction’’ means, with respect to chemical munitions or agents—

(A) the decommissioning of such munitions or agents by incineration or by any other means; or

(B) the dismantling or other disposal of such munitions or agents so as to make them useless for military purposes and harmless to human beings under normal circumstances.

(5) The term ‘‘training in chemical warfare defense operations; and’’—

(A) the Committee on Armed Services;

(B) the Committee on National Security; and

(C) the Committee on Foreign Relations.”

Codification

Pub. L. 109–163, § 921, which directed amendment of subsec. (c)(4) of this section effective Dec. 5, 1991, and applicable with respect to any cooperative agreement entered into on or after that date, was executed to subsec. (c)(4) of this section as in effect on the date of enactment of Pub. L. 109–163, to reflect the probable intent of Congress. This section did not contain a subsec. (c)(4) on Dec. 5, 1991. See 2006 Amendment note and Effective Date of 2006 Amendment note below.

Section was enacted as part of the Department of Defense Authorization Act, 1986, and not as part of Pub. L. 91–121, title IV, § 409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

Amendments


2006—Subsec. (c)(5)(B). Pub. L. 110–181, § 924, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “No assistance may be provided under this paragraph after the completion of the destruction of the United States’ stockpile of lethal chemical agents and munitions.”

Subsec. (e)(3). Pub. L. 110–181, § 923, inserted “and” at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “training in chemical warfare defense operations; and.”

2006—Subsec. (c)(4). Pub. L. 109–163 designated first two sentences as subpar. (A) and inserted “and” to tribal organizations” after “to State and local governments” and “and tribal organizations” after “assist those governments,” designated third and fourth sentences as subpar. (B) and inserted “, and with tribal organizations,” after “with State and local governments”, and added subpar. (C). See Codification note above.

2004—Subsec. (d). Pub. L. 108–375 amended heading and text of subsec. (d) generally. Prior to amendment, text required the Secretary of Defense to develop and submit to Congress by Mar. 15, 1986, a comprehensive plan to carry out this section.


1999—Subsec. (b)(4). Pub. L. 106–65, § 1067(11), substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

Subsec. (c)(2). Pub. L. 106–65, § 1411(d)(1)(A), added par. (2) and struck out former par. (2) which read as follows: “Facilities constructed to carry out this section shall be cleaned, dismantled, and disposed of in accordance with applicable laws and regulations.”

Subsec. (g)(3) to (5). Pub. L. 106–65, § 1411(b)(1)(B), added par. (3) and redesignated former par. (3) and (4) as (4) and (5), respectively.


Subsec. (k)(2). Pub. L. 106–65, § 1067(11), substituted “and the Committee on Armed Services” for “and the Committee on National Security”.


Subsec. (f). Pub. L. 105–261, § 141(b), designated existing provisions as par. (1) and added par. (2).
Subsec. (g)(2)(C), (D). Pub. L. 105–261, §141(c)(2), redesignated subpars. (B) and (C) as (D) and (C), respectively. Pub. L. 105–85 struck out “ND” quarterly report is required under paragraph (3) after the transmittal of the final report under paragraph (1).” at end of par. (4), redesignated par. (4) as (3), and struck out former par. (3) which read as follows: “The Secretary shall transmit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the House of Representatives a quarterly report containing an accounting of all funds expended (during the quarter covered by the report) for travel and associated travel costs for Citizens’ Advisory Commissioners under section 172(g) of Public Law 102–484 (50 U.S.C. 1521 note).” The quarterly report for the final quarter of the period covered by a report under paragraph (1) may be included in that report.

1996—Subsec. (b)(4). Pub. L. 104–106, §1502(c)(6), substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committee on Armed Services of the Senate and House of Representatives”.
Subsec. (e)(3). Pub. L. 104–106, §153(c), inserted “or civilian equivalent” after “general officer” in introductory provisions.
Subsec. (g)(2). Pub. L. 104–201, §119(f)(3)(A), substituted “shall include the following:” for “shall contain” in introductory provisions.
Subsec. (h)(1). Pub. L. 101–510, §171(b), substituted “November 8, 1985” for “the date of the enactment of this Act”.

Subsec. (b). Pub. L. 102–484, §179(3)(B), redesignated subpar. (A) as (B), redesignated subpar. (B) as (A), redesignated subpar. (C) as (B), substituted “November 8, 1985” for “the date of the enactment of this Act”, and struck out former subsec. (c) which read as follows: “The provisions of this section shall take effect on October 1, 1985.”

CHANGE OF NAME

EFFECTIVE DATE OF 2006 AMENDMENT
“(1) take effect as of December 5, 1991; and
“(2) apply with respect to any cooperative agreement entered into on or after that date.”

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SENSE OF CONGRESS ON COMPLETION OF DESTRUCTION OF UNITED STATES CHEMICAL WEAPONS STOCKPILE


“(a) FINDINGS.—Congress makes the following findings:


“(2) In 2006, under the terms of the Chemical Weapons Convention, the United States requested and received a one-time, 5-year extension of its chemical weapons destruction deadline to April 29, 2012.

“(3) On April 10, 2006, the Secretary of Defense notified Congress that the United States would not meet even the extended deadline under the Chemical Weapons Convention for destruction of the United States chemical weapons stockpile, but would ‘continue working diligently to minimize the time to complete destruction without sacrificing safety and security’ and would also ‘continue requesting resources needed to complete destruction as close to April 2012 as practicable’.

“(4) The United States chemical demilitarization program has met its one percent, 20 percent, and extended 45 percent destruction deadlines under the Chemical Weapons Convention.

“(5) Destroying the remaining stockpile of United States chemical weapons is imperative for public safety and homeland security, and doing so by April 2012, in accordance with the current destruction deadline provided under the Chemical Weapons Convention, is required by United States law.

“(6) The elimination of chemical weapons anywhere they exist in the world, and the prevention of their proliferation, is of utmost importance to the national security of the United States.


“(8) Section 921(b)(6) of that Act contained a sense of Congress urging the Secretary of Defense to propose a credible treatment and disposal process with the support of affected communities. In this regard, any such process should provide for sufficient communication and consultation between representatives of the Department of Defense and representatives of affected States and communities.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that:

“(1) the United States is, and must remain, committed to making every effort to safely dispose of its entire chemical weapons stockpile by April 2012, the current destruction deadline provided under the Chemical Weapons Convention, or as soon thereafter as possible, and must carry out all of its other obligations under the Convention; and

“(2) the Secretary of Defense should make every effort to plan for, and to request in the annual budget of the President submitted to Congress adequate funding to complete, the elimination of the United States chemical weapons stockpile in accordance with United States obligations under the Chemical Weapons Convention and in a manner that will protect public health, safety, and the environment, as required by law.


DEADLINE FOR DESTRUCTION OF STOCKPILE OF LETHAL CHEMICAL AGENTS AND MUNITIONS


INCENTIVES CLAUSES IN CHEMICAL DEMILITARIZATION CONTRACTS


MANAGEMENT OF CHEMICAL DEMILITARIZATION ACTIVITIES AT BLUEGRASS ARMY DEPOT, KENTUCKY AND PUEBLO ARMY DEPOT, COLORADO


ALTERNATIVE TECHNOLOGIES FOR DESTRUCTION OF ASSEMBLED CHEMICAL WEAPONS


PILOT PROGRAM FOR DEMILITARIZATION OF ASSEMBLED CHEMICAL MUNITIONS


ALTERNATIVE DISPOSAL PROCESS FOR LOW-VOLUME SITES: REVISED DISPOSAL CONCEPT PLAN


SENSE OF CONGRESS CONCERNING INTERNATIONAL CONSULTATION AND EXCHANGE PROGRAM

Pub. L. 102–484, div. A, title I, §178, Oct. 23, 1992, 106 Stat. 2366, provided that: “It is the sense of Congress that the Secretary of Defense, in consultation with the Secretary of State, should establish, with other nations that are anticipated to be signatories to an international agreement or treaty banning chemical wea-
osns, a program under which consultation and exchange concerning chemical weapons disposal technology could be enhanced. Such a program shall be used to facilitate the exchange of technical information and advice concerning the disposal of chemical weapons among signatory nations and to further the development of safer, more cost-effective methods for the disposal of chemical weapons.”

“LOW-VOLUME SITE” DEFINED


REVISION OF CHEMICAL DEMILITARIZATION PROGRAM


§1521a. Destruction of existing stockpile of lethal chemical agents and munitions

(a) Program management

The Secretary of Defense shall ensure that the program for destruction of the United States stockpile of lethal chemical agents and munitions is managed as a major defense acquisition program (as defined in section 2420 of title 10) in accordance with the essential elements of such programs as may be determined by the Secretary.

(b) Requirement for Under Secretary of Defense (Comptroller) annual certification

Beginning with respect to the budget request for fiscal year 2004, the Under Secretary of Defense (Comptroller) shall submit to the congressional defense committees on an annual basis a certification that the budget request for the chemical agents and munitions destruction program has been submitted in accordance with the requirements of section 1521 of this title.


CODIFICATION

Section was enacted as part of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, and not as part of Pub. L. 91–121, title IV, §490, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED


§1522. Conduct of chemical and biological defense program

(a) General

The Secretary of Defense shall carry out the chemical and biological defense program of the United States in accordance with the provisions of this section.

(b) Management and oversight

In carrying out his responsibilities under this section, the Secretary of Defense shall do the following:
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(1) Assign responsibility for overall coordination and integration of the chemical and biological warfare defense program and the chemical and biological medical defense program to a single office within the Office of the Secretary of Defense.

(2) Take those actions necessary to ensure close and continuous coordination between (A) the chemical and biological warfare defense program, and (B) the chemical and biological medical defense program.

(3) Exercise oversight over the chemical and biological defense program through the Defense Acquisition Board process.

(c) Coordination of program

(1) The Secretary of Defense shall designate the Army as executive agent for the Department of Defense to coordinate and integrate research, development, test, and evaluation, and acquisition, requirements of the military departments for chemical and biological warfare defense programs of the Department of Defense.

(2) The Director of the Defense Advanced Research Projects Agency may conduct a program of basic and applied research and advanced technology development on chemical and biological warfare defense technologies and systems. In conducting such program, the Director shall seek to avoid unnecessary duplication of the activities under the program with chemical and biological warfare defense activities of the military departments and defense agencies and shall coordinate the activities under the program with those of the military departments and defense agencies.

(d) Funding

(1) The budget for the Department of Defense for each fiscal year after fiscal year 1994 shall reflect a coordinated and integrated chemical and biological defense program for the Department of Defense.

(2) Funding requests for the program (other than for activities under the program conducted by the Defense Advanced Research Projects Agency under subsection (c)(2) of this section) shall be set forth in the budget of the Department of Defense for each fiscal year as a separate account, with a single program element for each of the categories of research, development, test, and evaluation, acquisition, and military construction. Amounts for military construction projects may be set forth in the annual military construction budget. Funds for military construction for the program in the military construction budget shall be set forth separately from other funds for military construction projects. Funding requests for the program may not be included in the budget accounts of the military departments.

(3) The program conducted by the Defense Advanced Research Projects Agency under subsection (c)(2) of this section shall be set forth as a separate program element in the budget of that agency.

(4) All funding requirements for the chemical and biological defense program shall be reviewed by the Secretary of the Army as executive agent pursuant to subsection (c) of this section.

(e) Management review and report

(1) The Secretary of Defense shall conduct a review of the management structure of the Department of Defense chemical and biological warfare defense program, including—

(A) research, development, test, and evaluation;
(B) procurement;
(C) doctrine development;
(D) policy;
(E) training;
(F) development of requirements;
(G) readiness; and
(H) risk assessment.

(2) Not later than May 1, 1994, the Secretary shall submit to Congress a report that describes the details of measures being taken to improve joint coordination and oversight of the program and ensure a coherent and effective approach to its management.


CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1994, and not as part of Pub. L. 91–121, title IV, §409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201, §229(a), designated existing provisions as par. (1) and added par. (2).
Subsec. (d)(1). Pub. L. 104–201, §229(b)(1), substituted “program for the Department of Defense” for “program for the military departments”.
Subsec. (d)(2). Pub. L. 104–201, §229(b)(2), in first sentence, inserted “(other than for activities under the program conducted by the Defense Advanced Research Projects Agency under subsection (c)(2) of this section)” after “requests for the program”.
Subsec. (d)(3), (4). Pub. L. 104–201, §229(b)(3), (4), added par. (3) and redesignated former par. (3) as (4).

NATIONAL BIO-WREAPNS DEFENSE ANALYSIS CENTER


For transfer of functions, personnel, assets, and liabilities of the National Bio-Wmns Defense Analysis Center of the Department of Defense to the Secretary of Homeland Security, and for treatment of related references, see sections 1812, 553(d), 553(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHEMICAL WARFARE DEFENSE


(1) To provide for adequate protection of personnel from any exposure to a chemical warfare agent (including chronic and low-level exposure to a chemical warfare agent) that would endanger the health of exposed personnel because of the deleterious effects of—
“(A) a single exposure to the agent;  
“(B) exposure to the agent concurrently with  
other dangerous exposures, such as exposures to  
other potentially toxic substances in the  
environment, including pesticides, other insect  
and vermin control agents, and environmental  
pollutants;  
“(ii) low-grade nuclear and electromagnetic  
radiation present in the environment;  
“(iii) preventive medications (that are dan- 
gerous when taken concurrently with other dan- 
gerous exposures referred to in this paragraph);  
“(iv) diesel fuel, jet fuel, and other hydro- 
carbon-based fuels; and  
“(v) occupational hazards, including battlefield  
hazards; and  
“(C) repeated exposures to the agent, or some  
combination of one or more exposures to the  
agent and other dangerous exposures referred to in  
paragraph (B), over time.  
“(2) To provide for—  
“(1) the prevention of and protection against,  
and the detection (including confirmation) of, expo- 
sures to a chemical warfare agent (whether inten- 
tional or inadvertent) at levels that, even if not suf- 
ficient to endanger health immediately, are greater  
than the level that is recognized under Department  
of Defense policies as being the maximum safe level  
of exposure to that agent for the general popu- 
lation; and  
“(B) the recording, reporting, coordinating, and  
retaining of information on possible exposures de- 
scribed in subparagraph (A), including the monitor- 
ing of the health effects of exposures on humans  
and animals, environmental effects, and ecological  
effects, and the documenting and reporting of those  
effects specifically by location.  
“(3) To provide solutions for the concerns and mis- 
sion requirements that are specifically applicable for  
one or more of the Armed Forces in a protracted con- 
flict when exposures to chemical agents could be  
complex, dynamic, and occurring over an extended  
period.  
“(c) Research Program.—The Secretary of Defense  
shall develop and carry out a plan to establish a re- 
search program for determining the effects of exposures  
to chemical warfare agents of the type described in sub- 
section (b). The research shall be designed to yield re- 
sults that can guide the Secretary in the evolution of  
policy and doctrine on exposures to chemical warfare  
agents and to develop new risk assessment methods and  
instruments with respect to such exposures. The plan  
shall state the objectives and scope of the program and  
include a 5-year funding plan.  
“(d) Report.—Not later than May 1, 1999, the Sec- 
retary of Defense shall submit to the Committee on  
Armed Services of the Senate and the Committee on  
National Security of the House of Representatives [now  
Committee on Armed Services of the Senate and the  
Committee on Armed Services of the House of Rep- 
resentatives] a report on the results of the review  
undertaken under subsection (a) and on the research program  
developed under subsection (c). The report shall include  
the following:  
“(1) Each modification of chemical warfare defense  
policy and doctrine resulting from the review.  
“(2) Any recommended legislation regarding chemi- 
cal warfare defense.  
“(3) The plan for the research program.”  

Study of Facility for Training and Evaluation of  
Chemical or Biological Weapons Response Per- 
sonnel  

1286, provided that:  
“(1) FINDINGS.—The Congress finds that—  
“(A) the threat of the use of chemical and biological  
weapons by Third World countries and by terror- 
ist organizations has increased in recent years and is  
now a problem of worldwide significance;  
“(B) the military and law enforcement agencies in  
the United States that are responsible for responding  
to the use of such weapons require additional testing,  
training, and evaluation facilities to ensure that the  
personnel of such agencies discharge their respon- 
sibilities effectively; and  
“(C) a facility that recreates urban and suburban  
locations would provide an especially effective envi- 
ronment in which to test, train, and evaluate such  
personnel for that purpose.  
“(2) Study of Facility.—  
“(A) In General.—The President shall establish an  
interagency task force to determine the feasibility and  
appropriateness of establishing a facility that recre- 
ates both an urban environment and a suburban envi-
ronment in such a way as to permit the effective testing, 
training, and evaluation in such environments of  
government personnel who are responsible for re-
sponding to the use of chemical and biological weapons  
in the United States.  
“(B) Description of Facility.—The facility consid-
ered under subparagraph (A) shall include—  
“(i) facilities common to urban environments (in- 
cluding a multistory building and an underground  
rail transit system) and to suburban environments;  
“(ii) the capacity to produce controllable releases  
of chemical and biological agents from a variety of  
urban and suburban structures, including laborato-
tories, small buildings, and dwellings;  
“(iii) the capacity to produce controllable re- 
leases of chemical and biological agents into sew-
ge, water, and air management systems common  
to urban areas and suburban areas;  
“(iv) chemical and biocontaminant facilities at the  
P3 and P4 levels;  
“(v) the capacity to test and evaluate the effect- 
iveness of a variety of protective clothing and fa-
cilities and survival techniques in urban areas and  
suburban areas; and  
“(vi) the capacity to test and evaluate the effect-
iveness of variable sensor arrays (including video,  
audio, meteorological, chemical, and biosensor ar-
rays) in urban areas and suburban areas.  
“(C) Sense of Congress.—If the sense of Congres-
s that the facility considered under subparagraph (A)  
shall, if established—  
“(i) be under the jurisdiction of the Secretary of  
Defense; and  
“(ii) be located at a principal facility of the De-
artment of Defense for the testing and evaluation  
of the use of chemical and biological weapons dur-
ing any period of armed conflict.”  

Consolidation of Chemical and Biological Defence  
Training Activities  

Section 1702 of Pub. L. 103–160 provided that: “The Secretary of Defense shall consolidate all chemical and 
biological warfare defense training activities of the De-
partment of Defense at the United States Army Chem-
ical School.”  

Sense of Congress Concerning Federal Emergency  
Planning for Response to Terrorist Threats  

Section 1704 of Pub. L. 103–160 provided that: “It is 
the sense of Congress that the President should  
strengthen Federal interagency emergency planning by 
the Federal Emergency Management Agency and other  
appropriate Federal, State, and local agencies for de-
velopment of a capability for early detection and warn-
ing of and response to—  
“(1) potential terrorist use of chemical or biological  
agents or weapons; and  
“(2) emergencies or natural disasters involving in-
dustrial chemicals or the widespread outbreak of dis-
ease.”  

§ 1523. Annual report on chemical and biological 
warfare defense  

(a) Report required  
The Secretary of Defense shall include in the  
annual report of the Secretary under section
§ 1524

113(c) of title 10 a report on chemical and biological warfare defense. The report shall assess—

(1) the overall readiness of the Armed Forces to fight in a chemical-biological warfare environment and shall describe steps taken and planned to be taken to improve such readiness; and

(2) requirements for the chemical and biological warfare defense program, including requirements for training, detection, and protective equipment, for medical prophylaxis, and for treatment of casualties resulting from use of chemical or biological weapons.

(b) Matters to be included

The report shall include information on the following:

(1) The quantities, characteristics, and capabilities of fielded chemical and biological defense equipment to meet wartime and peacetime requirements for support of the Armed Forces, including individual protective items.

(2) The status of research and development programs, and acquisition programs, for required improvements in chemical and biological defense equipment and medical treatment, including an assessment of the ability of the Department of Defense and the industrial base to meet those requirements.

(3) Measures taken to ensure the integration of requirements for chemical and biological defense equipment and material among the Armed Forces.

(4) The status of nuclear, biological, and chemical (NBC) warfare defense training and readiness among the Armed Forces and the mass destruction of chemical and biological warfare defense equipment and material among the Armed Forces.

(5) Problems encountered in the chemical and biological warfare defense program during the past year and recommended solutions to those problems for which additional resources or actions by the Congress are required.

(7) A description of the chemical warfare defense preparations that have been and are being undertaken by the Department of Defense to address needs which may arise under article X of the Chemical Weapons Convention.

(8) A summary of other preparations undertaken by the Department of Defense and the On-Site Inspection Agency to prepare for and to assist in the implementation of the convention, including activities such as training for inspectors, preparation of defense installations for inspections under the convention using the Defense Treaty Inspection Readiness Program, provision of chemical weapons detection equipment, and assistance in the safe transportation, storage, and destruction of chemical weapons in other signatory nations to the convention.

(9) A description of any program involving the testing of biological or chemical agents on human subjects that was carried out by the Department of Defense during the period covered by the report, together with—

(A) a detailed justification for the testing;  
(B) a detailed explanation of the purposes of the testing;  
(C) a description of each chemical or biological agent tested; and  
(D) the Secretary’s certification that informed consent to the testing was obtained from each human subject in advance of the testing on that subject.

(10) A description of the coordination and integration of the program of the Defense Advanced Research Projects Agency (DARPA) on basic and applied research and advanced technology development on chemical and biological warfare defense technologies and systems under section 1522(c)(2) of this title with the overall program of the Department of Defense on chemical and biological warfare defense, including—

(A) an assessment of the degree to which the DARPA program is coordinated and integrated with, and supports the objectives and requirements of, the overall program of the Department of Defense; and  
(B) the means by which the Department determines the level of such coordination and support.


Codification

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1994, and not as part of Pub. L. 91–121, title IV, §409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

Amendments


§ 1524. Agreements to provide support to vaccination programs of Department of Health and Human Services

(a) Agreements authorized

The Secretary of Defense may enter into agreements with the Secretary of Health and Human Services to provide support for vaccination programs of the Secretary of Health and Human Services in the United States through use of the excess peacetime biological weapons defense capability of the Department of Defense.

(b) Report

Not later than February 1, 1994, the Secretary of Defense shall submit to the congressional defense committees a report on the feasibility of providing Department of Defense support for vaccination programs under subsection (a) of this section and shall identify resource requirements that are not within the Department’s capability.


Codification

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1994, and not as part

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

Congressional defense committees means the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives, see section 3 of Pub. L. 193–190, 107 Stat. 1562. See note under section 101 of Title 10, Armed Forces.

§ 1525. Assistance for facilities subject to inspection under Chemical Weapons Convention

(a) Assistance authorized

Upon the request of the owner or operator of a facility that is subject to a routine inspection or a challenge inspection under the Chemical Weapons Convention, the Secretary of Defense may provide technical assistance to that owner or operator related to compliance of that facility with the Convention. Any such assistance shall be provided through the On-Site Inspection Agency of the Department of Defense.

(b) Reimbursement requirement

The Secretary may provide assistance under subsection (a) of this section only to the extent that the Secretary determines that the Department of Defense will be reimbursed for costs incurred in providing the assistance. The United States National Authority may provide such reimbursement from amounts available to it. Any such reimbursement shall be credited to amounts available for the On-Site Inspection Agency.

(c) Definitions

In this section:


(2) The term “facility that is subject to a routine inspection” means a declared facility, as defined in paragraph 15 of Part X of the Annex on Implementation and Verification of the Convention.

(3) The term “challenge inspection” means an inspection conducted under Article IX of the Convention.

(4) The term “United States National Authority” means the United States National Authority established or designated pursuant to Article VII, paragraph 4, of the Convention.


CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1998, and not as part of Pub. L. 91–121, title IV, § 409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

§ 1526. Effective use of resources for nonproliferation programs

(a) Prohibition

Except as provided in subsection (b) of this section, no assistance may be provided by the United States Government to any person who is involved in the research, development, design, testing, or evaluation of chemical or biological weapons for offensive purposes.

(b) Exception

The prohibition contained in subsection (a) of this section shall not apply to any activity conducted pursuant to title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).


REFERENCES IN TEXT


CHAPTER 33—WAR POWERS RESOLUTION

Sec. 1541. Purpose and policy.
1542. Consultation; initial and regular consultations.
1543. Reporting requirement.
1544. Congressional action.
1545. Congressional priority procedures for joint resolution or bill.
1546. Congressional priority procedures for concurrent resolution.
1546a. Expedited procedures for certain joint resolutions and bills.
1547. Interpretation of joint resolution.
1548. Separability.

§ 1541. Purpose and policy

(a) Congressional declaration

It is the purpose of this chapter to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Congressional legislative power under necessary and proper clause

Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer hereof.

(c) Presidential executive power as Commander-in-Chief; limitation

The constitutional powers of the President as Commander-in-Chief to introduce United States
Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war,
(2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.


**Effective Date**

Section 10 of Pub. L. 93–148 provided that: "This joint resolution [enacting this chapter] shall take effect on the date of its enactment [Nov. 7, 1973]."

**Short Title**

Section 1 of Pub. L. 93–148 provided that: "This joint resolution [enacting this chapter] may be cited as the 'War Powers Resolution'."

**REPORT ON RESPONSIBLE REDEPLOYMENT OF UNITED STATES ARMED FORCES FROM IRAQ**


"(a) REPORT REQUIRED.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], or December 31, 2010, whichever occurs later, and every 180 days thereafter, the Secretary of Defense shall submit to the appropriate congressional committees a report concerning the responsible redeployment of United States Armed Forces from Iraq in accordance with the policy announced by the President on February 27, 2009, and the Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces From Iraq and the Organization of Their Activities During Their Temporary Presence in Iraq.

"(b) ELEMENTS.—The report required under subsection (a) shall include the following elements:

1. The number of United States military personnel in Iraq by service and component for each month of the preceding 90-day period and an estimate of the personnel levels in Iraq for the 90-day period following submission of the report.

2. The number and type of military installations in Iraq occupied by 100 or more United States military personnel and the number of such military installations closed, consolidated, or transferred to the Government of Iraq in the preceding 90-day period.

3. An estimate of the number of military vehicles, containers of equipment, tons of ammunition, or other significant items belonging to the Department of Defense removed from Iraq during the preceding 90-day period, an estimate of the remaining amount of such items belonging to the Department of Defense, and an assessment of the likelihood of successfully removing, demilitarizing, or otherwise transferring all items belonging to the Department of Defense from Iraq on or before December 31, 2011.

4. An assessment of United States detainee operations and releases. Such assessment should include the total number of detainees held by the United States in Iraq, the number of detainees in each threat level category, the number of detainees who are not nationals of Iraq, the number of detainees transferred to Iraqi authorities, the number of detainees who were released from United States custody and the reasons for their release, and the number of detainees who having been released in the past were recaptured or had their remains identified planning or after carrying out attacks on United States or Coalition forces.

5. A listing of the objective and subjective factors utilized by the commander of United States Forces–Iraq, including any changes to that list in the case of an update to the report, to determine risk levels associated with the drawdown of United States Armed Forces, and the process and timing that will be utilized by the commander of United States Forces–Iraq and the Secretary of Defense to assess risk and make recommendations to the President about either continuing the redeployment of United States Armed Forces from Iraq in accordance with the schedule announced by the President or modifying the pace or timing of that redeployment.

6. An assessment of progress to transfer responsibility of programs, projects, and activities carried out in Iraq by the Department of Defense to other United States Government departments and agencies, international or nongovernmental entities, or the Government of Iraq. The assessment should include a description of the numbers and categories of programs, projects, and activities for which such other entities have taken responsibility or which have been discontinued by the Department of Defense. The assessment should also include a discussion of any difficulties or barriers in transitioning such programs, projects, and activities and what, if any, solutions have been developed to address such difficulties or barriers.

7. An assessment of progress toward the goal of building the minimum essential capabilities of the Ministry of Defense and the Ministry of the Interior of Iraq, including a description of—

(a) such capabilities both extant and remaining to be developed;

(b) major equipment necessary to achieve such capabilities;

(c) the level and type of support provided by the United States to address shortfalls in such capabilities; and

(d) the level of commitment, both financial and political, made by the Government of Iraq to develop such capabilities, including a discussion of resources used by the Government of Iraq to develop capabilities that the Secretary determines are not minimum essential capabilities for purposes of this paragraph.

8. A listing and assessment of the anticipated level and type of support to be provided by United States special operations forces to the Government of Iraq and Iraqi special operations forces during the redeployment of United States conventional forces from Iraq. The assessment should include a listing of anticipated critical support from general purpose forces required by United States conventional forces and Iraqi special operations forces. The assessment should also include combat support, including rotary aircraft and intelligence, surveillance, and reconnaissance assets, combat service support, and contractor support needed through December 31, 2011.

9. SECRETARY OF STATE COMMENTS.—Prior to submitting the report required under subsection (a), the Secretary of Defense shall provide a copy of the report to the Secretary of State for review. At the request of the Secretary of State, the Secretary of Defense shall include an appendix to the report which contains any comments or additional information that the Secretary of State requests.

10. FORM.—The report required under subsection (a) may include a classified annex.

11. APPROPRIATE CONGRESSIONAL COMMITTEES.—In this section, the term 'appropriate congressional committees' means—

1. the Committee on Armed Services, the Committee on Foreign Relations, the Select Committee on Intelligence, and the Committee on Appropriations of the Senate; and

2. the Committee on Armed Services, the Committee on Foreign Affairs, the Permanent Select Committee on Intelligence, and the Committee on Appropriations of the House of Representatives.

12. TERMINATION.—The requirement to submit the report required under subsection (a) shall terminate on September 30, 2012."
Title 50—War and National Defense

United States Policy on Iraq


Authorization for Use of Military Force Against Iraq Resolution of 2002


"Whereas in 1990 in response to Iraq’s war of aggression against and illegal occupation of Kuwait, the United States forged a coalition of nations to liberate Kuwait and its people in order to defend the national security of the United States and enforce United Nations Security Council resolutions relating to Iraq;"

"Whereas after the liberation of Kuwait in 1991, Iraq entered into a United Nations sponsored cease-fire agreement pursuant to which Iraq unequivocally agreed, among other things, to eliminate its nuclear, biological, and chemical weapons programs and the means to deliver and develop them, and to end its support for international terrorism;"

"Whereas the efforts of international weapons inspectors, United States intelligence agencies, and Iraqi defectors led to the discovery that Iraq had large stockpiles of chemical weapons and a large scale biological weapons program, and that Iraq had an advanced nuclear weapons development program that was much closer to producing a nuclear weapon than intelligence reporting had previously indicated;"

"Whereas Iraq, in direct and flagrant violation of the cease-fire, attempted to thwart the efforts of weapons inspectors to identify and destroy Iraq’s weapons of mass destruction stockpiles and development capabilities, which finally resulted in the withdrawal of inspectors from Iraq on October 31, 1998;"

"Whereas in Public Law 105–253 (August 14, 1998) (112 Stat. 1538), Congress concluded that Iraq’s continuing weapons of mass destruction programs threatened vital United States interests and international peace and security, declared Iraq to be in violation of United Nations resolutions relating to Iraq;"


"Whereas in the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102–1) [set out as a note below], Congress has authorized the President ‘to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 (1990) in order to achieve implementation of Security Council Resolution 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677’;"


"Whereas on September 12, 2002, President Bush committed the United States to ‘work with the United Nations Security Council to meet our common challenge’ posed by Iraq and to ‘work for the necessary resolutions,’ while also making clear that ‘the Security Council resolutions will be enforced, and Committed demands of peace and security will be met, or action will be unavoidable’;"

"Whereas the United States is determined to prosecute the war on terrorism and Iraq’s ongoing support for international terrorist groups combined with its development of weapons of mass destruction in direct..."
violation of its obligations under the 1991 cease-fire and other United Nations Security Council resolutions make clear that it is in the national security interests of the United States and in furtherance of the war on terrorism that all relevant United Nations Security Council resolutions be enforced, including through the use of force if necessary;

"Whereas Congress has taken steps to pursue vigorously the war on terrorism through the provision of authorities and funding requested by the President to take the necessary actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such persons or organizations;

"Whereas the President and Congress are determined to continue to take all appropriate actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such persons or organizations;

"Whereas the President has authority under the Constitution to take action in order to deter and prevent acts of international terrorism against the United States as Congress recognized in the joint resolution on Authorization for Use of Military Force (Public Law 107–40) [set out as a note below]; and

"Whereas it is in the national security interests of the United States to restore international peace and security to the Persian Gulf region: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

"SECTION 1. SHORT TITLE.

"This joint resolution may be cited as the 'Authorization for Use of Military Force Against Iraq Resolution of 2002'.

"SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

"(a) Authorization.—The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to—

"(1) defend the national security of the United States against the continuing threat posed by Iraq; and

"(2) enforce all relevant United Nations Security Council resolutions regarding Iraq.

"(b) Presidential Determination.—In connection with the exercise of the authority granted in subsection (a) to use force the President shall, prior to such exercise or as soon thereafter as may be feasible, but no later than 48 hours after exercising such authority, make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination that—

"(1) reliance by the United States on further diplomatic or other peaceful means alone either (A) will not adequately protect the national security of the United States against the continuing threat posed by Iraq or (B) is not likely to lead to enforcement of all relevant United Nations Security Council resolutions regarding Iraq; and

"(2) acting pursuant to this joint resolution is consistent with the United States and other countries continuing to take the necessary actions against international terrorist and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.

"(c) War Powers Resolution Requirements.—

"(1) Specific Statutory Authorization.—Consistent with section 6(a)(1) of the War Powers Resolution (50 U.S.C. 1547(a)(1)), the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b).

"(2) Applicability of Other Requirements.—Nothing in this joint resolution supersedes any requirement of the War Powers Resolution (50 U.S.C. 1541 et seq.).

"SEC. 3. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

"(a) Authorization.—The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to—

"(1) defend the national security of the United States against the continuing threat posed by Iraq; and

"(2) enforce all relevant United Nations Security Council resolutions regarding Iraq.

"(b) Presidential Determination.—In connection with the exercise of the authority granted in subsection (a) to use force the President shall, prior to such exercise or as soon thereafter as may be feasible, but no later than 48 hours after exercising such authority, make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination that—

"(1) reliance by the United States on further diplomatic or other peaceful means alone either (A) will not adequately protect the national security of the United States against the continuing threat posed by Iraq or (B) is not likely to lead to enforcement of all relevant United Nations Security Council resolutions regarding Iraq; and

"(2) acting pursuant to this joint resolution is consistent with the United States and other countries continuing to take the necessary actions against international terrorist and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.

"(c) War Powers Resolution Requirements.—

"(1) Specific Statutory Authorization.—Consistent with section 6(a)(1) of the War Powers Resolution (50 U.S.C. 1547(a)(1)), the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b).

"(2) Applicability of Other Requirements.—Nothing in this joint resolution supersedes any requirement of the War Powers Resolution (50 U.S.C. 1541 et seq.).

"SEC. 4. REPORTS TO CONGRESS.

"(a) Reports.—The President shall, at least once every 60 days, submit to the Congress a report on matters relevant to this joint resolution, including actions taken pursuant to the exercise of authority granted in section 3 and the status of planning for efforts that are expected to be required after such actions are completed, including those actions described in section 7 of the Iraq Liberation Act of 1998 (Public Law 105–50) [50 U.S.C. 2151 note]

"(b) Single Consolidated Report.—To the extent that the submission of any report described in subsection (a) coincides with the submission of any other report on matters relevant to this joint resolution otherwise required to be submitted to Congress pursuant to the reporting requirements of the War Powers Resolution (Public Law 93–448) [50 U.S.C. 1544(c)] all such reports may be submitted as a single consolidated report to the Congress.

"(c) Rule of Construction.—To the extent that the information required by section 3 of this joint resolution is considered as meeting the requirements of section 3 of such resolution.''

AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST SEPTEMBER 11 TERRORISTS


"Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

"Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and

"Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and

"Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

"Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

"SECTION 1. SHORT TITLE.

"This joint resolution may be cited as the 'Authorization for Use of Military Force'.

"SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

"(a) In General.—That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States against the continuing threat posed by Iraq or (B) is not likely to lead to enforcement of all relevant United Nations Security Council resolutions regarding Iraq.
United States by such nations, organizations or persons.

"(b) War Powers Resolution Requirements.

(1) Specific Statutory Authorization.—Consistent with section 8(a)(1) of the War Powers Resolution (50 U.S.C. 1547(a)(1)), the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)).

(2) Applicability of Other Requirements.—Nothing in this resolution supersedes any requirement of the War Powers Resolution (50 U.S.C. 1541 et seq.)."

LIMITATION ON DEPLOYMENT OF ARMED FORCES IN HAITI DURING FISCAL YEAR 2000 AND CONGRESSIONAL NOTICE OF DEPLOYMENTS TO HAITI


"(a) Limitation on deployment.—No funds available to the Department of Defense during fiscal year 2000 may be expended after May 31, 2000, for the continuous deployment of United States Armed Forces in Haiti pursuant to the Department of Defense operation designated as Operation Uphold Democracy;


INVOLVEMENT OF ARMED FORCES IN HAITI


"SECTION 1. SENSE OF CONGRESS REGARDING UNITED STATES ARMED FORCES OPERATIONS IN HAITI.

"It is the sense of Congress that—

"(a) the men and women of the United States Armed Forces in Haiti who are performing with professional excellence and dedicated patriotism are to be commended;

"(b) the President should have sought and welcomed Congressional approval before deploying United States Armed Forces to Haiti;

"(c) the departure from power of the de facto authorities in Haiti, and Haitian efforts to achieve national reconciliation, democracy and the rule of law are in the best interests of the Haitian people;

"(d) the President's lifting of the unilateral economic sanctions on Haiti, and his efforts to bring about the lifting of economic sanctions imposed by the United Nations are appropriate; and

"(e) Congress supports a prompt and orderly withdrawal of all United States Armed Forces from Haiti as soon as possible.

"SEC. 2. PRESIDENTIAL STATEMENT OF NATIONAL SECURITY OBJECTIVES.

"The President shall prepare and submit to the President pro tempore of the Senate and the Speaker of the House of Representatives (hereafter, 'Congress') not later than seven days after enactment of this resolution (Oct. 25, 1994) a statement of the national security objectives to be achieved by Operation Uphold Democracy, and a detailed description of United States policy, the military mission and the general rules of engagement under which operations of United States Armed Forces are conducted in and around Haiti, including the role of United States Armed Forces regarded Haitian on Haitian violence, and efforts to disarm Haitian military or police forces, or civilians. Changes or modifications to such objectives, policy, military mission, or general rules of engagement shall be submitted to Congress within forty-eight hours of approval.

"SEC. 3. REPORT ON THE SITUATION IN HAITI.

"Not later than November 1, 1994, and monthly thereafter until the cessation of Operation Uphold Democracy, the President shall submit a report to Congress on the situation in Haiti, including—

"(a) a listing of the units of the United States Armed Forces and of the police and military units of other nations participating in operations in and around Haiti;

"(b) the estimated duration of Operation Uphold Democracy and progress toward the withdrawal of all United States Armed Forces from Haiti consistent with the goals of section 1(e) of this resolution;

"(c) armed incidents or the use of force in or around Haiti involving United States Armed Forces or Coast Guard personnel in the time period covered by the report;

"(d) the estimated cumulative incremental cost of all United States activities subsequent to September 30, 1993, in and around Haiti, including but not limited to—

"(1) the cost of all deployments of United States Armed Forces and Coast Guard personnel, training, exercises, mobilization, and preparation activities, including the preparation of police and military units of the other nations of the multinational force involved in enforcement of sanctions, limits on migration, establishment and maintenance of migrant facilities at Guantanamo Bay and elsewhere, and all other activities relating to operations in and around Haiti; and

"(2) the costs of all other activities relating to United States policy toward Haiti, including humanitarian assistance, reconstruction, aid and other financial assistance, and all other costs to the United States Government;

"(e) a detailed accounting of the source of funds obligated or expended to meet the costs described in subparagraph (d), including—

"(1) in the case of funds expended from the Department of Defense budget, a breakdown by military service or defense agency, line item and program, and

"(2) in the case of funds expended from the budgets of departments and agencies other than the Department of Defense, by department or agency and program;

"(f) the Administration plan for financing the costs of the operations and the impact on readiness without supplemental funding;

"(g) a description of the situation in Haiti, including—

"(1) the security situation;

"(2) the progress made in transferring the functions of government to the democratically elected government of Haiti; and

"(3) progress toward holding free and fair parliamentary elections;

"(h) a description of issues relating to the United Nations Mission in Haiti (UNMIH), including—

"(1) the preparedness of the United Nations Mission in Haiti (UNMIH) to deploy to Haiti to assume its functions;

"(2) troop commitments by other nations to UNMIH;

"(3) the anticipated cost to the United States of participation in UNMIH, including payments to the United Nations and financial, material and other assistance to UNMIH;

"(4) proposed or actual participation of United States Armed Forces in UNMIH;

"(5) proposed command arrangements for UNMIH, including proposed or actual placement of United States Armed Forces under foreign command; and

"(6) the anticipated duration of UNMIH.

"SEC. 4. REPORT ON HUMAN RIGHTS.

"Not later than January 1, 1995, the Secretary of State shall report to Congress on the participation or involvement of any member of the de jure or de facto Haitian government in violations of internationally-recognized human rights from December 15, 1990, to December 15, 1994.

"SEC. 5. REPORT ON UNITED STATES AGREEMENTS.

"Not later than November 15, 1994, the Secretary of State shall provide a comprehensive report to Congress..."
on all agreements the United States has entered into with other nations, including any assistance pledged or provided, in connection with United States efforts in Haiti. Such report shall also include information on any agreements or commitments relating to United Nations Security Council actions concerning Haiti since 1992.

"SEC. 6. TRANSITION TO UNITED NATIONS MISSION IN HAITI.

"Nothing in this resolution should be construed or interpreted to constitute Congressional approval or disapproval of the participation of United States Armed Forces in the United Nations Mission in Haiti."

INvolvement of Armed Forces in Somalia


"(a) Sense of Congress Regarding United States Policy Toward Somalia.—

"(1) Since United States Armed Forces made significant contributions under Operation Restore Hope towards the establishment of a secure environment for humanitarian relief operations and restoration of peace in the region to end the humanitarian disaster that had claimed more than 300,000 lives.

"(2) Since the mission of United States forces in support of the United Nations appears to be evolving from the establishment of a secure environment for humanitarian relief operations, in set out in United Nations Security Council Resolution 794 of December 3, 1992, to one of internal security and nation building.

"(b) Statement of Congressional Policy.—

"(1) Consultation with the Congress.—The President should consult closely with the Congress regarding United States policy with respect to Somalia, including in particular the President's decision on the deployment of United States Armed Forces in that country, whether under United Nations or United States command.

"(2) Planning.—The United States shall facilitate the assumption of the functions of United States forces by the United Nations.

"(3) Reporting Requirement.—

"(A) The President shall ensure that the goals and objectives supporting deployment of United States forces to Somalia and a description of the mission, command arrangements, size, functions, location, and anticipated duration in Somalia of those forces are clearly articulated and provided in a detailed report to the Congress by October 15, 1993.

"(B) Such report shall include the status of planning to transfer the function contained in paragraph (2).

"(4) Congressional Approval.—Upon reporting under the requirements of paragraph (3) Congress believes the President should by November 15, 1993, seek and receive congressional authorization in order for the deployment of United States forces to Somalia to continue."

Duration of Authorization for United States Participation in Multinational Force in Somalia


"(a) The Congress finds that—

"(1) the United States entered into Operation Restore Hope in December of 1992 for the purpose of relieving mass starvation in Somalia;

"(2) the original mission in Somalia, to secure the environment for humanitarian relief, had the unambiguous support of the Senate, expressed in Senate Joint Resolution 45, passed on February 4, 1993, and was endorsed by the House when it amended S.J. Res. 45 on May 25, 1993;

"(3) Operation Restore Hope was being successfully accomplished by United States forces, working with forces of other nations, when it was replaced by the UNOSOM II mission, assumed by the United Nations on May 4, 1993, pursuant to United Nations Resolution 814 of March 26, 1993;

"(4) neither the expanded United Nations mission of national reconciliation nor the broad mission of disarming the clans, nor any other mission not essential to the performance of the humanitarian mission has been endorsed or approved by the Senate;

"(5) the expanded mission of the United Nations was, subsequent to an attack upon United Nations forces, diverted into a mission aimed primarily at capturing certain persons, pursuant to United Nations Security Council Resolution 837, of June 6, 1993;

"(6) the actions of hostile elements in Mogadishu, and the United Nations mission to subdue those elements, have resulted in open conflict in the city of Mogadishu and the deaths of 29 Americans, at least 159 wounded, and the capture of American personnel; and

"(7) during fiscal years 1992 and 1993, the United States incurred expenses in excess of $1,100,000,000 to support operations in Somalia.

"(b) The Congress approves the use of United States Armed Forces in Somalia for the following purposes:

"(1) The protection of United States personnel and bases; and

"(2) The provision of assistance in securing open lines of communication for the free flow of supplies and relief operations through the ports of Somalia.

"(A) United States military logistical support services to United Nations forces;

"(B) United States combat forces in a security role and as an interim force protection supplement to United Nations units: Provided, That funds appropriated, or otherwise made available, in this or any other Act to the Department of Defense may be obligated for expenses incurred only through March 31, 1994, for the operations of United States Armed Forces in Somalia: Provided further, That such date may be extended if so requested by the President and authorized by the Congress: Provided further, That funds may be obligated beyond March 31, 1994 to support a limited number of United States military personnel sufficient only to protect American diplomatic facilities and American citizens, and noncombat personnel to advise the United Nations commander in Somalia: Provided further, That United States combat forces in Somalia shall be under the command and control of United States commanders under the ultimate direction of the President of the United States: Provided further, That the President should intensify efforts to have United Nations member countries immediately deploy additional troops to Somalia to fulfill previous force commitments made to the United Nations and to deploy additional forces to assume the security missions of United States Armed Forces: Provided further, That—

"(i) captured United States personnel in Somalia should be treated humanely and fairly; and

"(ii) the United States and the United Nations should make all appropriate efforts to ensure the immediate and safe return of any future captured United States personnel: Provided further, That the President should ensure that, at all times, United States military personnel in Somalia have the capacity to defend themselves, and American citizens: Provided further, That the United States Armed Forces should remain deployed in or around Somalia until such time as all American service personnel missing in action in Somalia are accounted for, and all American service personnel held prisoner in Somalia are released: Provided further, That nothing herein shall be deemed to restrict in any way the authority of the President under the Constitution to protect the lives of Americans:"

Authorization for Use of Military Force Against Iraq Resolution

"Whereas the Government of Iraq without provocation invaded and occupied the territory of Kuwait on August 2, 1990;

"Whereas both the House of Representatives (in H.J. Res. 658 of the 101st Congress) and the Senate (in S. Con. Res. 147 of the 101st Congress) have condemned Iraq’s invasion of Kuwait and declared their support for international action to reverse Iraq’s aggression;

"Whereas, Iraq’s conventional, chemical, biological, and nuclear weapons and ballistic missile programs and its demonstrated willingness to use weapons of mass destruction pose a grave threat to world peace;

"Whereas the international community has demanded that Iraq withdraw unconditionally and immediately from Kuwait and that Kuwait’s independence and legitimate government be restored;

"Whereas the United Nations Security Council repeatedly affirmed the inherent right of individual or collective self-defense in response to the armed attack by Iraq against Kuwait in accordance with Article 51 of the United Nations Charter;

"Whereas, in the absence of full compliance by Iraq with its resolutions, the United Nations Security Council in Resolution 678 has authorized member states of the United Nations to use all necessary means, after January 15, 1991, to uphold and implement all relevant Security Council resolutions and to restore international peace and security in the area; and

"Whereas Iraq has persisted in its illegal occupation of, and brutal aggression against Kuwait: Now, therefore, be it

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

"This joint resolution may be cited as the ‘Authorization for Use of Military Force Against Iraq Resolution’.

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) AUTHORIZATION.—The President is authorized, subject to subsection (b), to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 (1990) in order to achieve implementation of Security Council Resolutions 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677.

(b) REQUIREMENT FOR DETERMINATION THAT USE OF MILITARY FORCE IS NECESSARY.—Before exercising the authority granted in subsection (a), the President shall make available to the Speaker of the House of Representatives and the President pro tempore of the Senate the determination that—

"(1) the United States has used all appropriate diplomatic and other peaceful means to obtain compliance by Iraq with the United Nations Security Council resolutions cited in subsection (a); and

"(2) that those efforts have not been and would not be successful in obtaining such compliance.

(c) WAR POWERS RESOLUTION REQUIREMENTS.—

"(1) SPECIFIC STATUTORY AUTHORIZATION.—Consistent with section 8(a)(1) of the War Powers Resolution (50 U.S.C. 1547(a)(1)), the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)).

"(2) APPLICABILITY OF OTHER REQUIREMENTS.—Nothing in this resolution supersedes any requirement of the War Powers Resolution (50 U.S.C. 1544 et seq.).

SEC. 3. REPORTS TO CONGRESS.

"At least once every 90 days, the President shall submit to the Congress a summary on the status of efforts to obtain compliance by Iraq with the resolutions adopted by the United Nations Security Council in response to Iraq’s aggression."

INTRODUCTION OF UNITED STATES ARMED FORCES INTO CENTRAL AMERICA FOR COMBAT


"(a) The Congress makes the following findings:

"(1) The President has stated that there is no need to introduce United States Armed Forces into Central America for combat and that he has no intention of doing so.

"(2) The President of El Salvador has stated that there is no need for United States Armed Forces to conduct combat operations in El Salvador and that he has no intention of asking that they do so.

"(3) The possibility of the introduction of United States Armed Forces into Central America for combat raises very grave concern in the Congress and the American people.

"(b) It is the sense of Congress that—

"(1) United States Armed Forces should not be introduced into or over the countries of Central America for combat; and

"(2) if circumstances change from those present on the date of the enactment of this Act and the President believes that those changed circumstances require the introduction of United States Armed Forces into or over a country of Central America for combat, the President should consult with Congress before any decision to so introduce United States Armed Forces and any such introduction of United States Armed Forces must comply with the War Powers Resolution [this chapter]."

Pub. L. 98–473, title I, §101(b) [title VIII, §8101], Oct. 12, 1984, 98 Stat. 1904, 1942, provided that:

"(a) The Congress makes the following findings:

"(1) The President has stated that there is no need to introduce United States Armed Forces into Central America for combat and that he has no intention of doing so.

"(2) The President of El Salvador has stated that there is no need for United States Armed Forces to conduct combat operations in El Salvador and that he has no intention of asking that they do so.

"(3) The possibility of the introduction of United States Armed Forces into Central America for combat raises very grave concern in the Congress and the American people.

"(b) It is the sense of Congress that—

"(1) United States Armed Forces should not be introduced into or over the countries of Central America for combat; and

"(2) if circumstances change from those present on the date of the enactment of this Act and the President believes that those changed circumstances require the introduction of United States Armed Forces into or over a country of Central America for combat, the President should consult with Congress before any decision to so introduce United States Armed Forces and any such introduction of United States Armed Forces must comply with the War Powers Resolution [this chapter]."

MULTINATIONAL FORCE IN LEBANON RESOLUTION


"SHORT TITLE

"SECTION 1. This joint resolution may be cited as the ‘Multinational Force in Lebanon Resolution’.

"FINDINGS AND PURPOSE

"SEC. 2. (a) The Congress finds that—

"(1) the removal of all foreign forces from Lebanon is an essential United States foreign policy objective in the Middle East;

"(2) in order to restore full control by the Government of Lebanon over its own territory, the United States is currently participating in the multinational peacekeeping force (hereafter in this resolution referred to as the ‘Multinational Force in Lebanon’) which was established in accordance with the exchange of letters between the Governments of the United States and Lebanon dated September 25, 1982;

"(3) the Multinational Force in Lebanon better enables the Government of Lebanon to establish its unity, independence, and territorial integrity;
“(4) progress toward national political reconciliation in Lebanon is necessary; and
“(5) United States Armed Forces participating in the Multinational Force in Lebanon are now in hostilities requiring authorization of their continued presence under the War Powers Resolution [50 U.S.C. 1544(b)], the purpose of this joint resolution is to authorize the continued participation of United States Armed Forces in the Multinational Force in Lebanon.

“(C) The Congress intends this joint resolution to constitute the necessary specific statutory authorization under the War Powers Resolution for continued participation by United States Armed Forces in the Multinational Force in Lebanon.

“AUTHORIZATION FOR CONTINUED PARTICIPATION OF UNITED STATES ARMED FORCES IN THE MULTINATIONAL FORCE IN LEBANON

“SEC. 3. The President is authorized, for purposes of section 5(b) of the War Powers Resolution [50 U.S.C. 1544(b)], to continue participation by United States Armed Forces in the Multinational Force in Lebanon, subject to the provisions of section 6 of this joint resolution. Such participation shall be limited to performance of the functions, and shall be subject to the limitations specified in the agreement establishing the Multinational Force in Lebanon as set forth in the exchange of letters between the Governments of the United States and Lebanon dated September 25, 1982, except that this shall not preclude such protective measures as may be necessary to ensure the safety of the Multinational Force in Lebanon.

“REPORTS TO THE CONGRESS

“SEC. 4. As required by section 4(c) of the War Powers Resolution [50 U.S.C. 1544(c)], the President shall report periodically to the Congress with respect to the situation in Lebanon, and in no event shall he report less than once every three months. In addition to providing the information required by that section on the status, scope, and duration of hostilities involving United States Armed Forces, such reports shall describe in detail—

“(1) the activities being performed by the Multinational Force in Lebanon;
“(2) the present composition of the Multinational Force in Lebanon, including a description of the responsibilities and deployment of the armed forces of each participating country;
“(3) the results of efforts to reduce and eventually eliminate the Multinational Force in Lebanon;
“(4) how continued United States participation in the Multinational Force in Lebanon is advancing United States foreign policy interests in the Middle East; and
“(5) what progress has occurred toward national political reconciliation among all Lebanese groups.

“STATEMENTS OF POLICY

“SEC. 5. (a) The Congress declares that the participation of the armed forces of other countries in the Multinational Force in Lebanon is essential to maintain the international character of the peacekeeping function in Lebanon.

“(b) The Congress believes that it should continue to be the policy of the United States to promote continuing discussions with Israel, Syria, and Lebanon with the objective of bringing about the withdrawal of all foreign troops from Lebanon and establishing an environment which will permit the Lebanese Armed Forces to take over their responsibilities in the Beirut area.

“(c) It is the sense of the Congress that, not later than one year after the date of enactment of this joint resolution [Oct. 12, 1983] and at least once a year thereafter, the United States should discuss with the other members of the Security Council of the United Nations the establishment of a United Nations peacekeeping force to assume the responsibilities of the Multinational Force in Lebanon. An analysis of the implications of the response to such discussions for the continuation of the Multinational Force in Lebanon shall be included in the reports required under paragraph (3) of section 4 of this resolution.

“DURATION OF AUTHORIZATION FOR UNITED STATES PARTICIPATION IN THE MULTINATIONAL FORCE IN LEBANON

“SEC. 6. The participation of United States Armed Forces in the Multinational Force in Lebanon shall be authorized for purposes of the War Powers Resolution [50 U.S.C. 1541 et seq.] until the end of the eighteen-month period beginning on the date of enactment of this resolution [Oct. 12, 1983] unless the Congress extends such authorization, except that such authorization shall terminate sooner upon the occurrence of any one of the following:

“(1) the withdrawal of all foreign forces from Lebanon, unless the President determines and certifies to the Congress that continued United States Armed Forces participation in the Multinational Force in Lebanon is required after such withdrawal in order to accomplish the purposes specified in the September 25, 1982, exchange of letters providing for the establishment of the Multinational Force in Lebanon; or
“(2) the assumption by the United Nations or the Government of Lebanon of the responsibilities of the Multinational Force in Lebanon; or
“(3) the implementation of other effective security arrangements in the area; or
“(4) the withdrawal of all other countries from participation in the Multinational Force in Lebanon.

“INTERPRETATION OF THIS RESOLUTION

“SEC. 7. (a) Nothing in this joint resolution shall preclude the President from withdrawing United States Armed Forces participation in the Multinational Force in Lebanon if circumstances warrant, and nothing in this joint resolution shall preclude the Congress by joint resolution from directing such a withdrawal.

“(b) Nothing in this joint resolution modifies, limits, or supersedes any provision of the War Powers Resolution [50 U.S.C. 1541 et seq.] or the requirement of section 4(a) of the Lebanon Emergency Assistance Act of 1983, relating to congressional authorization for any substantial expansion in the number or role of United States Armed Forces in Lebanon.

“CONGRESSIONAL PRIORITY PROCEDURES FOR AMENDMENTS

“SEC. 8. (a) Any joint resolution or bill introduced to amend or repeal this Act shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be. Such joint resolution or bill shall be considered by such committee within fifteen calendar days and may be reported out, together with its recommendations, unless such House shall otherwise determine pursuant to its rules.

“(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by the yeas and nays.

“(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereafter become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by the yeas and nays.
ADHERENCE TO WAR POWERS RESOLUTION

Pub. L. 96–342, title X, § 1008, Sept. 8, 1980, 94 Stat. 3497, provided: "Whereas, the National Command Authority must have the capacity to carry out any military mission which is essential to the national security of the United States having in its hands in the Rapid Deployment Force an increased capability to extend the reach of our military power in an expeditionary manner; and whereas, without the significant safeguard of the War Powers Resolution (Public Law 93–148) [this chapter], United States foreign and defense policies could be subject to misinterpretation; it is therefore the sense of the Congress that the provisions of the War Powers Resolution be strictly adhered to and that the constitutional and legislative authority under which such introduction took place; and

(b) Other information reported

The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Periodic reports; semiannual requirement

Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

§ 1544. Congressional action

(a) Transmittal of report and referral to congressional committees; joint request for convening Congress

Each report submitted pursuant to section 1543(a)(1) of this title shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Termination of use of United States Armed Forces; exceptions; extension period

Within sixty calendar days after a report is submitted or is required to be submitted pursu-
§ 1545. Congressional priority procedures for joint resolution or bill

(a) Time requirement; referral to Congressional committee; single report

Any joint resolution or bill introduced pursuant to section 1544(b) of this title at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Pending business; vote

Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Referral to other House committee

Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) of this section and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 1544(b) of this title. The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) Disagreement between Houses

In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 1544(b) of this title. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.


§ 1546. Congressional priority procedures for concurrent resolution

(a) Referral to Congressional committee; single report

Any concurrent resolution introduced pursuant to section 1544(c) of this title shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Pending business; vote

Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Referral to other House committee

Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) of this section and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) Disagreement between Houses

In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concern-
ing any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferences are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.


§ 1546a. Expedited procedures for certain joint resolutions and bills

Any joint resolution or bill introduced in either House which requires the removal of United States Armed Forces engaged in hostilities outside the territory of the United States, its possessions and territories, without a declaration of war or specific statutory authorization shall be considered in accordance with the procedures of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, except that any such resolution or bill shall be amendable. If such a joint resolution or bill should be vetoed by the President, the time for debate in consideration of the veto message on such measure shall be limited to twenty hours in the Senate and in the House shall be determined in accordance with the Rules of the House.


REFERENCES IN TEXT

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in text, is section 601(b) of Pub. L. 94–329, title VI, June 30, 1976, 90 Stat. 765, which was not classified to the Code.

CODIFICATION

Section was enacted as part of the Department of State Authorization Act, Fiscal Years 1984 and 1985, and not as part of the War Powers Resolution which comprises this chapter.

§ 1547. Interpretation of joint resolution

(a) Inferences from any law or treaty

Authority to introduce United States Armed Forces into hostilities or into situations where involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before November 7, 1973), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this chapter; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this chapter.

(b) Joint headquarters operations of high-level military commands

Nothing in this chapter shall be construed to require any further specific statutory authoriza-

(n) Introduction of United States Armed Forces

For purposes of this chapter, the term “introduction of United States Armed Forces” includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Constitutional authorities or existing treaties unaffected; construction against grant of Presidential authority respecting use of United States Armed Forces

Nothing in this chapter—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this chapter.


§ 1548. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to any other person or circumstance shall not be affected thereby.


CHAPTER 34—NATIONAL EMERGENCIES

SUBCHAPTER I—TERMINATING EXISTING DECLARED EMERGENCIES

Sec. 1601. Termination of existing declared emergencies.

SUBCHAPTER II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

1621. Declaration of national emergency by President; publication in Federal Register; effect on other laws; superseding legislation.

1622. National emergencies.

SUBCHAPTER III—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

1631. Declaration of national emergency by Executive order; authority; publication in Federal Register; transmittal to Congress.
§ 1601. Termination of existing declared emergencies

(a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, as a result of the existence of any declaration of national emergency in effect on September 14, 1976, are terminated two years from September 14, 1976. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;
(2) any action or proceeding based on any act committed prior to such date; or
(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.


SHORT TITLE

Section 1 of Pub. L. 94–412 provided: "That this Act [enacting this chapter, amending section 1481 of Title 8, Aliens and Nationality, and section 2697 of Title 10, Armed Forces, repealing section 249 of Title 12, Banks and Banking, section 831d of Title 16, Conservation, section 1383 of Title 18, Crimes and Criminal Procedure, section 211b of Title 42, The Public Health and Welfare, and section 1732 of the Appendix by reason of the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States, and repealing section 249 of Title 12, Banks and Banking, section 831d of Title 16, Conservation, section 1383 of Title 18, Crimes and Criminal Procedure, and section 211b of Title 42, The Public Health and Welfare] shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal; or
(2) any action or proceeding based on any act committed prior to such repeal; or
(3) any rights or duties that matured or penalties that were incurred prior to such repeal."

SUBCHAPTER II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

§ 1621. Declaration of national emergency by President; publication in Federal Register; effects on other laws; superseding legislation

(a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this chapter. No law enacted after September 14, 1976, shall supersede this subchapter unless it does so in specific terms, referring to this subchapter, and declaring that the new law supersedes the provisions of this subchapter.


PROD. NO. 7463. DECLARATION OF NATIONAL EMERGENCY BY REASON OF CERTAIN TERRORIST ATTACKS

Proc. No. 7463, Sept. 14, 2001, 66 F.R. 48199, provided: A national emergency exists by reason of the terrorist attacks of September 11, 2001, and the continuing and immediate threat of further attacks on the United States. NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, hereby declare that the national emergency has existed since September 11, 2001, and, pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.), I intend to utilize the following statutes: sections 123, 123a, 527, 2201(c), 12006, and 12302 of title 10, United States Code, and sections 331, 339, and 367 of title 14, United States Code. This proclamation immediately shall be published in the Federal Register or disseminated through the Emergency Federal Register, and transmitted to the Congress. This proclamation is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.

GEORGE W. BUSH.

CONTINUATION OF NATIONAL EMERGENCY DECLARED BY PROD. NO. 7463

Notice of President of the United States, dated Sept. 10, 2001, 66 F.R. 55661, provided: Consistent with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency previously declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks of September 11, 2001, and the continuing and immediate threat of further attacks on the United States.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the powers and authorities adopted to deal with that emergency must continue in effect beyond September 14, 2010. Therefore, I am continuing in effect for an additional year the national emergency that was declared on September 14, 2001, with respect to the terrorist threat.

This notice shall be published in the Federal Register and transmitted to the Congress.

BARACK OBAMA.

Prior continuations of national emergency declared by Proc. No. 7463 were contained in the following:
Notice of President of the United States, dated Sept. 5, 2006, 71 F.R. 52733.
Notice of President of the United States, dated Sept. 8, 2005, 70 F.R. 54229.

§ 1622. National emergencies
(a) Termination methods

Any national emergency declared by the President in accordance with this subchapter shall terminate if—

(1) there is enacted into law a joint resolution terminating the emergency; or

(2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any joint resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Termination review of national emergencies by Congress

Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated.

(c) Joint resolution; referral to Congressional committees; conference committee in event of disagreement; filing of report; termination procedure deemed part of rules of House and Senate

(1) A joint resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such joint resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any joint resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by the yeas and nays.

(3) Such a joint resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by the yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 1651(b) of this title are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Automatic termination of national emergency; continuation notice from President to Congress; publication in Federal Register

Any national emergency declared by the President in accordance with this subchapter, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

§ 1631. Declaration of national emergency by Executive order; authority; publication in Federal Register; transmittal to Congress

When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.


Release of American hostages in Iran

For provisions relating to the release of the American hostages in Iran, see Ex. Ord. Nos. 12276 to 12285, Jan. 19, 1981, 46 F.R. 7913 to 7932, listed in a table under section 1701 of this title.

Subchapter IV—Accountability and Reporting Requirements of President

§ 1641. Accountability and reporting requirements of President

(a) Maintenance of file and index of Presidential orders, rules and regulations during national emergency

When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) Presidential orders, rules and regulations; transmittal to Congress

All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) Expenditures during national emergency; Presidential reports to Congress

When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.


Delegation of Functions

Delegations of congressional reporting functions of President under subsec. (c) of this section were contained in the following:


Subchapter V—Application to Powers and Authorities of Other Provisions of Law and Actions Taken Thereunder

§ 1651. Other laws, powers and authorities conferred thereby, and actions taken thereunder; Congressional studies

(a) The provisions of this chapter shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) Chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41;

(2) Section 3727(a)–(e)(1) of title 31;

(3) Section 6305 of title 41;


(5) Section 2304(a)(1) of title 10;\(^2\)

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after September 14, 1976.


References in Text


Section 2304(a)(1) of title 10, referred to in subsec. (a)(5), originally authorized purchases or contracts without formal advertising when necessary in the pub-

\(^1\)See References in Text note below.

\(^2\)So in original. The semicolon probably should be a period.
lic interest during a national emergency declared by Congress or the President, and as amended generally by Pub. L. 98–369 now sets forth the competition requirements for procurement of property or services.

**Codification**


**Amendments**


**Effective Date of 1980 Amendment**


**CHAPTER 35—INTERNATIONAL EMERGENCY ECONOMIC POWERS**

Sec. 1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities.

1702. Presidential authorities.

1703. Consultation and reports.

1704. Authority to issue regulations.

1705. Penalties.

1706. Savings provisions.

1707. Multinational economic embargoes against governments in armed conflict with the United States.

§ 1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.


**Short Title of 2007 Amendment**


**Short Title of 2006 Amendment**


**Short Title of 2005 Amendment**

Pub. L. 109–112, § 1, Nov. 22, 2005, 119 Stat. 2366, provided that: “This Act [enacting provisions set out as a note under this section and amending provisions set out as notes under this section and section 2151 of Title 22, Foreign Relations and Intercourse, and amending provisions set out as a note under this section] may be cited as the ‘Iran Freedom Support Act.’”

**Short Title of 2001 Amendment**


**Short Title**

Section 201 of title II of Pub. L. 95–223 provided that: “This title [enacting this chapter] may be cited as the ‘International Emergency Economic Powers Act’.”

**Separability**

Section 238 of Pub. L. 95–223 provided that: “If any provision of this Act [enacting this chapter] is held invalid, the remainder of the Act shall not be affected thereby.”

**Sudan Accountability and Divestment**


**SEC. 2. DEFINITIONS.**

“In this Act:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

“(B) the Committee on Financial Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives.

“(2) BUSINESS OPERATIONS.—The term ‘business operations’ means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating
equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(3) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (former 41 U.S.C. 403) [see 41 U.S.C. 133].

(4) GOVERNMENT OF SUDAN.—The term ‘Government of Sudan’—

(A) means the government in Khartoum, Sudan, which is led by the National Congress Party (formerly known as the National Islamic Front) or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan); and

(B) does not include the regional government of southern Sudan.

(5) MARGINALIZED POPULATIONS OF SUDAN.—The term ‘marginalized populations of Sudan’ refers to—

(A) adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act of 2006 [Public Law 109–334; 50 U.S.C. 1701 note]; and

(B) marginalized areas in Northern Sudan described in section 4(f) of such Act.

(6) MILITARY EQUIPMENT.—The term ‘military equipment’ means—

(A) weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems or military-grade transport vehicles; or

(B) supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(7) MINERAL EXTRACTION ACTIVITIES.—The term ‘mineral extraction activities’ means exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chrome, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

(8) OIL-RELATED ACTIVITIES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘oil-related activities’ means—

(i) exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading oil; and

(ii) constructing, maintaining, or operating a pipeline, refinery, or other oilfield infrastructure.

(B) EXCLUSIONS.—A person shall not be considered to be involved in an oil-related activity if—

(I) the person is involved in the retail sale of gasoline or related consumer products in Sudan but is not involved in any other activity described in subparagraph (A); or

(II) the person is involved in leasing, or owns, rights to an oil block in Sudan but is not involved in any other activity described in subparagraph (A).

(9) PERSON.—The term ‘person’ means—

(A) a natural person, corporation, company, business association, partnership, society, trust, any other nongovernmental entity, organization, or group;

(B) any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 170(c)(3) of the International Financial Institutions Act (22 U.S.C. 262o(c)(3))); and

(C) any successor, subunit, parent company or subsidiary of any entity described in subparagraph (A) or (B).

(10) POWER PRODUCTION ACTIVITIES.—The term ‘power production activities’ means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or other similar entity of the Government of Sudan whose purpose is to facilitate power generation and delivery, including establishing power-generating plants or hydroelectric dams, selling or installing components for the project, or providing service contracts related to the installation or maintenance of the project.

(11) STATE.—The term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(12) STATE OR LOCAL GOVERNMENT.—The term ‘State or local government’ includes—

(A) any State and any agency or instrumentality thereof;

(B) any local government within a State, and any agency or instrumentality thereof;

(C) any other governmental instrumentality; and

(D) any public institution of higher education within the meaning of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) and 42 U.S.C. 2751 et seq.]

SEC. 3. AUTHORITY OF STATE AND LOCAL GOVERNMENTS TO DIVEST FROM CERTAIN COMPANIES DIRECTLY INVESTED IN CERTAIN SUDANESE SECTORS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States Government should support the decision of any State or local government to divest from, or to prohibit the investment of assets of the State or local government in, a person that the State or local government determines poses a financial or reputational risk.

(b) AUTHORITY TO DIVEST.—Notwithstanding any other provision of law, a State or local government may adopt and enforce measures that meet the requirements of subsection (e) to divest the assets of the State or local government from, or prohibit investment of the assets of the State or local government in, persons that the State or local government determines, using credible information available to the public, are conducting or have direct investments in business operations described in subsection (d).

(c) NOTICE TO DEPARTMENT OF JUSTICE.—Not later than 30 days after adopting a measure pursuant to subsection (b), a State or local government shall submit written notice to the Attorney General describing the measure.

(d) BUSINESS OPERATIONS DESCRIBED.—

(I) IN GENERAL.—Business operations described in this subsection are business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment.

(II) EXCEPTIONS.—Business operations described in this subsection do not include business operations that the person conducting the business operations can demonstrate—

(A) are conducted under contract directly and exclusively with the regional government of southern Sudan;

(B) are conducted under a license from the Office of Foreign Assets Control, or are expressly exempted under Federal law from the requirement to be conducted under such a license;

(C) consist of providing goods or services to marginalized populations of Sudan;

(D) consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(E) consist of providing goods or services that are used only to promote health or education; or

(F) have been voluntarily suspended.

(e) REQUIREMENTS.—Any measure taken by a State or local government under subsection (b) shall meet the following requirements:

(I) NOTICE.—The State or local government shall provide written notice and an opportunity to comment in writing to each person to whom a measure is to be applied.
“(2) Timing.—The measure shall apply to a person not earlier than the date that is 90 days after the date on which written notice is provided to the person under paragraph (1).

“(3) Applicability.—The measure shall not apply to a person that demonstrates to the State or local government that the person does not conduct or have direct investments in business operations described in subsection (d).”

“(4) Sense of Congress on Avoiding Erroneous Targeting.—It is the sense of Congress that a State or local government should not adopt a measure under subsection (b) with respect to a person unless the State or local government has made every effort to avoid erroneously targeting the person and has verified that the person conducts or has direct investments in business operations described in subsection (d).”

“(f) Definitions.—In this section:

“(1) Investment.—The ‘investment’ of assets, with respect to a State or local government, includes—

“(A) a commitment or contribution of assets; and

“(B) a loan or other extension of credit of assets; and

“(C) the entry into or renewal of a contract for goods or services.

“(2) Assets.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘assets’ refers to public monies and includes any pension, retirement, annuity, or endowment fund, or similar instrument, that is controlled by a State or local government.

“(B) Exception.—The term ‘assets’ does not include employee benefit plans covered by title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).”

“(g) Nonpreemption.—A measure of a State or local government authorized under subsection (b) is not preempted by any Federal law or regulation.

“(h) Effective Date.—

“(1) In general.—Except as provided in paragraph (2), this section applies to measures adopted by a State or local government before, on, or after the date of the enactment of this Act [Dec. 31, 2007].

“(2) Notice Requirements.—Subsections (c) and (e) apply to measures adopted by a State or local government on or after the date of the enactment of this Act.”

“SEC. 4. SAFE HARBOR FOR CHANGES IN INVESTMENT POLICIES BY ASSET MANAGERS.

“(a) In general.—(Amended section 80a–13 of Title 15, Commerce and Trade)

“(b) SEC regulations.—Not later than 120 days after the date of the enactment of this Act [Dec. 31, 2007], the Securities and Exchange Commission shall prescribe regulations, in the public interest and for the protection of investors, to require disclosure by each registered investment company that divests itself of securities held in accordance with section 13(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–13(c)). Such rules shall require the disclosure to be included in the next periodic report filed with the Commission under section 30 of such Act (15 U.S.C. 80a–29) following such divestiture.

“SEC. 5. SENSE OF CONGRESS REGARDING CERTAIN ERISA PLAN INVESTMENTS.

“(a) In general.—The sense of Congress that a fiduciary of an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)), may divest plan assets from, or avoid investing in assets in, any person the fiduciary determines is conducting or has direct investments in business operations in Sudan described in section 3(d) of this Act, without breaching the responsibilities, obligations, or duties imposed upon the fiduciary by subparagraph (A) or (B) of section 404(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)(1)), if—

“(1) the fiduciary makes such determination using credible information that is available to the public; and

“(2) the fiduciary prudently determines that the result of such divestment or avoidance of investment would not be expected to provide the employee benefit plan with—

“(A) a lower rate of return than alternative investments with commensurate degrees of risk; or

“(B) a higher degree of risk than alternative investments with commensurate rates of return.”

“SEC. 6. PROHIBITION ON UNITED STATES GOVERNMENT CONTRACTS.

“(a) Certification Requirement.—The head of each executive agency shall ensure that each contract entered into by such executive agency for the procurement of goods or services includes a clause that requires the contractor to certify to the contracting officer that the contractor does not conduct business operations in Sudan described in section 3(d).

“(b) Remedies.—

“(1) In general.—The head of an executive agency may impose remedies as provided in this subsection if the head of the executive agency determines that the contractor has submitted a false certification under subsection (a) after the date the Federal Acquisition Regulation is amended under subsection (e) to implement the requirements of this section.

“(2) Termination.—The head of an executive agency may terminate a covered contract upon the determination of a false certification under paragraph (1).

“(3) Suspension and debarment.—The head of an executive agency may debar or suspend a contractor from eligibility for Federal contracts under the determination of a false certification under paragraph (1). The debarment period may not exceed 3 years.

“(4) Inclusion on list of parties excluded from Federal procurement and nonprocurement programs.—The Administrator of General Services shall include on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the Administrator under part 9 of the Federal Acquisition Regulation issued under section 25 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421) [see 41 U.S.C. 1303] each contractor that is debarred, suspended, or declared ineligible by the head of an executive agency on the basis of a determination of a false certification under paragraph (1).

“(5) Rule of construction.—This subsection shall not be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a determination of a false certification under paragraph (1).

“(c) Waiver.—

“(1) In general.—The President may waive the requirement of subsection (a) on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees that it is in the national interest to do so.

“(2) Reporting requirement.—Not later than April 15, 2008, and semi-annually thereafter, the Administrator for Federal Procurement Policy shall submit to the appropriate congressional committees a report on waivers granted under paragraph (1).

“(d) Implementation through the Federal Acquisition Regulation.—Not later than 120 days after the date of the enactment of this Act [Dec. 31, 2007], the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation issued pursuant to section 25 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 421) [see 41 U.S.C. 1303] to provide for the implementation of the requirements of this section.

“(e) Report.—Not later than one year after the date the Federal Acquisition Regulation is amended under subsection (e) to implement the requirements of this section, the Administrator of General Services, with the assistance of other executive agencies, shall submit to the Office of Management and Budget and the appropriate congressional committees a report on the actions taken under this section.
"SEC. 7. SENSE OF CONGRESS ON EFFORTS BY OTHER COUNTRIES.

"It is the sense of Congress that the governments of all other countries should adopt measures, similar to those contained in this Act, to publicize the activities of all persons that, through their financial dealings, knowingly or unknowingly enable the Government of Sudan to continue to oppress and commit genocide against people in the Darfur region and other regions of Sudan, and to authorize divestment from, and the avoidance of further investment in, such persons.

"SEC. 8. SENSE OF CONGRESS ON PEACEKEEPING EFFORTS IN SUDAN.

"It is the sense of Congress that the President should—

"(1) continue to work with other members of the international community, including the Permanent Members of the United Nations Security Council, the African Union, the European Union, the Arab League, and the Government of Sudan to facilitate the urgent deployment of a peacekeeping force to Sudan; and

"(2) bring before the United Nations Security Council, and call for a vote on, a resolution requiring meaningful multilateral sanctions against the Government of Sudan in response to its acts of genocide against the people of Darfur and its continued refusal to allow the implementation of a peacekeeping force in Sudan.

"SEC. 9. SENSE OF CONGRESS ON THE INTERNATIONAL OBLIGATIONS OF THE UNITED STATES.

"It is the sense of Congress that nothing in this Act—

"(1) conflicts with the international obligations or commitments of the United States; or

"(2) affects article VI, clause 2, of the Constitution of the United States.

"SEC. 10. REPORTS ON SANCTIONS IN SUPPORT OF PEACE IN DARFUR.

"(a) In general.—The Secretary of State and the Secretary of the Treasury shall submit to the appropriate congressional committees a report assessing the effectiveness of sanctions imposed with respect to Sudan at the time the Secretary of State and the Secretary of the Treasury submits [sic] reports required under—

"(1) the Sudan Peace Act (Public Law 107-245; 50 U.S.C. 1701 note);

"(2) the Comprehensive Peace in Sudan Act of 2004 (Public Law 108-497; 50 U.S.C. 1701 note); and


"(b) ADDITIONAL REPORT BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall submit to the appropriate congressional committees a report assessing the effectiveness of sanctions imposed with respect to Sudan under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) at the time the President submits the reports required by section 204(c) of such Act (50 U.S.C. 1703(c)) with respect to Executive Order 13,067 (13067) (50 U.S.C. 1701 note; relating to blocking property of persons in connection with the conflict in Sudan’s region of Darfur).

"(c) CONTENTS.—The reports required by subsections (a) and (b) shall include—

"(1) a description of each sanction imposed under a law or executive order described in subsection (a) or (b);

"(2) the name of the person subject to the sanction, if any; and

"(3) whether or not the person subject to the sanction is also subject to sanctions imposed by the United Nations.

"SEC. 11. REPEAL OF REPORTING REQUIREMENT.

"Section 6305 of the U.S. ’Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110-28; 121 Stat. 172) is repealed.

"SEC. 12. TERMINATION.

"The provisions of sections 3, 4, 5, 6, and 10 shall terminate 30 days after the date on which the President has certified to Congress that the Government of Sudan has honored its commitments to—

"(1) abide by United Nations Security Council Resolution 1769 (2007);

"(2) cease attacks on civilians;

"(3) demobilize and demilitarize the Janjaweed and associated militias;

"(4) grant free and unfettered access for delivery of humanitarian assistance; and

"(5) allow for the safe and voluntary return of refugees and internally displaced persons.

Darfur Peace and Accountability


"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the ‘Darfur Peace and Accountability Act of 2006’.

"(b) TABLE OF CONTENTS.—[Omitted.]

"SEC. 2. DEFINITIONS.

"In this Act:

"(1) AMIS.—The term ‘AMIS’ means the African Union Mission in Sudan.

"(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means the Committee on Foreign Relations of the Senate and the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives.

"(3) COMPREHENSIVE PEACE AGREEMENT FOR SUDAN.—The term ‘Comprehensive Peace Agreement for Sudan’ means the peace agreement signed by the Government of Sudan and the SPLM/A in Nairobi, Kenya, on January 9, 2005.

"(4) DARFUR PEACE AGREEMENT.—The term ‘Darfur Peace Agreement’ means the peace agreement signed by the Government of Sudan and by Minni Minnawi, leader of the Sudan Liberation Movement/Army Faction, in Abuja, Nigeria, on May 5, 2006.

"(5) GOVERNMENT OF SUDAN.—The term ‘Government of Sudan’—

"(A) means—

"(i) the government in Khartoum, Sudan, which is led by the National Congress Party (formerly known as the National Islamic Front); or

"(ii) any successor government formed on or after the date of the enactment of this Act (Oct. 13, 2006) (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement).

"(B) does not include the regional government of Southern Sudan.

"(6) OFFICIALS OF THE GOVERNMENT OF SUDAN.—The term ‘official of the Government of Sudan’ does not include any individual—

"(A) who was not a member of such government before July 1, 2005; or

"(B) who is a member of the regional government of Southern Sudan.

"(7) SPLM/A.—The term ‘SPLM/A’ means the Sudan People’s Liberation Movement/Army.

"SEC. 3. FINDINGS.

"Congress makes the following findings:

"(1) On July 23, 2004, Congress declared, ‘the atrocities unfolding in Darfur, Sudan, are genocide’.

"(2) On September 9, 2004, Secretary of State Colin L. Powell stated before the Committee on Foreign Relations of the Senate, ‘genocide has occurred and may still be occurring in Darfur’, and ‘the Government of Sudan and the Janjaweed bear responsibility’.

"(3) On September 21, 2004, in an address before the United Nations General Assembly, President George W. Bush affirmed the Secretary of State’s finding and
stated, ‘[a]t this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide’.

(4) On July 30, 2004, the United Nations Security Council passed Security Council Resolution 1556 (2004), calling upon the Government of Sudan to disarm the Janjaweed militia and to apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out violations of human rights and international humanitarian law, and establishing a ban on the sale or supply of arms and related materiel of all types, including the provision of related technical training or assistance, to all nongovernmental entities and individuals, including the Janjaweed.

(5) On September 18, 2004, the United Nations Security Council passed Security Council Resolution 1564 (2004), determining that the Government of Sudan had failed to meet its obligations under Security Council Resolution 1556 (2004), calling for a military flight ban in and over the Darfur region, demanding the names of Janjaweed militia members disarmed and arrested for verification, establishing an International Commission of Inquiry on Darfur to investigate violations of international humanitarian and human rights laws, stating that should the Government of Sudan fail to fully comply with Security Council Resolutions 1556 (2004) and 1564 (2004), including such actions as to affect Sudan’s petroleum sector, or individual members of the Government of Sudan.


(7) On March 24, 2005, the United Nations Security Council passed Security Council Resolution 1590 (2005), establishing the United Nations Mission in Sudan (referred to in this section as the ‘UNMIS’), consisting of up to 10,000 military personnel and 715 civilian police tasked with supporting the implementation of the Comprehensive Peace Agreement for Sudan and to ‘closely and continuously liaise and coordinate at all levels with the African Union Mission in Sudan (AMIS)’, which had been established by the African Union on May 24, 2004, to monitor the implementation of the N’Djamena Humanitarian Ceasefire Agreement, signed on April 8, 2004, ‘with a view towards expeditiously reinforcing the effort to foster peace in Darfur’.

(8) On March 29, 2005, the United Nations Security Council passed Security Council Resolution 1591 (2005), extending the military embargo established by Security Council Resolution 1556 (2004) to all the parties to the N’Djamena Ceasefire Agreement of April 8, 2004, and any other belligerents in the states of North Darfur, South Darfur, and West Darfur, calling for an asset freeze and travel ban against those individuals who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities, are responsible for offensive military overflights, or violate the military embargo, and establishing a Committee of the Security Council and a panel of experts to assist in monitoring compliance with Security Council Resolutions 1556 (2004) and 1591 (2005).

(9) On March 31, 2005, the United Nations Security Council passed Security Council Resolution 1593 (2005), referring the situation in Darfur since July 1, 2002, to the prosecutor of the International Criminal Court and calling on the Government of Sudan and all parties to the conflict to cooperate fully with the Court.

(10) On July 30, 2005, Dr. John Garang de Mabior, the newly appointed Vice President of Sudan and the leader of the SPLM/A for the past 21 years, was killed in a tragic helicopter crash in Southern Sudan, sparking riots in Khartoum and to apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out violations of human rights and international humanitarian law, and establishing a ban on the sale or supply of arms and related materiel of all types, including the provision of related technical training or assistance, to all nongovernmental entities and individuals, including the Janjaweed.

(11) On January 12, 2006, the African Union Peace and Security Council issued a communiqué endorsing, in principle, a transition from AMIS to a United Nations peacekeeping operation and requested the Chairperson of the Council to initiate consultations with the United Nations and other stakeholders toward this end.


‘(A) welcomes the African Peace and Security Council’s March 10, 2006 communiqué; and

(B) requests that the United Nations Secretary-General, jointly with the African Union and in consultation with the parties to the Abuja Peace Talks, expedite planning for the transition of AMIS to a United Nations peacekeeping operation.

(13) On March 10, 2006, the African Union Peace and Security Council extended the mandate of AMIS, which had reached a force size of 7,000, to September 30, 2006, while simultaneously endorsing the transition of AMIS to a United Nations peacekeeping operation and setting April 30, 2006 as the deadline for reaching an agreement to resolve the crisis in Darfur.


‘(A) affirms its desire to see the United Nations Mission in Sudan (the “UNMIS”) complete its mandate in Darfur in a timely and effective manner, in accordance with the Comprehensive Peace Agreement for Sudan, which had reached a force size of 7,000, to September 30, 2006, while simultaneously endorsing the transition of AMIS to a United Nations peacekeeping operation.

(15) On March 29, 2006, during a speech at Freedom House, President Bush called for a transition to a United Nations peacekeeping operation and ‘additional forces with a NATO overlay . . . to provide logistical and command-and-control and airlift capacity, but also to send a clear signal to parties involved that the west is determined to help effect a settlement’.

(16) On April 25, 2006, the United Nations Security Council passed Security Council Resolution 1672 (2006), unani mously imposing targeted financial sanctions and travel restrictions on 4 individuals who had been identified as those who, among other acts, ‘impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities’, including the Commander of the Western Military Region for the armed forces of Sudan, the Paramount Chief of the Jalel Tribe in North Darfur, the Commander of the Sudan Liberation Army, and the Field Commander of the National Movement for Reform and Development.

(17) On May 5, 2006, under the auspices of African Union mediation and the direct engagement of the international community, including the United States, the Government of Sudan and the largest rebel faction in Darfur, the Sudan Liberation Movement, led by Minni Minnawi, signed the Darfur Peace Agreement, which addresses security, power sharing, and wealth sharing issues between the parties.

(18) In August 2006, the Sudanese government began to amass military forces and equipment in the Darfur region in contravention of the Darfur Peace Agreement to which they are signatories in what appears to be preliminary to full scale war.

(19) On August 30, 2006, the United Nations Security Council passed Security Council Resolution 1706 (2006), without dissent and with abstentions by China, Russian Federation, and Qatar, thereby asserting that the existing United Nations Mission in Sudan ‘shall take over from AMIS responsibility for sup-
porting the implementation of the Darfur Peace Agreement upon the expiration of AMIS’s mandate but in any event no later than 31 December 2006, and that AMIS shall be strengthened by up to 17,300 military personnel . . . 3,300 civilian police personnel and up to 16 Formed Police Units’, which ‘shall begin to be deployed [to Darfur] no later than 1 October 2006.

“(20) Between August 30 and September 3, 2006, President Bashir and other senior members of his administration have publicly rejected United Nations Security Council Resolution 1706 (2006), calling it illegal and a western invasion of his country, despite the current presence of 10,000 United Nations peacekeepers under the UNMIS peacekeeping force.

“SEC. 4. SENSE OF CONGRESS.

“(1) the genocide unfolding in the Darfur region of Sudan is characterized by acts of terrorism and atrocities directed against civilians, including mass murder, rape, and sexual violence committed by the Janjaweed and associated militias with the complicity and support of the National Congress Party-led faction of the Government of Sudan;

“(2) all parties to the conflict in the Darfur region have continued to violate the N’Djamena Ceasefire Agreement of April 8, 2004, and the Abuja Protocols of November 9, 2004, and violence against civilians, humanitarian aid workers, and personnel of AMIS is increasing;

“(3) the African Union should immediately make all necessary preparations for an orderly transition to a United Nations peacekeeping operation, which will maintain an appropriate level of African participation, with a mandate to protect civilians and humanitarian operations, assist in the implementation of the Darfur Peace Agreement, and deter violence in the Darfur region;

“(4) the international community, including the United States and the European Union, should immediately act to mobilize sufficient political, military, and financial resources through the United Nations and the North Atlantic Treaty Organization, to support the transition of AMIS to a United Nations peacekeeping operation with the size, strength, and capacity necessary to protect civilians and humanitarian operations, to assist with the implementation of the Darfur Peace Agreement, and to end the continued violence in the Darfur region;

“(5) if an expanded and reinforced AMIS or subsequent United Nations peacekeeping operation fails to stop genocide in the Darfur region, the international community should take additional measures to prevent and suppress acts of genocide in the Darfur region;

“(6) acting under article 5 of the Charter of the United Nations, the United Nations Security Council should call for suspension of the Government of Sudan’s rights and privileges of membership by the General Assembly until such time as the Government of Sudan, other than assistance necessary to carry out elements of the Comprehensive Peace Agreement for Sudan or the Darfur Peace Agreement; and

“(7) the President should use all necessary and appropriate diplomatic means to ensure the full discharge of the responsibilities of the Committee of the Permanent Representative to the United Nations Security Council established pursuant to section 3(a) of Security Council Resolution 1591 (2005);

“(8) the President should direct the United States Permanent Representative to the United Nations to use the voice, vote, and influence of the United States to urge the adoption of a resolution by the United Nations Security Council that—

“(A) extends the military embargo established by United Nations Security Council Resolutions 1556 (2004) and 1591 (2005) to include a total ban on the sale or supply of offensive military equipment to the Government of Sudan, except for use in an internationally recognized demobilization program or for nonlethal assistance necessary to carry out elements of the Comprehensive Peace Agreement for Sudan or the Darfur Peace Agreement; and

“(B) calls upon those member states of the United Nations that continue to undermine efforts to foster peace in Sudan by providing military assistance to the Government of Sudan, government supported militias, or any rebel group operating in Darfur in violation of the embargo on such assistance and equipment, as called for in United Nations Security Council Resolutions 1556 (2004) and 1591 (2005), to immediately cease and desist.

“(9) the United States should not provide assistance to the Government of Sudan, other than assistance necessary for the implementation of the Comprehensive Peace Agreement for Sudan and the Darfur Peace Agreement, the support of the regional Government of Southern Sudan, the Transitional Darfur Regional Authority, and marginalized areas in Northern Sudan (including the Nuba Mountains, Southern Blue Nile, Abyei, Eastern Sudan (Beja), Darfur, and Nubia), or for humanitarian purposes in Sudan, until the Government of Sudan has honored pledges to cease attacks upon civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance in the Darfur region, and allow for the safe and voluntary return of refugees and internally displaced persons;

“(10) the President should seek to assist members of the Sudanese diaspora in the United States by establishing a student loan forgiveness program for those individuals who commit to return to Southern Sudan for a period of not less than 5 years for the purpose of contributing professional skills needed for the reconstruction of Southern Sudan;

“(11) the Presidential Special Envoy for Sudan should be provided with appropriate resources and a clear mandate to—

“(A) provide stewardship of efforts to implement the Comprehensive Peace Agreement for Sudan and the Darfur Peace Agreement;

“(B) seek ways to bring stability and peace to the Darfur region;

“(C) address instability elsewhere in Sudan, Chad, and northern Uganda; and

“(D) pursue a truly comprehensive peace throughout the region;

“(12) the international community should strongly condemn attacks against humanitarian workers and African Union personnel, and the forcible recruitment of refugees and internally displaced persons from camps in Chad and Sudan, and demand that all armed groups in the region, including the forces of the Government of Sudan, the Janjaweed, associated militias, the Sudan Liberation Movement/Army, the Justice and Equality Movement, the National Movement for Reform and Development (NMRD), and all other armed groups refrain from such activities;

“(13) the United States should fully support the Comprehensive Peace Agreement for Sudan and the Darfur Peace Agreement and urge rapid implementation of their terms;

“(14) the May 5, 2006[,] signing of the Darfur Peace Agreement between the Government of Sudan and the Sudan Liberation Movement was a positive development in a situation that has seen little political progress in 2 years and should be seized upon by all sides to begin the arduous process of post-conflict re-
construction, restitution, justice, and reconciliation; and

"(15) the new leadership of the Sudan People’s Lib-
eration Movement referred to in this paragraph as
‘SPLM’ shall—

"(A) seek to transform SPLM into an inclusive,
transparent, and democratic body;
"(B) reaffirm the commitment of SPLM to—

"(i) bring peace to Southern Sudan, the Darfur
region, and Eastern Sudan; and

"(ii) eliminate safe haven for regional rebel
movements, such as the Lord’s Resistance Army;

and

"(C) remain united in the face of efforts to under-
mine SPLM.

"SEC. 5. SANCTIONS IN SUPPORT OF PEACE IN
DARFUR.

"(a) BLOCKING OF ASSETS AND RESTRICTION ON
VISAS.—[Amended Pub. L. 108–497, set out below.]

"(b) WAIVER.—[Amended Pub. L. 108–497, set out
below.]

"(c) SANCTIONS AGAINST JANjaweed COMMANDERS
AND COORDINATORS ON OTHER INDIVIDUALS.—It is the
sense of Congress, that the President should immediately im-
pose the sanctions described in section 6(c) of the Com-
set out below], as added by subsection (a), against any
actor, ‘impede the peace process, constitute a threat to
stability in Darfur and the region, commit violations of
international humanitarian or human rights law or
other atrocities’.

"SEC. 6. ADDITIONAL AUTHORITIES TO DETER
AND SUPPRESS GENOCIDE IN DARFUR.

"(a) PRESIDENTIAL ASSISTANCE TO SUPPORT AMIS.—
Subject to subsection (b) and notwithstanding any
other provision of law, the President is authorized to
provide AMIS with—

"(1) assistance for any expansion of the mandate,
size, strength, and capacity to protect civilians and
humanitarian operations in order to help stabilize
the Darfur region of Sudan and dissuade and deter air
attacks directed against civilians and humanitarian
workers; and

"(2) assistance in the areas of logistics, transport,
communications, material support, technical assist-
ance, training, command and control, aerial surveil-
ance, and intelligence.

"(b) CONDITIONS.—

"(1) IN GENERAL.—Assistance provided under sub-
section (a)—

"(A) shall be used only in the Darfur region; and

"(B) shall not be provided until AMIS has agreed
to not to transfer title to, or possession of, any such
assistance to anyone not an officer, employee or
agent of AMIS (or subsequent United Nations
peacekeeping operation), and not to use or to per-
mit the use of such assistance for any purposes
other than those for which such assistance was fur-
nished, unless the consent of the President has first
been obtained, and written assurances reflecting all
of the foregoing have been obtained from AMIS by
the President.

"(2) CONSENT.—If the President consents to the
transfer of such assistance to anyone not an officer,
employee, or agent of AMIS (or subsequent United
Nations peacekeeping operation), or agrees to permit
the use of such assistance for any purposes other than
those for which such assistance was furnished, the
President shall immediately notify the Committee on
Foreign Relations of the Senate and the Committee on
International Relations [now Committee on For-

eren Affairs] of the House of Representatives in ac-
cordance with the procedures applicable to re-
programming notifications under section 934A of the

"(c) NATO ASSISTANCE TO SUPPORT AMIS.—It is the
sense of Congress that the President should continue to
instruct the United States Permanent Representative
to the North Atlantic Treaty Organization (referred to
in this section as ‘NATO’) to use the voice, vote, and
influence of the United States at NATO to—

"(1) advocate NATO reinforcement of the AMIS and
its orderly transition to a United Nations peacekeep-
ing operation, as appropriate;

"(2) provide assets to help dissuade and deter air
strikes directed against civilians and humanitarian
workers in the Darfur region of Sudan; and

"(3) provide other logistical, transportation, com-
munications, training, technical assistance, com-
mand and control, aerial surveillance, and intel-
ligence support.

"(d) RULE OF CONSTRUCTION.—Nothing in this Act,
or any amendment made by this Act, shall be construed as
a provision described in section 5(b)(1) or 8(a)(1) of the
War Powers Resolution (Public Law 93–148; 50 U.S.C.
1595(b), 1546(a)(1), 1547(a)(1)).

"(e) DENIAL OF ENTRY AT UNITED STATES PORTS TO
CERTAIN CARGO SHIPS OR OIL TANKERS.—

"(1) IN GENERAL.—The President should take all
necessary and appropriate steps to deny the Govern-
ment of Sudan access to oil revenues, including by
prohibiting entry at United States ports to cargo
ships or oil tankers engaged in business or trade ac-
tivities in the oil sector of Sudan or involved in the
shipment of goods for use by the armed forces of
Sudan until such time as the Government of Sudan has
honored its commitments to cease attacks on civil-
ians, demobilize and demilitarize the Janjaweed
and associated militias, grant free and unfettered ac-
cess for deliveries of humanitarian assistance, and
allow for the safe and voluntary return of refugees
and internally displaced persons.

"(2) EXCEPTION.—Paragraph (1) shall not apply with
respect to cargo ships or oil tankers involved in—

"(A) an internationally-recognized demobiliza-

tion program;

"(B) the shipment of non-lethal assistance nec-

essary to carry out elements of the Comprehensive
Peace Agreement for Sudan or the Darfur Peace
Agreement; or

"(C) the shipment of military assistance nec-

essary to carry out elements of an agreement re-
ferred to in subparagraph (B) if the President has
made the determination set forth in section 8(c)(2).

"(f) PROHIBITION ON ASSISTANCE TO COUNTRIES IN VIOL-
ATION OF UNITED NATIONS SECURITY COUNCIL RESOLU-
TIONS 1556 AND 1591.—

"(1) PROHIBITION.—Amounts made available to

carry out the Foreign Assistance Act of 1961 (22 U.S.C.
2151 et seq.) may not be used to provide assist-
ance (other than humanitarian assistance) to the
government of a country that is in violation of the
embargo on military assistance with respect to
Sudan imposed pursuant to United Nations Security

"(2) WAIVER.—The President may waive the appli-
cation of paragraph (1) if the President determines,
and certifies to the appropriate congressional com-
mittees, that such waiver is in the national interests of
the United States.

"SEC. 7. CONTINUATION OF RESTRICTIONS.

"(a) IN GENERAL.—Restrictions against the Govern-
ment of Sudan that were imposed pursuant to Execu-
tive Order No. 13067 of November 3, 1997 (62 Federal Reg-
ister 59988) [listed in a table below], title III and sec-
ctions 508, 512, 527, and 569 of the Foreign Operations,
Export Financing, and Related Programs Appropria-
tions Act, 2006 (Public Law 109–102) [119 Stat. 2191, 2197,
2199, 2205, 2228], or any other similar provision of law,
shall remain in effect, and shall not be lifted pursuant
to such provisions of law, until the President certifies
to the appropriate congressional committees that the
Government of Sudan is acting in good faith to—

"(1) implement the Darfur Peace Agreement;

"(2) disarm and demobilize, and demilitarize the
Janjaweed and all militias allied with the Govern-
ment of Sudan;

“(4) negotiate a peaceful resolution to the crisis in eastern Sudan;

“(5) fully cooperate with efforts to disarm, demobilize, and deny safe haven to members of the Lord’s Resistance Army in Sudan; and

“(6) fully implement the Comprehensive Peace Agreement for Sudan without manipulation or delay, by—

“(A) implementing the recommendations of the Abyei Boundaries Commission Report;

“(B) establishing other appropriate commissions and adhering to the recommendations of such commissions consistent with the terms of the Comprehensive Peace Agreement for Sudan;

“(C) adhering to the terms of the Wealth Sharing Agreement; and

“(D) withdrawing government forces from Southern Sudan consistent with the terms of the Comprehensive Peace Agreement for Sudan.

“(b) WAIVER.—The President may waive the application of subsection (a) if the President determines, and certifies to the appropriate congressional committees, that such waiver is in the national interests of the United States.

“SEC. 8. ASSISTANCE EFFORTS IN SUDAN.

“(a) ASSISTANCE FOR INTERNATIONAL MALARIA CONTROL ACT.—[Repealed section 501 of Pub. L. 106–570, formerly set out below.]

“(b) COMPREHENSIVE PEACE IN SUDAN ACT.—[Amended Pub. L. 108–497, set out below.]

“(c) ECONOMIC ASSISTANCE.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the President is authorized to provide economic assistance for Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum, in an effort to provide emergency relief, to promote economic self-sufficiency, to build civil authority, to provide education, to enhance rule of law and the development of judicial and legal frameworks, and to support people to people reconciliation efforts, or to implement any nonmilitary programs in support of any viable peace agreement in Sudan, including the Comprehensive Peace Agreement for Sudan and the Darfur Peace Agreement.

“(2) CONGRESSIONAL NOTIFICATION.—Assistance may not be obligated under this subsection until 15 days after the date on which the Secretary of State notifies the congressional committees specified in section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1) of such obligation in accordance with the procedures applicable to reprogramming notifications under such section.

“(d) AUTHORIZED MILITARY ASSISTANCE.—

“(1) IN GENERAL.—If the President has not made a certification under section 12(a)(3) of the Sudan Peace Act [Pub. L. 107–245] (50 U.S.C. 1701 note) regarding the noncompliance of the SPLM/A or the Government of Southern Sudan with the Comprehensive Peace Agreement for Sudan, the President, notwithstanding any other provision of law, may authorize, for each of fiscal years 2006, 2007, and 2008, the provision of the following assistance to the Government of Southern Sudan for the purpose of constituting a professional military force—

“(A) non-lethal military equipment and related defense services, including training, controlled under the International Traffic in Arms Regulations (22 C.F.R. 121.1 et seq.), if the President—

“(i) determines that the provision of such items is in the national security interest of the United States; and

“(ii) not later than 15 days before the provision of any such items, notifies the Committee on For-
Nothing in this Act [see Short Title of 2006 Amendment note above] shall affect any United States sanction, control, or regulation as in effect on January 1, 2006, relating to a determination under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371a(a)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) that the Government of Iran has repeatedly provided support for acts of international terrorism.”

Burmese Freedom and Democracy


“SEC. 2. FINDINGS.

“Congress makes the following findings:

“(1) Beginning on August 19, 2007, hundreds of thousands of citizens of Burma, including thousands of Buddhist monks and students, participated in peaceful demonstrations against rapidly deteriorating living conditions and the violent and repressive policies of the State Peace and Development Council (SPDC), the ruling military regime in Burma—

“(A) to demand the release of all political prisoners, including 1991 Nobel Peace Prize winner Aung San Suu Kyi; and

“(B) to urge the regime to engage in meaningful dialogue to pursue national reconciliation.

“(2) The Burmese regime responded to these peaceful protests with a violent crackdown leading to the reported killing of approximately 200 people, including a Japanese photojournalist, and hundreds of injuries. Human rights groups further estimate that over 2,000 individuals have been detained, arrested, imprisoned, beaten, tortured, or otherwise intimidated as part of this crackdown. Burmese military, police, and their affiliates in the Union Solidarity Development Association (USDA) perpetrated almost all of these abuses. The Burmese regime continues to detain, torture, and otherwise intimidate those individuals whom [sic] it believes participated in or led the protests and it has closed down or otherwise limited access to several monasteries and temples that played key roles in the peaceful protests.

“(3) The Department of State’s 2006 Country Reports on Human Rights Practices found that the SPDC—

“(A) routinely restricts freedoms of speech, press, assembly, association, religion, and movement;

“(B) traffics in persons;

“(C) discriminates against women and ethnic minorities;

“(D) forcibly recruits child soldiers and child labor; and

“(E) commits other serious violations of human rights, including extrajudicial killings, custodial deaths, disappearances, rape, torture, abuse of prisoners and detainees, and the imprisonment of citizens arbitrarily for political motives.

“(4) Aung San Suu Kyi has been arbitrarily imprisoned or held under house arrest for more than 12 years, in violation of her right to freedom of assembly and expression.

“(5) In October 2007, President Bush announced a new Executive Order to tighten economic sanctions against Burma and block property and travel to the United States by certain senior leaders of the SPDC, individuals who provide financial backing for the SPDC, and individuals responsible for human rights violations and impeding democracy in Burma. Additional names were added in update notices October 19, 2007, and February 5, 2008. However, only 38 discrete individuals and 13 discrete companies have been designated under those sanctions, once aliases and companies with similar names were removed. By contrast, the Australian Government identified more than 400 individuals and entities subject to its sanctions applied in the wake of the 2007 violence.

“The European Union’s regulations to implement sanctions against Burma have identified more than 400 individuals among the leaders of government, the military, and the USDA, along with nearly 1300 state and military-run companies potentially subject to its sanctions.

“(6) The Burmese regime and its supporters finance their ongoing violations of human rights, undemocratic policies, and military activities in part through financial transactions, travel, and trade involving the United States, including the sale of petroleum products, gemstones and hardwoods.

“(7) In 2006, the Burmese regime earned more than $500 million from oil and gas projects, over $500 million from sale of hardwoods, and in excess of $300 million from the sale of rubies and jade. At least $500 million of the $2.16 billion earned in 2006 from Burma’s two natural gas pipelines, one of which is 28 percent owned by a United States company, went to the Burmese regime. The regime has earned smaller amounts from oil and gas exploration and non-operational pipelines but United States investors are also involved in those transactions. Industry sources estimate that over $100 million annually in Burmese rubies and jade enters the United States. Burma’s official statistics report that Burma exported $300 million in hardwoods in 2006 but NGOs estimate the true figure to exceed $300 million. Reliable statistics on the amount of hardwoods imported into the United States from Burma in the form of finished products are not available, in part due to widespread illegal logging and smuggling.

“(8) The SPDC seeks to evade the sanctions imposed in the Burmese Freedom and Democracy Act of 2003 [Pub. L. 108–61, set out below]. Millions of dollars in gemstones that are exported from Burma ultimately enter the United States, but the Burmese regime attempts to conceal the origin of the gemstones in an effort to evade sanctions. For example, according to gem industry experts, over 90 percent of the world’s ruby supply originates in Burma but only 3 percent of the rubies entering the United States are claimed to be of Burmese origin. The value of Burmese gemstones is predominantly based on their original quality and geological origin, rather than the labor involved in cutting and polishing the gemstones.

“(9) According to hardwood industry experts, Burma is home to approximately 60 percent of the world’s native teak reserves. More than 1/4 of the world’s internationally traded teak originates from Burma, and hardwood sales, mainly of teak, represent more than 11 percent of Burma’s official foreign exchange earnings.

“(10) The SPDC owns a majority stake in virtually all enterprises responsible for the extraction and trade of Burmese natural resources, including all mining operations, the Myanmar Timber Enterprise, the Myanmar Gems Enterprise, the Myanmar Pearl Enterprise, and the Myanmar Oil and Gas Enterprise. Virtually all profits from these enterprises enrich the SPDC.

“(11) On October 11, 2007, the United Nations Security Council, with the consent of the People’s Republic of China, issued a statement condemning the continuing violence in Burma, urging the release of all political prisoners, and calling on the SPDC to enter into a United Nations-mediated dialogue with its political opposition.


“(b) NO EFFECT ON OTHER SANCTIONS RELATING TO SUPPORT FOR ACTS OF INTERNATIONAL TERRORISM.—Nothing in this Act [see Short Title of 2006 Amendment note above] shall affect any United States sanction, control, or regulation as in effect on January 1, 2006, relating to a determination under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371a(a)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) that the Government of Iran has repeatedly provided support for acts of international terrorism.”
“(3) The leaders of the SPDC will have a greater incentive to cooperate with diplomatic efforts by the United Nations, the Association of Southeast Asian Nations and the People’s Republic of China if they come under targeted economic pressure that denies them access to personal wealth and sources of revenue.

“(14) On the night of May 2, 2008, through the morning of May 3, 2008, tropical cyclone Nargis struck the coast of Burma, resulting in the deaths of tens of thousands of Burmese.

“(15) The response to the cyclone by Burma’s military leaders illustrates their fundamental lack of concern for the welfare of the Burmese people. The regime did little to warn citizens of the cyclone, did not provide adequate humanitarian assistance to address basic needs and prevent loss of life, and continues to fail to provide life-protecting and life-sustaining services to its people.

“(16) The international community responded immediately to the cyclone and attempted to provide humanitarian assistance. More than 30 disaster assessment teams from 18 different nations and the United Nations arrived in the region, but the Burmese regime denied them permission to enter the country. Eventually visas were granted to aid workers, but the regime continues to severely limit their ability to provide assistance in the affected areas.

“(17) Despite the devastation caused by Cyclone Nargis, the junta went ahead with its referendum on a constitution drafted by an illegitimate assembly, conducting voting in unaffected areas on May 10, 2008, and in portions of the affected Irrawaddy region and Rangoon on May 26, 2008.

“SEC. 3. DEFINITIONS.

“In this Act: “(1) ACCOUNT.—Correspondent account; payable-through account.—The terms ‘account’, ‘correspondent account’, and ‘payable-through account’ have the meanings given the terms in section 5318A(e)(1) of title 31, United States Code.

“(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Foreign Relations of the Senate;

“(B) the Committee on Finance of the Senate;

“(C) the Committee on Foreign Affairs of the House of Representatives; and

“(D) the Committee on Ways and Means of the House of Representatives.

“(3) ASEAN.—The term ‘ASEAN’ means the Association of Southeast Asian Nations.

“(4) PERSON.—The term ‘person’ means—

“(A) an individual, corporation, company, business association, partnership, society, trust, any other nongovernmental entity, organization, or group;

“(B) any successor, subunit, or subsidiary of any person described in subparagraph (A);

“(C) or (D), any branch or office of such financial institution and any branch or office of such financial institution that is located outside the United States, to the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General of the United States; and

“(E) the property comes into the possession or control of a United States person after the date of the enactment of this Act [July 29, 2008].

“(2) FINANCIAL TRANSACTIONS.—Except with respect to transactions authorized under Executive Orders 13047 (May 20, 1997) and 13310 (July 28, 2003) [listed in a table below], no United States person may engage in a financial transaction with the SPDC or with a person described in subsection (a)(1).

“(3) PROHIBITED ACTIVITIES.—Activities prohibited by reason of the blocking of property and financial transactions under this subsection shall include the following: “(A) Payments or transfers of any property, or any transactions involving the transfer of anything of economic value by any United States person, including any United States financial institution and any branch or office of such financial institution that is located outside the United States, to the SPDC or to an individual described in subsection (a)(1).

“(B) The export or reexport directly or indirectly, of any goods, technology, or services by a United States person to the SPDC, to an individual described in subsection (a)(1), or to any entity owned, controlled, or operated by the SPDC or by an individual described in such subsection.

“(C) AUTHORITY FOR ADDITIONAL BANKING SANCTIONS.—

“(1) IN GENERAL.—The Secretary of the Treasury, in consultation with the Secretary of State, the"
ney General of the United States, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit or impose conditions on the opening or maintaining in the United States of a correspondent account or payable-through account by any financial institution (as that term is defined in section 3212 of title 31, United States Code) or financial agency that is organized under the laws of a State, territory, or possession of the United States, for or on behalf of a foreign banking institution, if the Secretary determines that the account might be used—

"(A) by a foreign banking institution that holds property or an interest in property belonging to the SPDC or a person described in subsection (a)(1); or

"(B) to conduct a transaction on behalf of the SPDC or a person described in subsection (a)(1).

"(2) AUTHORITY TO DEFINE TERMS.—The Secretary of the Treasury may, by regulation, further define the terms used in paragraph (1) for purposes of this section, as the Secretary considers appropriate.

"(d) LIST OF SANCTIONED OFFICIALS.—

"(1) In general.—Not later than 120 days after the date of the enactment of this Act [July 29, 2008], the President shall transmit to the appropriate congressional committees a list of—

"(A) former and present leaders of the SPDC, the Burmese military, and the USDA;

"(B) officials of the SPDC, the Burmese military, or the USDA involved in the repression of peaceful political activity in Burma or in the commission of other human rights abuses, including any current or former officials of the security services and judicial institutions of the SPDC;

"(C) any other Burmese persons or entities who provide substantial economic and political support for the SPDC, the Burmese military, or the USDA; and

"(D) the immediate family members of any person described in subparagraphs (A) through (C) whom [sic] the President determines effectively controls property in the United States or has benefitted from a financial transaction with any United States person.

"(2) CONSIDERATION OF OTHER DATA.—In preparing the list required under paragraph (1), the President shall consider the data already obtained by other countries and entities that apply sanctions against Burma, such as the Australian Government and the European Union.

"(3) UPDATES.—The President shall transmit to the appropriate congressional committees updated lists of the persons described in paragraph (1) as new information becomes available.

"(e) IDENTIFICATION OF INFORMATION.—The Secretary of State and the Secretary of the Treasury shall devote sufficient resources to the identification of information concerning potential persons to be sanctioned to carry out the purposes described in this Act.

"(f) RULE OF CONSTRUCTION.—Nothing in this section may be construed to prohibit any contract or other financial transaction with any nongovernmental humanitarian organization in Burma.

"(g) PENALTIES.—Any person who violates any prohibition or restriction imposed pursuant to subsection (b) may, upon notice and opportunity for hearing, be subject to the penalties under section 6 (probably means section 206) of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as for a violation under that Act [50 U.S.C. 1701 et seq.].

"(h) TERMINATION OF SANCTIONS.—The sanctions imposed under subsection (a), (b), or (c) shall apply until the President determines and certifies to the appropriate congressional committees that the SPDC has—

"(1) unconditionally released all political prisoners, including Aung San Suu Kyi and other members of the National League for Democracy;

"(2) entered into a substantive dialogue with democratic forces led by the National League for Democracy and the ethnic minorities of Burma on transitioning to democratic government under the rule of law; and

"(3) allowed humanitarian access to populations affected by armed conflict in all regions of Burma.

"(1) WAIVER.—The President may waive the sanctions described in subsections (b) and (c) if the President determines and certifies to the appropriate congressional committees that such waiver is in the national interest of the United States.


"(a) IN GENERAL.—[Amended Pub. L. 108–61, set out below.]

"(b) DURATION OF SANCTIONS.—

"(1) CONTINUATION OF IMPORT SANCTIONS.—[Amended Pub. L. 108–61, set out below.]

"(2) RENEWAL RESOLUTIONS.—[Amended Pub. L. 108–61, set out below.]

"(3) EFFECTIVE DATE.—

"(A) IN GENERAL.—The amendments made by this subsection take effect on the day after the date of the enactment of this Act [July 29, 2008], whichever occurs later.

"(B) RENEWAL RESOLUTION DEFINED.—In this paragraph, the term ‘renewal resolution’ means a renewal resolution described in section 9(c) of the Burmese Freedom and Democracy Act of 2003 [Pub. L. 108–61, set out below] that is enacted into law in accordance with such section.

"(c) CONFORMING AMENDMENT.—[Amended Pub. L. 108–61, set out below.]

"SEC. 7. SPECIAL REPRESENTATIVE AND POLICY COORDINATOR FOR BURMA.

"(a) UNITED STATES SPECIAL REPRESENTATIVE AND POLICY COORDINATOR FOR BURMA.—The President shall appoint a Special Representative and Policy Coordinator for Burma, by and with the advice and consent of the Senate.

"(b) RANK.—The Special Representative and Policy Coordinator for Burma appointed under subsection (a) shall have the rank of ambassador and shall hold the office at the pleasure of the President. Except for the position of United States Ambassador to the Association of Southeast Asian Nations, the Special Representative and Policy Coordinator may not simultaneously hold a separate position within the executive branch, including the Assistant Secretary of State, the Deputy Assistant Secretary of State, the United States Ambassador to Burma, or the Charge d’affaires to Burma.

"(c) DUTIES AND RESPONSIBILITIES.—The Special Representative and Policy Coordinator for Burma shall—

"(1) promote a comprehensive international effort, including multilateral sanctions, direct dialogue with
the SPDC and democracy advocates, and support for nongovernmental organizations operating in Burma and neighboring countries, designed to restore civilian democratic rule to Burma and address the urgent humanitarian needs of the Burmese people;

(2) consult broadly, including with the Governments of the People’s Republic of China, India, Thailand, and Japan, and the member states of ASEAN and the European Union to coordinate policies toward Burma;

(3) assist efforts by the United Nations Special Envoy to secure the release of all political prisoners in Burma and to promote dialogue between the SPDC and leaders of Burma’s democracy movement, including Aung San Suu Kyi;

(4) consult with Congress on policies relevant to Burma and the future and welfare of all the Burmese people, including refugees; and

(5) coordinate the imposition of Burma sanctions within the United States Government and with the relevant international financial institutions.

SEC. 8. SUPPORT FOR CONSTITUTIONAL DEMOCRACY IN BURMA.

(a) IN GENERAL.—The President is authorized to assist Burmese democracy activists who are dedicated to nonviolent opposition to the SPDC in their efforts to promote freedom, democracy, and human rights in Burma.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 to the Secretary of State for fiscal year 2008 to:

(1) provide aid to democracy activists in Burma;

(2) provide aid to individuals and groups conducting democracy programming outside of Burma targeted at a peaceful transition to constitutional democracy inside Burma; and

(3) expand radio and television broadcasting into Burma.

SEC. 9. SUPPORT FOR NONGOVERNMENTAL ORGANIZATIONS ADDRESSING THE HUMANITARIAN NEEDS OF THE BURMESE PEOPLE.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the international community should increase support for nongovernmental organizations attempting to meet the urgent humanitarian needs of the Burmese people.

(b) LICENSES FOR HUMANITARIAN OR RELIGIOUS ACTIVITIES IN BURMA.—(Amended Pub. L. 108-61, set out below.)

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) Without regard to any other provision of law, there are authorized to be appropriated $11,000,000 to the Secretary of State for fiscal year 2008 to support operations by nongovernmental organizations, subject to paragraph (2), designed to address the humanitarian needs of the Burmese people inside Burma and in refugee camps in neighboring countries.

(2) LIMITATION.—

(A) IN GENERAL.—Except as provided under subparagraph (B), amounts appropriated pursuant to paragraph (1) may not be provided to—

(i) SPDC-controlled entities;

(ii) entities run by members of the SPDC or their families; or

(iii) entities providing cash or resources to the SPDC, including organizations affiliated with the United Nations.

(B) WAIVER.—The President may waive the funding restriction described in subparagraph (A) if—

(i) the President determines and certifies to the appropriate congressional committees that such waiver is in the national interests of the United States;

(ii) a description of the national interests need for the waiver is submitted to the appropriate congressional committees; and

(iii) the description submitted under clause (ii) is posted on a publicly accessible Internet Web site of the Department of State.

SEC. 10. REPORT ON MILITARY AND INTELLIGENCE AID TO BURMA.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [July 29, 2008] and annually thereafter, the Secretary of State shall submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report containing a list of countries, companies, and other entities that provide military or intelligence aid to the SPDC and describing such military or intelligence aid provided by each such country, company, and other entity.

(b) MILITARY OR INTELLIGENCE AID DEFINED.—For the purpose of this section, the term ‘military or intelligence aid’ means, with respect to the SPDC—

(1) the provision of weapons, weapons parts, military vehicles, or military aircraft;

(2) the provision of military or intelligence training; including advice and assistance on subject matter exchanges;

(3) the provision of weapons of mass destruction and related materials, capabilities, and technology, including nuclear, chemical, or dual-use capabilities;

(4) conducting joint military exercises;

(5) the provision of naval support, including ship development and naval construction;

(6) the provision of technical support, including computer and software development and installations, networks, and infrastructure development and construction; or

(7) the construction or expansion of airfields, including radar and anti-aircraft systems.

(c) FORM.—The report required under subsection (a) shall be submitted in unclassified form but may include a classified annex and the unclassified form shall be placed on the Department of State’s website.

SEC. 11. SENSE OF CONGRESS ON INTERNATIONAL ARMS SALES TO BURMA.

It is the sense of Congress that the United States should lead efforts in the United Nations Security Council to impose a mandatory international arms embargo on Burma, curtailing all sales of weapons, ammunition, military vehicles, and military aircraft to Burma until the SPDC releases all political prisoners, restores constitutional rule, takes steps toward inclusion of ethnic minorities in political reconciliation efforts, and holds free and fair elections to establish a new government.

SEC. 12. REDUCTION OF SPDC REVENUE FROM TIMBER.

(a) REPORT.—Not later than one year after the date of the enactment of this Act [July 29, 2008] and annually thereafter, the Secretary of State, in consultation with the Secretary of Commerce, and other Federal officials, as appropriate, shall submit to the appropriate congressional committees a report on Burma’s timber trade containing information on the following:

(1) Products entering the United States made in whole or in part of wood grown and harvested in Burma, including measurements of annual value and volume and considering both legal and illegal timber trade.

(2) Statistics about Burma’s timber trade, including raw wood and wood products, in aggregate and broken down by country and timber species, including measurements of value and volume and considering both legal and illegal timber trade.

(3) A description of the chains of custody of products described in paragraph (1), including direct trade streams from Burma to the United States and via manufacturing or transshipment in third countries.

(4) Illegality, abuses, or corruption in the Burmese timber sector.

(5) A description of all common consumer and commercial applications unique to Burmese hardwoods, including the furniture and marine manufacturing industries.

(b) RECOMMENDATIONS.—The report required under subsection (a) shall include recommendations on the following:
"(1) Alternatives to Burmese hardwoods for the commercial applications described in paragraph (5) of subsection (a), including alternative species of timber that could provide the same applications.

"(2) Strategies for encouraging sustainable management of timber in locations with potential climate, soil, and other conditions to compete with Burmese hardwoods for the consumer and commercial applications described in paragraph (5) of subsection (a).

"(3) The appropriate United States and international customs documents and declarations that would need to be kept and compiled in order to establish the chain of custody concerning products described in paragraphs (1) and (3) of subsection (a).

"(4) Strategies for strengthening the capacity of Burmese civil society, including Burmese society in exile, to monitor and report on the SPDC’s trade in timber or other extractive industries so that Burmese natural resources can be used to benefit the majority of Burma’s population.

"SEC. 13. REPORT ON FINANCIAL ASSETS HELD BY MEMBERS OF THE SPDC.

"(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [July 29, 2008] and annually thereafter, the Secretary of the Treasury, in consultation with the Secretary of State, shall submit to the Committee on Foreign Affairs of the House of Representatives, the Committee on Finance of the Senate, and the Committee on Foreign Relations of the Senate, a report containing a list of all countries and foreign banking institutions that hold assets on behalf of senior Burmese officials.

"(b) Format.—The report required under subsection (a) shall be submitted in unclassified form but may include a classified annex. The report shall also be posted on the Department of Treasury’s website not later than 90 days after the submission to Congress of the report. To the extent possible, the report shall include the names of the senior Burmese officials and the approximate value of their holdings in the respective foreign banking institutions and any other pertinent information.

"SEC. 14. UNOCAL PLAINTIFFS.

"(a) SENSE OF CONGRESS.—It is the Sense of Congress that the United States should work with the Royal Thai Government to ensure the safety in Thailand of the 15 plaintiffs in the Doe v. Unocal case, and should consider granting refugee status or humanitarian parole to these plaintiffs to enter the United States consistent with existing United States law.

"(b) REPORT.—Not later than 90 days after the date of the enactment of this Act [July 29, 2008], the President shall submit to the appropriate Congressional committees a report on the status of the Doe vs. Unocal plaintiffs and whether the plaintiffs have been granted refugee status or humanitarian parole.

"SEC. 15. SENSE OF CONGRESS WITH RESPECT TO INVESTMENTS IN BURMA’S OIL AND GAS INDUSTRY.

"(a) FINDINGS AND DECLARATIONS.—Congress finds the following:

"(1) Currently United States, French, and Thai investors are engaged in the production and delivery of natural gas in the pipeline from the Yadana and Sein fields (Yadana pipeline) in the Andaman Sea, an enterprise which falls under the jurisdiction of the Burmese Government, and United States investment by Chevron represents approximately a 28 percent non-operated, working interest in that pipeline.

"(2) The Congressional Research Service estimates that the Yadana pipeline provides at least $500,000,000 in annual revenue for the Burmese Government.

"(3) The natural gas that transits the Yadana pipeline is delivered primarily to Thailand, representing about 20 percent of Thailand’s total gas supply.

"(4) The executive branch has in the past exempted investment in the Yadana pipeline from the sanctions regime against the Burmese Government.

"(5) Congress believes that United States companies ought to be held to a high standard of conduct overseas and should avoid as much as possible acting in a manner that supports repressive regimes such as the Burmese Government.

"(6) Congress recognizes the important symbolic value that divestment of United States holdings in Burma would have on the international sanctions effort, demonstrating that the United States will continue to lead by example.

"(b) STATEMENT OF POLICY.—

"(1) Congress urges Yadana investors to consider voluntary divestment over time if the Burmese Government fails to take meaningful steps to release political prisoners, restore civilian constitutional rule and promote national reconciliation.

"(2) Congress will remain concerned with the matter of continued investment in the Yadana pipeline in the years ahead.

"(3) Congress urges the executive branch to work with all firms invested in Burma’s oil and gas sector to use their influence to promote the peaceful transition to civilian democratic rule in Burma.

"(c) SENSE OF CONGRESS.—It is the sense of Congress that so long as Yadana investors remain invested in Burma, such investors should—

"(1) communicate to the Burmese Government, military and business officials, at the highest levels, concern about the lack of genuine consultation between the Burmese Government and its people, the failure of the Burmese Government to use its natural resources to benefit the Burmese people, and the military’s use of forced labor;

"(2) publicly disclose and deal with in a transparent manner, consistent with legal obligations, its role in any ongoing investment in Burma, including its financial involvement in any joint production agreement or other joint ventures and the amount of their direct or indirect support of the Burmese Government;

"(3) work with project partners to ensure that forced labor is not used to construct, maintain, support, or defend the project facilities, including pipelines, offices, or other facilities.


"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Burmese Freedom and Democracy Act of 2003'.

"SEC. 2. FINDINGS.

"Congress makes the following findings:

"(1) The State Peace and Development Council (SPDC) has failed to transfer power to the National League for Democracy (NLD) whose parliamentarians won an overwhelming victory in the 1990 elections in Burma.

"(2) The SPDC has failed to enter into meaningful, political dialogue with the NLD and ethnic minorities and has dismissed the efforts of United Nations Special Envoy Razali bin Ismail to further such dialogue.

"(3) According to the State Department’s 'Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma' dated March 29, 2003, the SPDC has become 'more confrontational' in its exchanges with the NLD.

"(4) On May 30, 2003, the SPDC, threatened by continued support for the NLD throughout Burma, brutally attacked NLD supporters, killed and injured scores of civilians, and arrested democracy advocate Aung San Suu Kyi and other activists.
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(5) The SPDC continues egregious human rights violations against Burmese citizens, uses rape as a weapon of intimidation and torture against women, and forcibly conscripts child-soldiers for the use in fighting indigenous ethnic groups.

(6) The SPDC is engaged in ethnic cleansing against minorities within Burma, including the Karen, Karenni, and Shan people, which constitutes a crime against humanity and has directly led to more than 600,000 internally displaced people living within Burma. The SPDC has also expelled more than 130,000 people from Burma living in refugee camps along the Thai-Burma border.

(7) The ethnic cleansing campaign of the SPDC is in sharp contrast to the traditional peaceful coexistence in Burma of Buddhists, Muslims, Christians, and people of traditional beliefs.

(8) The SPDC has demonstrably failed to cooperate with the United States in stopping the flood of heroin and methamphetamines being grown, refined, manufactured, and transported in areas under the control of the SPDC serving to flood the region and much of the world with these illicit drugs.

(9) The SPDC provides safety, security, and engages in business dealings with narcotics traffickers under indictment by United States authorities, and otherwise aids and abets traffickers of narcotics.

(10) The International Labor Organization (ILO), for the first time in its 82-year history, adopted in 2000 a resolution recommending that governments, employers, and workers organizations take appropriate measures to ensure that their relations with the SPDC do not abet the government-sponsored system of forced, compulsory, or slave labor in Burma, and that other international bodies reconsider any cooperation they may be engaged in with Burma and, if appropriate, cease as soon as possible any activity that could abet the practice of forced, compulsory, or slave labor.

(11) The SPDC has integrated the Burmese military and its surrogates into all facets of the economy effectively destroying any free enterprise system.

(12) Investment in Burmese companies and purchases from them serve to provide the SPDC with currency that is used to finance its instruments of terror and repression against the Burmese people.

(13) On April 15, 2003, the American Apparel and Footwear Association expressed its ‘strong support for a full and immediate ban on U.S. textiles, apparel and footwear imports from Burma’ and called upon the United States Government to ‘impose an outright ban on U.S. imports’ of these items until Burma demonstrates respect for basic human and labor rights of its citizens.

(14) The policy of the United States, as articulated by the President on April 24, 2003, is to officially recognize the NLD as the legitimate representative of the Burmese people as determined by the 1990 election.

(15) The United States must work closely with other nations, including Thailand, a close ally of the United States, to highlight attention to the SPDC’s systematic abuses of human rights in Burma, to ensure that nongovernmental organizations promoting human rights and political freedom in Burma are allowed to operate freely and without harassment, and to craft a multilateral sanctions regime against Burma in order to pressure the SPDC to meet the conditions identified in section 3a(k) of this Act.

SEC. 3. BAN AGAINST TRADE THAT SUPPORTS THE MILITARY REGIME OF BURMA.

(a) General Ban.—

(1) In General.—Notwithstanding any other provision of law, until such time as the President determines and certifies to Congress that Burma has met the conditions described in paragraph (3), beginning 30 days after the date of the enactment of this Act (July 28, 2003), the President shall ban the importation of any article that is a product of Burma.

(2) Ban on Imports from Certain Companies.—The import restrictions contained in paragraph (1) shall apply to, among other entities—

(A) the SPDC, any ministry of the SPDC, a member of the SPDC or an immediate family member of such member;

(B) any narcotics trafficker from Burma or an immediate family member of such narcotics trafficker;

(C) the Union of Myanmar Economics Holdings Incorporated (UMEHI) or any company in which the UMEHI has a fiduciary interest;

(D) the Myanmar Economic Corporation (MEC) or any company in which the MEC has a fiduciary interest;

(E) the Union Solidarity and Development Association (USAID); and

(F) an successor entity for the SPDC, UMEHI, MEC, or USAID.

(b) Conditions Described.—The conditions described in this paragraph are the following:

(A) The SPDC has made substantial and measurable progress to end violations of internationally recognized human rights including rape, and the Secretary of State, after consultation with the ILO Secretary General and relevant nongovernmental organizations, reports to the appropriate congressional committees that the SPDC no longer systematically violates workers rights, including the use of forced and child labor, and conscription of child-soldiers;

(B) The SPDC has made measurable and substantial progress toward implementing a democratic government including—

(i) releasing all political prisoners;

(ii) allowing freedom of speech and the press;

(iii) allowing freedom of association;

(iv) permitting the peaceful exercise of religion; and

(v) bringing to a conclusion an agreement between the SPDC and the democratic forces led by the NLD and Burma’s ethnic nationalities on the transfer of power to a civilian government accountable to the Burmese people through democratic elections under the rule of law;

(C) Pursuant to section 703(2) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107-228) [22 U.S.C. 2291-1(2)], Burma has not been designated as a country that has failed demonstrably to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take other effective counternarcotics measures, including, but not limited to (i) the arrest and extradition of all individuals under indictment by United States authorities, and other producers and traffickers of narcotics;

(D) The Union of Myanmar Economics Holdings Incorporated (UMEHI) or any company in which the MEC has a fiduciary interest;

(E) the Union Solidarity and Development Association (USAID); and

(F) any successor entity for the SPDC, UMEHI, MEC, or USAID.

SEC. 3A. PROHIBITION ON IMPORTATION OF JADEITE AND RUBIES FROM BURMA AND ARTICLES OF JEWELRY CONTAINING JADEITE OR RUBIES FROM BURMA.

(a) Definitions.—In this section:
“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

(A) the Committee on Ways and Means and the Committee on Foreign Affairs of the House of Representatives; and

(B) the Committee on Finance and the Committee on Foreign Relations of the Senate.

(2) BURMESE COVERED ARTICLE.—The term ‘Burmes covered article’ means—

(A) jadeite mined or extracted from Burma;

(B) rubies mined or extracted from Burma; or

(C) articles of jewelry containing jadeite described in subparagraph (A) or rubies described in subparagraph (B).

(3) NON-BURMESE COVERED ARTICLE.—The term ‘non-Burmes covered article’ means—

(A) jadeite mined or extracted from a country other than Burma;

(B) rubies mined or extracted from a country other than Burma; or

(C) articles of jewelry containing jadeite described in subparagraph (A) or rubies described in subparagraph (B).

(4) JADEITE; RUBIES; ARTICLES OF JEWELRY CONTAINING JADEITE OR RUBIES.—

(A) JADEITE.—The term ‘jadeite’ means any jade classifiable under heading 7106 of the Harmonized Tariff Schedule of the United States (in this paragraph referred to as the ‘HTS’) (see Publication of Harmonized Tariff Schedule note set out under section 1922 of Title 19, Customs Duties).

(B) RUBIES.—The term ‘rubies’ means any rubies classifiable under heading 7103 of the HTS.

(C) ARTICLES OF JEWELRY CONTAINING JADEITE OR RUBIES.—The term ‘articles of jewelry containing jadeite or rubies’ means—

(i) any article of jewelry classifiable under heading 7113 of the HTS that contains jadeite or rubies; or

(ii) any article of jadeite or rubies classifiable under heading 7116 of the HTS.

(5) UNITED STATES.—The term ‘United States’, when used in the geographic sense, means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(6) PROHIBITION ON IMPORTATION OF BURMESE COVERED ARTICLES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, until such time as the President determines and certifies to the appropriate congressional committees that Burma has met the conditions described in section 3(a)(3), beginning 60 days after the date of the enactment of the Tom Lantos Block Burmes Jade (Junta’s Anti-Democratic Efforts) Act of 2008 (July 29, 2008), the President shall require as a condition for the importation into the United States of any non-Burmes covered article that—

(A) the exporter of the non-Burmes covered article has implemented measures that have substantially the same effect and achieve the same goals as the measures described in clauses (i) through (iv) of paragraph (2)(B) (or their functional equivalent) to prevent the trade in Burmes covered articles; and

(B) the importer of the non-Burmes covered article agrees—

(i) to maintain a full record of, in the form of reports or otherwise, complete information relating to any act or transaction related to the purchase, manufacture, or shipment of the non-Burmes covered article for a period of not less than 5 years from the date of entry of the non-Burmes covered article; and

(ii) to provide the information described in clause (i) within the custody or control of such person to the relevant United States authorities upon request.

(2) EXCEPTION.—

(A) IN GENERAL.—The President may waive the requirements of paragraph (1) with respect to the importation of non-Burmes covered articles from any country with respect to which the President determines and certifies to the appropriate congressional committees has implemented the measures described in subparagraph (B) (or their functional equivalent) to prevent the trade in Burmes covered articles.

(B) MEASURES DESCRIBED.—The measures referred to in subparagraph (A) are the following:

(i) to maintain a full record of, in the form of reports or otherwise, complete information relating to any act or transaction related to the purchase, manufacture, or shipment of the non-Burmes covered article in rough form, a system of verifiable controls on the jadeite or rubies from mine to exportation demonstrating that the jadeite or rubies were not mined or extracted from Burma, and accompanied by officially-validated documentation certifying the country from which the jadeite or rubies were mined or extracted, total carat weight, and value of the jadeite or rubies.

(ii) With respect to exportation from the country of finished jadeite or polished rubies, a system of verifiable controls on the jadeite or rubies from mine to the place of final finishing of the jadeite or rubies demonstrating that the jadeite or rubies were not mined or extracted from Burma, and accompanied by officially-validated documentation certifying the country from which the jadeite or rubies were mined or extracted.

(iii) With respect to exportation from the country of articles of jewelry containing jadeite or rubies, a system of verifiable controls on the jadeite or rubies from mine to the place of final finishing of the article of jewelry containing jadeite or rubies demonstrating that the jadeite or rubies were not mined or extracted from Burma, and accompanied by officially-validated documentation certifying the country from which the jadeite or rubies were mined or extracted.

(iv) Verifiable recordkeeping by all entities and individuals engaged in mining, importation, and exportation of non-Burmes covered articles in the country, and subject to inspection and verification by authorized authorities of the government of the country in accordance with applicable law.

(v) Implementation by the government of the country of proportionate and dissuasive penalties
against any persons who violate laws and regulations designed to prevent trade in Burmese covered articles.

(4) Full cooperation by the country with the United Nations or other official international organizations that seek to prevent trade in Burmese covered articles.

(5) REGULATORY AUTHORITY.—The President is authorized to, and shall as necessary, issue such proclamations, regulations, licenses, and orders and conduct such investigations, as may be necessary to implement the provisions under paragraphs (1) and (2).

(6) INAPPLICABILITY.—

(1) IN GENERAL.—The requirements of subsection (b)(1) and subsection (c)(1) shall not apply to Burmese covered articles and non-Burmese covered articles, respectively, that were previously exported from the United States, including those that accompanied an individual outside the United States for personal use, if they are reimported into the United States by the same person, without having been advanced in value or improved in condition by any process or other means while outside the United States.

(2) ADDITIONAL PROVISION.—The requirements of subsection (c)(1) shall not apply with respect to the importation of non-Burmese covered articles that are imported by or on behalf of an individual for personal use and accompanying an individual upon entry into the United States.

(7) ENFORCEMENT.—Burmese covered articles or non-Burmese covered articles that are imported into the United States in violation of any prohibition of this Act or any other provision law [sic] shall be subject to all applicable seizure and forfeiture laws and criminal and civil laws of the United States to the same extent as any other violation of the customs laws of the United States.

(8) SENSE OF CONGRESS.—

(1) IN GENERAL.—It is the sense of Congress that the President should take the necessary steps to seek to negotiate an international arrangement—similar to the Kimberley Process Certification Scheme for conflict diamonds—to prevent the trade in Burmese covered articles. Such an international arrangement should create an effective global system of controls and should contain the measures described in subsection (c)(2)(B) (or their functional equivalent).

(2) KIMBERLEY PROCESS CERTIFICATION SCHEME DEFINED.—In paragraph (1), the term ‘Kimberley Process Certification Scheme’ has the meaning given to the term in section 6 of the Clean Diamond Trade Act (Public Law 108–19; 19 U.S.C. 3902(6)).

(9) REPORT.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act [July 29, 2008], the President shall transmit to Congress a report describing what actions the United States has taken during the 60-day period beginning on the date of the enactment of such Act to seek—

(A) the issuance of a draft waiver decision by the Council for Trade in Goods of the World Trade Organization, as specified in subsection (b)(3)(A);

(B) the adoption of a resolution by the United Nations General Assembly, as specified in subsection (b)(3)(B); and

(C) the negotiation of an international arrangement, as specified in subsection (f)(1).

(2) UPDATE.—The President shall make continued efforts to seek the items specified in subparagraphs (A), (B), and (C) of paragraph (1) and shall promptly update the appropriate congressional committees on subsequent developments with respect to these efforts.

(10) GAO REPORT.—Not later than 14 months after the date of the enactment of the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008 [July 29, 2008], the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the effectiveness of the implementation of this section. The Comptroller General shall include in the report any recommendations for improving the administration of this Act.

SEC. 4. FREEZING ASSETS OF THE BURMESE REGIME IN THE UNITED STATES.

(1) REPORTING REQUIREMENT.—Not later than 60 days after the date of enactment of this Act [July 29, 2008], the President shall take such action as is necessary to direct, and promulgate regulations to the same, that any United States financial institution holding funds belonging to the SPDC or the assets of those individuals who hold senior positions in the SPDC or its political arm, the Union Solidarity Development Association, shall promptly report those funds or assets to the Office of Foreign Assets Control.

(2) ADDITIONAL AUTHORITY.—The President may take such action as may be necessary to impose a sanctions regime to freeze such funds or assets, subject to such terms and conditions as the President determines to be appropriate.

(3) DELEGATION.—The President may delegate the duties and authorities under this section to such Federal officers or other officials as the President deems appropriate.

SEC. 5. LOANS AT INTERNATIONAL FINANCIAL INSTITUTIONS.

(1) OPPOSITION TO ASSISTANCE TO BURMA.—The Secretary of the Treasury shall instruct the United States or any international financial institution in which the United States participates, to oppose, and vote against the extension by such institution of any loan or financial or technical assistance to Burma until such time as the conditions described in section 3(a)(3) are met.

(2) LICENSES FOR HUMANITARIAN OR RELIGIOUS ACTIVITIES IN BURMA.—Notwithstanding any other provision of law, the Secretary of the Treasury is authorized to issue multi-year licenses for humanitarian or religious activities in Burma.

SEC. 6. EXPANSION OF VISA BAN.

(1) GENERAL.—

(a) IN GENERAL.—The President is authorized to deny visas and entry to the former and present leadership of the SPDC or the Union Solidarity Development Association.

(b) UPDATES.—The Secretary of State shall coordinate on a biannual basis with representatives of the European Union to allow officials of the United States and the European Union to ensure a high degree of coordination of lists of individuals banned from receiving a visa by the European Union for the reason described in paragraph (1) and those banned from receiving a visa from the United States.

(c) PUBLICATION.—The Secretary of State shall post on the Department of State’s website the names of individuals whose entry into the United States is banned under subsection (a).

SEC. 7. CONDEMNATION OF THE REGIME AND DISSEMINATION OF INFORMATION.

Congress encourages the Secretary of State to highlight the abysmal record of the SPDC to the international community and use all appropriate fora, including the Association of Southeast Asian Nations Regional Forum and Asian Nations Regional Forum, to encourage other states to restrict financial resources to the SPDC and Burmese companies while offering political recognition and support to Burma’s democratic movement including the National League for Democracy and Burma’s ethnic groups.

SEC. 8. SUPPORT DEMOCRACY ACTIVISTS IN BURMA.

(1) IN GENERAL.—The President is authorized to use all available resources to assist Burmese democracy activists dedicated to nonviolent opposition to the regime in their efforts to promote freedom, democracy, and human rights in Burma, including a listing of constraints on such programming.
"(b) REPORTS.—

"(1) FIRST REPORT.—Not later than 3 months after the date of enactment of this Act [July 28, 2003], the Secretary of State shall provide the Committees on Appropriations and Foreign Relations of the Senate and the Committees on Appropriations and International Relations [now Foreign Affairs] of the House of Representatives a comprehensive report on its short- and long-term programs and activities to support democracy activists in Burma, including a list of constraints on such programming.

"(2) REPORT ON RESOURCES.—Not later than 6 months after the date of enactment of this Act, the Secretary of State shall provide the Committees on Appropriations and Foreign Relations of the Senate and the Committees on Appropriations and International Relations [now Foreign Affairs] of the House of Representatives a report identifying resources that will be necessary for the reconstruction of Burma, after the NLD is removed from power, including—

"(A) the formation of democratic institutions;

"(B) establishing the rule of law;

"(C) establishing freedom of the press;

"(D) providing for the successful reintegration of military officers and personnel into Burmese society; and

"(E) providing health, educational, and economic development.

"(3) REPORT ON TRADE SANCTIONS.—Not later than 90 days before the date on which the import restrictions contained in section 3(a)(1) are to expire, the Secretary of State, in consultation with the United States Trade Representative and the heads of appropriate agencies, shall submit to the Committees on Appropriations, Finance, and Foreign Relations of the Senate, and the Committees on Appropriations, International Relations [now Foreign Affairs], and Ways and Means of the House of Representatives, a report on—

"(A) bilateral and multilateral measures undertaken by the United States Government and other governments to promote human rights and democracy in Burma;

"(B) the extent to which actions related to trade with Burma taken pursuant to this Act have been effective in—

"(i) improving conditions in Burma, including human rights violations, arrest and detention of democracy activists, forced and child labor, and the status of dialogue between the SPDC and the NLD and ethnic minorities;

"(ii) furthering the policy objections of the United States toward Burma; and

"(D) providing for the successful reintegration of military officers and personnel into Burmese society.

"(3) Report on trade sanctions. Not later than 90 days before the date on which the import restrictions contained in section 3(a)(1) are to expire, the Secretary of State, in consultation with the United States Trade Representative and the heads of appropriate agencies, shall submit to the Committees on Appropriations, Finance, and Foreign Relations of the Senate, and the Committees on Appropriations, International Relations [now Foreign Affairs], and Ways and Means of the House of Representatives, a report on—

"(A) the formation of democratic institutions;

"(B) establishing the rule of law;

"(C) establishing freedom of the press;

"(D) providing for the successful reintegration of military officers and personnel into Burmese society; and

"(E) providing health, educational, and economic development.

"(2) Resolution by Congress. For purposes of this Act, any reference to section 3(a)(1) shall be deemed to include a reference to section 3A(b)(1) and (c)(1).

"(3) Renewal resolutions. For purposes of this section, the term 'renewal resolution' means a joint resolution of the 2 Houses of Congress, the sole matter after the resolving clause of which is as follows: That Congress approves the renewal of the import restrictions contained in section 3(a)(1) and section 3A(b)(1) and (c)(1) of the Burmese Freedom and Democracy Act of 2003.'.

"(4) Procedures. For purposes of this Act, any reference to section 3(a)(1) and section 3A(b)(1) and (c)(1); and

"(i) the provisions of subparagraph (B) shall apply.

"(2) Expedited consideration. For purposes of this Act, any reference to section 152(b), (c), (d), (e), and (f) of the Trade Act of 1974 [19 U.S.C. 2192 (b), (c), (d), (e), and (f)] and any action made by this Act shall take effect on the date of the enactment of this Act [Aug. 1, 2006] or July 26, 2006, whichever occurs first.

"(3) Report to Congress. Not later than 3 months after the date of enactment of this Act [Aug. 1, 2006], the Secretary of the Treasury, in consultation with the United States Trade Representative, is authorized to perform the functions set forth in section 3A(g) of this Act, in consultation with the Secretary of State, is authorized to perform the functions set forth in sections 3(b) and 3A(b)(3) of Pub. L. 108–61, and in consultation with the Secretary of Homeland Security, is authorized to perform the functions specified in section 3A(b)(3)(A) of Pub. L. 108–61 relating to the issuance of waivers and may redelegate those functions; in par. (4), that the Secretary of the Treasury and the Secretary of Homeland Security are authorized to issue regulations, licenses, and orders and to conduct necessary investigations to implement the prohibition on Burmese covered articles and the conditions for importation of non-Burmese covered articles set forth in section 3A(b), (c), (d), (e), (f) of Pub. L. 108–61, set out above, and also to delegate those functions as necessary; in par. (5), that the Secretary of the Treasury, in consultation with the Secretary of State, is authorized to perform the functions set forth in sections 3A(c)(2)(A) of Pub. L. 108–61 relating to the issuance of waivers and may redelegate those functions; in par. (6), that the United States Trade Representative is authorized to perform the functions specified in section 3A(b)(3)(A) of Pub. L. 108–61; and, in pars. (7) to (9), that the Secretary of State is authorized to perform the functions in sections 3(b) and 3A(b)(3)(B) of Pub. L. 108–61, as well as the functions in section 3A(g) of that Act, in consultation with the United States Trade Representative.

"(4) Rule of construction. For purposes of this subsection, any reference to section 3A(b)(1) shall be deemed to include a reference to section 3A(b)(1) and (c)(1).

"(5) Limitation. The import restrictions contained in section 3(a)(1) may be renewed for a maximum of nine years from the date of the enactment of this Act [July 28, 2003].

"(6) Expiration. The import restrictions contained in section 3(a)(1) shall expire 1 year from the date of enactment of this Act [July 28, 2003] unless renewed under paragraph (2) of this section.

"(7) Resolution by Congress. The import restrictions contained in section 3(a)(1) may be renewed annually for a 1-year period if, prior to the anniversary of the date of enactment of this Act, and each year thereafter, a renewal resolution is enacted into law in accordance with subsection (c).

"(8) Limitation. The import restrictions contained in section 3(a)(1) may be renewed for a maximum of nine years from the date of the enactment of this Act [July 28, 2003].

"(9) Expiration. The import restrictions contained in section 3(a)(1) shall expire 1 year from the date of enactment of this Act [July 28, 2003] unless renewed under paragraph (2) of this section.

"(10) Resolution by Congress. The import restrictions contained in section 3(a)(1) may be renewed annually for a 1-year period if, prior to the anniversary of the date of enactment of this Act, and each year thereafter, a renewal resolution is enacted into law in accordance with subsection (c).

"(11) Limitation. The import restrictions contained in section 3(a)(1) may be renewed for a maximum of nine years from the date of the enactment of this Act [July 28, 2003].

"(12) Expiration. The import restrictions contained in section 3(a)(1) shall expire 1 year from the date of enactment of this Act [July 28, 2003] unless renewed under paragraph (2) of this section.

"(13) Limitation. The import restrictions contained in section 3(a)(1) may be renewed for a maximum of nine years from the date of the enactment of this Act [July 28, 2003].

"(14) Expiration. The import restrictions contained in section 3(a)(1) shall expire 1 year from the date of enactment of this Act [July 28, 2003] unless renewed under paragraph (2) of this section.

"(15) Limitation. The import restrictions contained in section 3(a)(1) may be renewed for a maximum of nine years from the date of the enactment of this Act [July 28, 2003].

"(16) Expiration. The import restrictions contained in section 3(a)(1) shall expire 1 year from the date of enactment of this Act [July 28, 2003] unless renewed under paragraph (2) of this section.

"(17) Limitation. The import restrictions contained in section 3(a)(1) may be renewed for a maximum of nine years from the date of the enactment of this Act [July 28, 2003].

"(18) Expiration. The import restrictions contained in section 3(a)(1) shall expire 1 year from the date of enactment of this Act [July 28, 2003] unless renewed under paragraph (2) of this section.

"(19) Limitation. The import restrictions contained in section 3(a)(1) may be renewed for a maximum of nine years from the date of the enactment of this Act [July 28, 2003].

"(20) Expiration. The import restrictions contained in section 3(a)(1) shall expire 1 year from the date of enactment of this Act [July 28, 2003] unless renewed under paragraph (2) of this section.
(a) IN GENERAL.—Congress approves the renewal of the import restrictions contained in section 3(a)(1) and section 3A(b)(1) and (c)(1) of the Burmese Freedom and Democracy Act of 2003 [Pub. L. 108–61, set out above].

(b) RULE OF CONSTRUCTION.—This joint resolution shall be deemed to be a 'renewal resolution' for purposes of section 9 of the Burmese Freedom and Democracy Act of 2003.

Prior similar provisions were contained in the following Acts:


LIMITED WAIVER OF CERTAIN SANCTIONS IMPOSED BY, AND DELEGATION OF CERTAIN AUTHORITIES PURSUANT TO, THE TOM LANTOS BLOCK BURMESE JADE (JUNTA’S ANTI-DemOCRATIC EFFORTS) ACT OF 2008

Determination of the President of the United States, No. 2008–11, Jan. 15, 2009, 74 P.R. 3967, provided:

Memorandum for the Secretary of State [and] the Secretary of the Treasury
By the authority vested in me as President by the Constitution and laws of the United States, including the Tom Lantos Block Burmese JADE (JUNTA’s Anti-Democratic Efforts) Act of 2008 (Public Law 110–287) (JADE Act) [set out as a note above] and section 301 of title 3, United States Code, in order to ensure that the United States Government’s sanctions against the Burmese leadership and its supporters continue to be implemented effectively, to allow the reconciliation of measures applicable to persons sanctioned under the JADE Act with measures applicable to the same persons sanctioned under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and to allow for the implementation of additional appropriate sanctions:

(1) I hereby waive, pursuant to section 5(i) of the JADE Act, the provisions of section 5(b) of the JADE Act with respect to those persons described in section 5(a)(1) of the JADE Act who are not included on the Department of the Treasury’s List of Specially Designated Nationals and Blocked Persons. Because the implementation of effective and meaningful blocking sanctions requires the identification of those individuals and entities targeted for sanction and the authorization of certain limited exceptions to the prohibitions and restrictions that would otherwise apply, I hereby determine and certify that such a limited waiver is in the national interest of the United States.

(2) I hereby delegate to the Secretary of the Treasury the waiver authority set forth in section 5(i) of the JADE Act, including the authority to invoke or revoke the waiver with respect to any person or persons or any transaction or category of transactions or prohibitions by making the necessary determination and certification regarding the national interest of the United States set forth in that section. I hereby direct the Secretary of the Treasury, after consultation with the Secretary of State and with necessary support from the Intelligence Community, as defined in section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a(4)), to continue to target aggressively the Burmese regime and its lines of support. I further delegate to the Secretary of the Treasury the authority to take such actions as may be necessary to carry out the purposes of section 5(b) of the JADE Act. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. The authorities delegated to the Secretary of the Treasury under this memorandum shall be exercised after consultation with the Secretary of State.

(3) I authorize the Secretary of State, after consultation with the Secretary of the Treasury, to take such actions as may be necessary to make the submissions to the appropriate congressional committees pursuant to section 5(d) of the JADE Act.

I hereby authorize and direct the Secretary of the Treasury to report this determination to the appropriate congressional committees and to publish it in the Federal Register.
The Government of Sudan reluctantly agreed to attend talks to bring peace to the Darfur region only after considerable international pressure and outrage was expressed through high level visits by the Secretary of State Colin Powell and others, and through United Nations Security Council Resolution 1556 (July 30, 2004).

The Government of the United States, in both the executive branch and Congress, has concluded that genocide has been committed and may still be occurring in the Darfur region, and that the Government of Sudan and militias supported by the Government of Sudan, known as the Janjaweed, bear responsibility for the genocide.

Evidence collected by international observers in the Darfur region between February 2003 and November 2004 indicate a coordinated effort to target African Sudanese civilians in a scorched earth policy, similar to that which was employed in southern Sudan, that has destroyed African Sudanese villages, killing and driving away their people, while Arab Sudanese villages have been left unscathed.

As a result of this genocidal policy in the Darfur region, an estimated 70,000 people have died, more than 1,600,000 people have been internally displaced, and more than 200,000 people have been forced to flee to neighboring Chad.

Reports further indicate the systematic rape of thousands of women and girls, the abduction of women and children, and to the destruction of hundreds of ethnically African villages, including the poisoning of their wells and the plunder of their crops and cattle upon which the people of such villages sustain themselves.

Despite the threat of international action expressed through United Nations Security Council Resolutions 1556 (July 30, 2004) and 1561 (September 18, 2004), the Government of Sudan continues to obstruct and prevent efforts to reverse the catastrophic consequences that loom over the Darfur region.

In addition to the thousands of violent deaths directly caused by ongoing Sudanese military and government-sponsored Janjaweed attacks in the Darfur region, the Government of Sudan has restricted access by humanitarian and human rights workers to the Darfur area through intimidation by military and security forces, and through bureaucratic and administrative obstruction, in an attempt to inflict the most devastating harm on those individuals displaced from their villages and homes without any means of sustenance or shelter.

The Government of Sudan’s continued support for the Janjaweed and their obstruction of the delivery of food, shelter, and medical care to the Darfur region is estimated by the World Health Organization to be causing up to 10,000 deaths per month and, should current conditions persist, is projected to escalate to thousands of deaths each day by December 2004.

The Government of Chad served an important role in facilitating the humanitarian cease-fire (the N’Djamena Agreement dated April 8, 2004) for the Darfur region between the Government of Sudan and the two opposition rebel groups in the Darfur region (the JEM and the SLA), although both sides have violated the cease-fire agreement repeatedly.

The people of Chad have responded courageously to the plight of over 200,000 Darfur refugees by providing assistance to them even though such assistance has adversely affected their own means of livelihood.

On September 9, 2004, Secretary of State Colin Powell stated before the Committee on Foreign Relations of the Senate: "When we reviewed the evidence compiled by our team, along with other information available to the State Department, we concluded that genocide has been committed in Darfur and that the Government of Sudan and the Janjaweed bear responsibility—and genocide may still be occurring.

The African Union has demonstrated renewed vigor in regional affairs through its willingness to respond to the crisis in the Darfur region, by convening talks between the parties and deploying several hundred monitors and security forces to the region, as well as by recognizing the need for a far larger force with a broader mandate.

The Government of Sudan’s complicity in the atrocities and genocide in the Darfur region raises fundamental questions about the Government of Sudan’s commitment to peace and stability in Sudan.

SEC. 4. SENSE OF CONGRESS REGARDING THE CONFLICT IN DARFUR, SUDAN

(a) SUDAN PEACE ACT.—It is the sense of Congress that the Sudan Peace Act (Pub. L. 107–245) (50 U.S.C. 1701 note) remains relevant and should be extended to include the Darfur region of Sudan.

(b) ACTIONS TO ADDRESS THE CONFLICT.—It is the sense of Congress that—

(1) a legitimate countrywide peace in Sudan will only be possible if those principles enumerated in the 1948 Universal Declaration of Human Rights, that are affirmed in the Machakos Protocol of 2002 and the Nairobi Declaration on the Final Phase of Peace in the Sudan signed on June 5, 2004, are applied to all of Sudan, including the Darfur region;

(2) the parties to the N’Djamena Agreement (the Government of Sudan, the JEM, and the SLA) must meet their obligations under that Agreement to allow safe and immediate delivery of all humanitarian assistance throughout the Darfur region and must expedite the conclusion of a political agreement to end the genocide and conflict in the Darfur region;

(3) the United States should continue to provide humanitarian assistance to the areas of Sudan to which access has been limited, and, at the same time, implement a plan to provide assistance to the areas of Sudan to which access has been obstructed or denied;

(4) the international community, including African, Arab, and Muslim nations, should immediately provide resources necessary to save the lives of hundreds of thousands of individuals at risk as a result of the crisis in the Darfur region;

(5) the United States and the international community should—

(A) provide all necessary assistance to deploy and sustain an African Union Force to the Darfur region; and

(B) work to increase the authorized level and expand the mandate of such forces commensurate with the gravity and scope of the problem in a region the size of France;

(6) the President, acting through the Secretary of State and the Permanent Representative of the United States to the United Nations, should—

(A) condemn any failure on the part of the Government of Sudan to fulfill its obligations under United Nations Security Council Resolutions 1556 (July 30, 2004) and 1561 (September 18, 2004), and press the United Nations Security Council to respond to such failure by immediately imposing the penalties suggested in paragraph (14) of United Nations Security Council Resolution 1561;

(B) press the United Nations Security Council to pursue accountability for those individuals who are found responsible for orchestrating and carrying out the atrocities in the Darfur region, consistent with relevant United Nations Security Council Resolutions; and

(C) encourage member states of the United Nations to—

(i) cease to import Sudanese oil; and

(ii) take the following actions against Sudanese Government and military officials and other individuals who are planning, carrying out, or otherwise involved in the policy of genocide in the Darfur region, as well as their families, and businesses controlled by the Government of Sudan and the National Congress Party:

(1) freeze the assets held by such individuals or businesses in each such member state; and
"(II) restrict the entry or transit of such officials through each such member state;

"(7) the President should impose targeted sanctions including a ban on travel and the freezing of assets, on those officials of the Government of Sudan, including military officials, and other individuals who have planned or carried out, or otherwise been involved in the policy of genocide in the Darfur region, and should also freeze the assets of businesses controlled by the Government of Sudan or the National Congress Party;

"(8) the Government of the United States should not normalize relations with Sudan, including through the lifting of any sanctions, until the Government of Sudan agrees to, and takes demonstrable steps to implement, peace agreements for all areas of Sudan, including the Darfur region;

"(9) those individuals found to be involved in the planning or carrying out of genocide, war crimes, or crimes against humanity in Darfur, including military officials, and other individuals involved in the policy of genocide in the Darfur region, and should also freeze the assets of businesses controlled by the Government of Sudan or the coalition government established pursuant to the agreements reached in the Nairobi Declaration on the Final Phase of Peace in the Sudan; and

"(10) the Government of Sudan has a primary responsibility to guarantee the safety and welfare of its citizens, which includes allowing them access to humanitarian assistance and providing them protection from violence.

‘SECTION 5. AMENDMENTS TO THE SUDAN PEACE ACT.’

‘[Amended Pub. L. 107–245, set out below.]

‘SECTION 6. SANCTIONS IN SUPPORT OF PEACE IN DARFUR.’

‘(a) SANCTIONS. — Beginning on the date that is 30 days after the date of enactment of this Act (Dec. 23, 2004), the President shall, notwithstanding paragraph (1) of section 6(b) of the Sudan Peace Act (Pub. L. 107–245) (50 U.S.C. 1701 note), implement the measures set forth in subparagraphs (A) through (D) of paragraph (2) of such section.

‘(b) BLOCKING OF ASSETS OF APPROPRIATE SENIOR OFFICIALS OF THE GOVERNMENT OF SUDAN. — Beginning on the date that is 30 days after the date of enactment of this Act, the President shall, consistent with the authorities granted in this chapter, suspend and prohibit the President from authorizing any provision of law, shall remain in effect against the Government of Sudan and may not be lifted pursuant to such provisions of law unless the President transmits a certification to the appropriate congressional committees in accordance with paragraph (2) of section 12(a) of the Sudan Peace Act (as added by section 9(a)(1) of this Act).

‘(c) DETERMINATION. — Notwithstanding subsection (a) of this section, the President shall continue to transmit the determination required under section 6(b)(1)(A) of the Sudan Peace Act (50 U.S.C. 1701 note).

‘SECTION 7. ADDITIONAL AUTHORITIES.’


‘SECTION 8. TECHNICAL CORRECTION.’

‘[Amended section 288f–2 of Title 22, Foreign Relations and Intercourse.]

‘[For assignment of functions of President under subsec. (c) and the last sentence of subsec. (d) of section 6 of Pub. L. 108–497, set out above, see section 4(c), (d) of Ex. Ord. No. 13412, Oct. 13, 2006, 71 F.R. 61370, listed in a table below.]


‘SECTION 1. SHORT TITLE.

‘This Act may be cited as the ‘Sudan Peace Act’.

‘SECTION 2. FINDINGS.

‘The Congress makes the following findings:

‘(1) The Government of Sudan has intensified its prosecution of the war against areas outside of its control, which has already cost more than 2,000,000 lives and displaced more than 4,000,000 people.

‘(2) A viable, comprehensive, and internationally sponsored peace process, protected from manipulation, presents the best chance for a permanent resolution of the war, protection of human rights, and a self-sustaining Sudan.

‘(3) Continued strengthening and reform of humanitarian relief operations in Sudan is an essential element in the effort to bring an end to the war.

‘(4) Continued leadership by the United States is critical.

‘(5) Regardless of the future political status of the areas of Sudan outside of the control of the Government of Sudan, the absence of credible civil authority and institutions is a major impediment to achieving self-sustenance by the Sudanese people and to meaningful progress toward a viable peace process. It is critical that credible civil authority and institutions play an important role in the reconstruction of post-war Sudan.

‘(6) Through the manipulation of traditional rivalries among peoples in areas outside of its full control, the Government of Sudan has used divide-and-conquer techniques effectively to subjugate its population. However, internationally sponsored reconciliation efforts have played a critical role in reducing human suffering and the effectiveness of this tactic.

‘(7) The Government of Sudan utilizes and organizes militias, Popular Defense Forces, and other irregular units for raiding and enslaving parties in...
areas outside of the control of the Government of Sudan in an effort to disrupt severely the ability of the populations in those areas to sustain themselves. The tactic helps minimize the Government of Sudan’s accountability internationally.

“(8) The Government of Sudan has repeatedly stated that it intends to use the expected proceeds from future oil sales to increase the tempo and lethality of the war against the areas outside of its control.

“(9) By regularly banning air transport relief flights by the United Nations relief operation OLS, the Government of Sudan has been able to manipulate the receipt of food aid by the Sudanese people from the United States and other donor countries as a devastating weapon of war in the ongoing effort by the Government of Sudan to starve targeted groups and subdue areas of Sudan outside of the Government’s control.


“(11) The efforts of the United States and other donors in delivering relief and assistance through means outside of OLS have played a critical role in addressing the deficiencies in OLS and offset the Government of Sudan’s manipulation of food donations to advantage in the civil war in Sudan.

“(12) While the immediate needs of selected areas in Sudan facing starvation have been addressed in the near term, the population in areas of Sudan outside of the control of the Government of Sudan are still in danger of extreme disruption of their ability to sustain themselves.

“(13) The Nuba Mountains and many areas in Bahr al Ghazal and the Upper Nile and the Blue Nile regions have been excluded completely from relief distribution by OLS, consequently placing their populations at increased risk of famine.

“(14) At a cost which has sometimes exceeded $1,000,000 per day, and with a primary focus on providing only for the immediate food needs of the recipients, the current international relief operations are neither sustainable nor desirable in the long term.

“(15) The ability of populations to defend themselves against attack in areas outside of the control of the Government of Sudan has been severely compromised by the disengagement of the front-line states of Ethiopia, Eritrea, and Uganda, fostering the belief among officials of the Government of Sudan that success on the battlefield can be achieved.

“(16) The United States should use all means of pressure available to facilitate a comprehensive solution to the war in Sudan, including:

“(A) the multilateralization of economic and diplomatic tools to compel the Government of Sudan to enter into a good faith peace process;

“(B) the support or creation of viable democratic civil authority and institutions in areas of Sudan outside of government control;

“(C) continued active support of people-to-people reconciliation mechanisms and efforts in areas outside of government control;

“(D) the strengthening of the mechanisms to provide humanitarian relief to those areas; and

“(E) cooperation among the trading partners of the United States and within multilateral institutions toward those ends.

‘‘SEC. 3. DEFINITIONS.

‘‘In this Act:

‘‘(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives and the Committee on Foreign Relations of the Senate.

‘‘(2) GOVERNMENT OF SUDAN.—Except as provided in section 12, the term ‘Government of Sudan’ means the National Islamic Front government in Khartoum, Sudan.

‘‘(3) OLS.—The term ‘OLS’ means the United Nations relief operation carried out by UNICEF, the World Food Program, and participating relief organizations known as ‘Operation Lifeline Sudan’.

‘‘(4) SPLM.—The term ‘SPLM’ means the Sudan People’s Liberation Movement.

‘‘SEC. 4. CONDEMNATION OF SLAVERY, OTHER HUMAN RIGHTS ABUSES, AND TACTICS OF THE GOVERNMENT OF SUDAN.

‘‘The Congress hereby—

‘‘(1) condemns—

‘‘(A) violations of human rights on all sides of the conflict in Sudan;

‘‘(B) the Government of Sudan’s overall human rights record, with particular reference to the Government of Sudan in abetting and tolerating the practice;

‘‘(C) the ongoing slave trade in Sudan and the role of the Government of Sudan in abetting and tolerating the practice;

‘‘(D) the Government of Sudan’s use and organization of ‘murahalilin’ or ‘mujahadeen’, Popular Defense Forces, and regular Sudanese Army units into organized and coordinated raiding and slaving parties in Bahr al Ghazal, the Nuba Mountains, and the Upper Nile and the Blue Nile regions; and

‘‘(E) aerial bombardment of civilian targets that is sponsored by the Government of Sudan; and

‘‘(2) recognizes that, along with selective bans on air transport relief flights by the Government of Sudan, the use of raiding and slaving parties is a tool for creating food shortages and is used as a systemic means to destroy the societies, culture, and economies of the Dinka, Nuer, and Nuba peoples in a policy of low-intensity ethnic cleansing.

‘‘SEC. 5. ASSISTANCE FOR PEACE AND DEMOCRATIC GOVERNANCE.

‘‘(a) ASSISTANCE TO SUDAN.—The President is authorized to provide increased assistance to the areas of Sudan that are not controlled by the Government of Sudan to prepare the population for peace and democratic governance, including support for civil administration, communications infrastructure, education, health, and agriculture.

‘‘(b) AUTHORIZATION OF APPROPRIATIONS.—

‘‘(1) IN GENERAL.—There are authorized to be appropriated to the President to carry out the activities described in subsection (a) of this section $100,000,000 for each of the fiscal years 2003, 2004, and 2005.

‘‘(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) of this subsection are authorized to remain available until expended.

‘‘SEC. 6. SUPPORT FOR AN INTERNATIONALLY SANCTIONED PEACE PROCESS.

‘‘(a) FINDINGS.—Congress hereby—

‘‘(1) recognizes that—

‘‘(A) a single, viable internationally and regionally sanctioned peace process holds the greatest opportunity to promote a negotiated, peaceful settlement to the war in Sudan; and

‘‘(B) resolution to the conflict in Sudan is best made through a peace process based on the Declaration of Principles reached in Nairobi, Kenya, on July 29, 1994, and on the Machakos Protocol in July 2002; and

‘‘(2) commends the efforts of Special Presidential Envoy, Senator Danforth and his team in working to assist the parties to the conflict in Sudan in finding a just, permanent peace to the conflict in Sudan.

‘‘(b) MEASURES OF CERTAIN CONDITIONS NOT MET.—

‘‘(1) PRESIDENTIAL DETERMINATION.—

‘‘(A) The President shall make a determination and certify in writing to the appropriate congressional committees within 6 months after the date of enactment of this Act [Oct. 21, 2002], and each 6
months thereafter, that the Government of Sudan and the Sudan People's Liberation Movement are negotiating in good faith and that negotiations should continue.

"(C) If, under paragraph (A) the President determines and certifies in writing to the appropriate congressional committees that the Government of Sudan has not engaged in good faith negotiations to achieve a permanent, just, and equitable peace agreement, or has unreasonably interfered with humanitarian efforts, then the President, after consultation with the Congress, shall implement the measures set forth in paragraph (2).

"(D) If the President certifies to the appropriate congressional committees that the Government of Sudan is not in compliance with the terms of a permanent peace agreement between the Government of Sudan and the Sudan People's Liberation Movement, then the President, after consultation with the Congress, shall implement the measures set forth in paragraph (2).

"(E) If, at any time after the President has made a determination and certifies in writing to the appropriate congressional committees that the Government of Sudan has resumed good faith negotiations, or makes a determination and certifies in writing to the appropriate congressional committees that the Government of Sudan is in compliance with a peace agreement, then paragraph (2) shall not apply to the Government of Sudan.

(2) MEASURES IN SUPPORT OF THE PEACE PROCESS.—Subject to the provisions of paragraph (1), the President—

"(A) shall, through the Secretary of the Treasury, instruct the United States executive directors to each international financial institution to continue to vote against and actively oppose any extension by the respective institution of any loan, credit, or guarantee to the Government of Sudan;

"(B) should consider downgrading or suspending diplomatic relations between the United States and the Government of Sudan;

"(C) shall take all necessary and appropriate steps, including through multilateral efforts, to deny the Government of Sudan access to oil revenues to ensure that the Government of Sudan neither directly nor indirectly utilizes any oil revenues to purchase or acquire military equipment or to finance any military activities; and


(3) A DESCRIPTION OF THE STATUS OF NEGOTIATIONS.—If, at any time after the President has made a certification under subsection (b)(1)(A), the Government of Sudan discontinues negotiations with the Sudan People's Liberation Movement for a 14-day period, then the President shall submit a quarterly report to the appropriate congressional committees on the status of the peace process until negotiations resume.

(c) REPORT ON UNITED STATES OPPOSITION TO FINANCING BY INTERNATIONAL FINANCIAL INSTITUTIONS.—The Secretary of the Treasury shall submit a semi-annual report to the appropriate congressional committees describing the steps taken by the United States to oppose the extension of a loan, credit, or guarantee if, after the Secretary of the Treasury gives the instructions described in subsection (b)(2)(A), such financing is extended.

(d) REPORT ON EFFORTS TO DENY OIL REVENUES.—Not later than 45 days after the President takes an action under subsection (b)(2)(C), the President shall submit to the appropriate congressional committees a comprehensive plan for implementing the actions described in such subsection.

(f) DEFINITION.—In this section, the term 'international financial institution' means the International Bank for Reconstruction and Development, the International Monetary Fund, the African Development Bank, and the African Development Fund.
under this section, the Secretary of State, in consultation with all relevant Federal departments and agencies, shall prepare and submit a report, to the appropriate congressional committees, regarding—

(a) a detailed description of all United States assistance provided to the African Union Mission in Sudan (referred to in this subsection as `AMIS`) since the establishment of AMIS, reported by fiscal year and the type and purpose of such assistance; and

(b) the level of other international assistance provided to AMIS, including assistance from countries, regional and international organizations, such as the North Atlantic Treaty Organization, the European Union, the Arab League, and the United Nations, reported by fiscal year and the type and purpose of such assistance, to the extent possible.

(d) REPORT ON SANCTIONS IN SUPPORT OF PEACE IN DARFUR.—In conjunction with the other reports required under this section, the Secretary of State shall submit a report to the appropriate congressional committees regarding sanctions imposed under section 6 of the Comprehensive Peace in Sudan Act of 2004 [Pub. L. 108–497, set out above], including—

(A) a detailed annex on any military assistance provided under such provision of law;

(B) the name of the individual or entity subject to the sanction, if applicable; and

(C) whether or not such individual has been identified by the United Nations panel of experts.

(e) REPORT ON UNITED STATES MILITARY ASSISTANCE.—In conjunction with the other reports required under this section, the Secretary of State shall submit a report to the appropriate congressional committees describing the effectiveness of any assistance provided under section 8 of the Darfur Peace and Accountability Act of 2006 [Pub. L. 109–344, set out above], including—

(A) a detailed annex on any military assistance provided in the period covered by this report;

(B) the results of any review or other monitoring conducted by the Federal Government with respect to assistance provided under that Act; and

(C) any unauthorized retransfer or use of military assistance furnished by the United States.

(g) DISCLOSURE TO THE PUBLIC.—The Secretary of State shall publish or otherwise make available to the public each unclassified report, or portion of a report that is unclassified, submitted under subsection (a) or (b).

SEC. 9. CONTINUED USE OF NON-OLS ORGANIZATIONS FOR RELIEF EFFORTS.

(a) SENSE OF CONGRESS.—It is the sense of the Congress that the President should continue to increase the use of non-OLS agencies in the distribution of relief supplies in southern Sudan.

(b) REPORT.—Not later than 90 days after the date of enactment of this Act [Oct. 21, 2002], the President shall submit to the appropriate congressional committees a detailed report describing the progress made toward carrying out subsection (a).

SEC. 10. CONTINGENCY PLAN FOR ANY BAN ON AIR TRANSPORT RELIEF FLIGHTS.

(a) PLAN.—The President shall develop a contingency plan to provide, outside the auspices of the United Nations if necessary, the greatest possible amount of United States Government and privately donated relief to all affected areas in Sudan, including the Nuba Mountains and the Upper Nile and the Blue Nile regions, in the event that the Government of Sudan imposes a total, partial, or incremental ban on OLS air transport relief flights.

(b) REPROGRAMMING AUTHORITY.—Notwithstanding any other provision of law, in carrying out the plan developed under subsection (a), the President may reprogram 100 percent of the funds available for support of OLS operations for the purposes of the plan.

SEC. 11. INVESTIGATION OF WAR CRIMES.

(a) IN GENERAL.—The Secretary of State shall collect information about incidents which may constitute crimes against humanity, genocide, war crimes, and other violations of international humanitarian law by all parties to the conflict in Sudan, including slavery, rape, and aerial bombardment of civilian targets.

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act [Oct. 21, 2002] and annually thereafter, the Secretary of State shall prepare and submit to the appropriate congressional committees a detailed report on the information that the Secretary of State has collected under subsection (a) and any findings or determinations made by the Secretary on the basis of that information. The report under this subsection may be submitted as part of the report required under section 8.

(c) CONSULTATIONS WITH OTHER DEPARTMENTS.—In preparing the report required by this section, the Secretary of State shall consult and coordinate with all other Government officials who have information necessary to complete the report. Nothing contained in this section shall require the disclosure, on a classified or unclassified basis, of information that would jeopardize sensitive sources and methods or other vital national security interests.

SEC. 12. ASSISTANCE FOR THE CRISIS IN DARFUR AND FOR COMPREHENSIVE PEACE IN SUDAN.

(a) ASSISTANCE.—

(1) AUTHORITY.—Withholding any other provision of law, the President is authorized to provide assistance for Sudan as authorized in paragraph (5) of this section—

(A) to subject the requirements of this section, to support the implementation of a comprehensive peace agreement that applies to all regions of Sudan, including the Darfur region; and

(B) to address the humanitarian and human rights crisis in the Darfur region and eastern Chad, including to support the African Union mission in the Darfur region, provided that no assistance may be made available to the Government of Sudan.

(2) CERTIFICATION FOR THE GOVERNMENT OF SUDAN.—Assistance authorized under paragraph (1)(A) may be provided to the Government of Sudan only if the President certifies to the appropriate congressional committees that the Government of Sudan has taken demonstrable steps to—

(A) ensure that the armed forces of Sudan and any associated militias are not committing atrocities or obstructing human rights monitors or the provision of humanitarian assistance;

(B) demobilize and disarm militias supported or created by the Government of Sudan;

(C) allow full and unfettered humanitarian assistance to all regions of Sudan, including the Darfur region;

(D) allow an international commission of inquiry to conduct an investigation of atrocities in the Darfur region, in a manner consistent with United Nations Security Council Resolution 1564 (September 18, 2004), to investigate reports of violations of international humanitarian law and human rights law in the Darfur region by all parties, to determine also whether or not acts of genocide have occurred and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable;

(E) cooperate fully with the African Union, the United Nations, and all other observer, monitoring, and protection missions mandated to operate in Sudan;

(F) permit the safe and voluntary return of displaced persons and refugees to their homes and rebuild the communities destroyed in the violence; and

(G) implement the final agreements reached in the Naivasha peace process and install a new coalition government based on the Nairobi Declaration on the Final Phase of Peace in the Sudan signed on June 5, 2004.

(3) CERTIFICATION WITH REGARD TO SPLM COMPLIANCE WITH A PEACE AGREEMENT.—If the President de-
terms and certifies in writing to the appropriate congressional committees that the SPLM has not engaged in good faith negotiations, or has failed to honor the agreements signed, the President shall immediately suspend assistance authorized in this section for the SPLM, except for health care, education, and humanitarian assistance.

(4) SUSPENSION OF ASSISTANCE.--If, on a date after the President transmits the certification described in paragraph (2), the President determines that the Government of Sudan has ceased taking the actions described in such paragraph, the President shall immediately suspend the provision of any assistance to such Government under this section until the date on which the President transmits to the appropriate congressional committees a further certification that the Government of Sudan has resumed taking such actions.

(5) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—In addition to any other funds otherwise available for such purposes, there are authorized to be appropriated to the President—

(i) $100,000,000 for fiscal year 2005, and such sums as may be necessary for each of the fiscal years 2006 and 2007, unless otherwise authorized, to carry out paragraph (1)(A); and

(ii) $200,000,000 for fiscal year 2005 to carry out paragraph (1)(B), provided that no amounts appropriated under this authorization may be made available for the Government of Sudan.

(B) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subparagraph (A) are authorized to remain available until expended.

(B) GOVERNMENT OF SUDAN DEFINED.—In this section, the term 'Government of Sudan' means the National Congress Party, formerly known as the National Islamic Front, government in Khartoum, Sudan, or any successor government formed on or after the date of the enactment of the Comprehensive Peace in Sudan Act of 2005, Dec. 31, 2004 (other than the coalition government agreed upon in the Cairo Declaration on the Final Phase of Peace in the Sudan signed on June 5, 2004).

Memorandum of President of the United States, Oct. 21, 2004, 69 F.R. 63039, delegated to the Secretary of State the determination, certification, and reporting functions of the President under sections 4(b)(1) and 6(c) of Pub. L. 107–245, set out above.

Memorandum of President of the United States, Mar. 14, 2005, 70 F.R. 14967, delegated to the Secretary of State the reporting function of the President under section 6(e) of Pub. L. 107–245, set out above.

PRESIDENTIAL DETERMINATIONS ON THE SUDAN PEACE ACT

Provisions certifying good faith negotiations between the Government of Sudan and the Sudan People’s Liberation Movement were contained in the following:


ASSISTANCE EFFORTS IN SUDAN


Pub. L. 106–570, title V, §§ 501, 114 Stat. 3058, authorized the President to undertake appropriate programs with indigenous groups, agencies, or organizations in areas outside of control of the Government of Sudan in order to benefit the economic development of that area and its people and exempted exports from those areas from the export prohibitions of Ex. Ord. No. 12967, prior to repeal by Pub. L. 109–344, § 8(a), Oct. 13, 2006, 120 Stat. 1879.

IRAN, NORTH KOREA, AND SYRIA NONPROLIFERATION


‘‘SECTION 1. SHORT TITLE.

‘‘This Act may be cited as the ‘Iran, North Korea, and Syria Nonproliferation Act’.

‘‘SEC. 2. REPORTS ON PROLIFERATION RELATING TO IRAN, NORTH KOREA, AND SYRIA.

(a) REPORTS.—The President shall, at the times specified in subsection (b), submit to the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives and the Committee on Foreign Relations of the Senate a report identifying every foreign person with respect to whom there is credible information indicating that that person, on or after January 1, 1999, transferred to or acquired from Iran, on or after January 1, 2005, transferred to or acquired from Syria, or on or after January 1, 2006, transferred to or acquired from North Korea—

(1) goods, services, or technology listed on—

(A) the Nuclear Suppliers Group Guidelines for the Export of Nuclear Material, Equipment and Technology (published by the International Atomic Energy Agency as Information Circular INFCIRC/254 Rev.3 Part 1, and subsequent revisions) and Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology (published by the International Atomic Energy Agency as Information Circular INFCIRC/254 Rev.3 Part 2, and subsequent revisions);

(B) the Missile Technology Control Regime Equipment and Technology Annex of June 11, 1996, and subsequent revisions;

(c) the lists of items and substances relating to biological and chemical weapons the export of which is controlled by the Australia Group;

(D) the Schedule One or Schedule Two list of toxic chemicals and precursors the export of which is controlled pursuant to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction;

(E) the Wassenaar Arrangement list of Dual Use Goods and Technologies and Munitions list of July 12, 1996, and subsequent revisions;

(2) goods, services, or technology not listed on any list identified in paragraph (1) but which nevertheless would be, if they were United States goods, services, or technology, prohibited for export to Iran, North Korea, or Syria, as the case may be, because of their potential to make a material contribution to the development of nuclear, biological, or chemical weapons, or of ballistic or cruise missile systems.

(b) TIMING OF REPORTS.—The reports under subsection (a) shall be submitted not later than 90 days after the date of the enactment of this Act [Mar. 14, 2000], not later than 6 months after such date of enactment, and not later than the end of each 6-month period thereafter.

(c) EXCEPTIONS.—Any foreign person who—

(1) was identified in a previous report submitted under subsection (a) on account of a particular transfer; or

(2) has engaged in a transfer on behalf of, or in concert with, the Government of the United States, is not required to be identified on account of that same transfer in any report submitted thereafter under this section, except to the degree that new information has emerged indicating that the particular transfer may have continued, or been larger, more significant, or different in nature than previously reported under this section.

(d) SUBMISSION IN CLASSIFIED FORM.—When the President considers it appropriate, reports submitted
under subsection (a), or appropriate parts thereof, may be submitted in classified form.

"(e) CONTENT OF REPORTS.—Each report under subsection (a), with respect to each foreign person identified in such report, a brief description of the type and quantity of the goods, services, or technology transferred by that person to Iran, the circumstances surrounding the transfer, the usefulness of the transfer to Iranian weapons programs, and the probable awareness or lack thereof of the transfer on the part of the government with primary jurisdiction over the person.

"SEC. 3. APPLICATION OF MEASURES TO CERTAIN FOREIGN PERSONS.

"(a) APPLICATION OF MEASURES.—Subject to sections 4 and 5, the President is authorized to apply with respect to each foreign person identified in a report submitted pursuant to section 2(a), for such period of time as he may determine, any or all of the measures described in subsection (b).

"(b) DESCRIPTION OF MEASURES.—The measures referred to in subsection (a) are the following:

"(1) EXECUTIVE ORDER NO. 1285 PROHIBITONS.—The measures set forth in subsections (b) and (c) of section 4 of Executive Order No. 1285.

"(2) ARMS EXPORT PROHIBITION.—Prohibition on United States Government sales to that foreign person of any item on the United States Munitions List as in effect on August 8, 1995, and termination of sales to that person of any defense articles, defense services, or design and construction services under the Arms Export Control Act [22 U.S.C. 2751 et seq.].

"(3) DUAL USE EXPORT PROHIBITION.—Denial of licenses and suspension of existing licenses for the transfer to that person of items the export of which is controlled under the Export Administration Act of 1979 [50 U.S.C. App. 2401 et seq.] or the Export Administration Regulations.

"(c) EFFECTIVE DATE OF MEASURES.—Measures applied pursuant to subsection (a) shall be effective with respect to a foreign person no later than—

"(1) 90 days after the report identifying the foreign person is submitted, if the report is submitted on or before the date required by section 2(b); or

"(2) 90 days after the date required by section 2(b) for submitting the report, if the report identifying the foreign person is submitted within 60 days after that date; or

"(3) on the date that the report identifying the foreign person is submitted, if that report is submitted more than 60 days after the date required by section 2(b).

"(d) PUBLICATION IN FEDERAL REGISTER.—The application of measures to a foreign person pursuant to subsection (a) shall be announced by notice published in the Federal Register.

"SEC. 4. PROCEDURES IF MEASURES ARE NOT APPLIED.

"(a) REQUIREMENT TO NOTIFY CONGRESS.—Should the President not exercise the authority of section 3(a) to apply any or all of the measures described in section 3(b) with respect to a foreign person identified in a report submitted pursuant to section 2(a), he shall so notify the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives and the Committee on Foreign Relations of the Senate no later than the effective date under section 3(c) for measures with respect to that person.

"(b) WRITTEN JUSTIFICATION IN CLASSIFIED FORM.—When the President considers it appropriate, the notification of the President under subsection (a), and the written justification under subsection (b), or appropriate parts thereof, may be submitted in classified form.

"SEC. 5. DETERMINATION EXEMPTING FOREIGN PERSON FROM SECTIONS 3 AND 4.

"(a) IN GENERAL.—Sections 3 and 4 shall not apply to a foreign person 15 days after the President reports to the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives and the Committee on Foreign Relations of the Senate that the President has determined, on the basis of information provided by that person, or otherwise obtained by the President, that—

"(1) the person did not, on or after January 1, 1999, knowingly transfer to or acquire from Iran, North Korea, or Syria, as the case may be, the goods, services, or technology the apparent transfer of which caused that person to be identified in a report submitted pursuant to section 2(a);

"(2) the goods, services, or technology the transfer of which caused that person to be identified in a report submitted pursuant to section 2(a) did not materially contribute to the efforts of Iran, North Korea, or Syria, as the case may be, to develop nuclear, biological, or chemical weapons, or ballistic or cruise missile systems, or weapons listed on the Wassenaar Arrangement Munitions List of July 12, 1996, or any subsequent revision of that list;

"(3) the person is subject to the primary jurisdiction of a government that is an adherent to one or more relevant nonproliferation regimes, the person was identified in a report submitted pursuant to section 2(a) with respect to a transfer of goods, services, or technology described in subsection 2(a)(1), and such transfer was made consistent with the guidelines and parameters of all such relevant regimes of which such government is an adherent; or

"(4) the government with primary jurisdiction over the person has imposed meaningful penalties on that person on account of the transfer of the goods, services, or technology which caused that person to be identified in a report submitted pursuant to section 2(a).

"(b) OPPORTUNITY TO PROVIDE INFORMATION.—Congress urges the President—

"(1) in every appropriate case, to contact in a timely fashion each foreign person identified in each report submitted pursuant to section 2(a), or the government with primary jurisdiction over such person, in order to afford such person, or governments, the opportunity to provide explanatory, exculpatory, or other additional information with respect to the transfer that caused such person to be identified in a report submitted pursuant to section 2(a); and

"(2) to exercise the authority in subsection (a) in all cases where information obtained from a foreign person identified in a report submitted pursuant to section 2(a), or from the government with primary jurisdiction over such person, establishes that the exercise of such authority is warranted.

"(c) SUBMISSION IN CLASSIFIED FORM.—When the President considers it appropriate, the determination and report of the President under subsection (a), or appropriate parts thereof, may be submitted in classified form.

"SEC. 6. RESTRICTION ON EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.

"(a) RESTRICTION ON EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.—Notwithstanding any other provision of law, no agency of the United States Government may make extraordinary payments in connection with the International Space Station to the Russian Aviation and Space Agency, any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, or any other organization, entity, or element of the Government of the Russian Federation, unless, during the fiscal year in which the extraordinary payments in connection with the International Space Station are to be
made, the President has made the determination described in subsection (b), and reported such determination to the Committee on International Relations [now Committee on Foreign Affairs] and the Committee on Science [now Committee on Science and Technology] of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate.

“(b) DETERMINATION REGARDING RUSSIAN COOPERATION IN PREVENTING PROLIFERATION RELATING TO IRAN, NORTH KOREA, AND SYRIA.—The determination referred to in subsection (a) is a determination by the President that—

“(1) it is the policy of the Government of the Russian Federation (including the law enforcement, export promotion, export control, and intelligence agencies of such government) has demonstrated and continues to demonstrate a sustained commitment to seek out and prevent the transfer to or from Iran, North Korea, and Syria of goods, services, and technology that could make a material contribution to the development of nuclear, biological, or chemical weapons, or of ballistic or cruise missiles; and

“(2) neither the Russian Aviation and Space Agency, nor any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, has, during the 1-year period prior to the date of the determination pursuant to this subsection, made transfers to or from Iran, North Korea, or Syria reportable under section 2(a) of this Act (other than transfers with respect to which a determination pursuant to section 5 has been or will be made).

“(c) PRIOR NOTIFICATION.—Not less than 5 days before making a determination under subsection (b), the President shall notify the Committee on International Relations [now Committee on Foreign Affairs] and the Committee on Science [now Committee on Science and Technology] of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of his intention to make such determination.

“(d) WRITTEN JUSTIFICATION.—A determination of the President under subsection (b) shall include a written justification describing in detail the facts and circumstances supporting the President’s conclusion.

“(e) SUBMISSION IN CLASSIFIED FORM.—When the President considers it appropriate, a determination of the President under subsection (b), a prior notification under subsection (c), and a written justification under subsection (d), or appropriate parts thereof, may be submitted in classified form.

“(f) EXCEPTION FOR CREW SAFETY.—

“(1) EXCEPTION.—The National Aeronautics and Space Administration may make extraordinary payments that would otherwise be prohibited under this section to the Russian Aviation and Space Agency or any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency if the President has notified the Congress in writing that such payments are necessary to prevent the imminent loss of life by or grievous injury to individuals aboard the International Space Station.

“(2) REPORT.—Not later than 30 days after notifying Congress that the National Aeronautics and Space Administration will make extraordinary payments under paragraph (1), the President shall submit to Congress a report describing—

“(A) the extent to which the provisions of subsection (b) had been met as of the date of notification; and

“(B) the measures that the National Aeronautics and Space Administration is taking to ensure that—

“(i) the conditions posing a threat of imminent loss of life by or grievous injury to individuals aboard the International Space Station necessitating the extraordinary payments are not repeated; and

“(ii) it is no longer necessary to make extraordinary payments in order to prevent imminent loss of life by or grievous injury to individuals aboard the International Space Station.

“(g) SERVICE MODULE EXCEPTION.—

“(1) The National Aeronautics and Space Administration may make extraordinary payments that would otherwise be prohibited under this section to the Russian Aviation and Space Agency, any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, or any subcontractor thereof for the construction, testing, preparation, delivery, launch, or maintenance of the Service Module, and for the purchase (at a total cost not to exceed $14,000,000) of the pressure dome for the Intermediate Docking Adapter and related hardware for the United States propulsion module, if—

“(A) the President has notified Congress at least 5 days before making such payments;

“(B) no report has been made under section 2 with respect to an activity of the entity to receive such payment, and the President has no credible information of any activity that would require such a report; and

“(C) the United States will receive goods or services of value to the United States commensurate with the value of the extraordinary payments made.

“(2) For purposes of this subsection, the term ‘maintenance’ means activities which cannot be performed by the National Aeronautics and Space Administration and which must be performed in order for the Service Module to provide environmental control, life support, and orbital maintenance functions which cannot be performed by an alternative means at the time of payment.

“(h) THIS SUBSECTION SHALL CEASE TO BE EFFECTIVE 60 DAYS AFTER A UNITED STATES PROPULSION MODULE IS IN PLACE AT THE INTERNATIONAL SPACE STATION.

“(i) EXCEPTION.—Notwithstanding subsections (a) and (b), no agency of the United States Government may make extraordinary payments in connection with the International Space Station, or any other payments in connection with the International Space Station, to any foreign person subject to measures applied pursuant to—

“(1) section 3 of this Act; or

“(2) section 4 of Executive Order No. 12938 (November 14, 1994), as amended by Executive Order No. 13094 (July 28, 1998).

Such payments shall also not be made to any other entity if the agency of the United States Government anticipates that such payments will be passed on to such a foreign person.

“(j) REPORT ON CERTAIN PAYMENTS RELATED TO INTERNATIONAL SPACE STATION.—

“(1) IN GENERAL.—The President shall, together with each report submitted under section 2(a), submit to the Committee on Foreign Relations of the Senate and the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives a report that identifies each Russian entity or person to whom the United States Government has, since the date of the enactment of the Iran Nonproliferation Amendments Act of 2005 [Nov. 22, 2005], made a payment in cash or in kind for work to be performed or services to be rendered under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, or contract related thereto.

“(2) CONTENT.—Each report submitted under paragraph (1) shall include—

“(A) the specific purpose of each payment made to each entity or person identified in the report; and
“(B) with respect to each such payment, the assessment of the President that the payment was not prejudicial to the achievement of the objectives of the United States Government to prevent the proliferation of ballistic or cruise missile systems in Iran and other countries that have repeatedly provided support for acts of international terrorism, determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(j)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).

‘SEC. 7. DEFINITIONS.

‘For purposes of this Act, the following terms have the following meanings:

‘(1) EXTRASTRAINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.—The term ‘extraordinary payments in connection with the International Space Station’ means payments in cash or in kind made or to be made by the United States Government—

‘(A) for work on the International Space Station which the Russian Government pledged at any time to provide at its expense; or

‘(B) for work on the International Space Station, or for the purchase of goods or services relating to human space flight, that are not required to be made under the terms of a contract or other agreement that was in effect on January 1, 1999, as those terms were in effect on such date, except that such terms do not mean payments in cash or in kind made or to be made by the United States Government prior to July 1, 2016, for work to be performed or services to be rendered prior to that date necessary to meet United States obligations under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, or contract related thereunto.

‘(2) FOREIGN PERSON; PERSON.—The terms ‘foreign person’ and ‘person’ mean—

‘(A) a natural person that is an alien;

‘(B) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, that is organized under the laws of a foreign country or has its principal place of business in a foreign country; including any foreign governmental entity; and

‘(D) any successor, subunit, or subsidiary of any entity described in subparagraph (A), (B), or (C), including any entity in which any entity described in such subparagraph owns a controlling interest.

‘(3) EXECUTIVE ORDER NO. 12938.—The term ‘Executive Order No. 12938’ means Executive Order No. 12938 (listed in a table below) as in effect on January 1, 1999.

‘(4) ADHERENT TO RELEVANT NONPROLIFERATION REGIME.—A government is an ‘adherent’ to a ‘relevant nonproliferation regime’ if that government—

‘(A) is a member of the Nuclear Suppliers Group with respect to a transfer of goods, services, or technology described in section 2(a)(1)(A);

‘(B) is a member of the Missile Technology Control Regime with respect to a transfer of goods, services, or technology described in section 2(a)(1)(B), or is a party to a binding international agreement with the United States that was in effect on January 1, 1999, to control the transfer of such goods, services, or technology in accordance with the criteria and standards set forth in the Missile Technology Control Regime;

‘(C) is a member of the Australia Group with respect to a transfer of goods, services, or technology described in section 2(a)(1)(C);

‘(D) is a party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction with respect to a transfer of goods, services, or technology described in section 2(a)(1)(D); or

‘(E) is a member of the Wassenaar Arrangement with respect to a transfer of goods, services, or technology described in section 2(a)(1)(E).

‘(5) ORGANIZATION OR ENTITY UNDER THE JURISDICTION OR CONTROL OF THE RUSSIAN AVIATION AND SPACE AGENCY.—

‘(A) The term ‘organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency’ means an organization or entity that—

‘(i) was made part of the Russian Space Agency upon its establishment on February 25, 1992;

‘(ii) was transferred to the Russian Space Agency by decree of the Russian Government on July 25, 1994, or May 22, 1996 (now Iran, North Korea, Syria Nonproliferation Act).’]

[Memorandum of President after the date of the enactment of this Act (Mar. 14, 2000);]

‘(iv) is a joint stock company in which the Russian Aviation and Space Agency or Russian Space Agency has at any time held controlling interest.

‘(B) Any organization or entity described in subparagraph (A) shall be deemed to be under the jurisdiction or control of the Russian Aviation and Space Agency regardless of whether—

‘(i) such organization or entity, after being part of or transferred to the Russian Aviation and Space Agency or Russian Space Agency, is removed from or transferred out of the Russian Aviation and Space Agency or Russian Space Agency;

‘(ii) the Russian Aviation and Space Agency or Russian Space Agency, after holding a controlling interest in such organization or entity, divests its controlling interest.


APPLICATION OF AUTHORITIES UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT TO COMMUNIST CHINESE MILITARY COMPANIES


‘(A) PRESIDENTIAL AUTHORITY.—

‘(1) IN GENERAL.—The President may exercise IEEPA authorities (other than authorities relating to importation) without regard to section 202 of the International Emergency Economic Powers Act (50 U.S.C. 1701) in the case of any commercial activity in the United States by a person that is on the list published under subsection (b).


‘(3) IEEPA AUTHORITIES.—For purposes of paragraph (1), the term ‘IEEPA authorities’ means the authori-
ties set forth in section 203(a) of the International Emergency Economic Powers Act (50 U.S.C. 1702(a)).

"(b) DETERMINATION AND REPORTING OF COMMUNIST CHINESE MILITARY COMPANIES OPERATING IN UNITED STATES.—

"(1) INITIAL DETERMINATION AND REPORTING.—Not later than March 1, 2001, the Secretary of Defense shall make a determination of those persons operating directly or indirectly in the United States or any of its territories and possessions that are Communist Chinese military companies and shall submit a list of those persons in classified and unclassified form to the following:

"(A) The Committee on Armed Services of the Senate.

"(B) The Committee on Armed Services of the House of Representatives.

"(C) The Secretary of State.

"(D) The Secretary of the Treasury.


"(F) The Secretary of Commerce.

"(G) The Secretary of Energy.

"(H) The Director of Central Intelligence.

"(2) ANNUAL REVISIONS TO THE LIST.—The Secretary of Defense shall make additions or deletions to the list submitted under paragraph (1) on an annual basis based on the latest information available and shall submit the updated list not later than February 1, each year to the committees and officers specified in paragraph (1).

"(3) CONSULTATION.—The Secretary of Defense shall consult with the following officers in carrying out paragraphs (1) and (2):

"(A) The Attorney General.

"(B) The Director of Central Intelligence.

"(C) The Director of the Federal Bureau of Investigation.

"(4) COMMUNIST CHINESE MILITARY COMPANY.—For purposes of making the determination required by paragraph (1) and of carrying out paragraph (2), the term 'Communist Chinese military company' means—

"(A) any person identified in the Defense Intelligence Agency publication numbered VP–1920–271–90, dated September 1990, or PC–1221–57–96, dated October 1996, and any update of those publications for the purposes of this section; and

"(B) any other person that—

"(i) is owned or controlled by, or affiliated with, the People's Liberation Army or a ministry of the government of the People's Republic of China or that is owned or controlled by an entity affiliated with the defense industrial base of the People's Republic of China; and

"(ii) is engaged in providing commercial services, manufacturing, producing, or exporting.

"(C) PEOPLE'S LIBERATION ARMY.—For purposes of this section, the term 'People's Liberation Army' means the land, naval, and air military services, the police, and the intelligence services of the Communist Government of the People's Republic of China, and any member of any such service or of such police.

[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 Central 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 108(a), (b) of Pub. L. 104–172, 110 Stat. 1464, set out as a note under section 401 of this title.]

IRAN SANCTIONS


"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Iran Sanctions Act of 1996'.

"SEC. 2. FINDINGS.

"The Congress makes the following findings:

"(1) The efforts of the Government of Iran to acquire weapons of mass destruction and the means to deliver them and its support of acts of international terrorism endanger the national security and foreign policy interests of the United States and those countries with which the United States shares common strategic and foreign policy objectives.

"(2) The objective of preventing the proliferation of weapons of mass destruction and acts of international terrorism through existing multilateral and bilateral initiatives requires additional efforts to deny Iran the financial means to sustain its nuclear, chemical, biological, and missile weapons programs.

"(3) The Government of Iran uses its diplomatic facilities and quasi-governmental institutions outside of Iran to promote acts of international terrorism and assist its nuclear, chemical, biological, and missile weapons programs.

"SEC. 3. DECLARATION OF POLICY.

"The Congress declares that it is the policy of the United States to deny Iran the ability to support acts of international terrorism and to fund the development and acquisition of weapons of mass destruction and the means to deliver them by limiting the development of Iran's ability to explore for, extract, refine, or transport by pipeline petroleum resources of Iran.

"SEC. 4. MULTILATERAL REGIME.

"(a) MULTILATERAL NEGOTIATIONS.—In order further to extend the objectives of section 3, the Congress urges the President to commence immediately diplomatic efforts, both in appropriate international fora such as the United Nations, and bilaterally with allies of the United States, to establish a multilateral sanctions regime against Iran, including provisions limiting the development of petroleum resources, that will inhibit Iran's efforts to carry out activities described in section 2.

"(b) REPORTS TO CONGRESS.—The President shall report to the appropriate congressional committees, not later than 1 year after the date of enactment of this Act [Aug. 5, 1996], and periodically thereafter, on the extent that diplomatic efforts described in subsection (a) have been successful. Each report shall include—

"(1) the countries that have agreed to undertake measures to further the objectives of section 3 with respect to Iran, and a description of those measures; and

"(2) the countries that have not agreed to measures described in paragraph (1), and, with respect to those countries, other measures the President recommends that the United States take to further the objectives of section 3 with respect to Iran.

"(c) WAIVER.—

"(1) IN GENERAL.—

"(A) GENERAL WAIVER.—The President may, on a case by case basis, waive for a period of not more than six months the application of section 5(a) with respect to a national of a country, if the President certifies to the appropriate congressional committees at least 30 days before such waiver is to take effect that such waiver is vital to the national security interests of the United States.

"(B) WAIVER WITH RESPECT TO PERSONS IN COUNTRIES THAT COOPERATE IN MULTILATERAL EFFORTS WITH RESPECT TO IRAN.—The President may, on a case by case basis, waive for a period of not more than 12 months the application of section 5(a) with respect to a person if the President, at least 30 days before the waiver is to take effect—
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"(1) certifies to the appropriate congressional committees that—

"(1) the government with primary jurisdiction over the person is closely cooperating with the United States in multilateral efforts to prevent Iran from—

"(aa) acquiring or developing chemical, biological, or nuclear weapons or related technologies; or

"(bb) acquiring or developing destabilizing numbers and types of advanced conventional weapons; and

"(II) such a waiver is vital to the national security interests of the United States; and

"(ii) submits to the appropriate congressional committees a report identifying—

"(I) the person with respect to which the President waives the application of sanctions; and

"(II) the actions taken by the government described in such section.

"(2) SUBSEQUENT RENEWAL OF WAIVER.—At the conclusion of the period of a waiver under subparagraph (A) or (B) of paragraph (1), the President may renew the waiver—

"(A) if the President determines, in accordance with subparagraph (A) or (B) of that paragraph (as the case may be), that the waiver is appropriate; and

"(B)(i) in the case of a waiver under subparagraph (A) of paragraph (1), for subsequent periods of not more than six months each; and

"(ii) in the case of a waiver under subparagraph (B) of paragraph (1), for subsequent periods of not more than 12 months each.

"(4) INFORM REPORT ON MULTILATERAL SANCTIONS; MONITORING.—The President, not later than 90 days after the date of the enactment of this Act, shall report to the appropriate congressional committees on—

"(1) whether the member states of the European Union, the Republic of Korea, Australia, Israel, or Japan have legislative or administrative standards providing for the imposition of trade sanctions on persons or their affiliates doing business or having investments in Iran or Libya;

"(2) the extent and duration of each instance of the application of such sanctions; and

"(3) the disposition of any decision with respect to such sanctions by the World Trade Organization or its predecessor organization.

"(e) INVESTIGATIONS.—

"(1) IN GENERAL.—The President shall initiate an investigation into the possible imposition of sanctions under section 5(a) against a person upon receipt of credible information indicating

"that the person is engaging in an activity described in such section.

"(2) DETERMINATION AND NOTIFICATION.—Not later than 180 days after an investigation is initiated in accordance with paragraph (1), the President shall (unless paragraph (3) applies) determine, pursuant to section 5(a), if a person has engaged in an activity described in such section and shall notify the appropriate congressional committees of the basis for any such determination.

"(3) SPECIAL RULE.—The President need not initiate an investigation, and may terminate an investigation, under this subsection if the President certifies in writing to the appropriate congressional committees that—

"(A) the person whose activity was the basis for the investigation is no longer engaging in the activity or has taken significant verifiable steps toward stopping the activity; and

"(B) the President has received reliable assurances that the person will not knowingly engage in an activity described in section 5(a) in the future.

"SEC. 5. IMPOSITION OF SANCTIONS.

"(a) SANCTIONS WITH RESPECT TO THE DEVELOPMENT OF PETROLEUM RESOURCES OF IRAN, PRODUCTION OF REFINED PETROLEUM PRODUCTS IN IRAN, AND EXPORTATION OF REFINED PETROLEUM PRODUCTS TO IRAN.—

"(1) DEVELOPMENT OF PETROLEUM RESOURCES OF IRAN.—

"(A) IN GENERAL.—Except as provided in subsection (f), the President shall impose 3 or more of the sanctions described in section 6(a) with respect to a person if the President determines that the person knowingly, on or after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 [July 1, 2010]—

"(i) makes an investment described in subparagraph (B) of $20,000,000 or more; or

"(ii) makes a combination of investments described in subparagraph (B) in a 12-month period if each such investment is of at least $5,000,000 and such investments equal or exceed $20,000,000 in the aggregate.

"(B) INVESTMENT DESCRIBED.—An investment described in this subparagraph is an investment that directly and significantly contributes to the enhancement of Iran’s ability to develop petroleum resources.

"(2) PRODUCTION OF REFINED PETROLEUM PRODUCTS TO IRAN.—

"(A) IN GENERAL.—Except as provided in subsection (f), the President shall impose 3 or more of the sanctions described in section 6(a) with respect to a person if the President determines that the person knowingly, on or after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, sells, leases, or provides to Iran goods, services, technology, information, or support described in subparagraph (B)—

"(i) any of which has a fair market value of $1,000,000 or more; or

"(ii) that, during a 12-month period, have an aggregate fair market value of $5,000,000 or more.

"(B) GOODS, SERVICES, TECHNOLOGY, INFORMATION, OR SUPPORT DESCRIBED.—Goods, services, technology, information, or support that could directly and significantly facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries.

"(3) EXPORTATION OF REFINED PETROLEUM PRODUCTS TO IRAN.—

"(A) IN GENERAL.—Except as provided in subsection (f), the President shall impose 3 or more of the sanctions described in section 6(a) with respect to a person if the President determines that the person knowingly, on or after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010—

"(i) sells or provides to Iran refined petroleum products—

"(I) that have a fair market value of $1,000,000 or more; or

"(II) that, during a 12-month period, have an aggregate fair market value of $5,000,000 or more; or

"(ii) sells, leases, or provides to Iran goods, services, technology, information, or support described in subparagraph (B)—

"(I) any of which has a fair market value of $1,000,000 or more; or

"(II) that, during a 12-month period, have an aggregate fair market value of $5,000,000 or more.

"(B) GOODS, SERVICES, TECHNOLOGY, INFORMATION, OR SUPPORT DESCRIBED.—Goods, services, technology, information, or support described in this subparagraph are goods, services, technology, information, or support that could directly and significantly facilitate the maintenance or expansion of Iran’s domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries.
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ability to import refined petroleum products, including—

(1) except as provided in subparagraph (C), underwriting or entering into a contract to provide insurance or reinsurance for the sale, lease, or provision of such goods, services, technology, information, or support;

(2) financing or brokering such sale, lease, or provision; or

(3) providing ships or shipping services to deliver refined petroleum products to Iran.

(C) EXCEPTION FOR UNDERWRITERS AND INSURANCE PROVIDERS EXERCISING DUE DILIGENCE.—The President may not impose sanctions under this paragraph with respect to a person that provides underwriting services or insurance or reinsurance if the President determines that the person has exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that the person does not underwrite or enter into a contract to provide insurance or reinsurance for the sale, lease, transfer, or retransfer, directly or indirectly, of goods, services, technology, information, or support described in subparagraph (B).

(D) MANDATORY SANCTIONS WITH RESPECT TO DEVELOPMENT OR USE OF NUCLEAR TECHNOLOGY OR OTHER MILITARY CAPABILITIES.—

(1) IN GENERAL.—The President shall impose 3 or more of the following sanctions described in section 6(a) if the President determines that a person has, on or after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (July 1, 2010), exported, transferred, or otherwise provided to Iran any goods, services, technology, or other items knowing that the provision of such goods, services, technology, or other items would contribute materially to the ability of Iran to—

(A) acquire or develop chemical, biological, or nuclear weapons or related technologies;

(B) acquire or develop destabilizing numbers and types of advanced conventional weapons;

(2) ADDITIONAL MANDATORY SANCTIONS RELATING TO TRANSFER OF NUCLEAR TECHNOLOGY.—

Except as provided in subparagraphs (B) and (C), in any case in which a person is subject to sanctions under paragraph (1) because of an activity described in that paragraph that relates to the acquisition or development of nuclear weapons or related technology or of missiles or advanced conventional weapons that are designed or modified to deliver a nuclear weapon, no license may be issued for the export, and no approval may be given for the transfer or retransfer, directly or indirectly, to the country the government of which has primary jurisdiction over the person, of any nuclear material, facilities, components, or other goods, services, or technology that are or would be subject to an agreement for cooperation between the United States and that government.

Section 1702.—Except as provided in subparagraph (A) shall not apply with respect to a country the government of which has primary jurisdiction over a person that engages in an activity described in that subparagraph if the President determines and notifies the appropriate congressional committees that the government of the country—

(1) does not know or has reason to know about the activity; or

(2) has taken, or is taking, all reasonable steps necessary to prevent a recurrence of the activity and to penalize the person for the activity.

Section 1703. INDIVIDUAL APPROVAL.—Notwithstanding subparagraph (A), the President may, on a case-by-case basis, approve the issuance of a license for the export, or approve the transfer or retransfer, of any nuclear material, facilities, components, or other goods, services, or technology that are or would be subject to an agreement for cooperation, to a person in a country to which subparagraph (A) applies other than a person that is subject to the sanctions under paragraph (1) if the President—

(1) determines that such approval is vital to the national security interests of the United States; and

(2) does not later than 15 days before issuing such license or approving such transfer or retransfer, submits to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate the justifications for approving such license, transfer, or retransfer.

Section 1704. CONSTRUCTION.—The restrictions in subparagraph (A) shall apply in addition to all other applicable procedures, requirements, and restrictions contained in the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and other related laws.

Section 1705. DEFINITION.—In this paragraph, the term "agreement for cooperation" has the meaning given that term in section 11 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2011).

Section 1706. APPLICABILITY.—The sanctions under subparagraph (A) shall apply only in a case in which a person is subject to sanctions under paragraph (1) because of an activity described in that paragraph in which the person engages on or after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (July 1, 2010).

Section 1707. PERSONS AGAINST WHICH THE SANCTIONS ARE TO BE IMPOSED.—The sanctions described in subsections (a) and (b)(1) shall be imposed on—

(1) any person the President determines has carried out the activities described in subsection (a) or (b)(1); and

(2) any person that—

(A) is a successor entity to the person referred to in paragraph (1); or

(B) owns or controls the person referred to in paragraph (1), if the person that owns or controls the person referred to in paragraph (1) had actual knowledge or should have known that the person referred to in paragraph (1) engaged in the activities referred to in that paragraph; or

(C) is owned or controlled by, or under common ownership or control with, the person referred to in paragraph (1), if the person owned or controlled by, or under common ownership or control with (as the case may be), the person referred to in paragraph (1) knowingly engaged in the activities referred to in that paragraph.

For purposes of this Act, any person or entity described in this subsection shall be referred to as a "sanctioned person.

Section 1708. PUBLICATION IN FEDERAL REGISTER.—The President shall cause to be published in the Federal Register a current list of persons and entities on whom sanctions were imposed under this Act. The removal of persons or entities from, and the addition of persons and entities to, the list, shall also be so published.

Section 1709. PUBLICATION OF PROJECTS.—The President shall cause to be published in the Federal Register a list of all significant projects which have been publicly tendered in the oil and gas sector in Iran.

Section 1710. EXCEPTIONS.—The President shall not be required to apply or maintain the sanctions under subsection (a) or (b)(1)—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States; and

(B) if the President determines in writing that the person to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(C) if the President determines in writing that such sanctions under this paragraph are essential to the national security under defense coproduction agreements;
"(2) in the case of procurement, to eligible products, as defined in section 308(d) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of that Act (19 U.S.C. 2511(b));

"(3) to products, technology, or services provided under contracts entered into before the date on which the President publishes in the Federal Register the name of the person on whom the sanctions are to be imposed;

"(4) to—

"(A) spare parts which are essential to United States products or production;

"(B) component parts, but not finished products, essential to United States products or production; or

"(C) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

"(5) to—

"(A) medicines, medical supplies, or other humanitarian items.

"(6) to information and technology essential to United States products or production; or

"(7) to medicines, medical supplies, or other humanitarian items.

"SEC. 6. DESCRIPTION OF SANCTIONS.

"(a) In General.—The sanctions to be imposed on a sanctioned person under section 5 are as follows:

"(1) Export-Import Bank Assistance for Exports to Sanctioned Persons.—The President may direct the Export-Import Bank of the United States not to issue any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to any sanctioned person.

"(2) Export Sanction.—The President may order the United States Government not to issue any specific license and not to grant any other specific permission or authority to export any goods or technology to a sanctioned person under—

"(i) the Export Administration Act of 1979 [50 U.S.C. App. 2401 et seq.];

"(ii) the Arms Export Control Act [22 U.S.C. 2751 et seq.];

"(iii) the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; or

"(iv) any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of any goods or services.

"(3) Loans from United States Financial Institutions.—The United States Government may prohibit any United States financial institutions from making loans or providing credits to any sanctioned person totaling more than $10,000,000 in any 12-month period unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

"(4) Prohibitions on Financial Institutions.—The following prohibitions may be imposed against a sanctioned person that is a financial institution:

"(a) Prohibition on Designation as Primary Dealer.—Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, such financial institution as a primary dealer in United States Government debt instruments.

"(b) Prohibition on Service as a Depository for Government Funds.—Such financial institution may not serve as agent of the United States Government to receive, or serve as a repository for United States Government funds.

The imposition of either sanction under subparagraph (A) or (B) shall be treated as 1 sanction for purposes of section 5, and the imposition of both such sanctions shall be treated as 2 sanctions for purposes of section 5.

"(5) Procurement Sanction.—The United States Government may not procure, or enter into any contract for the procurement of, any goods or services from a sanctioned person.

"(a) In General.—The remedies set forth in paragraph (2) shall not apply with respect to the procurement of eligible products, as defined in section 308(d) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of that Act (19 U.S.C. 2511(b)).

"(6) Foreign Exchange.—The President may, pursuant to such regulations as the President may prescribe, prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest.

"(7) Banking Transactions.—The President may, pursuant to such regulations as the President may prescribe, prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person.

"(8) Property Transactions.—The President may, pursuant to such regulations as the President may prescribe, prohibit any person from—

"(a) acquiring, holding, withholding, using, transferring, withdrawing, transporting, importing, or exporting any property that is subject to the jurisdiction of the United States and with respect to which the sanctioned person has any interest;

"(b) dealing in or exercising any right, power, or privilege with respect to such property;

"(C) conducting any transaction involving such property.

"(9) Additional Sanctions.—The President may impose sanctions, as appropriate, to restrict imports with respect to a sanctioned person, if adequate and effective assistance is being provided by the International Emergency Economic Powers Act (50 U.S.C. 1701 and following).

"(10) Additional Measure Relating to Government Contracts.—

"(1) Modification of Federal Acquisition Regulation.—Not later than 90 days after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 [July 1, 2010], the Federal Acquisition Regulation issued pursuant to section 25 of the Office of Federal Procurement Policy Act (former 41 U.S.C. 421) (see 41 U.S.C. 1303) shall be revised to require a certification from each person that is a prospective contractor that the person, and any person owned or controlled by the person, does not engage in any activity for which sanctions may be imposed under section 5.

"(2) Remedies.—

"(a) In General.—If the head of an executive agency determines that a person has submitted a false certification under paragraph (1) on or after the date on which the revision of the Federal Acquisition Regulation required by this subsection becomes effective, the head of that executive agency shall terminate a contract with such person or debar or suspend such person from eligibility for Federal contracts for a period of not more than 3 years. Any such debarment or suspension shall be subject to the procedures that apply to debarment and suspension under the Federal Acquisition Regulation under subpart 9.4 of part 9 of title 48, Code of Federal Regulations.

"(B) Inclusion on List of Parties Excluded from Federal Procurement and Nonprocurement Programs.—The Administrator of General Services shall include on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the Administrator under part 9 of the Federal Acquisition Regulation issued pursuant to section 25 of the Office of Federal Procurement Policy Act (former 41 U.S.C. 421) [see 41 U.S.C. 1303] each person that is debarred, suspended, or proposed for debarment or suspension by the head of an executive agency on the basis of a determination of a false certification under subparagraph (A).

"(3) Clarification Regarding Certain Products.—

The remedies set forth in paragraph (2) shall not apply with respect to the procurement of eligible products, as defined in section 308(d) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of that Act (19 U.S.C. 2511(b)).
“(4) RULE OF CONSTRUCTION.—This subsection shall not be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a determination of a false certification under paragraph (1).

“(5) WAIVERS.—The President may in a case-by-case manner waive the requirement that a person make a certification under paragraph (1) if the President determines and certifies in writing to the appropriate congressional committees, the Committee on Armed Services of the Senate, and the Committee on Armed Services of the House of Representatives, that it is in the national interest of the United States to do so.

“(6) EXECUTIVE AGENCY DEFINED.—In this subsection, the term ‘executive agency’ has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (former 41 U.S.C. 403) [see 41 U.S.C. 133].

“(7) APPLICABILITY.—The revisions to the Federal Acquisition Regulation required under paragraph (1) shall apply with respect to contracts for which solicitations are issued on or after the date that is 90 days after the date of the enactment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 [July 1, 2010].

“SEC. 7. ADVISORY OPINIONS.

“The Secretary of State may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this Act. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, will not be made subject to such sanctions on account of such activity.

“SEC. 8. TERMINATION OF SANCTIONS.

“The requirement under section 5(a) to impose sanctions shall no longer have force or effect with respect to Iran if the President determines and certifies to the appropriate congressional committees that Iran—

“(I) has ceased its efforts to design, develop, manufacture, or acquire—

“(A) a nuclear explosive device or related materials and technology; and

“(B) chemical and biological weapons; and

“(C) ballistic missiles and ballistic missile launch technology;

“(ii) has been removed from the list of countries the governments of which have been determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), to have repeatedly provided support for acts of international terrorism; and

“(III) poses no significant threat to the national security, interests, or allies.

“SEC. 9. DURATION OF SANCTIONS; PRESIDENTIAL WAIVER.

“(a) DELAY OF SANCTIONS.—

“(1) CONSULTATIONS.—If the President makes a determination described in section 5(a) or 5(b)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions under this Act.

“(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue consultations under paragraph (1) with the government concerned, the President may delay imposition of sanctions under this Act for up to 90 days. Following such consultations, the President shall immediately impose sanctions unless the President determines and certifies to the Congress that the government has taken specific and effective actions, including, as appropriate, the imposition of appropriate penalties, to terminate the involvement of the sanctioned person in the activities that resulted in the determination by the President under section 5(a) or 5(b)(1) concerning such person.

“(3) ADDITIONAL DELAY IN IMPOSITION OF SANCTIONS.—The President may delay the imposition of sanctions for up to an additional 90 days if the President determines and certifies to the Congress that the government with primary jurisdiction over the person concerned is in the process of taking the actions described in paragraph (2).

“(4) REPORT TO CONGRESS.—Not later than 90 days after making a determination under section 5(a) or 5(b)(1), the President shall submit to the appropriate congressional committees a report on the status of consultations with the appropriate foreign government under this subsection, and the basis for any determination under paragraph (3).

“(b) DURATION OF SANCTIONS.—A sanction imposed under section 5 shall remain in effect—

“(1) for a period of not less than 2 years from the date on which it is imposed; or

“(2) until such time as the President determines and certifies to the Congress that the person whose activities were the basis for imposing the sanction is no longer engaging in such activities and that the President has received reliable assurances that such person will not knowingly engage in such activities in the future, except that such sanction shall remain in effect for a period of at least 1 year.

“(c) PRESIDENTIAL WAIVER.

“(1) AUTHORITY.—The President may waive the requirement in section 5 to impose a sanction or sanctions on a person described in section 5(c), and may waive the continued imposition of a sanction or sanctions under subsection (b) of this section, 90 days or more after the President determines and reports to the appropriate congressional committees that it is necessary to the national interest of the United States to exercise such waiver authority.

“(2) CONTENTS OF REPORT.—Any report under paragraph (1) shall provide a specific and detailed rationale for the determination under paragraph (1), including—

“(A) a description of the conduct that resulted in the imposition under section 5(a) or 5(b)(1), as the case may be;

“(B) in the case of a foreign person, an explanation of the efforts to secure the cooperation of the government with primary jurisdiction over the sanctioned person to terminate or, as appropriate, penalize the activities that resulted in the determination under section 5(a) or 5(b)(1), as the case may be;

“(C) an estimate of the significance of the conduct of the person in contributing to the ability of Iran to—

“(i) develop petroleum resources, produce refined petroleum products, or import refined petroleum products; or

“(ii) acquire or develop—

“(I) chemical, biological, or nuclear weapons or related technologies; or

“(II) destabilizing numbers and types of advanced conventional weapons; and

“(D) a statement as to the reason the United States in the event that the person concerned engages in other activities that would be subject to section 5(a) or 5(b)(1).

“(3) EFFECT OF REPORT ON WAIVER.—If the President makes a report under paragraph (1) with respect to a waiver of sanctions on a person described in section 5(c), sanctions need not be imposed under section 5(a) or 5(b)(1) on that person during the 30-day period referred to in paragraph (1).

“SEC. 10. REPORTS REQUIRED.

“(a) REPORT ON CERTAIN INTERNATIONAL INITIATIVES.—Not later than 6 months after the date of the enactment of this Act [Aug. 5, 1996], and every 6 months thereafter, the President shall transmit a report to the appropriate congressional committees describing—

“(1) the efforts of the President to mount a multilateral campaign to persuade all countries to pres-
sure Iran to cease its nuclear, chemical, biological, and missile weapons programs and its support of acts of international terrorism.

(2) the efforts of the President to persuade other governments to ask Iran to reduce the presence of Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran and to withdraw any such diplomats or representatives who participated in the takeover of the United States embassy in Tehran on November 4, 1979, or the subsequent holding of United States hostages for 444 days;

(3) the extent to which the International Atomic Energy Agency has established regular inspections of all nuclear facilities in Iran, including those presently under construction; and

(4) Iran’s use of Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran to promote acts of international terrorism or to develop or sustain Iran’s nuclear, chemical, biological, and missile weapons programs.

SEC. 12. EXCLUSION OF CERTAIN ACTIVITIES.

shall not be reviewable in any court.

National Security Act of 1947 [50 U.S.C. 413 et seq.].

subject to the reporting requirements of title V of the

Continued Transmittal to the Congress of Reports Dependent on Whether or Not This Act Should be Terminated or Modified.

After the date of the enactment of the ILSA Extension Act of 2001 [Aug. 3, 2001], the President shall transmit to Congress a report that describes

(1) the extent to which actions relating to trade taken pursuant to this Act—

(A) have been effective in achieving the objectives of section 3 and any other foreign policy or national security objectives of the United States with respect to Iran; and

(B) have affected humanitarian interests in Iran, the country in which the sanctioned person is located, or in other countries; and

(2) the impact of actions relating to trade taken pursuant to this Act on other national security, economic, and foreign policy interests of the United States, including relations with countries friendly to the United States, and on the United States economy.

The President may include in the report the President’s recommendation on whether or not this Act should be terminated or modified.

SEC. 13. EFFECTIVE DATE; SUNSET.

(a) EFFECTIVE DATE.—This Act shall take effect on the date of the enactment of this Act [Aug. 5, 1996].

(b) SUNSET.—This Act shall cease to be effective on December 31, 2016.

SEC. 14. DEFINITIONS.

As used in this Act:

(1) ACT OF INTERNATIONAL TERRORISM.—The term ‘act of international terrorism’ means an act—

(A) which is violent or dangerous to human life and that is a violation of the criminal laws of the United States or of any State or that would be a criminal violation if committed within the jurisdiction of the United States or any State; and

(B) which appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means the Committee on Finance, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Foreign Relations of the Senate and the Committee on Ways and Means, the Committee on Financial Services, and the Committee on Foreign Affairs of the House of Representatives.

(3) COMPONENT PART.—The term ‘component part’ has the meaning given that term in section 11A(e)(1) of the Export Administration Act of 1979 [50 U.S.C. App. 2416(o)(1)].

(4) DEVELOP AND DEVELOPMENT.—To ‘develop’, or the ‘development’ of, petroleum resources means the exploration for, or the extraction, refining, or transportation by pipeline of, petroleum resources.

(5) FINANCIAL INSTITUTION.—The term ‘financial institution’ includes—

(A) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(1)], including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 [12 U.S.C. 3101(b)(7)]);

(B) a credit union;

(C) a securities firm, including a broker or dealer;

(D) an insurance company, including an agency or underwriter; and

(E) any other company that provides financial services.

(6) FINISHED PRODUCT.—The term ‘finished product’ has the meaning given that term in section 11A(e)(2) of the Export Administration Act of 1979 [50 U.S.C. App. 2416(o)(2)].

(7) FOREIGN PERSON.—The term ‘foreign person’ means—

(A) an individual who is not a United States person or an alien lawfully admitted for permanent residence into the United States; or

(B) a corporation, partnership, or other non-governmental entity which is not a United States person.

(8) GOODS AND TECHNOLOGY.—The terms ‘goods’ and ‘technology’ have the meanings given those terms in section 15 of the Export Administration Act of 1979 [50 U.S.C. App. 2415].

(9) INVESTMENT.—The term ‘investment’ means any of the following activities if such activity is undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Government of Iran or a non-governmental entity in Iran on or after the date of the enactment of this Act [Aug. 5, 1996]:

(A) The entry into a contract that includes responsibility for the development of petroleum resources located in Iran, or the entry into a contract providing for the general supervision and guarantee of another person’s performance of such a contract.

(B) The purchase of a share of ownership, including an equity interest, in that development.
"(C) The entry into a contract providing for the participation in royalties, earnings, or profits in that development, without regard to the form of the participation. For purposes of this paragraph, an amendment or other modification that is made, on or after June 13, 2001, to an agreement or contract shall be treated as the entry of an agreement or contract.

"(18) IRAN.—The term ‘Iran’ includes any agency or instrumentality of Iran.

"(19) IRANIAN DIPLOMATS AND REPRESENTATIVES OF OTHER GOVERNMENT AND MILITARY OR QUASI-GOVERNMENTAL INSTITUTIONS OF IRAN.—The term ‘Iranian diplomats and representatives of other government and military or quasi-governmental institutions of Iran’ includes employees, representatives, or affiliates of Iran’s—

"(A) Foreign Ministry;

"(B) Ministry of Intelligence and Security;

"(C) Revolutionary Guard Corps;

"(D) Crusade for Reconstruction;

"(E) Qods (Jerusalem) Forces;

"(F) Interior Ministry;

"(G) Foundation for the Oppressed and Disabled;

"(H) Prophet’s Foundation;

"(I) June 5th Foundation;

"(J) Martyr’s Foundation;

"(K) Islamic Propagation Organization; and

"(L) Ministry of Islamic Guidance.

"(12) KNOWINGLY.—The term ‘knowingly’, with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.

"(13) NUCLEAR EXPLOSIVE DEVICE.—The term ‘nuclear explosive device’ means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material (as defined in section 11(aa) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa))) that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT).

"(14) PERSON.—

"(A) IN GENERAL.—The term ‘person’ means—

"(i) a natural person;

"(ii) a corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

"(iii) any successor to any entity described in clause (ii).

"(B) APPLICATION TO GOVERNMENTAL ENTITIES.—The term ‘person’ does not include a government or governmental entity that is not operating as a business enterprise.

"(15) PETROLEUM RESOURCES.—The term ‘petroleum resources’ includes petroleum, refined petroleum products, oil or liquefied natural gas, natural gas sources, oil or liquefied natural gas tankers, and products used to construct or maintain pipelines used to transport oil or liquefied natural gas.

"(16) REFINED PETROLEUM PRODUCTS.—The term ‘refined petroleum products’ means diesel, gasoline, jet fuel (including naptha-type and kerosene-type jet fuel), and aviation gasoline.

"(17) UNITED STATES OR STATE.—The term ‘United States’ or ‘State’ means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States.

"(18) UNITED STATES PERSON.—The term ‘United States person’ means—

"(A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States; and

"(B) a corporation or other legal entity which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia, if natural persons described in subparagraph (A) own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such legal entity.''

Pub. L. 111–195, title I, §102(b), July 1, 2010, 124 Stat. 1325, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending Pub. L. 104–172, set out above] shall—

"(A) take effect on the date of the enactment of this Act [July 1, 2010]; and

"(B) except as provided in this subsection or section 6(b)(7) of the Iran Sanctions Act of 1996 [Pub. L. 104–172, set out above], as amended by subsection (b) of this section, apply with respect to an investment or activity described in subsection (a) or (b) of section 5 of the Iran Sanctions Act of 1996, as amended by this section, that is commenced on or after such date of enactment.

"(2) APPLICABILITY TO ONGOING INVESTMENTS PROHIBITED UNDER PRIOR LAW.—A person that makes an investment described in section 5(a) of the Iran Sanctions Act of 1996, as in effect on the day before the date of the enactment of this Act, that is commenced before such date of enactment and continues on or after such date of enactment, shall, except as provided in paragraph (4), be subject to the provisions of the Iran Sanctions Act of 1996, as in effect on the day before such date of enactment.

"(3) APPLICABILITY TO ONGOING ACTIVITIES RELATING TO CHEMICAL, BIOLOGICAL, OR NUCLEAR WEAPONS OR RELATED TECHNOLOGIES.—A person that, before the date of the enactment of this Act, commenced an activity described in section 5(b) of the Iran Sanctions Act of 1996, as in effect on the day before such date of enactment, and continues the activity on or after such date of enactment, shall be subject to the provisions of the Iran Sanctions Act of 1996, as amended by this Act.

"(4) APPLICABILITY OF MANDATORY INVESTIGATIONS TO INVESTMENTS.—The amendments made by subsection (g)(5) of this section [amending section 4 of Pub. L. 104–172, set out above] shall apply on and after the date of the enactment of this Act—

"(A) with respect to an investment described in section 5(a)(1) of the Iran Sanctions Act of 1996, as amended by subsection (a) of this section, that is commenced on or after such date of enactment;

"(B) except as provided in this subsection or section 6(b)(7) of the Iran Sanctions Act of 1996 [Pub. L. 104–172, set out above], as amended by this section, that is commenced before such date of enactment and continues on or after such date of enactment, shall, except as provided in this subsection or section 6(b)(7) of the Iran Sanctions Act of 1996, as amended by this section, be subject to the provisions of the Iran Sanctions Act of 1996, as amended by this Act.

"(5) APPLICABILITY OF MANDATORY INVESTIGATIONS TO ACTIVITIES RELATING TO PETROLEUM.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (g)(5) of this section shall apply on and after the date that is 1 year after the date of the enactment of this Act with respect to an activity described in paragraph (2) or (3) of section 5(a) of the Iran Sanctions Act of 1996, as amended by subsection (a) of this section, that is commenced on or after the date that is 1 year after the date of the enactment of this Act or the date on which the President fails to submit a certification that is required under subparagraph (B) (whichever is applicable).

"(B) SPECIAL RULE FOR DELAY OF EFFECTIVE DATE.—

"(i) REPORTING REQUIREMENT.—Not later than 30 days before the date that is 1 year after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report describing—

"(I) the diplomatic and other efforts of the President—

"(aa) to dissuade foreign persons from engaging in activities described in paragraph (2) or (3) of section 5(a) of the Iran Sanctions Act of 1996,
as amended by subsection (a) of this section; and

"(bb) to encourage other governments to dis-
suade persons over which those governments
have jurisdiction from engaging in such activi-
ties;

"(iii) each investigation under section 4(e) of
the Iran Sanctions Act of 1996, as amended
by subsection (g)(5) of this section and as in effect
pursuant to subparagraph (C) of this paragraph,
or any other review of an activity described in
paragraph (2) or (3) of section 5(a) of the
Iran Sanctions Act of 1996, as amended by subsection
(a) of this section, that is initiated or ongoing
during the period beginning on the date of the en-
actment of this Act and ending on the date on
which the President is required to submit the re-
port.

"(ii) CERTIFICATION.—If the President submits
to the appropriate congressional committees, with the
report required by clause (i), a certification that
there was a substantial reduction in activities de-
scribed in paragraphs (2) and (3) of section 5(a) of
the Iran Sanctions Act of 1996, as amended by sub-
section (a) of this section, during the period de-
scribed in clause (i)(III), the effective date provided
for in subparagraph (A) shall be delayed for a 180-
day period beginning after the date provided for in
that subparagraph.

"(iii) SUBSEQUENT REPORTS AND DELAYS.—The ef-
fective date provided for in subparagraph (A) shall
be delayed for additional 180-day periods occurring
after the end of the 180-day period provided for
under clause (ii), if, not later than 30 days before
the 180-day period preceding such additional 180-day
period expires, the President submits to the ap-
propriate congressional committees—

"(I) a report containing the matters required
in the report under clause (i) for the period begin-
ning on the date on which the preceding report
was required to be submitted under clause (i) or
this clause (as the case may be) and ending on the
date on which the President is required to submit
the most recent report under this clause; and

"(II) a certification that, during the period de-
scribed in subclause (I), there was (as compared to
the period for which the preceding report was
submitted under this subparagraph) a progressive re-
duction in activities described in paragraphs (2) and
(3) of section 5(a) of the Iran Sanctions Act of
1996, as amended by subsection (a) of this section.

"(C) CONSEQUENCE AGENCY—FAILURE TO CERTIFY.—If
the President does not make a certification at a
time required by this subparagraph—

"(I) the amendments made by subsection (g)(5) of
this section shall apply on and after the date
on which the certification was required to be sub-
mitted by this subparagraph, with respect to an
activity described in paragraph (2) or (3) of sec-
tion 5(a) of the Iran Sanctions Act of 1996, as
amended by subsection (a) of this section, that—

"(aa) is referenced in the most recent report
required to be submitted under this subpara-
graph; or

"(bb) is commenced on or after the date on
which such most recent report is required to be
submitted; and

"(II) not later than 45 days after the date on
which the certification was required to be sub-
mitted by this subparagraph, the President shall
make a determination under paragraph (2) or (3)
of section 5(a) of the Iran Sanctions Act of 1996
(as the case may be), as amended by subsection
(a) of this section, with respect to relevant activi-
ties described in subclause (I)(aa).

"(D) PREEMPTIVE INVESTIGATIONS.—During the 1-year period beginning on the
date of the enactment of this Act and during any 180-
day period during which the effective date provided
for in subparagraph (A) is delayed pursuant to sub-
paragraph (B), section 4(e) of the Iran Sanctions
Act of 1996, as amended by subsection (g)(5) of this sec-
tion, shall be applied, with respect to an activity de-
scribed in paragraph (2) or (3) of section 5(a) of the
Iran Sanctions Act of 1996, as amended by subsection
(a) of this section, by substituting ‘‘should’’ for ‘‘shall’’
each place it appears.

"(E) WAIVER AUTHORITY.—The amendments made by
subsection (c) (amending section 9 of Pub. L. 104–172,
set out above) shall not be construed to affect any exer-
cise of the authority under section 9(c) of the Iran
Sanctions Act of 1996, as in effect on the day before
the date of the enactment of this Act.’’

[For definition of ‘‘appropriate congressional com-
mittees’’ as used in section 102(h) of Pub. L. 111–195, set
out above, see section 8511 of Title 22, Foreign Rela-
tions and Intercourse.]

[Functions of President under section 102(h)(5)
of Pub. L. 111–195, set out above, delegated to Secretary of
State by Memorandum of President of the United States,
Sept. 23, 2010, 75 F.R. 67025, set out as a note
under section 8501 of Title 22, Foreign Relations and
Intercourse.]

[Pub. L. 109–293, title II, § 202(c), Sept. 30, 2006, 120
Stat. 1347, provided that: ‘‘Any reference in any other
provision of law, regulation, document, or other record
of the United States to the ‘Iran and Libya Sanctions
Act of 1996’ shall be deemed to be a reference to the
above].]

vided that: ‘‘The amendments made by subsection (a)
amending section 5 of Pub. L. 104–172, set out above)
shall apply to investments made on or after June 13, 2001.’’]

[For delegation of certain functions of President
under sections 4, 5, 6, 9, and 10 of Pub. L. 104–172, set out
above, see Memorandum of President of the United
States, Sept. 23, 2010, 75 F.R. 67025, set out as a note
under section 8501 of Title 22, Foreign Relations and
Intercourse.]

[Memorandum of President of the United States, Nov.
21, 1996, 61 F.R. 64339, delegated to the Secretary of
State, in consultation with the Departments of the
Treasury and Commerce and the United States Trade
Representative, and with the Export-Import Bank and
the Federal Reserve Board among other appropriate
agencies, the authority vested in the President by
section 102(h)(5) of Pub. L. 104–172, set out above, to
exercise the authority vested in the President by
section 9(c) of Pub. L. 104–172, provided that any reference to provisions of
any Act related to the subject of the memorandum be
deemed to include references to any subsequent provi-
dion of law that is the same or substantially the same
as such provisions, and that only the functions vested in the President by
section 4(c), former section 5(a), section 5(b), (c), (f),
former section 6(1), (2) (now section 6(a)(1), (2)), and
section 9(c) of Pub. L. 104–172, set out above, delegated to
the Secretary of State functions vested in the Presi-
dent by section 4(a), (b), former section 4(d), (e) (now
(d)), and sections 6(d), 9a(a), (b), and 10 of Pub.
L. 104–172, provided that any reference to provisions
of any Act related to the subject of the memorandum be
deemed to include references to any subsequent provi-
dion of law that is the same or substantially the same
as such provisions, and that only the functions vested in the President by
section 4(a), (b), former section 4(d), (e) (now (d)), and sections 5(d), (e), 9a(a), (b), and 10 of Pub.
L. 104–172 and delegated by the memorandum could be redelegated.]

DETERMINATION AND CERTIFICATION UNDER SECTION 8(b)
OF THE IRAN AND LIBYA SANCTIONS ACT

Determination of President of the United States, No.
2004–30, Apr. 23, 2004, 69 F.R. 24907, provided:

Memorandum for the Secretary of State

Pursuant to section 8(b) of the Iran and Libya Sanctions
Act of 1996 [now Iran Sanctions Act of 1996] (Public
Law 104–172; 50 U.S.C. 1701 note), as amended (Public
Law 107–24), I hereby determine and certify that Libya


You are authorized and directed to transmit this determination and certification to the appropriate congressional committees and to arrange for its publication in the Federal Register.

GEORGE W. BUSH.

SANCTIONS AGAINST SERBIA AND MONTENEGRO

Pub. L. 106–113, div. B, § 1000(a)(2) [title V, § 599], Nov. 29, 1999, 113 Stat. 1535, 1501A–127, provided that:

"(a) CONTINUATION OF EXECUTIVE BRANCH SANCTIONS.—The sanctions listed in subsection (b) shall remain in effect for fiscal year 2000, unless the President submits to the Committees on Appropriations and Foreign Relations in the Senate and the Committees on Appropriations and International Relations (now Foreign Affairs) of the House of Representatives a certification described in subsection (c).

"(b) APPLICABLE SANCTIONS.—

"(1) The Secretary of the Treasury shall instruct the United States executive directors of the international financial institutions to work in opposition to, and vote against, any extension by such institutions of any financial or technical assistance or grants of any kind to the government of Serbia.

"(2) The Secretary of State shall instruct the United States Ambassador to the Organization for Security and Cooperation in Europe (OSCE) to block any consensus to allow the participation of Serbia in the OSCE or any organization affiliated with the OSCE.

"(3) The Secretary of State shall instruct the United States Representative to the Organization for Security and Cooperation in Europe (OSCE) to work to prevent the extension of SECI membership to Serbia-Montenegro unless the President first submits to the Congress a certification described in subsection (c).

"(4) The United States Representative to the European Bank for Reconstruction and Development, the European Investment Bank, and the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the European Bank for Reconstruction and Development shall instruct the United States executive directors of the international financial institutions to work in opposition to, and vote against, any extension by such institutions of any financial or technical assistance or grants of any kind to the government of Serbia-Montenegro, unless the President first submits to the Congress a certification described in subsection (c).

"(c) CERTIFICATION.—A certification described in this subsection is a certification that—

"(1) there is substantial improvement in the human rights situation in Kosovo;

"(2) international human rights observers are allowed to return to Kosovo;

"(3) Serbian, Serbian-Montenegrin federal government officials, and representatives of the ethnic Albanian community in Kosovo have agreed on, signed, and begun implementation of a negotiated settlement on the future status of Kosovo;

"(4) the government of Serbia-Montenegro is fully complying with its obligations as a signatory to the General Framework Agreement for Peace in Bosnia and Herzegovina including fully cooperating with the International Criminal Tribunal for the Former Yugoslavia.

"(d) WAIVER AUTHORITY.—The President may waive the application in whole or in part, of any sanction described in subsection (b) if the President certifies to the Congress that the President has determined that the waiver is necessary to meet emergency humanitarian needs.


"(a) RESTRICTIONS.—None of the funds in this or any other Act may be made available to modify or remove any sanction, prohibition or requirement with respect to Serbia-Montenegro unless the President first submits to the Congress a certification described in subsection (c).

"(b) INTERNATIONAL FINANCIAL INSTITUTIONS.—The Secretary of the Treasury shall instruct the United States executive directors of the international financial institutions to work in opposition to, and vote against, any extension by such institutions of any financial or technical assistance or grants of any kind to the government of Serbia-Montenegro, unless the President first submits to the Congress a certification described in subsection (c).

"(c) CERTIFICATION.—A certification described in this subsection is a certification that—

"(1) there is substantial improvement in the human rights situation in Kosovo;

"(2) international human rights observers are allowed to return to Kosovo;

"(3) the representatives of the successor states to the Socialist Federal Republic of Yugoslavia have successfully negotiated the dissolution of the Socialist Federal Republic of Yugoslavia and the creation of two new states.

"(4) the government of Serbia is fully complying with its obligations as a signatory to the General Framework Agreement for Peace in Bosnia and Herzegovina; and

"(5) Serbian federal government officials, and representatives of the ethnic Albanian community in Kosovo have agreed on, signed, and begun implementation of a negotiated settlement on the future status of Kosovo.

"(d) STATEMENT OF POLICY.—It is the sense of the Congress that the United States should not restore full diplomatic relations with Serbia until the President submits to the Committees on Appropriations and Foreign Relations in the Senate and the Committees on Appropriations and International Relations (now Foreign Affairs) of the House of Representatives the certification described in subsection (c).

"(e) EXEMPTION OF MONTENEGRO AND KOSOVA.—The sanctions described in subsection (b) shall not apply to Montenegro or Kosovo.

"(f) DEFINITION.—The term ‘international financial institution’ includes the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the European Bank for Reconstruction and Development.

Pub. L. 106–113, div. B, § 1001(c) [title V, § 540], Nov. 29, 1999, 113 Stat. 1535, 1501A–82, provided that:

"(a) RESTRICTIONS.—None of the funds in this or any other Act may be made available to modify or remove any sanction, prohibition or requirement with respect to Serbia-Montenegro unless the President first submits to the Congress a certification described in subsection (c).

"(b) INTERNATIONAL FINANCIAL INSTITUTIONS.—The Secretary of the Treasury shall instruct the United States executive directors of the international financial institutions to work in opposition to, and vote against, any extension by such institutions of any financial or technical assistance or grants of any kind to the government of Serbia-Montenegro, unless the President first submits to the Congress a certification described in subsection (c).

"(c) CERTIFICATION.—A certification described in this subsection is a certification that—

"(1) there is substantial improvement in the human rights situation in Kosovo;

"(2) international human rights observers are allowed to return to Kosovo;

"(3) Serbian, Serbian-Montenegrin federal government officials, representatives of the ethnic Albanian community in Kosovo have agreed on and begun implementation of a negotiated settlement on the future status of Kosovo; and

"(4) the government of Serbia-Montenegro is fully complying with its obligations as a signatory to the General Framework Agreement for Peace in Bosnia and Herzegovina.
Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose any assistance from that institution to the government of Serbia or the government of Montenegro pursuant to section 1511 of Pub. L. 103–160, set out above, were contained in any sanction described in subsection (a), the prohibitions that involve reform of the electoral process, the political parties, or humanitarian assistance (including refugee care and human rights observation).

(d) Exception.—Notwithstanding any other provision of law, the President is authorized and encouraged to exempt from sanctions imposed against Serbia and Montenegro that are described in subsection (a) those United States-supported programs, projects, or activities that involve reform of the electoral process, the development of democratic institutions or democratic political parties, or humanitarian assistance (including disaster relief, development, and other relevant statutes, regarding the non-proliferation of weapons of mass destruction and the means of their delivery.

(2) The President should also urgently seek the agreement of other nations to adopt and institute, at the earliest practicable date, sanctions and controls comparable to those the United States is obligated to apply under this subsection.

(c) Public Identification.—The Congress calls on the President to identify publicly (in the report required by section 1607) any country or person that transfers goods or technology to Iran or Iraq contrary to the policy set forth in subsection (a).

SEC. 1603. APPLICATION TO IRAN OF CERTAIN IRAQ SANCTIONS.

The Congress calls on the President to identify publically (in the report required by section 1607) any country or person that transfers goods or technology to Iran or Iraq contrary to the policy set forth in subsection (a).

SEC. 1604. SANCTIONS AGAINST CERTAIN IRAN PERSONS.

This title may be cited as the 'Iran-Iraq Arms Non-Proliferation Act of 1992.'

SEC. 1602. UNITED STATES POLICY.

(a) In General.—It shall be the policy of the United States to oppose, and urgently to seek the agreement of other nations also to oppose, any transfer to Iran or Iraq of any goods or technology, including dual-use goods or technology, wherever that transfer could materially contribute to either country's acquiring chemical, biological, nuclear, or destabilizing numbers and types of advanced conventional weapons.

(b) Sanctions.—(1) In the furtherance of this policy, the President shall apply sanctions and controls with respect to Iran, Iraq, and those nations and persons who assist them in acquiring weapons of mass destruction in accordance with the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], the Nuclear Non-Proliferation Act of 1978 [22 U.S.C. 3217 et seq.], the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 [22 U.S.C. 5601 et seq.], chapter 7 of the Arms Export Control Act [22 U.S.C. 2797 et seq.], and other relevant statutes, regarding the non-proliferation of weapons of mass destruction and the means of their delivery.

(2) The President should also urgently seek the agreement of other nations to adopt and institute, at the earliest practicable date, sanctions and controls comparable to those the United States is obligated to apply under this subsection.

(3) The President is authorized and encouraged to exempt from sanctions imposed against Iran, Iraq, and those nations and persons who assist them in acquiring weapons of mass destruction in accordance with the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], the Nuclear Non-Proliferation Act of 1978 [22 U.S.C. 3217 et seq.], the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 [22 U.S.C. 5601 et seq.], chapter 7 of the Arms Export Control Act [22 U.S.C. 2797 et seq.], and other relevant statutes, regarding the non-proliferation of weapons of mass destruction and the means of their delivery.

(c) Public Identification.—The Congress calls on the President to identify publicly (in the report required by section 1607) any country or person that transfers goods or technology to Iran or Iraq contrary to the policy set forth in subsection (a).

SEC. 1605. SANCTIONS AGAINST CERTAIN FOREIGN COUNTRIES.

(a) Prohibition.—If the President determines that the government of any foreign country transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country) to acquire chemical, biological, or nuclear weapons or to acquire destabilizing numbers and types of advanced conventional weapons, then the sanctions described in subsection (b) shall be imposed.

(b) Mandatory Sanctions.—The sanctions to be imposed pursuant to subsection (a) are as follows:

(1) Procurement Sanction.—For a period of two years, the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned person.

(2) Export Sanction.—For a period of two years, the United States Government shall not issue any license for any export by or to the sanctioned person.

SEC. 1606. SANCTIONS AGAINST CERTAIN FOREIGN COUNTRIES.

(a) Prohibition.—If the President determines that the government of any foreign country transfers or retransfers goods or technology so as to contribute knowingly and materially to the efforts by Iran or Iraq (or any agency or instrumentality of either such country) to acquire chemical, biological, or nuclear weapons or to acquire destabilizing numbers and types of advanced conventional weapons, then the sanctions described in subsection (b) shall be imposed:

(1) The sanctions described in subsection (b) shall be imposed on such country; and...
(2) in addition, the President may apply, in the discretion of the President, the sanction described in subsection (c)." 

(1) MANDATORY SANCTIONS. Except as provided in paragraph (2), the sanctions to be imposed pursuant to subsection (a)(1) are as follows: 

(1) SUSPENSION OF UNITED STATES ASSISTANCE. The United States Government shall suspend, for a period of one year, United States assistance to the sanctioned country. 

(2) MULTILATERAL DEVELOPMENT BANK ASSISTANCE. The Secretary of the Treasury shall instruct the United States Executive Director to each appropriate international financial institution to oppose, and vote against, for a period of one year, the extension by such institution of any loan or financial or technical assistance to the sanctioned country. 

(3) SUSPENSION OF CODEVELOPMENT OR COPRODUCTION AGREEMENTS. The United States shall suspend, for a period of one year, compliance with its obligations under any memorandum of understanding with the sanctioned country for the codevelopment or co-production of any item on the United States Munitions List (established under section 38 of the Arms Export Control Act [22 U.S.C. 278b]), including any obligation for implementation of the memorandum of understanding through the sale to the sanctioned country of technical data or assistance or the licensing for export to the sanctioned country of any component part. 

(4) SUSPENSION OF MILITARY AND DUAL-USE TECHNICAL EXCHANGE AGREEMENTS. The United States shall suspend, for a period of one year, compliance with its obligations under any technical exchange agreement involving military and dual-use technology between the United States and the sanctioned country that does not directly contribute to the security of the United States, and no military or dual-use technology may be exported from the United States to the sanctioned country pursuant to that agreement during that period. 

(5) UNITED STATES MUNITIONS LIST. No item on the United States Munitions List (established pursuant to section 38 of the Arms Export Control Act) may be exported to the sanctioned country for a period of one year. 

(c) DISCRETIONARY SANCTION. The sanction referred to in subsection (a)(2) is as follows: 

(1) USE OF AUTHORITIES OF INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT. Except as provided in paragraph (2), the President may exercise, in accordance with the provisions of that Act [50 U.S.C. 1701 et seq.], the authorities of the International Emergency Economic Powers Act with respect to the sanctioned country. 

(2) EXCEPTION. Paragraph (1) does not apply with respect to urgent humanitarian assistance. 

SEC. 1606. WAIVER. 

The President may waive the requirement to impose a sanction described in section 1603, in the case of Iraq, or a sanction described in section 1604(b) or 1605(b), in the case of Iran, and in the case of Iraq and Iran, 15 days after the President determines and so reports to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives that it is essential to the national interest of the United States to exercise such waiver authority. Any such report shall provide a specific and detailed rationale for such determination. 

SEC. 1607. REPORTING REQUIREMENT. 


(b) REPORT ON INDIVIDUAL TRANSFERS. Whenever the President determines that a person or foreign government has made a transfer which is subject to any sanction under this title, the President shall, within 30 days after such transfer, submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report— 

(1) identifying the person or government and providing the details of the transfer; and 

(2) describing the actions the President intends to undertake or has undertaken under the provisions of this title with respect to each such transfer. 

(c) FORM OF TRANSMITTAL. Reports required by this section may be submitted in classified as well as in unclassified form. 

SEC. 1608. DEFINITIONS. 

For purposes of this title: 

(1) The term 'advanced conventional weapons' includes— 

(A) such long-range precision-guided munitions, fuel air explosives, cruise missiles, low observability aircraft, other radar evading aircraft, advanced military aircraft, military satellites, electromagnetic weapons, and laser weapons as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways; 

(B) such advanced command, control, and communications systems, electronic warfare systems, or intelligence collection systems as the President determines destabilize the military balance or enhance offensive capabilities in destabilizing ways; and 

(C) such other items or systems as the President may, by regulation, determine necessary for purposes of this title. 

(2) The term 'cruise missile' means guided missiles that use aerodynamic lift to offset gravity and propulsion to counteract drag. 

(3) The term 'dual-use technology' means— 

(A) any article, natural or manmade substance, material, supply, or manufactured product, including inspection and test equipment; and 

(B) any information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data. 

(4) The term 'person' means any United States or foreign individual, partnership, corporation, or other form of association, or any of their successor entities, parents, or subsidiaries. 

(5) The term 'sanctioned country' means a country against which sanctions are required to be imposed pursuant to section 1605. 

(6) The term 'sanctioned person' means a person that makes a transfer described in section 1604(a). 

(7) The term 'United States assistance' means— 

(A) any assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), other than urgent humanitarian assistance or medicine; 

(B) sales and assistance under the Arms Export Control Act [22 U.S.C. 2751 et seq.]; 

(C) financing by the Commodity Credit Corporation for export sales of agricultural commodities; and 

(D) financing under the Export-Import Bank Act of 1945 [22 U.S.C. 635 et seq.]. 

(Memorandum of President of the United States, Sept. 27, 1994, 59 F.R. 50685, delegated to Secretary of State, in consultation with heads of other departments and agencies, all functions vested in President under title XVI of Pub. L. 102–484, set out above, without limitation of authority of other officers to exercise powers heretofore or hereafter delegated to them to implement sanctions imposed or actions directed by the Secretary pursuant to this delegation of authority.) 

PAYMENT OF CLAIMS BY UNITED STATES NATIONALS AGAINST IRAQ. 

Pub. L. 101–519, §131, Nov. 5, 1990, 104 Stat. 2249, which authorized President to vest title in a portion of property in which transactions were blocked pursuant to Executive Order 12722, listed in a table below, in order

IRAQ SANCTIONS


"SEC. 586. SHORT TITLE.

"Sections 586 through 586J of this Act may be cited as the 'Iraq Sanctions Act of 1990'.

"SEC. 586A. DECLARATIONS REGARDING IRAQ'S INVASION OF KUWAIT.

"The Congress—

"(1) condemns Iraq's invasion of Kuwait on August 2, 1990;

"(2) supports the actions that have been taken by the President in response to that invasion;

"(3) calls for the immediate and unconditional withdrawal of Iraqi forces from Kuwait;

"(4) supports the efforts of the United Nations Security Council to end this violation of international law and threat to international peace;

"(5) supports the imposition and enforcement of multilateral sanctions against Iraq;

"(6) calls on United States allies and other countries to support fully the efforts of the United Nations Security Council, and to take other appropriate actions, to bring about an end to Iraq's occupation of Kuwait;

"(7) condemns the brutal occupation of Kuwait by Iraq and its gross violations of internationally recognized human rights in Kuwait, including widespread arrests, torture, summary executions, and mass extrajudicial killings.

"SEC. 586B. CONSULTATIONS WITH CONGRESS.

"The President shall keep the Congress fully informed, and shall consult with the Congress, with respect to, and anticipated events regarding the international crisis caused by Iraq's invasion of Kuwait, including with respect to United States actions.

"SEC. 586C. TRADE EMBARGO AGAINST IRAQ.

"(a) Continuation of embargo.—Except as otherwise provided in this section, the President shall continue to impose the trade embargo and other economic sanctions with respect to Iraq and Kuwait that the United States is imposing, in response to Iraq's invasion of Kuwait, pursuant to Executive Orders Numbered 12722 and 12723 and other relevant Security Council resolutions.

"(b) Humanitarian assistance.—To the extent that transactions involving foodstuffs or payments for foodstuffs are exempted 'in humanitarian circumstances' from the prohibitions established by the United States pursuant to United Nations Security Council Resolution 661 (1990), those exemptions shall be limited to foodstuffs that are to be provided consistent with United Nations Security Council Resolution 661 (1990) and other relevant Security Council resolutions.

"(c) Notice to Congress of exceptions to and termination of sanctions.—

"(1) Notice of regulations.—Any regulations issued after the date of enactment of this Act [Nov. 5, 1990] with respect to the economic sanctions imposed with respect to Iraq and Kuwait by the United States under Executive Orders Numbered 12722 and 12723 (August 2, 1990) and Executive Orders Numbered 12724 and 12725 (August 9, 1990) shall be submitted to the Congress before those regulations take effect.

"(2) Notice of termination of sanctions.—The President shall notify the Congress at least 15 days before the termination, in whole or in part, of any sanction imposed with respect to Iraq or Kuwait pursuant to those Executive orders.

"(d) Relation to other laws.—

"(1) Sanctions legislation.—The sanctions that are described in subsection (a) are in addition to, and not in lieu of the sanctions provided for in section 586G of this Act or any other provision of law.


"SEC. 586D. COMPLIANCE WITH UNITED NATIONS SANCTIONS AGAINST IRAQ.

"(a) Denial of assistance.—None of the funds appropriated or otherwise made available pursuant to this Act [see Tables for classification] to carry out the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.] (including title IV of chapter 2 of part I [22 U.S.C. 2151 et seq.], relating to the Overseas Private Investment Corporation) or the Arms Export Control Act [22 U.S.C. 2751 et seq.] may be used to provide assistance to any country that is not in compliance with the United Nations Security Council sanctions against Iraq unless the President determines and so certifies to the Congress that:

"(1) such assistance is in the national interest of the United States;

"(2) such assistance will directly benefit the needy people in that country; or

"(3) the assistance to be provided will be humanitarian assistance for foreign nationals who have fled Iraq and Kuwait.

"(b) Import sanctions.—If the President considers that the taking of such action would promote the effectiveness of the economic sanctions of the United Nations and the United States imposed with respect to Iraq, and is consistent with the national interest, the President may prohibit, for such period of time as he considers appropriate, the importation into the United States of any or all products of any foreign country that has not prohibited—

"(1) the importation of products of Iraq into its customs territory, and

"(2) the export of its products to Iraq.

"SEC. 586E. PENALTIES FOR VIOLATIONS OF EMBARGO.


"(1) a civil penalty of not to exceed $250,000 may be imposed on any person who, after the date of enactment of this Act [Nov. 5, 1990], violates or evades or attempts to violate or evade Executive Order Numbered 12722, 12723, 12724, or 12725 [listed in a table below] or any license, order, or regulation issued under any such Executive order; and

"(2) whoever, after the date of enactment of this Act, willfully violates or evades or attempts to violate or evade Executive Order Numbered 12722, 12723, 12724, or 12725 or any license, order, or regulation issued under any such Executive order and that has not prohibited—

"(A) shall, upon conviction, be fined not more than $1,000,000, or a person other than a natural person; or
Congress determines that—

recognized human rights. All provisions of law that im-
sistent pattern of gross violations of internationally

§ 1701
LONG-STANDING VIOLATIONS OF INTER-
NATIONAL LAW.

(a) IRAQ’S VIOLATIONS OF INTERNATIONAL LAW.—The Congress determines that—

(1) the Government of Iraq has demonstrated re-
peated and blatant disregard for its obligations under

international law by violating the Charter of the
United Nations, the Protocol for the Prohibition of
the Use in War of Asphyxiating, Poisonous or Other
Gases, and of Bacteriological Methods of Warfare
(dated at Geneva, June 17, 1925), as well as other inter-
national treaties;

(2) the Government of Iraq is a party to the Inter-
national Covenant on Civil and Political Rights and
the International Covenant on Economic, Social, and
Cultural Rights and is obligated under the Convenants,
as well as the Universal Declaration of Human Rights,
to respect internationally recognized human rights;

(3) the State Department’s Country Reports on
Human Rights Practices for 1989 again characterizes
Iraq’s human rights record as ‘abysmal’;

(4) Amnesty International, Middle East Watch, and
other independent human rights organizations
have documented extensive, systematic, and continu-
ing human rights abuses by the Government of Iraq,
including summary executions, mass political kill-
ings, disappearances, widespread use of torture, arbi-
trary arrests and prolonged detention without trial of
thousands of political opponents, forced relocation
and deportation, denial of nearly all civil and politi-
cal rights such as freedom of association, assembly,
speech, and the press, and the imprisonment, torture,
and execution of children;

(5) since 1987, the Government of Iraq has intensi-
ﬁed its severe repression of the Kurdish minority of
Iraq, deliberately destroyed more than 3,000 villages
and towns in the Kurdish regions, and forcibly ex-
pelled more than 500,000 people, thus effectively de-
populating the rural areas of Iraqi Kurdistan;

(6) Iraq has blatantly violated international law by
initiating use of chemical weapons in the Iran-Iraq
war;

(7) Iraq has also violated international law by
using chemical weapons against its own Kurdish citi-
zens, resulting in tens of thousands of deaths and
more than 65,000 refugees;

(8) Iraq continues to expand its chemical weapons
capability, and President Saddam Hussein has threat-
ened to use chemical weapons against other nations;

(9) persuasive evidence exists that Iraq is develop-
ing biological weapons in violation of international
law;

(10) there are strong indications that Iraq has taken
steps to produce nuclear weapons and has at-
tempted to smuggle from the United States, in viola-
tion of United States law, components for triggering
device used in nuclear warheads whose manufacture
would contravene the Treaty on the Non-Prolifer-
ation of Nuclear Weapons, to which Iraq is a party; and

(11) Iraqi President Saddam Hussein has threat-
ened to use terrorism against other nations in viola-
tion of international law and has increased Iraq’s
support for the Palestine Liberation Organization
and other Palestinian groups that have conducted ter-
rorist acts.

(b) HUMAN RIGHTS VIOLATIONS.—The Congress deter-
mines that the Government of Iraq is engaged in a con-
sistent pattern of gross violations of internationally
recognized human rights. All provisions of law that im-
pose sanctions against a country whose government is
engaged in a consistent pattern of gross violations of
internationally recognized human rights shall be fully
enforced against Iraq.

(c) SUPPORT FOR INTERNATIONAL TERRORISM.—(1) The Congress determines that Iraq is a country which has
repeatedly provided support for acts of international
terrorism, a country which repeated paragraphs (2) and (3) of that paragraph.

``SEC. 586F. DECLARATIONS REGARDING IRAQ’S
LONG-STANDING VIOLATIONS OF INTER-
NATIONAL LAW.

(a) IMPOSITION.—Except as provided in section 586F(a), the following sanctions shall apply with respect to
Iraq:

(1) FMS SALES.—The United States Government shall not enter into any sale with Iraq under the
Arms Export Control Act [22 U.S.C. 2761 et seq.].

(2) COMMERCIAL ARMS SALES.—Licenses shall not be issued for the export to Iraq of any item on the
United States Munitions List.

(3) EXPORTS OF CERTAIN GOODS AND TECHNOLOGY.—
The authorities of section 6 of the Export Adminis-
tration Act of 1979 (50 U.S.C. App. 2405) shall be used
to prohibit the export to Iraq of any goods or tech-
nology listed pursuant to that section or section 5 of that Act (50 U.S.C. App. 2406(c)(1)) on the
control list provided for in section 4(b) of that Act (50 U.S.C. App. 2403(b)).

(4) NUCLEAR EQUIPMENT, MATERIALS, AND TECH-
NOLOGY.—

(A) NRC LICENSES.—The Nuclear Regulatory
Commission shall not issue any license or other au-
thorization under the Atomic Energy Act of 1954 (42
U.S.C. 2011 and following) for the export to Iraq of
any source or special nuclear material, any produc-
tion or utilization facility, any sensitive nuclear

technology, any component, item, or substance
determined to have significance for nuclear explosive
purposes pursuant to section 160b, of the Atomic
Energy Act of 1954 (42 U.S.C. 2139(b)), or any other
material or technology requiring such a license or
authorization.

(B) DISTRIBUTION OF NUCLEAR MATERIALS.—The authority of the Atomic Energy Act of 1954 shall
not be used to distribute any special nuclear mate-
rial, source material, or byproduct material to Iraq.

(C) DOE AUTHORIZATIONS.—The Secretary of En-
ergy shall not provide a specific authorization under section 57(b)(2) of the Atomic Energy Act of
1954 (42 U.S.C. 2077(b)(2)) for any activity that would constitute directly or indirectly engaging in Iraq in activities that require a specific authorization under that section.

"(5) Assistance from International Financial Institutions.—The United States shall oppose any loan or financial or technical assistance to Iraq by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 2624).

"(6) Assistance through the Export-Import Bank.—Credits and credit guarantees through the Export-Import Bank of the United States shall be denied to Iraq.

"(7) Assistance through the Commodity Credit Corporation.—Credit, credit guarantees, and other assistance through the Commodity Credit Corporation shall be denied to Iraq.

"(8) Foreign Assistance.—All forms of assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2351 and following) other than emergency assistance for medical supplies and other forms of emergency humanitarian assistance, and under the Arms Export Control Act (22 U.S.C. 2751 and following) shall be denied to Iraq.

"(b) Contract Sanctity.—For purposes of the export controls imposed pursuant to subsection (a)(3), the date described in subsection (m)(1) of section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405) shall be deemed to be August 1, 1990.

"SEC. 586H. WAIVER AUTHORITY.

"(a) In General.—The President may waive the requirements of any paragraph of section 586G(a) if the President makes a certification under subsection (b) or subsection (c).

"(b) Certification of Fundamental Changes in Iraq Leadership and Policies.—The authority of subsection (a) may be exercised 30 days after the President certifies to the Congress that—

"(1) there has been a fundamental change in the leadership of the Government of Iraq; and

"(2) the new Government of Iraq has provided reliable and credible assurance that—

"(A) it respects internationally recognized human rights and it will demonstrate such respect through its conduct;

"(B) it is not acquiring, developing, or manufacturing and it will not acquire, develop, or manufacture (i) ballistic missiles, (ii) chemical, biological, or nuclear weapons, or (iii) components for such weapons; has forsworn the first use of such weapons; and is taking substantial and verifiable steps to destroy or otherwise dispose of any such missiles and weapons it possesses;

"(C) it is not and will not provide support for international terrorism; and

"(D) it is and will continue to be in substantial compliance with its obligations under international law, including all the treaties specified in subparagraphs (A) through (F) of subsection (b)(2).

"(c) Certification of Fundamental Changes in Iraqi Leadership and Policies.—The authority of subsection (a) may be exercised 30 days after the President certifies to the Congress that—

"(1) there has been a fundamental change in the leadership of the Government of Iraq; and

"(2) the new Government of Iraq has provided reliable and credible assurance that—

"(A) it respects internationally recognized human rights and it will demonstrate such respect through its conduct;

"(B) it is not acquiring, developing, or manufacturing and it will not acquire, develop, or manufacture (i) ballistic missiles, (ii) chemical, biological, or nuclear weapons, or (iii) components for such weapons; has forsworn the first use of such weapons; and is taking substantial and verifiable steps to destroy or otherwise dispose of any such missiles and weapons it possesses;

"(C) it is not and will not provide support for international terrorism; and

"(D) it is and will continue to be in substantial compliance with its obligations under international law, including all the treaties specified in subparagraphs (A) through (F) of subsection (b)(2).

"(d) Information To Be Included in Certifications.—Any certification under subsection (b) or (c) shall include the justification for each determination required by that subsection. The certification shall also specify which paragraphs of section 586G(a) the President will waive pursuant to that certification.

"SEC. 586I. DENIAL OF LICENSES FOR CERTAIN EXPORTS TO COUNTRIES ASSISTING IRAQ'S ROCKET OR CHEMICAL, BIOLOGICAL, OR NUCLEAR WEAPONS CAPABILITY.

"(a) Restriction on Export Licenses.—None of the funds appropriated by this or any other Act may be used to approve the licensing for export of any supercomputer to any country whose government the President determines is assisting, or whose government officials the President determines are assisting, Iraq to improve its rocket technology or chemical, biological, or nuclear weapons capability.

"(b) Negotiations.—The President is directed to begin immediate negotiations with those governments with which the United States has bilateral supercomputer agreements, including the Government of the United Kingdom and the Government of Japan, on conditions restricting the transfer to Iraq of supercomputer or associated technology.

"SEC. 586J. REPORTS TO CONGRESS.

"(a) Study and Report on the International Export to Iraq of Nuclear, Biological, Chemical, and Ballistic Missile Technology.—(1) The President shall conduct a study on the sale, export, and third party transfer or development of nuclear, biological, chemical, and ballistic missile technology to or with Iraq including—

"(A) an identification of specific countries, as well as companies and individuals, both foreign and domestic, engaged in such sale or export of, nuclear, biological, chemical, and ballistic missile technology;

"(B) a detailed description and analysis of the international supply, information, support, and co-production network, individual, corporate, and state, responsible for Iraq's current capability in the area of nuclear, biological, chemical, and ballistic missile technology; and

"(C) a recommendation of standards and procedures against which to measure and verify a decision of the Government of Iraq to terminate the development, production, coproduction, and deployment of nuclear, biological, chemical, and offensive ballistic missile technology as well as the destruction of all existing facilities associated with such technologies.

"(2) The President shall include in the study required by paragraph (1) specific recommendations on new mechanisms, to include, but not be limited to, legal, political, economic, and regulatory, whereby the United
States might contribute, in conjunction with its friends, allies, and the international community, to the management, control, or elimination of the threat of nuclear, biological, chemical, and ballistic missile proliferation.

“(3) Not later than March 30, 1991, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report, in both classified and unclassified form, setting forth the findings of the study required by paragraph (1) of this subsection.

“(b) STUDY AND REPORT ON IRAQ’S OFFENSIVE MILITARY CAPABILITY.—(1) The President shall conduct a study on Iraq’s offensive military capability and its effect on the Middle East balance of power including an assessment of Iraq’s power projection capability, the prospects for another sustained conflict with Iran, joint Iraqi-Jordanian military cooperation, the threat Iraq’s military influence into Africa and Latin America.

“(2) Not later than March 30, 1991, the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report, in both classified and unclassified form, setting forth the findings of the study required by paragraph (1).

“(c) REPORT ON SANCTIONS TAKEN BY OTHER NATIONS AGAINST IRAQ.—(1) The President shall prepare a report on the steps taken by other nations, both before and after the August 2, 1990, invasion of Kuwait, to curtail the export of goods, services, and technologies to Iraq which might contribute to, or enhance, Iraq’s nuclear, biological, chemical, and ballistic missile capability.

“(2) The President shall provide a complete accounting of international compliance with each of the sanctions resolutions adopted by the United Nations Security Council against Iraq since August 2, 1990, and shall list, by name, each country which to his knowledge, has provided any assistance to Iraq and the amount and type of that assistance in violation of each United Nations Resolution.

“(3) The President shall make every effort to encourage other nations, in whatever forum or context, to adopt sanctions toward Iraq similar to those contained in this section.

“(4) Not later than six months after the date of enactment of this Act [Nov. 5, 1990], the President shall submit to the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, a report, in both classified and unclassified form, setting forth the findings of the study required by paragraph (1) of this subsection.”

[Provisions similar to section 586D of Pub. L. 101–513, set out above, relating to compliance with sanctions against Iraq were contained in the following appropriations acts:]


[Pub. L. 106–429, §101(a) [title V, §534], Nov. 6, 2000, 114 Stat. 1900, 1900A–34.]


[Pub. L. 101–510, div. A, title XIV, §1458, Nov. 5, 1990, 104 Stat. 1967, provided that: “If the President considers that the taking of such action would promote the effectiveness of the economic sanctions of the United Nations and the United States imposed with respect to Iraq, and is consistent with the national interest, the President may prohibit, for such a period of time as he considers appropriate, the importation into the United States of any or all products of any foreign country that has not—

“(1) prohibited—

“(A) the importation of products of Iraq into its customs territory, and

“(B) the export of its products to Iraq; or

“(2) given assurances satisfactory to the President that such import and export sanctions will be promptly implemented.”

[SUSPENDING THE IRAQ SANCTIONS ACT, MAKING INAPPLICABLE CERTAIN STATUTORY PROVISIONS RELATED TO IRAQ, AND DELINQUENT AUTHORITIES, UNDER THE EMERGENCY WARTIME SUPPLEMENTAL APPROPRIATIONS ACT, 2003]

Determination of President of the United States, No. 2003–23, May 7, 2003, 68 F.R. 26569, provided:

Memorandum for the Secretary of State [and] the Secretary of Commerce


(1) suspend the application of all of the provisions, other than section 586E, of the Iraq Sanctions Act of 1990, Public Law 101–513 [set out above], and

(2) make inapplicable with respect to Iraq section 620A of the Foreign Assistance Act of 1961, Public Law 87–185, as amended [22 U.S.C. 2371 (the “F.A.A.”), and any other provision of law that applies to countries that have supported terrorism.

In addition, I delegate the functions and authorities conferred upon the President by:

(1) section 1503 of the Act to submit reports to the designated committees of the Congress to the Secretary of Commerce, or until such time as the principal licensing responsibility for the export to Iraq of items on the Commerce Control List has reverted to the Department of Commerce, to the Secretary of the Treasury; and,

(2) section 1504 of the Act to the Secretary of State.

The functions and authorities delegated herein may be further delegated and redelegated to the extent consistent with applicable law.

The Secretary of State is authorized and directed to publish this determination in the Federal Register.

GEORGE W. BUSH

IRAN CLAIMS SETTLEMENT

Pub. L. 99–93, title V, §539, Aug. 16, 1985, 99 Stat. 437, provided for the determination of the validity and amounts of claims by United States nationals against Iran which were settled on bloc by the United States.

EXECUTIVE DOCUMENTS

Provisions relating to the exercise of Presidential authorities to declare national emergencies for unusual and extraordinary threats with respect to the actions of certain persons and countries are contained in the following:

AFGHANISTAN (TALIBAN)

Continuations of national emergency declared by Ex. Ord. No. 13128 were contained in the following:


Notice of President of the United States, dated June 30, 2000, 66 F.R. 41549.


Continuations of national emergency declared by Ex. Ord. No. 12865 were contained in the following:


Notice of President of the United States, dated Sept. 21, 1999, 64 F.R. 51419.


BELARUS


Continuations of national emergency declared by Ex. Ord. No. 13403 were contained in the following:

Notice of President of the United States, dated June 8, 2010, 75 F.R. 32841.

Notice of President of the United States, dated June 12, 2009, 74 F.R. 28437.

Notice of President of the United States, dated June 6, 2008, 73 F.R. 32981.

Notice of President of the United States, dated June 14, 2007, 72 F.R. 35381.

Continuations of national emergency declared by Ex. Ord. No. 13407 were contained in the following:

Notice of President of the United States, dated May 13, 2010, 75 F.R. 27629.

Notice of President of the United States, dated May 10, 2009, 74 F.R. 23207.

Notice of President of the United States, dated May 16, 2008, 73 F.R. 29035.

Notice of President of the United States, dated May 17, 2007, 72 F.R. 29447.

Notice of President of the United States, dated May 18, 2006, 71 F.R. 29239.

Notice of President of the United States, dated May 17, 2005, 70 F.R. 28771.


Notice of President of the United States, dated May 16, 2003, 68 F.R. 27425.


Notice of President of the United States, dated May 18, 2000, 65 F.R. 32005.

Notice of President of the United States, dated May 18, 1999, 64 F.R. 27443.

COLOMBIA


Continuations of national emergency declared by Ex. Ord. No. 12978 were contained in the following:


CÔTE D’IVOIRE


Continuations of national emergency declared by Ex. Ord. No. 13396 were contained in the following:


Continuators and Persons Committing or Supporting Terrorism

Ex. Ord. No. 12947 were contained in the following:


Notice of President of the United States, dated Jan. 18, 2006, 71 F.R. 3407.
§ 1701
Notice of President
17, 2005, 70 F.R. 3277.
Notice of President
Notice of President
Notice of President
Notice of President
Notice of President
19, 2000, 65 F.R. 3581.
Notice of President
20, 1999, 64 F.R. 3393.
Notice of President
Notice of President
Notice of President

TITLE 50—WAR AND NATIONAL DEFENSE
of the United States, dated Jan.
of the United States, dated Jan.
of the United States, dated Jan.
of the United States, dated Jan.
of the United States, dated Jan.
of the United States, dated Jan.
of the United States, dated Jan.
of the United States, dated Jan.
of the United States, dated Jan.
of the United States, dated Jan.

Ex. Ord. No. 13224, Sept. 23, 2001, 66 F.R. 49079, as
amended by Ex. Ord. No. 13268, § 1, July 2, 2002, 67 F.R.
Continuations of national emergency declared by
Ex. Ord. No. 13224 were contained in the following:
Notice of President of the United States, dated
Notice of President of the United States, dated
Sept. 21, 2009, 74 F.R. 48359.
Notice of President of the United States, dated
Notice of President of the United States, dated
Notice of President of the United States, dated
Sept. 21, 2006, 71 F.R. 55725.
Notice of President of the United States, dated
Sept. 21, 2005, 70 F.R. 55703.
Notice of President of the United States, dated
Notice of President of the United States, dated
Notice of President of the United States, dated
COUNTRIES AND PERSONS PROLIFERATING WEAPONS OF
MASS DESTRUCTION
Continuations of national emergency declared by
Ex. Ord. No. 12735 were contained in the following:
Notice of President of the United States, dated Nov.
12, 1993, 58 F.R. 60361.
Notice of President of the United States, dated Nov.
11, 1992, 57 F.R. 53979.
Notice of President of the United States, dated Nov.
Ex. Ord. No. 12868, Sept. 30, 1993, 58 F.R. 51749, revoked, with savings provision, by Ex. Ord. No. 12930, § 3,
Ex. Ord. No. 12938, Nov. 14, 1994, 59 F.R. 59099, as
amended by Ex. Ord. No. 13094, § 1, July 28, 1998, 63 F.R.
40803; Ex. Ord. No. 13128, June 25, 1999, 64 F.R. 34704; Ex.
Continuations of national emergency declared by
Ex. Ord. No. 12938 were contained in the following:
Notice of President of the United States, dated Nov.
6, 2009, 74 F.R. 58187.
Notice of President of the United States, dated Nov.
Notice of President of the United States, dated Nov.
8, 2007, 72 F.R. 63963.
Notice of President of the United States, dated Oct.

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Notice of President of the United States, dated Oct.
Notice of President of the United States, dated Nov.
Notice of President of the United States, dated Oct.
Notice of President of the United States, dated Nov.
Notice of President of the United States, dated Nov.
Notice of President of the United States, dated Nov.
9, 2000, 65 F.R. 68063.
Notice of President of the United States, dated Nov.
10, 1999, 64 F.R. 61767.
Notice of President of the United States, dated Nov.
Notice of President of the United States, dated Nov.
Notice of President of the United States, dated Nov.
12, 1996, 61 F.R. 58309.
Notice of President of the United States, dated Nov.
8, 1995, 60 F.R. 57137.
COUNTRIES AND PERSONS THREATENING UNITED STATES
EXPORT REGULATION UPON EXPIRATION OF THE EXPORT
ADMINISTRATION ACT OF 1979
Continuation of emergency declared by Ex. Ord. No.
12470 was contained in the following:
Notice of President of the United States, dated
Continuations of national emergency declared by
Ex. Ord. No. 12730 were contained in the following:
Notice of President of the United States, dated
Notice of President of the United States, dated
Continuations of national emergency declared by
Ex. Ord. No. 12924 were contained in the following:
Notice of President of the United States, dated
Notice of President of the United States, dated
Notice of President of the United States, dated
Notice of President of the United States, dated
Notice of President of the United States, dated
Notice of President of the United States, dated
Continuations of national emergency declared by
Ex. Ord. No. 13222 were contained in the following:
Notice of President of the United States, dated
Notice of President of the United States, dated
Notice of President of the United States, dated July
Notice of President of the United States, dated




DEMOCRATIC REPUBLIC OF THE CONGO


Continuations of national emergency declared by Ex. Ord. No. 13413 were contained in the following:


HAITI


Continuations of national emergency declared by Ex. Ord. No. 12775 were contained in the following:


Notice of President of the United States, dated Nov. 9, 2005, 70 F.R. 69639.

Notice of President of the United States, dated Nov. 9, 2004, 69 F.R. 65513.

Notice of President of the United States, dated Nov. 12, 2003, 68 F.R. 64498.


Notice of President of the United States, dated Nov. 9, 2003, 66 F.R. 59986.

Notice of President of the United States, dated Nov. 9, 2000, 65 F.R. 68061.

Notice of President of the United States, dated Nov. 5, 1999, 64 F.R. 61471.

Notice of President of the United States, dated Nov. 9, 1998, 63 F.R. 63125.


Notice of President of the United States, dated Nov. 1, 1993, 58 F.R. 56639.


Notice of President of the United States, dated Nov. 9, 1990, 55 F.R. 47453.


Notice of President of the United States, dated Nov. 8, 1988, 53 F.R. 45750.


Notice of President of the United States, dated Nov. 1, 1985, 50 F.R. 45861.

Notice of President of the United States, dated Nov. 7, 1984, 49 F.R. 44741.

Notice of President of the United States, dated Nov. 8, 1982, 47 F.R. 50841.


Continuations of national emergency declared by Ex. Ord. No. 12967 were contained in the following:


Notice of President of the United States, dated Mar. 11, 2009, 74 F.R. 10999.

Notice of President of the United States, dated Mar. 11, 2008, 73 F.R. 13727.


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Notice of President of the United States, dated Mar. 19, 1999, 64 F.R. 12256.


Continuations of national emergency declared by Ex. Ord. No. 13059 were contained in the following:
Notice of President of the United States, dated July 31, 2003, 68 F.R. 45739.
Notice of President of the United States, dated July 20, 1993, 58 F.R. 30111.


KUWAIT


LEBANON


Continuations of national emergency declared by Ex. Ord. No. 14341 were contained in the following:
Notice of President of the United States, dated July 30, 2009, 74 F.R. 38321.
Notice of President of the United States, dated July 30, 2008, 73 F.R. 44885.

LIBERIA


Continuations of national emergency declared by Ex. Ord. No. 13348 were contained in the following:
Notice of President of the United States, dated July 19, 2010, 75 F.R. 42261.
Notice of President of the United States, dated July 16, 2009, 74 F.R. 35763.
Notice of President of the United States, dated July 16, 2008, 73 F.R. 42255.
Notice of President of the United States, dated July 18, 2006, 71 F.R. 41093.
Notice of President of the United States, dated July 19, 2005, 70 F.R. 41935.

LIBYA


Continuations of national emergency declared by Ex. Ord. No. 12543 were contained in the following:


Notice of President of the United States, dated Dec. 29, 1988, 53 F.R. 52971.


Continuations of national emergency declared by Ex. Ord. No. 13159 were contained in the following:

Notice of President of the United States, dated April 6, 1989, 54 F.R. 14197.


RUSSIA


Continuations of national emergency declared by Ex. Ord. No. 13159 were contained in the following:

Notice of President of the United States, dated June 17, 2010, 75 F.R. 34921.

Notice of President of the United States, dated June 18, 2008, 73 F.R. 35335.


Notice of President of the United States, dated June 18, 2006, 71 F.R. 35349.

Notice of President of the United States, dated June 19, 2006, 71 F.R. 35349.

Notice of President of the United States, dated June 17, 2006, 70 F.R. 35507.


SOMALIA


South Africa


Continuation of national emergency declared by Ex. Ord. No. 12353 was contained in the following:


SUDAN


Continuations of national emergency declared by Ex. Ord. No. 12367 were contained in the following:


Notice of President of the United States, dated Nov. 1, 2007, 72 F.R. 62407.

Notice of President of the United States, dated Nov. 1, 2006, 71 F.R. 64629.

Notice of President of the United States, dated Nov. 1, 2005, 70 F.R. 66745.


Notice of President of the United States, dated Oct. 29, 1999, 64 F.R. 59105.


SYRIA


Continuations of national emergency declared by Ex. Ord. No. 13338 were contained in the following:


Notice of President of the United States, dated May 7, 2009, 74 F.R. 21765.

Notice of President of the United States, dated May 7, 2008, 73 F.R. 26569.

§ 1702. Presidential authorities

(a) In general

(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities, by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, exercising any right, power, or privilege with respect to, or transactions involving, any property, subject to the jurisdiction of the United States; and.

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time

1 So in original. The period probably should not appear.
to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

(b) Exceptions to grant of authority

The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 2404 of the Appendix to this title, or under section 2405 of the Appendix to this title to the extent that such controls promote the non-proliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18; or

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

(c) Classified information

In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.


REFERENCES IN TEXT

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (c), is section 196–456, Oct. 15, 1980, 94 Stat. 2055, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

2001—Pub. L. 107–56, § 106, which directed certain amendments to section 203 of the International Emergency Powers Act, was executed by making the amendments to this section, which is section 203 of the International Emergency Economic Powers Act, to reflect the probable intent of Congress. See below.

Subsec. (a)(1). Pub. L. 107–56, § 106(1)(A), which directed striking out “by any person, or with respect to any property, subject to the jurisdiction of the United States” without providing closing quotation marks designating the provisions to be struck, was executed by striking out “by any person, or with respect to any property, subject to the jurisdiction of the United States” in concluding provisions.


Subsec. (a)(1)(B). Pub. L. 107–56, § 106(1)(B), inserted “, block during the pendency of an investigation” after investigate” and substituted “interest by any person, or with respect to any property, subject to the jurisdiction of the United States” for “interest;”.


1994—Subsec. (b)(3), (4). Pub. L. 103–236 added paras. (3) and (4) and struck out former par. (3) which read as follows: “the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 2404 of the Appendix to this title or with respect to which no acts are prohibited by chapter 37 of title 18.”

So in original. The word “or” probably should not appear.
provided that, upon satisfaction of the judgments on which
Pub. L. 107–297) [see Tables for classification], pro-
tachments in aid of execution of judgments pursuant to
or consular purposes, and
the United States, and are or have been used for diplomatic
enactment of this Act.’’
Embargoed under the International Emergency Eco-
date of enactment of this Act, with respect to countries
not apply to restrictions on the transactions and ac-
Economic Powers Act (as added by paragraph (1)) shall
the interest of the United States to confiscate certain
confiscated and vested in the Department of the Treas-
in accounts in the name of the Government of Iraq, the
Central Bank of Iraq, Rafidain Bank, Rasheed Bank, or
S
1. All blocked funds held in the United States
amounts shall, by virtue of this order and without fur-
other action, be confiscated and vested.
Sic. 2. The Secretary of the Treasury is authorized to
perform, without further approval, ratification, or
other action of the President, all functions of the Presi-
dent set forth in section 203(a)(1)(C) of IEEPA [50 U.S.C.
Government of Iraq, including its agencies, instrument-
als, or controlled entities, and to take additional
steps, including the promulgation of rules and regulat-
ations as may be necessary, to carry out the purposes of
this order. The Secretary of the Treasury may redele-
gate such functions in accordance with applicable law.
The Secretary of the Treasury shall consult the Attor-
ney General as appropriate in the implementation of
this order.
Sic. 3. This order shall be transmitted to the Con-
gress and published in the Federal Register.
GEORGE W. BUSH.
§ 1703. Consultation and reports
(a) Consultation with Congress
The President, in every possible instance, shall consult with the Congress before exercis-
ing any of the authorities granted by this chapter
and shall consult regularly with the Congress
so long as such authorities are exercised.
(b) Report to Congress upon exercise of Presi-
dential authorities
Whenever the President exercises any of the
authorities granted by this chapter, he shall im-
mediately transmit to the Congress a report specifying—
(1) the circumstances which necessitate such
exercise of authority;
(2) why the President believes those circum-
stances constitute an unusual and extraor-
dinary threat, which has its source in whole or
substantial part outside the United States, to
the national security, foreign policy, or econ-
omy of the United States;
(3) the authorities to be exercised and the
actions to be taken in the exercise of those au-
thorities to deal with those circumstances;
(4) why the President believes such actions
are necessary to deal with those circum-
stances; and
(5) any foreign countries with respect to
which such actions are to be taken and why
such actions are to be taken with respect to
those countries.
(c) Periodic follow-up reports
At least once during each succeeding six-
month period after transmitting a report pursu-
ant to subsection (b) of this section with respect
to an exercise of authorities under this chapter,
the President shall report to the Congress with
respect to the actions taken, since the last such
report, in the exercise of such authorities, and
with respect to any changes which have oc-
curred concerning any information previously
furnished pursuant to paragraphs (1) through (5)
of subsection (b) of this section.
(d) Supplemental requirements
The requirements of this section are supple-
mental to those contained in title IV of the Na-
tional Emergencies Act [50 U.S.C. 1641].
Stat. 1627.)
§ 1706. Savings provisions

(a) Termination of national emergencies pursuant to National Emergencies Act

(1) Except as provided in subsection (b) of this section, notwithstanding the termination pursuant to the National Emergencies Act [50 U.S.C. 1601 et seq.] of a national emergency declared for purposes of this chapter, any authorities granted by this chapter, which are exercisable on the date of such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(2) Notwithstanding the termination of the authorities described in section 101(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(b) Congressional termination of national emergencies by concurrent resolution

The authorities described in subsection (a)(1) of this section may not continue to be exercised...
under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act [50 U.S.C. 1622] and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

(c) Supplemental savings provisions; supersede of inconsistent provisions

(1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) [50 U.S.C. 1601(a)(1), (2), (3)] and of paragraphs (A), (B), and (C) of section 202(a) [50 U.S.C. 1622(a)(A), (B), and (C)] of the National Emergencies Act.

(2) The provisions of this section supersede the termination provisions of section 101(a) [50 U.S.C. 1601(a)] and of title II [50 U.S.C. 1621 et seq.] of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

(d) Periodic reports to Congress

If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.


REFERENCES IN TEXT

The National Emergencies Act, referred to in subsecs. (a)(1) and (c)(2), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 91 (§1601 et seq.) of this title. Title II of the National Emergencies Act is classified generally to subchapter II (§1621 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Tables.

Section 101(b) of this Act, referred to in subsec. (a)(2), is section 101(b) of Pub. L. 95–223, which is set out as a note under section 3 of the Appendix to this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (d) of this section is listed as the 11th item on page 27), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§1707. Multinational economic embargoes against governments in armed conflict with the United States

(a) Policy on the establishment of embargoes

It is the policy of the United States, that upon the use of the Armed Forces of the United States to engage in hostilities against any foreign country, the President shall, as appropriate—

(1) seek the establishment of a multinational economic embargo against such country; and

(2) seek the seizure of its foreign financial assets.

(b) Reports to Congress

Not later than 20 days after the first day of the engagement of the United States in hos-
As used in this subchapter:

(a) “Foreign power” means—

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization, not substantially composed of United States persons;

(6) an entity that is directed and controlled by a foreign government or governments; or

(7) an entity not substantially composed of United States persons that is engaged in the international proliferation of weapons of mass destruction.

(b) “Agent of a foreign power” means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person’s presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities;

(C) engages in international terrorism or activities in preparation therefore;

(D) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or

(E) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(2) any person who—

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;

(D) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or

(E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) “International terrorism” means activities that—

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of
§ 1801

means—

against the United States.

would involve such a violation if committed

a violation of chapter 105 of title 18, or that

communication, under circumstances in

information, other than from a wire or radio

sender and all intended recipients are lo-

which a person has a reasonable expectation

the United States for monitoring to acquire

vacy and a warrant would be required for

law enforcement purposes; and

(2) the acquisition by an electronic, me-

chanical, or other surveillance device of the

contents of any wire or radio communica-

sent by or intended to be received by a

particular, known United States person who

is in the United States, if the contents are

acquired by intentionally targeting that

United States person, under circumstances

in which a person has a reasonable expecta-

tion of privacy and a warrant would be re-

quired for law enforcement purposes;

the acquisition by an electronic, me-

chanical, or other surveillance device of the

contents of any wire communication to or

from a person in the United States, without

the consent of any party thereto, if such ac-

quisition occurs in the United States, but
do not include the acquisition of those

communications of computer trespassers

that would be permissible under section

2511(2)(i) of title 18;

the intentional acquisition by an elec-

tronic, mechanical, or other surveillance de-

vice of the contents of any radio commu-

nication, under circumstances in which a

person has a reasonable expectation of pri-

vacy and a warrant would be required for

law enforcement purposes, and if both the

sender and all intended recipients are lo-

cated within the United States; or

the installation or use of an electronic,

mechanical, or other surveillance device in

the United States for monitoring to acquire

information, other than from a wire or radio

communication, under circumstances in

which a person has a reasonable expecta-

tion of privacy and a warrant would be re-

quired for law enforcement purposes.

(g) “Attorney General” means the Attorney

General of the United States (or Acting Attor-

ney General), the Deputy Attorney General,
or, upon the designation of the Attorney Gen-

eral, the Assistant Attorney General des-

ignated as the Assistant Attorney General for

National Security under section 507A of title

28.

(h) “Minimization procedures”, with respect
to electronic surveillance, means—

(1) specific procedures, which shall be

adopted by the Attorney General, that are

reasonably designed in light of the purpose

and technique of the particular surveillance,
to minimize the acquisition and retention,

and prohibit the dissemination, of nonpub-

licly available information concerning un-

consenting United States persons consistent

with the need of the United States to obtain,

produce, and disseminate foreign intel-

ligence information;

(2) procedures that require that nonpub-

licly available information, which is not for-

eign intelligence information, as defined in

subsection (e)(1) of this section, shall not be
disseminated in a manner that identifies any

United States person, without such person’s

consent, unless such person’s identity is nec-

essary to understand foreign intelligence in-

formation or assess its importance;

(3) notwithstanding paragraphs (1) and (2),

procedures that allow for the retention and
dissemination of information that is evi-
dence of a crime which has been, is being, or

is about to be committed and that is to be

retained or disseminated for law enforce-

ment purposes; and

(4) notwithstanding paragraphs (1), (2), and

(3), with respect to any electronic surveil-

lance approved pursuant to section 1802(a) of
this title, procedures that require that no

contents of any communication to which a

United States person is a party shall be dis-
closed, disseminated, or used for any purpose

or retained for longer than 72 hours unless a

court order under section 1805 of this title is
obtained or unless the Attorney General de-
termines that the information indicates a

threat of death or serious bodily harm to

any person.

(i) “United States person” means a citizen

of the United States, an alien lawfully ad-

mitted for permanent residence (as defined in
section 1101(a)(20) of title 8), an unincorporated
association a substantial number of members
of which are citizens of the United States or

aliens lawfully admitted for permanent resi-
dence, or a corporation which is incorporated
in the United States, but does not include a

corporation or an association which is a for-
ingen power, as defined in subsection (a)(1), (2),
or (3) of this section.

(j) “United States”, when used in a geo-

graphic sense, means all areas under the terri-

torial sovereignty of the United States and the

Trust Territory of the Pacific Islands.

(k) “Aggrieved person” means a person who

is the target of an electronic surveillance or
any other person whose communications or activities were subject to electronic surveillance.

(i) “Wire communication” means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) “Person” means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) “Contents”, when used with respect to a communication, includes any information contained in such communication or the existence, substance, purport, or meaning of that communication.

(o) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(p) “Weapon of mass destruction” means—

(1) any explosive, incendiary, or poison gas device that is designed, intended, or has the capability to cause a mass casualty incident;

(2) any weapon that is designed, intended, or has the capability to cause death or serious bodily injury to a significant number of persons through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined in section 178 of title 18) that is designed, intended, or has the capability to cause death, illness, or serious bodily injury to a significant number of persons;

(4) any weapon that is designed, intended, or has the capability to release radiation or radioactivity causing death, illness, or serious bodily injury to a significant number of persons.

(2006—Subsec. (g), Pub. L. 109–177 substituted “the Deputy Attorney General, or, upon the designation of the Attorney General, the Assistant Attorney General designated as the Assistant Attorney General for National Security under section 507A of title 28” for “the Deputy Attorney General”).


1999—Subsec. (b)(2)(D), (E). Pub. L. 106–120 added subpar. (D) and redesignated former subpar. (D) as (E).

Effective Date of 2008 Amendment

Pub. L. 110–261, title IV, §402, July 10, 2008, 122 Stat. 2473, provided that: “Except as provided in section 404 [set out as a note under this section], the amendments made by this Act [see Short Title of 2008 Amendment note below] shall take effect on the date of the enactment of this Act [July 10, 2008].”

Termination Date of 2004 Amendment

Pub. L. 108–458, title VI, §6001(b), Dec. 17, 2004, 118 Stat. 3743, provided that: “Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall cease to have effect on February 28, 2011.

(2) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which the provisions cease to have effect, such provisions shall continue in effect.”

Effective Date of 2001 Amendment

Pub. L. 107–108, title III, §314(c), Dec. 28, 2001, 115 Stat. 1411, provided in part that: “Except as provided in paragraph (2), the amendments made hereby shall become effective upon the date of the enactment of this Act [Oct. 25, 1998], except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act (enacting this subchapter) within ninety days following the designation of the first judge pursuant to section 188 of this Act [section 1803 of this title], was repealed by Pub. L. 110–261, title I, §101(a)(1), July 10, 2008, 122 Stat. 2437.
Short Title of 2008 Amendment
Pub. L. 110–261, §1(a), July 10, 2008, 122 Stat. 2436, provided that: “This Act [enacting section 1612 and subsections VI and VII of this chapter, amending this section, sections 1803 to 1805, 1806, 1808, 1809, 1821 to 1825, 1843, and 1871 of this title, and section 2511 of Title 18, Crimes and Criminal Procedure, repealing sections 1805a to 1805c of this title and subchapter VI of this chapter, enacting provisions set out as notes under this section, section 1881 of this title, and section 2511 of Title 18, amending provisions set out as a note under section 1803 of this title, and repealing provisions set out as a note under this section] may be cited as the ‘Foreign Intelligence Surveillance Act of 1978 Amendments of 2008’ or the ‘FISA Amendments Act of 2008’.”

Short Title of 2007 Amendment
Pub. L. 110–55, §1, Aug. 5, 2007, 121 Stat. 552, provided that: “This Act [enacting sections 1805a to 1805c of this title, amending section 1803 of this title, and enacting provisions set out as a note under section 1803 of this title] may be cited as the ‘Protect America Act of 2007’.”

Short Title of 2000 Amendment
Pub. L. 106–567, title VI, §601, Dec. 27, 2000, 114 Stat. 2850, provided that: “This title [enacting sections 402a, 1804, 1805, 1808, 1823, and 1824 of this title, and enacting provisions set out as a note under this title] may be cited as the ‘Counterintelligence Reform Act of 2000’.”

Short Title
Section 1 of Pub. L. 95–511 provided in part: “That this Act [enacting this chapter, amending sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note above] may be cited as the ‘Foreign Intelligence Surveillance Act of 1978’.”

Severability
Pub. L. 110–261, title IV, §401, July 10, 2008, 122 Stat. 2473, provided that: “If any provision of this Act [see Short Title of 2008 Amendment note above], any amendment made by this Act, the Protect America Act of 2007, or the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), is held invalid, the validity of the remainder of the Act, of any such amendment, and of the application of such provisions to other persons and circumstances shall not be affected thereby.”

Transitional Procedures

“(1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—Except as provided in paragraph (7), notwithstanding any other provision of law, any order, authorization, or directive issued or made pursuant to section 165B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805b), as added by section 2 of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 552), shall continue in effect until the expiration of such order, authorization, or directive.
“(4) **REPORTING REQUIREMENTS.**—

“(A) **CONTINUED APPLICABILITY.**—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978, [50 U.S.C. 1881c] as added by section 2 of the Protect America Act of 2007 (Public Law 110–55), any order, authorization, or directive issued or pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881x], as added by section 101(a) of this Act, shall remain in effect, notwithstanding the expiration provided for in subsection (a) of such section 105B, until the Foreign Intelligence Surveillance Court (as such term is defined in section 701(b)(2) of such Act [50 U.S.C. 1801(b)(2)]) (as so added) a certification prepared in accordance with subsection (g) of such section 702 and the procedures adopted in accordance with subsections (d) and (e) of such section 702 at least 30 days before the expiration of such certification.

“(A) **IN GENERAL.**—If the Attorney General and the Director of National Intelligence seek to replace an authorization made pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881x] as added by section 2 of the Protect America Act of 2007 (Public Law 110–55), with an authorization under section 702 of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881a] (as added by section 101(a) of this Act), the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Foreign Intelligence Surveillance Court (as such term is defined in section 701(b)(2) of such Act [50 U.S.C. 1801(b)(2)]) (as so added)) a certification in accordance with subsection (g) of such section 702 and the procedures adopted in accordance with subsections (d) and (e) of such section 702 at least 30 days before the expiration of such certification.

“(B) **CONTINUATION OF EXISTING ORDERS.**—If the Attorney General and the Director of National Intelligence seek to replace an authorization made pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881x] as added by section 2 of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 522), by filing a certification in accordance with subparagraph (A), that authorization, and any directives issued thereunder and any order related thereto, shall remain in effect, notwithstanding the expiration provided for in subsection (a) of such section 105B, until the Foreign Intelligence Surveillance Court (as such term is defined in section 701(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (as so added)) issues an order with respect to that certification under section 702(1)(3) of such Act (as so added) at which time the provisions of that section and of section 702(1)(4) of such Act (as so added) shall apply.

“(3) **EFFECTIVE DATE.**—Paragraphs (1) through (7) shall take effect as if enacted on August 5, 2007.

“(B) **TRANSITION PROCEDURES FOR FISA AMENDMENTS ACT OF 2008 PROVISIONS.**—

“(1) **ORDERS IN EFFECT ON DECEMBER 31, 2012.**—Notwithstanding any other provision of this Act, any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.], any authorization, or directive issued under title VII of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881 et seq.], as amended by section 101(a), shall continue in effect until the date of the expiration of such order, authorization, or directive.

“(2) **APPLICABILITY OF TITLE VII OF FISA TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.**—Notwithstanding any other provision of this Act, any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.], any authorization, or directive issued under title VII of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881 et seq.], as amended by section 101(a), shall continue in effect until the date of the expiration of such order, authorization, or directive.

“(3) **CHALLENGE OF DIRECTIVES: PROTECTION FROM LIABILITY; USE OF INFORMATION.**—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.],—

“(A) section 103(e) of such Act [50 U.S.C. 1803(e)], as amended by section 403(a)(1)(B)(ii), shall continue to apply with respect to any directive issued pursuant to section 702(h) of such Act [50 U.S.C. 1881(a)], as added by section 101(a); and

“(B) section 702(h)(3) of such Act (as so added) shall continue to apply with respect to any directive issued pursuant to section 702(h) of such Act (as so added); and

“(C) section 703(e) of such Act [50 U.S.C. 1881(b)] (as so added) shall continue to apply with respect to any order or request for emergency assistance under that section.

“(D) section 706 of such Act [50 U.S.C. 1881(e)] (as so added) shall continue to apply to an acquisition conducted under section 702 or 705 of such Act (as so added); and

“(E) section 2511(2)(a)(iv)(A) of title 18, United States Code, as amended by section 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1811c] as added by section 101(a).

“(4) **REPORTING REQUIREMENTS.**—

“(A) **CONTINUED APPLICABILITY.**—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978, [50 U.S.C. 1881c] as added by section 2 of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 522), by filing a certification in accordance with subparagraph (A), that authorization, and any directives issued thereunder and any order related thereto, shall remain in effect, notwithstanding the expiration provided for in subsection (a) of such section 105B, until the Foreign Intelligence Surveillance Court (as such term is defined in section 701(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (as so added)) issues an order with respect to that certification under section 702(1)(3) of such Act (as so added) at which time the provisions of that section and of section 702(1)(4) of such Act (as so added) shall apply.

“(B) **CERTIFICATION.**—The certification described in this subparagraph is a certification—

“(i) made by the Attorney General;

“(ii) submitted to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on the Judiciary of the Senate and the House of Representatives;

“(iii) that states that there will be no further acquisitions carried out under title VII of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.], as amended by section 101(a), after the date of such certification; and

“(iv) that states that the information required to be included in a review, assessment, or report under section 601 of such Act [50 U.S.C. 1871], as amended by section 101(c), and section 702(l) or 707 of such Act, as added by section 101(a), relating to any acquisition conducted under title VII of such Act, as amended by section 101(a), has been included in a review, assessment, or report under such section 601, 702(l), or 707.

“(5) **TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS OVERSEAS.**—Any authorization in effect on the date of enactment of this Act [July 10, 2008] under section 2.5 of Executive Order 12333 [50 U.S.C. 401 note] to intentionally target a United States person reasonably believed to be located outside the United States shall continue in effect, and shall constitute a sufficient basis for conducting such an acquisition targeting a United States person located outside the United States until the earlier of—

“(A) the date that authorization expires; or

“(B) the date that is 90 days after the date of the enactment of this Act [July 10, 2008].”

**Termination of Trust Territory of the Pacific Islands**

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.
§ 1802. Electronic surveillance authorization without court order; certification by Attorney General; reports to Congressional committees; transmittal under seal; duties and compensation of communication common carriers; applications; jurisdiction of court

(a)(1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) the acquisition of the contents of communications transmitted by means of communications used exclusively between or among foreign powers, as defined in section 1803(a)(1), (2), or (3) of this title; or

(ii) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power, as defined in section 1803(a)(1), (2), or (3) of this title;

(B) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party; and

(C) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 1801(h) of this title; and

if the Attorney General reports such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General’s certification and the minimization procedures adopted by him. The Attorney General shall assess compliance with such procedures and shall report such assessments to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence under the provisions of section 1806(a) of this title.

(3) The Attorney General shall immediately transmit under seal to the court established under section 1803(a) of this title a copy of his certification. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the surveillance is made under sections 1801(h)(4) and 1804 of this title; or

(B) the certification is necessary to determine the legality of the surveillance under section 1806(f) of this title.

(4) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this subsection are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the court having jurisdiction under section 1803 of this title, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 1805 of this title, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) of this section unless such surveillance may involve the acquisition of communications of any United States person.


AMENDMENTS


 EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 22925, set out as a note under section 401 of this title.


EX. ORD. NO. 12139. EXERCISE OF CERTAIN AUTHORITY RESPECTING ELECTRONIC SURVEILLANCE


By the authority vested in me as President by Sections 102 and 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802 and 1804), in order to provide as set forth in that Act [this chapter] for the authorization of electronic surveillance for foreign intelligence purposes, it is hereby ordered as follows: 1–101. Pursuant to Section 102(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)),
the Attorney General is authorized to approve electronic surveillance to acquire foreign intelligence information without a court order, but only if the Attorney General makes the certifications required by that Section.

1–102. Pursuant to Section 102(b) of the Foreign Intelligence Act of 1978 (50 U.S.C. 1802(b)), the Attorney General is authorized to approve applications to the court having jurisdiction under Section 103 of that Act (50 U.S.C. 1803) to obtain orders for electronic surveillance for the purpose of obtaining foreign intelligence information.

1–103. Pursuant to Section 104(a)(6) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(6)), the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by Section 104(a)(6) of the Act in support of applications to conduct electronic surveillance:

(a) Secretary of State.
(b) Secretary of Defense.
(c) Director of National Intelligence.
(d) Director of the Federal Bureau of Investigation.
(e) Deputy Secretary of State.
(f) Deputy Secretary of Defense.
(g) Director of the Central Intelligence Agency.
(h) Principal Deputy Director of National Intelligence.
(i) Deputy Director of the Federal Bureau of Investigation.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President with the advice and consent of the Senate. The requirement of the preceding sentence that the named official must be appointed by the President with the advice and consent of the Senate does not apply to the Deputy Director of the Federal Bureau of Investigation.

Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978 shall be conducted in accordance with that Act as well as this Order.’’.

1–104. Section 2–203 of Executive Order No. 12036 [set out under section 401 of this title] is amended by inserting the following at the end of that section: “Any electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act as well as this Order.”.

§ 1803. Designation of judges

(a) Court to hear applications and grant orders; record of denial; transmittal to court of review

(1) The Chief Justice of the United States shall publicly designate 11 district court judges from at least seven of the United States judicial circuits of whom no fewer than 3 shall reside within 20 miles of the District of Columbia who shall constitute a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this chapter, except that no judge designated under this subsection (except when sitting en banc under paragraph (2)) shall hear the same application for electronic surveillance under this chapter which has been denied previously by another judge designated under this subsection. If any judge so designated denies an application for an order authorizing electronic surveillance under this chapter, such judge shall provide immediately for the record a written statement of each reason of his decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established in subsection (b) of this section.

(2)(A) The court established under this subsection may, on its own initiative, or upon the request of the Government in any proceeding or a party under section 1861(f) of this title or paragraph (4) or (5) of section 1881a(h) of this title, hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

(i) en banc consideration is necessary to secure or maintain uniformity of the court’s decisions; or

(ii) the proceeding involves a question of exceptional importance.

(B) Any authority granted by this chapter to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this chapter on the exercise of such authority.

(C) For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection.

(b) Court of review; record, transmittal to Supreme Court

The Chief Justice shall publicly designate three judges, one of whom shall be publicly designated as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a court of review which shall have jurisdiction to review the denial of any application made under this chapter. If such court determines that the application was properly denied, the court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

(c) Expeditious conduct of proceedings; security measures for maintenance of records

Proceedings under this chapter shall be conducted as expeditiously as possible. The record of proceedings under this chapter, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of National Intelligence.

(d) Tenure

Each judge designated under this section shall serve for a maximum of seven years and shall not be eligible for redesignation, except that the judges first designated under subsection (a) of this section shall be designated for terms of from one to seven years so that one term expires each year, and that judges first designated under subsection (b) of this section shall be designated for terms of three, five, and seven years.

(e) Jurisdiction and procedures for review of petitions

(1) Three judges designated under subsection (a) who reside within 20 miles of the District of

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Columbia, or, if all of such judges are unavailable, other judges of the court established under subsection (a) as may be designated by the presiding judge of such court, shall comprise a petition review pool which shall have jurisdiction to review petitions filed pursuant to section 1861(f)(1) or 1881(a)(4) of this title.

(2) Not later than 60 days after March 9, 2006, the court established under subsection (a) shall adopt and, consistent with the protection of national security, publish procedures for the review of petitions filed pursuant to section 1861(f)(1) or 1881(a)(4) of this title by the panel established under paragraph (1). Such procedures shall provide that review of a petition shall be conducted in camera and shall also provide for the designation of an acting presiding judge.

(f) Stay of order

(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any subchapter of this chapter, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition for certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

(2) The authority described in paragraph (1) shall apply to an order entered under any provision of this chapter.

(g) Establishment and transmittal of rules and procedures

(1) The courts established pursuant to subsections (a) and (b) may establish such rules and procedures, and take such actions, as are reasonably necessary to administer their responsibilities under this chapter.

(2) The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded, and shall be transmitted to the following:

(A) All of the judges on the court established pursuant to subsection (a).

(B) All of the judges on the court of review established pursuant to subsection (b).

(C) The Chief Justice of the United States.

(D) The Committee on the Judiciary of the Senate.

(E) The Select Committee on Intelligence of the Senate.

(F) The Committee on the Judiciary of the House of Representatives.

(G) The Permanent Select Committee on Intelligence of the House of Representatives.

(3) The transmissions required by paragraph (2) shall be submitted in unclassified form, but may include a classified annex.

(h) Compliance with rules, orders, and procedures

Nothing in this chapter shall be construed to reduce or contravene the inherent authority of the court established under subsection (a) to determine or enforce compliance with an order or a rule of such court or with a procedure approved by such court.


REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c), (f), (g)(1), and (h), was in the original “this Act”, meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS


2006—Subsec. (a). Pub. L. 110–261, §109(a)–(b)(2)(A), designated existing provisions as par. (1), inserted “at least” before “seven of the United States judicial circuits” and “(except when sitting en banc under paragraph (2))” before “shall hear”, and added par. (2).


Subsecs. (f), (g). Pub. L. 110–261, §109(c), added subsec. (f) and redesignated former subsec. (f) as (g).


2001—Subsec. (a). Pub. L. 107–56 substituted “11 district court judges” for “seven district court judges” and inserted “of whom no fewer than 3 shall reside within 20 miles of the District of Columbia” after “judicial circuits”.

EFFECTIVE DATE OF 2008 AMENDMENT


EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT


“(a) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this Act (enacting sections
1805a to 1805c of this title and amending this section) shall take effect immediately after the date of the enactment of this Act [Aug. 5, 2007].


“(c) SUNSET.—Except as provided in subsection (d), sections 2, 3, 4, and 5 of this Act [enacting sections 1805a to 1805c of this title and amending this section], and the amendments made by this Act [enacting sections 1805a to 1805c of this title and amending this section], shall cease to have effect 195 days after the date of the enactment of this Act.

“(d) AUTHORIZATIONS IN EFFECT.—Authorizations for the acquisition of foreign intelligence information pursuant to the amendments made by this Act, and directives issued pursuant to such authorizations, shall remain in effect until their expiration. Such acquisitions shall be governed by the applicable provisions of such amendments and shall not be deemed to constitute electronic surveillance as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).”


§ 1804. Applications for court orders

(a) Submission by Federal officer; approval of Attorney General; contents

Each application for an order approving electronic surveillance under this subchapter shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 1803 of this title. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this subchapter. It shall include—

(1) the identity of the Federal officer making the application;
(2) the identity, if known, or a description of the specific target of the electronic surveillance;
(3) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—
(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and
(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;
(4) a statement of the proposed minimization procedures;
(5) a description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;
(6) a certification or certifications by the Assistant to the President for National Security Affairs, an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—
(A) that the certifying official deems the information sought to be foreign intelligence information;
(B) that a significant purpose of the surveillance is to obtain foreign intelligence information;
(C) that such information cannot reasonably be obtained by normal investigative techniques;
(D) that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and
(E) including a statement of the basis for the certification that—
(i) the information sought is the type of foreign intelligence information designated; and
(ii) such information cannot reasonably be obtained by normal investigative techniques;
(7) a summary statement of the means by which the surveillance will be effected and a statement whether physical entry is required to effect the surveillance;
(8) a statement of the facts concerning all previous applications that have been made to any judge under this subchapter involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application; and
(9) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this subchapter should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter.

(b) Additional affidavits or certifications

The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(c) Additional information

The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 1805 of this title.

(d) Personal review by Attorney General

(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, the Director of National Intelligence, or the Direc-
tor of the Central Intelligence Agency, the Attorney General shall personally review under subsection (a) of this section an application under that subsection for a target described in section 1801(b)(2) of this title.

(B) Except when disabled or otherwise unavailable to make a request referred to in subparagraph (A), an official referred to in that subparagraph may not delegate the authority to make a request referred to in that subparagraph.

(C) Each official referred to in subparagraph (A) with authority to make a request under that subparagraph shall take appropriate actions in advance to ensure that delegation of such authority is clearly established in the event such official is disabled or otherwise unavailable to make such request.

(2)(A) If as a result of a request under paragraph (1) the Attorney General determines not to approve an application under the second sentence of subsection (a) of this section for purposes of making the application under this section, the Attorney General shall provide written notice of the determination to the official making the request for the review of the application under that paragraph. Except when disabled or otherwise unavailable to make a determination under the preceding sentence, the Attorney General may not delegate the responsibility to make a determination under that sentence. The Attorney General shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event the Attorney General is disabled or otherwise unavailable to make such determination.

(B) Notice with respect to an application under subparagraph (A) shall set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application under the second sentence of subsection (a) of this section for purposes of making the application under this section.

(C) Upon review of any modifications of an application set forth under subparagraph (B), the official notified of the modifications under this paragraph shall modify the application if such official determines that such modification is warranted. Such official shall supervise the making of any modification under this paragraph. Each such official shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.


FOR FURTHER REVIEW

OFFICIALS TO MAKE CERTIFICATIONS

For designation of certain officials to make certifications required by subsec. (a)(7) of this section, see Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, set out under section 1802 of this title.
§ 1805. Issuance of order

(a) Necessary findings

Upon an application made pursuant to section 1804 of this title, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the application has been made by a Federal officer and approved by the Attorney General;

(2) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: Provided, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(3) the proposed minimization procedures meet the definition of minimization procedures under section 1801(h) of this title; and

(4) the application which has been filed contains all statements and certifications required by section 1804 of this title and, if the target is a United States person, the certifications or certifications are not clearly erroneous on the basis of the statement made under section 1804(a)(7)(E) of this title and any other information furnished under section 1804(d) of this title.

(b) Determination of probable cause

In determining whether or not probable cause exists for purposes of an order under subsection (a)(2) of this section, a judge may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target.

(c) Specifications and directions of orders

(1) Specifications

An order approving an electronic surveillance under this section shall specify—

(A) the identity, if known, or a description of the specific target of the electronic surveillance identified or described in the application pursuant to section 1804(a)(3) of this title;

(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed, if known;

(C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;

(D) the means by which the electronic surveillance will be effected and whether physical entry will be used to effect the surveillance; and

(E) the period of time during which the electronic surveillance is approved.

(2) Directions

An order approving an electronic surveillance under this section shall direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person, or in circumstances where the Court finds, based upon specific facts provided in the application, that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons, furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and

(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.

(3) Special directions for certain orders

An order approving an electronic surveillance under this section in circumstances where the nature and location of each of the facilities or places at which the surveillance will be directed is unknown shall direct the applicant to provide notice to the court within ten days after the date on which surveillance begins to be directed at any new facility or place, unless the court finds good cause to justify a longer period of up to 60 days, of—

(A) the nature and location of each new facility or place at which the electronic surveillance is directed;

(B) the facts and circumstances relied upon by the applicant to justify the applicant’s belief that each new facility or place at which the electronic surveillance is directed is or was being used, or is about to be used, by the target of the surveillance;

(C) a statement of any proposed minimization procedures that differ from those contained in the original application or order, that may be necessitated by a change in the facility or place at which the electronic surveillance is directed; and

(D) the total number of electronic surveillances that have been or are being conducted under the authority of the order.

(d) Duration of order; extensions; review of circumstances under which information was acquired, retained or disseminated

(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that (A) an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title, for the period specified in the application
or for one year, whichever is less, and (B) an order under this chapter for a surveillance targeted against an agent of a foreign power who is not a United States person may be for the period specified in the application or for 120 days, whichever is less.

(2) Extensions of an order issued under this subchapter may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that (A) an extension of an order under this chapter for a surveillance targeted against a foreign power, as defined in paragraph (5), (6), or (7) of section 1801(a) of this title, or against a foreign power as defined in section 1801(a)(4) of this title that is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period, and (B) an extension of an order under this chapter for a surveillance targeted against an agent of a foreign power who is not a United States person may be for a period not to exceed 1 year.

(3) At or before the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(e) Emergency orders

(1) Notwithstanding any other provision of this subchapter, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General—

(A) reasonably determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

(B) reasonably determines that the factual basis for the issuance of an order under this subchapter to approve such electronic surveillance exists;

(C) informs, either personally or through a designee, a judge having jurisdiction under section 1803 of this title at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

(D) makes an application in accordance with this subchapter to a judge having jurisdiction under section 1803 of this title as soon as practicable, but not later than 7 days after the Attorney General authorizes such surveillance.

(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this subchapter for the issuance of a judicial order be followed.

(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(f) Testing of electronic equipment; discovering unauthorized electronic surveillance; training of intelligence personnel

Notwithstanding any other provision of this subchapter, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment;

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test; and

(D) Provided. That the test may exceed ninety days only with the prior approval of the Attorney General;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, or section 605 of title 47, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—
(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this subchapter; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained, or disseminated for any purpose, but are destroyed as soon as reasonably possible.

(g) Retention of certifications, applications and orders

Certifications made by the Attorney General pursuant to section 1802(a) of this title and applications made and orders granted under this subchapter shall be retained for a period of at least one year from the date of the certification or application.

(h) Bar to legal action

No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that furnishes any information, facilities, or technical assistance in accordance with a court order or request for emergency assistance under this chapter for electronic surveillance or physical search.

(i) Pen registers and trap and trace devices

In any case in which the Government makes an application to a judge under this subchapter to conduct electronic surveillance involving communications and the judge grants such application, upon the request of the applicant, the judge shall also authorize the installation and use of pen registers and trap and trace devices, and direct the disclosure of the information set forth in section 1842(d)(2) of this title.

...
procedures shall apply to information subject to acquisition by each device."

Subsec. (d). Pub. L. 110–261, § 105(a)(4), (5), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to exclusion of certain information respecting foreign power targets from ex parte order.

Subsec. (d)(2). Pub. L. 110–261, § 110(c)(1), substituted "‘‘paragraph (5), (6), or (7) of section 1801(a)’’ for ‘‘section 1801(a)(5) or (6)’’.

Subsec. (e). Pub. L. 110–261, § 105(a)(5), (6), redesignated subsec. (f) as (e) and amended it generally. Prior to amendment, subsec. (e) related to authority of the Attorney General to authorize emergency employment of electronic surveillance and required application to a judge within 72 hours after authorization. Former subsec. (e) redesignated (d).

Subsecs. (f) to (i). Pub. L. 110–261, § 105(a)(5), (7), added subsec. (i) and redesignated former subsecs. (g) to (i) as (f) to (h), respectively. Former subsec. (f) redesignated (e).

2006—Subsec. (c)(1). Pub. L. 109–177, § 108(b)(1), substituted ‘‘(1) SPECIFICATIONS.—An order approving an electronic surveillance under this section shall specify—’’ for ‘‘An order approving an electronic surveillance under this section shall—’’.

Subsec. (c)(1)(A). Pub. L. 109–177, § 108(a)(2)(A), substituted ‘‘specific target of the electronic surveillance identified or described in the application pursuant to section 1804(a)(3) of this title’’ for ‘‘target of the electronic surveillance’’.


Subsec. (c)(2). Pub. L. 109–177, § 108(b)(3), inserted par. heading and substituted ‘‘An order approving an electronic surveillance under this section shall direct’’ for ‘‘direct’’ in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 109–177, § 108(a)(2)(B), substituted ‘‘where the Court finds, based upon specific facts provided in the application,’’ for ‘‘where the Court finds’’.


Subsec. (e)(1)(B). Pub. L. 109–177, § 105(a)(1), substituted ‘‘who is not a United States person’’ for ‘‘, and (B) an extension of an order under this chapter for a surveillance targeted against an agent of a foreign power, as defined in section 1801(b)(1)(A) of this title’’.

Subsec. (e)(2)(B). Pub. L. 109–177, § 105(a)(2), substituted ‘‘who is not a United States person’’ for ‘‘as defined in section 1801(b)(1)(A) of this title’’.


2002—Subsec. (i). Pub. L. 107–273 amended Pub. L. 107–56, § 207(a)(1), inserted ‘‘(A)’’ after ‘‘except that’’ and ‘‘, and (B) an order under this chapter for a surveillance targeted against an agent of a foreign power, as defined in section 1801(b)(1)(A) of this title may be for the period specified in the application or for 120 days, whichever is less’’ before period at end.

Subsec. (e)(2). Pub. L. 107–56, § 1207(b)(1), as amended by Pub. L. 107–108, § 1207(c)(1), inserted ‘‘(A)’’ after ‘‘except that’’ and ‘‘, and (B) an extension of an order under this chapter for a surveillance targeted against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title may be for a period not to exceed 1 year’’ before period at end.


2000—Subsecs. (b), (c), Pub. L. 106–567, § 602(b)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 106–567, § 602(b)(1), (3), redesignated subsec. (c) as (d) and substituted ‘‘subsection (c)(1)’’ for ‘‘subsection (b)(1)’’. Former subsec. (d) redesignated (e).

Subsecs. (e) to (h), Pub. L. 106–567, § 602(b)(1), redesignated subsecs. (d) to (g) as (e) to (h), respectively.

1984—Subsec. (f)(2)(C). Pub. L. 98–549 substituted ‘‘section 705’’ for ‘‘section 605’’ in the original to accommodate renumbering of sections in subchapter VII (section 601 et seq.) of chapter 5 of Title 47, Telephones, Radiophones, and Radiotelegraphs, by section 6(a) of Pub. L. 98–549. Because both sections translate as ‘‘section 605 of Title 47’’, the amendment by Pub. L. 98–549 resulted in no change in text.

EFFECTIVE DATE OF 2008 AMENDMENT

EFFECTIVE DATE OF 2006 AMENDMENT


(2) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.

EFFECTIVE DATE OF 2004 AMENDMENT
For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


EFFECTIVE DATE OF 2002 AMENDMENT

EFFECTIVE DATE OF 2001 AMENDMENT

**Effective Date of 1984 Amendment**

Amendment by Pub. L. 98–549 effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98–549, set out as a note under section 521 of Title 47, Telephones, and Radiotelegraphs.


**Effective Date of Repeal**


§ 1806. Use of information

(a) Compliance with minimization procedures; privileged communications; lawful purposes

Information acquired from an electronic surveillance conducted pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this subchapter. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this subchapter shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Statement for disclosure

No information acquired pursuant to this subchapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Notification by United States

Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this subchapter, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Notification by States or political subdivisions

Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Motion to suppress

Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) In camera and ex parte review by district court

Whenever a court or other authority is notified pursuant to subsection (c) or (d) of this section, or whenever a motion is made pursuant to subsection (e) of this section, or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this chapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the surveillance as may be necessary.
to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the surveillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance.

(g) Suppression of evidence; denial of motion

If the United States district court pursuant to subsection (f) of this section determines that the surveillance was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Finality of orders

Orders granting motions or requests under subsection (g) of this section, decisions under this section that electronic surveillance was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

(i) Destruction of unintentionally acquired information

In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents indicate a threat of death or serious bodily harm to any person.

(j) Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination

If an emergency employment of electronic surveillance is authorized under section 1805(e) of this title and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

(1) the fact of the application; (2) the period of the surveillance; and (3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

(k) Coordination with law enforcement on national security matters

(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this subchapter may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power; (B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 1804(a)(7)(B) of this title or the entry of an order under section 1805 of this title.

(3) The Attorney General shall inform the United States court requiring review or granting disclosure of applications, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

(k) Coordination with law enforcement on national security matters

(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this subchapter may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power; (B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 1804(a)(7)(B) of this title or the entry of an order under section 1805 of this title.

(3) The Attorney General shall inform the United States court requiring review or granting disclosure of applications, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

(i) Destruction of unintentionally acquired information

In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents indicate a threat of death or serious bodily harm to any person.

(j) Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination

If an emergency employment of electronic surveillance is authorized under section 1805(e) of this title and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

(1) the fact of the application; (2) the period of the surveillance; and (3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

(k) Coordination with law enforcement on national security matters

(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this subchapter may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power; (B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 1804(a)(7)(B) of this title or the entry of an order under section 1805 of this title.

(3) The Attorney General shall inform the United States court requiring review or granting disclosure of applications, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

(iii) Destruction of unintentionally acquired information

In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents indicate a threat of death or serious bodily harm to any person.

(j) Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination

If an emergency employment of electronic surveillance is authorized under section 1805(e) of this title and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

(1) the fact of the application; (2) the period of the surveillance; and (3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

(k) Coordination with law enforcement on national security matters

(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this subchapter may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power; (B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 1804(a)(7)(B) of this title or the entry of an order under section 1805 of this title.

(3) The Attorney General shall inform the United States court requiring review or granting disclosure of applications, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

AMENDMENTS


Subsec. (k)(1). Pub. L. 110–261, § 110(b)(1), substituted “sabotage, international terrorism, or the international proliferation of weapons of mass destruction” for “sabotage, international terrorism”.


REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original “this Act”, meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.


See References in Text note below.
out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110–261, set out as an Effective Date note under section 1801 of this title.

**Effective Date of 2002 Amendment**

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.


Pub. L. 106–567, title VI, § 604(b), Dec. 27, 2000, 114 Stat. 2853, provided that:

“(1) The Attorney General shall submit to the appropriate committees of Congress a report on the authorities and procedures utilized by the Department of Justice for determining whether or not to disclose information acquired under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for law enforcement purposes.

“(2) In this subsection, the term ‘appropriate committees of Congress’ means the following:

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

(B) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.”

§ 1807. Report to Administrative Office of the United States Court and to Congress

In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Court and to Congress a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this subchapter; and

(b) the total number of such orders and extensions either granted, modified, or denied.


§ 1808. Report of Attorney General to Congressional committees; limitation on authority or responsibility of information gathering activities of Congressional committees; report of Congressional committees to Congress

(a)(1) On a semianual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, and the Committee on the Judiciary of the Senate, concerning all electronic surveillance under this subchapter. Nothing in this subchapter shall be deemed to limit the authority and responsibility of the appropriate committees of each House of Congress to obtain such information as they may need to carry out their respective functions and duties.

(2) Each report under the first sentence of paragraph (1) shall include a description of—

(A) the total number of applications made for orders and extensions of orders approving electronic surveillance under this subchapter where the nature and location of each facility or place at which the electronic surveillance will be directed is unknown;

(B) each criminal case in which information acquired under this chapter has been author-

ized for use at trial during the period covered by such report; and

(C) the total number of emergency employment of electronic surveillance under section 1805(e) of this title and the total number of subsequent orders approving or denying such electronic surveillance.

(b) On or before one year after October 25, 1978, and on the same day each year for four years thereafter, the Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence shall report respectively to the House of Representatives and the Senate, concerning the implementation of this chapter. Said reports shall include but not be limited to an analysis and recommendations concerning whether this chapter should be (1) amended, (2) repealed, or (3) permitted to continue in effect without amendment.


**References in Text**

This chapter, referred to in subsec. (b), was in the original ‘‘this Act’’, meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

**Amendments**


Subsec. (a)(2). Pub. L. 109–177, § 108(c)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ‘‘(A) each criminal case in which information acquired under this chapter has been passed for law enforcement purposes during the period covered by such report; and

(B) each criminal case in which information acquired under this chapter has been authorized for use at trial during such reporting period.’’

2000—Subsec. (a). Pub. L. 106–567 redesignated existing provisions as par. (1) and added par. (2).

**Effective Date of 2008 Amendment**


§ 1809. Criminal sanctions

(a) Prohibited activities

A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title;
(2) discloses or uses information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title.

(b) Defense
It is a defense to a prosecution under subsection (a) of this section that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(c) Penalties
An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

(d) Federal Jurisdiction
There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

References in Text

Amendments

2008—Subsec. (a)(2). Pub. L. 110–261 substituted “authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title;” for “authorized by statute” in pars. (1) and (2).

Effective Date of 2008 Amendment

§ 1810. Civil liability
An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801(a) or (b)(1)(A) of this title, respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 1809 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of $1,000 or $100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney’s fees and other investigation and litigation costs reasonably incurred.


§ 1811. Authorization during time of war
Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed fifteen calendar days following a declaration of war by the Congress.


§ 1812. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted
(a) Except as provided in subsection (b), the procedures of chapters 119, 121, and 206 of title 18 and this chapter shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.

(b) Only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to this chapter or chapters 119, 121, or 206 of title 18 shall constitute an additional exclusive means for the purpose of subsection (a).


References in Text
This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1793, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.


Subchapter II—Physical Searches

§ 1821. Definitions
As used in this subchapter:
(1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”, “sabotage”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, “weapon of mass destruction”, and “State” shall have the same meanings as in section 1801 of this title, except as specifically provided by this subchapter.
(2) ‘‘Aggrieved person’’ means a person whose premises, property, information, or material is the target of physical search or any other person whose premises, property, information, or material was subject to physical search.

(3) ‘‘Foreign Intelligence Surveillance Court’’ means the court established by section 1803(a) of this title.

(4) ‘‘Minimization procedures’’ with respect to physical search, means—

(A) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purposes and technique of the particular physical search, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 1801(e)(1) of this title, shall not be disseminated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is necessary to understand such foreign intelligence information or assess its importance;

(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(D) notwithstanding subparagraphs (A), (B), and (C), with respect to any physical search approved pursuant to section 1822(a) of this title, procedures that require that no information, material, or property of a United States person shall be disclosed, disseminated, or used for any purpose or retained for longer than 72 hours unless a court order under section 1824 of this title is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(5) ‘‘Physical search’’ means any physical intrusion within the United States into premises or property (including examination of the interior of property by technical means) that is intended to result in a seizure, reproduction, inspection, or alteration of information, material, or property, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, but does not include (A) ‘‘electronic surveillance’’, as defined in section 1801(f) of this title, or (B) the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 1801(f) of this title.

§ 1822. Authorization of physical searches for foreign intelligence purposes

(a) Presidential authorization

(1) Notwithstanding any other provision of law, the President, acting through the Attorney General, may authorize physical searches without a court order under this subchapter to acquire foreign intelligence information for periods of up to one year if—

(A) the Attorney General certifies in writing under oath that—

(i) the physical search is solely directed at premises, information, material, or property used exclusively by, or under the open and exclusive control of, a foreign power or powers (as defined in section 1801(a)(1), (2), or (3) of this title); and

(ii) there is no substantial likelihood that the physical search will involve the premises, information, material, or property of a United States person; and

(b) Procedures

(1) Notwithstanding any other provision of law, the Attorney General may authorize procedures to be followed in conducting physical searches under section 1822(a) of this title, if—

(A) the Attorney General certifies in writing under oath that—

(i) the physical search is solely directed at premises, information, material, or property used exclusively by, or under the open and exclusive control of, a foreign power or powers (as defined in section 1801(a)(1), (2), or (3) of this title); and

(ii) there is no substantial likelihood that the physical search will involve the premises, information, material, or property of a United States person; and

(c) Limitations

(1) Procedures authorized under section 1822(a) of this title may not be used—

(A) to gather foreign intelligence for periods in excess of 90 days;

(B) to gather foreign intelligence information, as defined in section 1801(f) of this title, unless the Attorney General certifies in writing under oath that—

(i) the physical search is solely directed at premises, information, material, or property used exclusively by, or under the open and exclusive control of, a foreign power or powers (as defined in section 1801(a)(1), (2), or (3) of this title); and

(ii) there is no substantial likelihood that the physical search will involve the premises, information, material, or property of a United States person; and

(d) Effective Date

(1) Section 1822(a) of this title shall take effect 90 days after the date of enactment of this Act [Oct. 14, 1994].
(iii) the proposed minimization procedures with respect to such physical search meet the definition of minimization procedures under paragraphs (1) through (4) of section 1821(4) of this title; and

(B) the Attorney General reports such minimization procedures and any changes thereto to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate at least 30 days before their effective date, unless the Attorney General determines that immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) A physical search authorized by this subsection may be conducted only in accordance with the certification and minimization procedures adopted by the Attorney General. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate under the provisions of section 1826 of this title.

(3) The Attorney General shall immediately transmit under seal to the Foreign Intelligence Surveillance Court a copy of the certification. Such certification shall be maintained under security measures established by the Chief Justice of the United States with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the physical search is made under section 1821(4) of this title and section 1823 of this title; or

(B) the certification is necessary to determine the legality of the physical search under section 1825(g) of this title.

(4) (A) With respect to physical searches authorized by this subsection, the Attorney General may direct a specified landlord, custodian, or other specified person to—

(i) furnish all information, facilities, or assistance necessary to accomplish the physical search in such a manner as will protect its secrecy and produce a minimum of interference with the services that such landlord, custodian, or other person is providing the target of the physical search; and

(ii) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the search or the aid furnished that such person wishes to retain.

(B) The Government shall compensate, at the prevailing rate, such landlord, custodian, or other person for furnishing such aid.

(b) Application for order; authorization

Applications for a court order under this subchapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the Foreign Intelligence Surveillance Court. Notwithstanding any other provision of law, a judge of the court to whom application is made may grant an order in accordance with section 1824 of this title approving a physical search in the United States of the premises, property, information, or material of a foreign power or an agent of a foreign power for the purpose of collecting foreign intelligence information.

(c) Jurisdiction of Foreign Intelligence Surveillance Court

The Foreign Intelligence Surveillance Court shall have jurisdiction to hear applications for and grant orders approving a physical search for the purpose of obtaining foreign intelligence information anywhere within the United States under the procedures set forth in this subchapter, except that no judge (except when sitting en banc) shall hear the same application which has been denied previously by another judge designated under section 1809(a) of this title. If any judge so designated denies an application for an order authorizing a physical search under this subchapter, such judge shall provide immediately for the record a written statement of each reason for such decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established under section 1803(b) of this title.

(d) Court of review; record; transmittal to Supreme Court

The court of review established under section 1803(b) of this title shall have jurisdiction to review the denial of any application made under this subchapter. If such court determines that the application was properly denied, the court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

(e) Expedient conduct of proceedings; security measures for maintenance of records

Judicial proceedings under this subchapter shall be concluded as expeditiously as possible. The record of proceedings under this subchapter, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of National Intelligence.

Amendments


2006—Subsec. (e). Pub. L. 110–261 inserted "except that no judge" after "except that no judge".

National Intelligence’’ for ‘‘Director of Central Intelligence’’.

**Effective Date of 2008 Amendment**


**Effective Date of 2004 Amendment**

For Determination by President that amendment by Pub. L. 108–458 takes effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


**Ex. Ord. No. 12949. Foreign Intelligence Physical Searches**


By the authority vested in me as President by the Constitution and the laws of the United States, including sections 302 and 303 of the Foreign Intelligence Surveillance Act of 1978 (‘‘Act’’) (50 U.S.C. 1801, et seq.), as amended by Public Law 103–359 (50 U.S.C. 1822, 1823), and in order to provide for the authorization of physical searches for foreign intelligence purposes as set forth in the Act, it is hereby ordered as follows:

**Section 1. Pursuant to section 302(a)(1) of the Act, the Attorney General is authorized to approve physical searches, without a court order, to acquire foreign intelligence information for periods of up to one year, if the Attorney General makes the certifications required by that section.**

Scc. 2. Pursuant to section 302(b) of the Act, the Attorney General is authorized to approve applications to the Foreign Intelligence Surveillance Court under section 303 of the Act to obtain orders for physical searches for the purpose of collecting foreign intelligence information.

Scc. 3. Pursuant to section 303(a)(6) of the Act, the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by section 303(a)(6) of the Act in support of applications to conduct physical searches:

(a) Secretary of State;
(b) Secretary of Defense;
[(c)] Director of National Intelligence;
(d) Director of the Federal Bureau of Investigation,
(e) Deputy Secretary of State;
(f) Deputy Secretary of Defense;
(g) Director of the Central Intelligence Agency;
(h) Principal Deputy Director of National Intelligence; and
(i) Deputy Director of the Federal Bureau of Investigation.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President, by and with the advice and consent of the Senate. The requirement of the preceding sentence that the named official must be appointed by the President with the advice and consent of the Senate does not apply to the Deputy Director of the Federal Bureau of Investigation.

**§ 1823. Application for order**

(a) Submission by Federal officer; approval of Attorney General; contents

Each application for an order approving a physical search under this subchapter shall be made by a Federal officer in writing upon oath or affirmation to a judge of the Foreign Intelligence Surveillance Court. Each application shall require the approval of the Attorney General based upon the Attorney General’s finding that it satisfies the criteria and requirements for such application as set forth in this subchapter. Each application shall include—

(1) the identity of the Federal officer making the application;
(2) the identity, if known, or a description of the target of the search, and a description of the premises or property to be searched and of the information, material, or property to be seized, reproduced, or altered;
(3) a statement of the facts and circumstances relied upon by the applicant to justify the applicant’s belief that—

(A) the target of the physical search is a foreign power or an agent of a foreign power;
(B) the premises or property to be searched contains foreign intelligence information; and
(C) the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power;
(4) a statement of the proposed minimization procedures;
(5) a statement of the nature of the foreign intelligence sought and the manner in which the physical search is to be conducted;
(6) a certification or certifications by the Assistant to the President for National Security Affairs, an executive branch official or officials designated by the President from among those executive branch officers employed in the area of national security or defense and appointed by the President, by and with the advice and consent of the Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—

(A) that the certifying official deems the information sought to be foreign intelligence information;
(B) that a significant purpose of the search is to obtain foreign intelligence information;
(C) that such information cannot reasonably be obtained by normal investigative techniques;
(D) that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and
(E) includes a statement explaining the basis for the certifications required by subparagraphs (C) and (D);
(7) where the physical search involves a search of the residence of a United States person, the Attorney General shall state what investigative techniques have previously been utilized to obtain the foreign intelligence information concerned and the degree to which
these techniques resulted in acquiring such information; and
(8) a statement of the facts concerning all previous applications that have been made to any judge under this subchapter involving any of the persons, premises, or property specified in the application, and the action taken on each previous application.

(b) Additional affidavits or certifications

The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(c) Additional information

The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 1824 of this title.

(d) Personal review by Attorney General

(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, the Director of National Intelligence, or the Director of the Central Intelligence Agency, the Attorney General shall personally review under subsection (a) of this section an application under that subsection for a target described in section 1801(b)(2) of this title.

(B) Except when disabled or otherwise unavailable to make a request referred to in subparagraph (A), an official referred to in that subparagraph may not delegate the authority to make a request referred to in that subparagraph.

(C) Each official referred to in subparagraph (A) with authority to make a request under that subparagraph shall take appropriate actions in advance to ensure that delegation of such authority is clearly established in the event such official is disabled or otherwise unavailable to make such request.

(2)(A) If as a result of a request under paragraph (1) the Attorney General determines not to approve an application under the second sentence of subsection (a) of this section for purposes of making the application under this section, the Attorney General shall provide written notice of the determination to the official making the request for the review of the application under that paragraph. Except when disabled or otherwise unavailable to make a determination under the preceding sentence, the Attorney General may not delegate the responsibility to make a determination under that sentence. The Attorney General shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to make such determination.

(B) Notice with respect to an application under subparagraph (A) shall set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application under the second sentence of subsection (a) of this section for purposes of making the application under this section.

(C) Upon review of any modifications of an application set forth under subparagraph (B), the official notified of the modifications under this paragraph shall modify the application if such official determines that such modification is warranted. Such official shall supervise the making of any modification under this subparagraph. Except when disabled or otherwise unavailable to supervise the making of any modification under the preceding sentence, such official may not delegate the responsibility to supervise the making of any modification under that preceding sentence. Each such official shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.

OFFICIALS DESIGNATED TO MAKE CERTIFICATIONS

For provisions listing officials designated by President to make certifications required by subsec. (a)(7) of title.

§ 1824. Issuance of order

(a) Necessary findings

Upon an application made pursuant to section 1823 of this title, the judge shall enter an ex parte order as requested or as modified approving the physical search if the judge finds that—

(1) the application has been made by a Federal officer and approved by the Attorney General;

(2) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the physical search is a foreign power or an agent of a foreign power, except that no United States person may be considered an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from an agent of a foreign power or a foreign power;

(3) the proposed minimization procedures meet the definition of minimization contained in this subchapter; and

(4) the application which has been filed contains all statements and certifications required by section 1823 of this title, and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 1823(a)(6)(E) of this title and any other information furnished under section 1823(c) of this title.

(b) Determination of probable cause

In determining whether or not probable cause exists for purposes of an order under subsection (a)(2), a judge may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target.

(c) Specifications and directions of orders

An order approving a physical search under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the physical search;

(B) the nature and location of each of the premises or property to be searched;

(C) the type of information, material, or property to be seized, altered, or reproduced;

(D) a statement of the manner in which the physical search is to be conducted and, whenever more than one physical search is authorized under the order, the authorized scope of each search and what minimization procedures shall apply to the information acquired by each search; and

(E) the period of time during which physical searches are approved; and

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified landlord, custodian, or other specified person furnish the applicant forthwith all information, facilities, or assistance necessary to accomplish the physical search in such a manner as will protect its secrecy and produce a minimum of interference with the services that such landlord, custodian, or other person is providing the target of the physical search;

(C) that such landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the search or the aid furnished that such person wishes to retain;

(D) that the applicant compensate, at the prevailing rate, such landlord, custodian, or other person for furnishing such aid; and

(E) that the Federal officer conducting the physical search promptly report to the court the circumstances and results of the physical search.

(d) Duration of order; extensions; assessment of compliance

(1) An order issued under this section may approve a physical search for the period necessary to achieve its purpose, or for 90 days, whichever is less, except that (A) an order under this section shall approve a physical search targeted against a foreign power, as defined in paragraph (1), (2), or (3) of section 1801(a) of this title, for the period specified in the application or for one year, whichever is less, and (B) an order under this section for a physical search targeted against an agent of a foreign power who is not a United States person may be for the period specified in the application or for 120 days, whichever is less.

(2) Extensions of an order issued under this subchapter may be granted on the same basis as the original order upon an application for an extension and new findings made in the same manner as required for the original order, except that an extension of an order under this chapter for a physical search targeted against a foreign power, as defined in paragraph (5), (6), or (7) of section 1801(a) of this title, or against a foreign power, as defined in section 1801(a)(4) of this title, that is not a United States person, or against an agent of a foreign power who is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no property of any individual United States person will be acquired during the period.

(3) At or before the end of the period of time for which a physical search is approved by an order or an extension, or at any time after a physical search is carried out, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.
(e) Emergency orders

(1) Notwithstanding any other provision of this subchapter, the Attorney General may authorize the emergency employment of a physical search if the Attorney General—

(A) reasonably determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

(B) reasonably determines that the factual basis for issuance of an order under this subchapter to approve such physical search exists;

(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

(D) makes an application in accordance with this subchapter to a judge of the Foreign Intelligence Surveillance Court as soon as practicable but not more than 7 days after the Attorney General authorizes such physical search.

(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this subchapter for the issuance of a judicial order be followed.

(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(4) A denial of the application made under this subsection may be reviewed as provided in section 1803 of this title.

(5) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(f) Retention of applications and orders

Applications made and orders granted under this subchapter shall be retained for a period of at least 10 years from the date of the application.

(2008 Amendment)

Preliminary to this section for a physical search targeted against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title, see section 1801(a)(5) or (6) of this Act.

References to "the President has authorized the Attorney General to approve applications for physical searches for foreign intelligence purposes;".

References to "who is not a United States person" for "as defined in subsection (a)(5) or (6)".

References to "72 hours" for "24 hours".

References to "90 days," for "forty-five days," and inserted "or is about to be" before "owned" in par. (2)(B), substituted "1823(a)(6)(E)" for "1823(a)(7)(E)" in par. (4), and struck out former par. (1) which read as follows: "the President has authorized the Attorney General to approve applications for physical searches for foreign intelligence purposes;"

References to "the President has authorized the Attorney General to approve applications for physical searches for foreign intelligence purposes;"

References to "who is not a United States person" for "as defined in subsection (a)(5) or (6)" of this Act.

References to "72 hours" for "24 hours"

Effective Date of 2008 Amendment


Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memo-
§ 1825. Use of information

(a) Compliance with minimization procedures; lawful purposes

Information acquired from a physical search conducted pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this subchapter. No information acquired from a physical search pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Notice of search and identification of property seized, altered, or reproduced

Where a physical search authorized and conducted pursuant to section 1824 of this title involves the residence of a United States person, and, at any time after the search the Attorney General determines there is no national security interest in continuing to maintain the secrecy of the search, the Attorney General shall provide notice to the United States person whose residence was searched of the fact of the search conducted pursuant to this chapter and shall identify any property of such person seized, altered, or reproduced during such search.

(c) Statement for disclosure

No information acquired pursuant to this subchapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(d) Notification by United States

Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from a physical search pursuant to the authority of this subchapter, the United States shall, prior to the trial, hearing, or the other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information.

(e) Notification by States or political subdivisions

Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof against an aggrieved person any information obtained or derived from a physical search pursuant to the authority of this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(f) Motion to suppress

(1) Any person against whom evidence obtained or derived from a physical search to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such search on the grounds that—

(A) the information was unlawfully acquired; or

(B) the physical search was not made in conformity with an order of authorization or approval.

(2) Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(g) In camera and ex parte review by district court

Whenever a court or other authority is notified pursuant to subsection (d) or (e) of this section, or whenever a motion is made pursuant to subsection (f) of this section, or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to a physical search authorized by this subchapter or to discover, obtain, or suppress evidence or information obtained or derived from a physical search authorized by this subchapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law, if the Attorney General files an affidavit under oath that disclosure or any adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the physical search as may be necessary to determine whether the physical search of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the physical search, or may require the Attorney Gen-
eral to provide to the aggrieved person a summary of such materials, only where such disclosure is necessary to make an accurate determination of the legality of the physical search.

(h) Suppression of evidence; denial of motion

If the United States district court pursuant to subsection (g) of this section determines that the physical search was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the physical search of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the physical search was lawfully authorized or conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(i) Finality of orders

Orders granting motions or requests under subsection (h) of this section, decisions under this section that a physical search was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to the physical search shall be final orders and binding upon all courts of the United States and the several States except a United States Court of Appeals or the Supreme Court.

(j) Notification of emergency execution of physical search; contents; postponement, suspension, or elimination

(1) If an emergency execution of a physical search is authorized under section 1824(d) of this title and a subsequent order approving the search is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to the search as the judge may determine in his discretion it is in the interests of justice to serve notice of—

(A) the fact of the application;

(B) the period of the search; and

(C) the fact that during the period information was or was not obtained.

(2) On an ex parte showing of good cause to the judge, the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed 90 days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

(k) Coordination with law enforcement on national security matters

(1) Federal officers who conduct physical searches to acquire foreign intelligence information under this subchapter may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 1823(a)(6) of this title or the entry of an order under section 1824 of this title.

(3) Federal officers, prior to executing a physical search or in the course of conducting a physical search, may provide to the chief executive officer of that State or political subdivision of a State (including the chief executive of other United States persons who have the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) or the chief law enforcement officer of that State or political subdivision a special certificate acknowledging the fact that the physical search was lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to the physical search shall be final orders and binding upon all courts of the United States and the several States except a United States Court of Appeals or the Supreme Court.

(4) Federal officers shall immediately report to the chief executive officer of that State or political subdivision of a State (including the chief executive of other United States persons who have the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) or the chief law enforcement officer of that State or political subdivision the fact that during the period information was or was not obtained.

(5) On a semiannual basis the Attorney General shall also provide to those committees and the Judicial Committee of the Senate, concerning all physical searches conducted pursuant to this subchapter.

On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the Senate, concerning all physical searches conducted pursuant to this subchapter.
§ 1827. Penalties

(a) Prohibited activities

A person is guilty of an offense if he intentionally—

(1) under color of law for the purpose of obtaining foreign intelligence information, executes a physical search within the United States except as authorized by statute; or

(2) discloses or uses information obtained under color of law by physical search within the United States, knowing or having reason to know that the information was obtained through physical search not authorized by statute, for the purpose of obtaining intelligence information.

(b) Defense

It is a defense to a prosecution under subsection (a) of this section that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the physical search was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(c) Fine or imprisonment

An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

(d) Federal jurisdiction

There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.


§ 1828. Civil liability

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801(a) or (b)(1)(A), respectively, of this title, whose premises, property, information, or material has been subjected to a physical search within the United States or about whom information obtained by such a physical search has been disclosed or used in violation of section 1827 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(1) actual damages, but not less than liquidated damages of $1,000 or $100 per day for each day of violation, whichever is greater; and

(2) punitive damages and

(3) reasonable attorney’s fees and other investigative and litigation costs reasonably incurred.


§ 1829. Authorization during time of war

Notwithstanding any other provision of law, the President, through the Attorney General, may authorize physical searches without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by the Congress.


SUBCHAPTER III—PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES

§ 1841. Definitions

As used in this subchapter:

(1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, and “State” shall have the same meanings as in section 1801 of this title.

(2) The terms “pen register” and “trap and trace device” have the meanings given such terms in section 3127 of title 18.

(3) The term “aggrieved person” means any person—

(A) whose telephone line was subject to the installation or use of a pen register or trap and trace device authorized by this subchapter; or

(B) whose communication instrument or device was subject to the use of a pen register or trap and trace device authorized by this subchapter to capture incoming electronic or other communications impulses.


PRIOR PROVISIONS

A prior section 401 of Pub. L. 95–511 was renumbered section 701 and was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110–261.
§ 1842. Pen registers and trap and trace devices for foreign intelligence and international terrorism investigations

(a) Application for authorization or approval

(1) Notwithstanding any other provision of law, the Attorney General or a designated attorney for the Government may make an application for an order or an extension of an order authorizing or approving the installation and use of a pen register or trap and trace device for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution which is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

(2) The authority under paragraph (1) is in addition to the authority under subchapter I of this chapter to conduct the electronic surveillance referred to in that paragraph.

(b) Form of application; recipient

Each application under this section shall be in writing under oath or affirmation to—

(1) a judge of the court established by section 1803(a) of this title; or

(2) a United States Magistrate Judge under chapter 43 of title 28 who is publicly designated by the Chief Justice of the United States to have the power to hear applications for and grant orders approving the installation and use of a pen register or trap and trace device on behalf of a judge of that court.

(c) Executive approval; contents of application

Each application under this section shall require the approval of the Attorney General, or a designated attorney for the Government, and shall include—

(1) the identity of the Federal officer seeking to use the pen register or trap and trace device covered by the application; and

(2) a certification by the applicant that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(d) Ex parte judicial order of approval

(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the installation and use of a pen register or trap and trace device if the judge finds that the application satisfies the requirements of this section.

(2) An order issued under this section—

(A) shall specify—

(i) the identity, if known, of the person who is the subject of the investigation; and

(ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied; and

(B) shall direct that—

(i) upon request of the applicant, the provider of a wire or electronic communication service, landlord, custodian, or other person shall furnish any information, facilities, or technical assistance necessary to accomplish the installation and operation of the pen register or trap and trace device in such a manner as will protect its secrecy and produce a minimum amount of interference with the services that such provider, landlord, custodian, or other person is providing the person concerned;

(ii) such provider, landlord, custodian, or other person—

(I) shall not disclose the existence of the investigation or of the pen register or trap and trace device to any person unless or until ordered by the court; and

(II) shall maintain, under security procedures approved by the Attorney General and the Director of National Intelligence pursuant to section 1805(b)(2)(C) of this title, any records concerning the pen register or trap and trace device or the aid furnished; and

(iii) the applicant shall compensate such provider, landlord, custodian, or other person for reasonable expenses incurred by such provider, landlord, custodian, or other person in providing such information, facilities, or technical assistance; and

(C) shall direct that, upon the request of the applicant, the provider of a wire or electronic communication service shall disclose to the Federal officer using the pen register or trap and trace device covered by the order—

(i) in the case of the customer or subscriber using the service covered by the order (for the period specified by the order)—

(I) the name of the customer or subscriber;

(II) the address of the customer or subscriber;

(III) the telephone or instrument number, or other subscriber number or identifier, of the customer or subscriber; including any temporarily assigned network address or associated routing or transmission information;

(IV) the length of the provision of service by such provider to the customer or subscriber and the types of services utilized by the customer or subscriber;

(V) in the case of a provider of local or long distance telephone service, any local or long distance telephone records of the customer or subscriber;  

1 See References in Text note below.
(VI) if applicable, any records reflecting period of usage (or sessions) by the customer or subscriber; and
(VII) any mechanisms and sources of payment for such service, including the number of any credit card or bank account utilized for payment for such service; and
(ii) if available, with respect to any customer or subscriber of incoming or outgoing communications to or from the service covered by the order—
(I) the name of such customer or subscriber;
(II) the address of such customer or subscriber;
(III) the telephone or instrument number, or other subscriber number or identifier, of such customer or subscriber, including any temporarily assigned network address or associated routing or transmission information; and
(IV) the length of the provision of service by such provider to such customer or subscriber and the types of services utilized by such customer or subscriber.

(e) Time limitation
(1) Except as provided in paragraph (2), an order issued under this section shall authorize the installation and use of a pen register or trap and trace device for a period not to exceed 90 days. Extensions of such an order may be granted, but only upon an application for an order under this section and upon the judicial finding required by subsection (d) of this section. The period of extension shall be for a period not to exceed 90 days.

(2) In the case of an application under subsection (c) where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order, or an extension of an order, under this section may be for a period not to exceed one year.

(f) Cause of action barred
No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that furnishes any information, facilities, or technical assistance under subsection (d) of this section in accordance with the terms of an order issued under this section.

(g) Furnishing of results
Unless otherwise ordered by the judge, the results of a pen register or trap and trace device shall be furnished at reasonable intervals during regular business hours for the duration of the order to the authorized Government official or officials.


Subsec. (e). Pub. L. 109–177, §105(c), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), an order issued” for “An order issued”, and added par. (2).


2001—Subsec. (a)(1). Pub. L. 107–56, §214(a)(1), substituted “Director of Central Intelligence” for “Director of National Intelligence” not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution” for “for any investigation to gather foreign intelligence information or information concerning international terrorism”.

Subsec. (c)(2). Pub. L. 107–108, §314(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “a certification by the applicant that the information likely to be obtained is relevant to an ongoing investigation being conducted by the Federal Bureau of Investigation under guidelines approved by the Attorney General and”,
Subsec. (c)(3). Pub. L. 107–56, §214(a)(3), struck out par. (3) which read as follows: “information which demonstrates that there is reason to believe that the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device, has been or is about to be used in communication with—
(A) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States; or
(B) a foreign power or agent of a foreign power under circumstances giving reason to believe that the communication concerns or concerned international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States.”

(i) the identity, if known, of the person who is the subject of the foreign intelligence or international terrorism investigation;
(ii) in the case of an application for the installation and use of a pen register or trap and trace device with respect to a telephone line—
(I) the identity, if known, of the person to whom is leased or in whose name the telephone line is listed; and
(II) the number and, if known, physical location of the telephone line; and
(iii) in the case of an application for the use of a pen register or trap and trace device with respect to
§ 1843  TITLE 50—WAR AND NATIONAL DEFENSE

(a) Requirements for authorization

Notwithstanding any other provision of this chapter, when the Attorney General makes a determination described in subsection (b) of this section, the Attorney General may authorize the installation and use of a pen register or trap and trace device on an emergency basis to gather foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(1) a judge referred to in section 1842(b) of this title is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to install and use the pen register or trap and trace device, as the case may be, on an emergency basis; and

(2) an application in accordance with section 1842 of this title is made to such judge as soon as practicable, but not more than 7 days after the Attorney General authorizes the installation and use of the pen register or trap and trace device, as the case may be, under this section.

(b) Determination of emergency and factual basis

A determination under this subsection is a reasonable determination by the Attorney General that—

(1) an emergency requires the installation and use of a pen register or trap and trace device to obtain foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution before an order authorizing the installation and use of the pen register or trap and trace device, as the case may be, can with due diligence be obtained under section 1842 of this title; and

(2) the factual basis for issuance of an order under such section 1842 of this title to approve the installation and use of the pen register or trap and trace device, as the case may be, exists.

(c) Effect of absence of order

(1) In the absence of an order applied for under subsection (a)(2) of this section approving the installation and use of a pen register or trap and trace device authorized under this section, the installation and use of the pen register or trap and trace device, as the case may be, shall terminate at the earlier of—

(A) when the information sought is obtained; or

(B) when the application for the order is denied under section 1842 of this title; or

(C) 7 days after the time of the authorization by the Attorney General.

(2) In the event that an application for an order applied for under subsection (a)(2) of this section is denied, or in any other case where the installation and use of a pen register or trap and trace device under this section is terminated and no order under section 1842 of this title is issued approving the installation and use of the pen register or trap and trace device, as the case may be, no information obtained or evidence derived from the use of the pen register or trap and trace device, as the case may be, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from the use of the pen register or trap and trace device, as the case may be, shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.


AMENDMENTS


2001—Subsec. (a). Pub. L. 107–56, § 214(b)(1), substituted “foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution” for “foreign intelligence information concerning international terrorism” in introductory provisions.

Subsec. (b)(1). Pub. L. 107–56, § 214(b)(2), substituted “foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution” for “foreign intelligence information or information concerning international terrorism”. 
§ 1844. Authorization during time of war

Notwithstanding any other provision of law, the President, through the Attorney General, may authorize the use of a pen register or trap and trace device without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by Congress.


§ 1845. Use of information

(a) In general

(1) Information acquired from the use of a pen register or trap and trace device installed pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the provisions of this section.

(2) No information acquired from a pen register or trap and trace device installed and used pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Disclosure for law enforcement purposes

No information acquired pursuant to this subchapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Notification of intended disclosure by United States

Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States against an aggrieved person any information obtained or derived from the use of a pen register or trap and trace device pursuant to this subchapter, the United States shall, before the trial, hearing, or the other proceeding or at a reasonable time before an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information.

(d) Notification of intended disclosure by State or political subdivision

Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the State or political subdivision thereof against an aggrieved person any information obtained or derived from the use of a pen register or trap and trace device pursuant to this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Motion to suppress

(1) Any aggrieved person against whom evidence obtained or derived from the use of a pen register or trap and trace device is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, or a State or political subdivision thereof, may move to suppress the evidence obtained or derived from the use of the pen register or trap and trace device, as the case may be, on the grounds that—

(A) the information was unlawfully acquired; or

(B) the use of the pen register or trap and trace device, as the case may be, was not made in conformity with an order of authorization or approval under this subchapter.

(2) A motion under paragraph (1) shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the aggrieved person concerned was not aware of the grounds of the motion.

(f) In camera and ex parte review

(1) Whenever a court or other authority is notified pursuant to subsection (c) or (d) of this section, whenever a motion is made pursuant to subsection (e) of this section, or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to the use of a pen register or trap and trace device authorized by this subchapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law and if the Attorney General files an affidavit under oath that disclosure or any adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the use of the pen register or trap and trace device, as the case may be, as may be necessary to determine whether the use of the pen register or trap and trace device, as the case may be, was lawfully authorized and conducted.

(2) In making a determination under paragraph (1), the court may disclose to the ag-
grieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the use of the pen register or trap and trace device, as the case may be, or may require the Attorney General to provide to the aggrieved person a summary of such materials, only where such disclosure is necessary to make an accurate determination of the legality of the use of the pen register or trap and trace device, as the case may be.

(g) Effect of determination of lawfulness

(1) If the United States district court determines pursuant to subsection (f) of this section that the use of a pen register or trap and trace device was not lawfully authorized or conducted, the court may, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the use of the pen register or trap and trace device, as the case may be, or otherwise grant the motion of the aggrieved person.

(2) If the court determines that the use of the pen register or trap and trace device, as the case may be, was lawfully authorized or conducted, it may deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Binding final orders

Orders granting motions or requests under subsection (g) of this section, decisions under this section that the use of a pen register or trap and trace device was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to the installation and use of a pen register or trap and trace device shall be final orders and binding upon all courts of the United States and the several States except a United States Court of Appeals or the Supreme Court.

($ 1846. Congressional oversight

(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, concerning all uses of pen registers and trap and trace devices pursuant to this subchapter.

(b) On a semiannual basis, the Attorney General shall also provide to the committees referred to in subsection (a) of this section and to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

(1) the total number of applications made for orders approving the use of pen registers or trap and trace devices pursuant to this subchapter;

(2) the total number of such orders either granted, modified, or denied; and

(3) the total number of pen registers and trap and trace devices whose installation and use was authorized by the Attorney General on an emergency basis under section 1843 of this title, and the total number of subsequent orders approving or denying the installation and use of such pen registers and trap and trace devices.


AMENDMENTS

2006—Subsec. (a). Pub. L. 109–177, §128(b), inserted ". and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,” after “Select Committee on Intelligence of the Senate”.


SUBCHAPTER IV—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

$ 1861. Access to certain business records for foreign intelligence and international terrorism investigations

(a) Application for order; conduct of investigation generally

(1) Subject to paragraph (3), the Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(2) An investigation conducted under this section shall—

(A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

(B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(3) In the case of an application for an order requiring the production of library circulation records, library patron lists, book sales records, book customer lists, firearms sales records, tax return records, educational records, or medical records containing information that would identify a person, the Director of the Federal Bureau of Investigation may delegate the authority to make such application to either the Deputy Director of the Federal Bureau of Investigation or the Executive Assistant Director for National Security (or any successor position). The Deputy Director or the Executive Assistant Director may not further delegate such authority.

(b) Recipient and contents of application

Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section 1803(a) of this title; or
(B) A United States Magistrate Judge under chapter 43 of title 28, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

(2) shall include—
(A) a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, such things being presumptively relevant to an authorized investigation if the applicant shows in the statement the facts that they pertain to—
(i) a foreign power or an agent of a foreign power;
(ii) the activities of a suspected agent of a foreign power who is the subject of such an authorized investigation; or
(iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation; and
(B) an enumeration of the minimization procedures adopted by the Attorney General under subsection (g) that are applicable to the Federal Bureau of Investigation of any tangible things to be made available to the Federal Bureau of Investigation based on the order requested in such application.

(c) Ex parte judicial order of approval

(1) Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as meets the requirements of subsection (a) and section, if the judge finds that the application requested, or as modified, approving the release of tangible things. Such order shall direct that:
(i) a foreign power or an agent of a foreign power;
(ii) the activities of a suspected agent of a foreign power who is the subject of such an authorized investigation; or
(iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation; and

(2) An order under this subsection—
(A) shall describe the tangible things that are ordered to be produced with sufficient particularity to permit them to be fairly identified;
(B) shall include the date on which the tangible things must be provided, which shall allow a reasonable period of time within which the tangible things can be assembled and made available;
(C) shall provide clear and conspicuous notice of the principles and procedures described in subsection (d);
(D) may only require the production of a tangible thing if such thing can be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things; and
(E) shall not disclose that such order is issued for purposes of an investigation described in subsection (a).

(d) Nondisclosure

(1) No person shall disclose to any other person that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section, other than to—
(A) those persons to whom disclosure is necessary to comply with such order;
(B) an attorney to obtain legal advice or assistance with respect to the production of things in response to the order; or
(C) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

(2)(A) A person to whom disclosure is made pursuant to paragraph (1) shall be subject to the nondisclosure requirements applicable to a person to whom an order is directed under this section in the same manner as such person.

(B) Any person who discloses to a person described in subparagraph (A), (B), or (C) of paragraph (1) that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section shall notify such person of the nondisclosure requirements of this subsection.

(C) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under subparagraph (A) or (C) of paragraph (1) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

(e) Liability for good faith disclosure; waiver

A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

(f) Judicial review of FISA orders

(1) In this subsection—
(A) the term “production order” means an order to produce any tangible thing under this section; and
(B) the term “nondisclosure order” means an order imposed under subsection (d).

(2)(A)(i) A person receiving a production order may challenge the legality of that order by filing a petition with the pool established by section 1803(e)(1) of this title. Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section 1803(e)(1) of this title.

(ii) The presiding judge shall immediately assign a petition under clause (i) to 1 of the judges serving in the pool established by section 1803(e)(1) of this title. Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm
the production order or nondisclosure order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section 1803(e)(2) of this title.

(iii) The assigned judge shall promptly provide a written statement for the record of the reasons for any determination under this subsection. Upon the request of the Government, any order setting aside a nondisclosure order shall be stayed pending review pursuant to paragraph (3).

(B) A judge considering a petition to modify or set aside a production order may grant such petition only if the judge finds that such order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the production order, the judge shall immediately affirm such order, and order the recipient to comply therewith.

(C)(i) A judge considering a petition to modify or set aside a nondisclosure order may grant such petition only if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.

(ii) If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive, unless the judge finds that the certification was made in bad faith.

(iii) If the judge denies a petition to modify or set aside a nondisclosure order, the recipient of such order shall be precluded for a period of 1 year from filing another such petition with respect to such nondisclosure order.

(D) Any production or nondisclosure order not explicitly modified or set aside consistent with this subsection shall remain in full effect.

(3) A petition for review of a decision under paragraph (2) to affirm, modify, or set aside an order by the Government or any person receiving such an order under this subchapter may be used or disclosed by Federal officers and employees without the consent of the United States person, without such person's identity being revealed, and disclosed in a manner that identifies any United States person consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information.

(g) Minimization procedures

(1) In general

Not later than 180 days after March 9, 2006, the Attorney General shall adopt specific minimization procedures governing the retention and dissemination by the Federal Bureau of Investigation of any tangible things, information, or evidence of a crime which has been, is being, or is about to be committed and that is to be evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes.

(2) Defined

In this section, the term “minimization procedures” means—

(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the production of tangible things, to minimize the retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 1801(e)(1) of this title, shall not be disseminated in a manner that identifies any United States person without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance; and

(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes.

(h) Use of information

Information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures adopted pursuant to subsection (g). No otherwise privileged information acquired from tangible things received by the Federal Bureau of Investigation in accordance with the provisions of this subchapter shall lose its privileged character. No information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes. (Pub. L. 95–511, title V, §501, as added Pub. L. 107–56, title II, §215, Oct. 26, 2001, 115 Stat. 287; amended Pub. L. 107–108, title III, §313(a)(6), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 109–177, title I, §§102(b)(1), 106(a)–(e), (f)(2), (g), Mar. 9, 2006, 120 Stat. 195–198; Pub. L. 109–178, §§3, 4(a), Mar. 9, 2006, 120 Stat. 278, 280; Pub. L. 111–118, div. B,

AMENDMENT OF SECTION


§1861. Definitions

As used in this subchapter:

(1) The terms "foreign power", "agent of a foreign power", "foreign intelligence information", "international terrorism", and "Attorney General" shall have the same meanings as in section 1801 of this title.

(2) The term "common carrier" means any person or entity transporting people or property by land, rail, water, or air for compensation.

(3) The term "physical storage facility" means any business or entity that provides space for the storage of goods or materials, or services related to the storage of goods or materials, to the public or any segment thereof.

(4) The term "public accommodation facility" means any inn, hotel, motel, or other establishment that provides lodging to transient guests.

(5) The term "vehicle rental facility" means any person or entity that provides vehicles for rent, lease, loan, or other similar use to the public or any segment thereof.

REFERENCES IN TEXT

Executive Order No. 12333, referred to in subsec. (a)(2)(A), is set out as a note under section 401 of this title.

PRIOR PROVISIONS


AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–177, §106(a)(1), substituted "Subject to paragraph (3), the Director" for "The Director".


Subsec. (b)(2). Pub. L. 109–177, §106(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) of this section to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities."

Subsec. (c). Pub. L. 109–177, §106(c), (d), amended subsec. (c) generally. Prior to amendment, text read as follows:

“(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.

“(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a) of this section.

Subsec. (d). Pub. L. 109–177, §106(e), amended subsec. (d) generally. Prior to amendment, text read as follows:

“No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.”

Subsec. (d)(2)(C). Pub. L. 109–178, §4(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”


Subsecs. (g), (h). Pub. L. 109–177, §106(g), added subsecs. (g) and (h).

2001—Subsec. (a)(1). Pub. L. 107–108 inserted "to obtain foreign intelligence information not concerning a United States person or" after "an investigation".

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 102(b)(1) of Pub. L. 109–177 effective Feb. 28, 2011, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Feb. 28, 2011, or with respect to any particular offense or potential offense that began or occurred before Feb. 28, 2011, see section 102(b) of Pub. L. 109–177, set out as a note under section 1806 of this title.

§1862. Congressional oversight

(a) On an annual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate concerning all requests for the production of tangible things under section 1861 of this title.

(b) In April of each year, the Attorney General shall submit to the House and Senate Committees on the Judiciary and the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence a report setting forth with respect to the preceding calendar year—

(1) the total number of applications made for orders approving requests for the production of tangible things under section 1861 of this title;

(2) the total number of such orders either granted, modified, or denied; and

(3) the number of such orders either granted, modified, or denied for the production of each of the following:

(A) Library circulation records, library patron lists, book sales records, or book customer lists.

(B) Firearms sales records.

(C) Tax return records.

(D) Educational records.

(E) Medical records containing information that would identify a person.

(c)(1) In April of each year, the Attorney General shall submit to Congress a report setting forth with respect to the preceding year—
(A) the total number of applications made for orders approving requests for the production of tangible things under section 1861 of this title; and

(B) the total number of such orders either granted, modified, or denied.

(2) Each report under this subsection shall be submitted in unclassified form.


AMENDMENT OF SECTION


§1862. Access to certain business records for foreign intelligence and international terrorism investigations

(a) Application for authorization

The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order authorizing a common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to release records in its possession for an investigation concerning international terrorism which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

(b) Recipient and contents of application

Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section 1803(a) of this title; or

(B) a United States Magistrate Judge under chapter 43 of title 28 who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the release of records under this section on behalf of a judge of that court; and

(2) shall specify that—

(A) the records concerned are sought for an investigation described in subsection (a); and

(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.

(c) Ex parte judicial order of approval

(1) Upon application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application satisfies the requirements of this section.

(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a) of this section.

(d) Compliance; nondisclosure

(1) Any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility shall comply with an order under subsection (c).

(2) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation has sought or obtained records pursuant to an order under this section.

PRIOR PROVISIONS


AMENDMENTS

2010—Subsec. (a). Pub. L. 111–259 substituted “an annual” for “a annual”.

2006—Subsec. (a). Pub. L. 109–177, §106(h)(1), substituted “annual basis” for “‘semiannual basis’ and inserted “and the Committee on the Judiciary” after “and the Select Committee on Intelligence”.

Subsec. (b). Pub. L. 109–177, §106(h)(2)(A), in introductory provisions, substituted “In April of each year, the Attorney General shall submit to the House and Senate Committees on the Judiciary and the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence a report setting forth with respect to the preceding calendar year” for “On a semianual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period”.


EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 102(b)(1) of Pub. L. 109–177 effective Feb. 28, 2011, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Feb. 28, 2011, or with respect to any particular offense or potential offense that began or occurred before Feb. 28, 2011, see section 102(b) of Pub. L. 109–177, set out as a note under section 1806 of this title.


SUBCHAPTER V—REPORTING REQUIREMENT

§ 1871. Semiannual report of the Attorney General

(a) Report

On a semiannual basis, the Attorney General shall submit to the Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Committees on the Judiciary of the House of Representatives and the Senate, in a manner consistent with the protection of the national security, a report setting forth with respect to the preceding 6-month period—

(1) the aggregate number of persons targeted for orders issued under this chapter, including a breakdown of those targeted for—

(A) electronic surveillance under section 1806 of this title;

(B) physical searches under section 1824 of this title;

(C) pen registers under section 1842 of this title;

(D) access to records under section 1861 of this title;

(E) acquisitions under section 1881b of this title; and

(F) acquisitions under section 1881c of this title;

(2) the number of individuals covered by an order issued pursuant to section 1801(b)(1)(C) of this title;

(3) the number of times that the Attorney General has authorized that information obtained under this chapter may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding;

(4) a summary of significant legal interpretations of this chapter involving matters before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, including interpretations presented in applications or pleadings filed with the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review by the Department of Justice; and

(5) copies of all decisions, orders, or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of the provisions of this chapter.

(b) Frequency

The first report under this section shall be submitted not later than 6 months after December 17, 2004. Subsequent reports under this section shall be submitted semi-annually thereafter.

(c) Submissions to Congress

The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this chapter, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

(2) a copy of each such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on July 10, 2008, and not previously submitted in a report under subsection (a).

(d) Protection of national security

The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national security of the United States and are limited to sensitive sources and methods information or the identities of targets.

(e) Definitions

In this section:

(1) Foreign Intelligence Surveillance Court

The term “Foreign Intelligence Surveillance Court” means the court established under section 1803(a) of this title.

(2) Foreign Intelligence Surveillance Court of Review

The term “Foreign Intelligence Surveillance Court of Review” means the court established under section 1803(b) of this title.

(2) a copy of each such decision, order, or opinion is issued; and

(2) a copy of each such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

(2) a copy of each such decision, order, or opinion, that was issued during the 5-year period ending on July 10, 2008, and not previously submitted in a report under subsection (a).

Amendment of Subsection (a)(1)


References in Text

This chapter, referred to in subssecs. (a) and (c)(1), was in the original “‘this Act’”, meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Prior Provisions

A prior section 601 of Pub. L. 95–511 was renumbered section 701 and was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110–261.

Amendments


Subsec. (a)(5). Pub. L. 110–261, § 103(a), substituted “‘orders,” for “‘(not including orders)’”.

Subsecs. (c) and (d). Pub. L. 110–261, § 103(b), added subsecs. (c) and (d).

§ 1881

DEFINITIONS

(a) In general

The terms “agent of a foreign power”, “Attorney General”, “contents”, “electronic surveillance”, “foreign intelligence information”, “foreign power”, “person”, “United States”, and “United States person” have the meanings given such terms in section 1801 of this title, except as specifically provided in this subchapter.

(b) Additional definitions

(1) Congressional intelligence committees

The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) Foreign Intelligence Surveillance Court; Court

The terms “Foreign Intelligence Surveillance Court” and “Court” mean the court established under section 1803(a) of this title.

(3) Foreign Intelligence Surveillance Court of Review; Court of Review

The terms “Foreign Intelligence Surveillance Court of Review” and “Court of Review” mean the court established under section 1803(b) of this title.

(4) Electronic communication service provider

The term “electronic communication service provider” means—

(A) a telecommunications carrier, as that term is defined in section 153 of title 47;

(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

(5) Intelligence community

The term “intelligence community” has the meaning given the term in section 401a(4) of this title.

§ 1881a. Procedures for targeting certain persons outside the United States other than United States persons

(a) Authorization

Notwithstanding any other provision of law, upon the issuance of an order in accordance with subsection (c) or a determination under subsection (c)(2), the Attorney General and the Director of National Intelligence may authorize jointly, for a period of up to 1 year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

(b) Limitations

An acquisition authorized under subsection (a)—

(1) may not intentionally target any person known at the time of acquisition to be located in the United States;

(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;

(3) may not intentionally target a United States person reasonably believed to be located outside the United States;

(4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and

(5) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

(c) Conduct of acquisition

(1) In general

An acquisition authorized under subsection (a) shall be conducted only in accordance with—

(A) the targeting and minimization procedures adopted in accordance with subsections (d) and (e); and

(B) upon submission of a certification in accordance with subsection (g), such certification.

(2) Determination

A determination under this paragraph and for purposes of subsection (a) is a determination by the Attorney General and the Director of National Intelligence that exigent circumstances exist because, without immediate im-
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(2) Submission of guidelines

The Attorney General shall provide the guidelines adopted in accordance with paragraph (1) to—

(A) the congressional intelligence committees;
(B) the Committees on the Judiciary of the Senate and the House of Representatives; and
(C) the Foreign Intelligence Surveillance Court.

(g) Certification

(1) In general

(A) Requirement

Subject to subparagraph (B), prior to the implementation of an authorization under subsection (a), the Attorney General and the Director of National Intelligence shall provide to the Foreign Intelligence Surveillance Court a written certification and any supporting affidavit, under oath and under seal, in accordance with this subsection.

(B) Exception

If the Attorney General and the Director of National Intelligence make a determination under subsection (c)(2) and time does not permit the submission of a certification under this subsection prior to the implementation of an authorization under subsection (a), the Attorney General and the Director of National Intelligence shall submit to the Court a certification for such authorization as soon as practicable but in no event later than 7 days after such determination is made.

(2) Requirements

A certification made under this subsection shall—

(A) attest that—

(i) there are procedures in place that have been approved, have been submitted for approval, or will be submitted with the certification for approval by the Foreign Intelligence Surveillance Court that are reasonably designed to—

(I) ensure that an acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and
(II) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;

(ii) the minimization procedures to be used with respect to such acquisition—

(I) meet the definition of minimization procedures under section 1801(h) of this title, as appropriate; and
(II) have been approved, have been submitted for approval, or will be submitted with the certification for approval by the Foreign Intelligence Surveillance Court;

(iii) guidelines have been adopted in accordance with subsection (f) to ensure compliance with the limitations in sub-
section (b) and to ensure that an application for a court order is filed as required by this chapter;

(iv) the procedures and guidelines referred to in clauses (i), (ii), and (iii) are consistent with the requirements of the fourth amendment to the Constitution of the United States;

(v) a significant purpose of the acquisition is to obtain foreign intelligence information;

(vi) the acquisition involves obtaining foreign intelligence information from or with the assistance of an electronic communication service provider; and

(vii) the acquisition complies with the limitations in subsection (b);

(B) include the procedures adopted in accordance with subsections (d) and (e);

(C) be supported, as appropriate, by the affidavit of any appropriate official in the area of national security who is—

(i) appointed by the President, by and with the advice and consent of the Senate; or

(ii) the head of an element of the intelligence community;

(D) include—

(i) an effective date for the authorization that is at least 30 days after the submission of the written certification to the court or

(ii) if the acquisition has begun or the effective date is less than 30 days after the submission of the written certification to the court, the date the acquisition began or the effective date for the acquisition; and

(E) if the Attorney General and the Director of National Intelligence make a determination under subsection (c)(2), include a statement that such determination has been made.

(3) Change in effective date

The Attorney General and the Director of National Intelligence may advance or delay the effective date referred to in paragraph (2)(D) by submitting an amended certification in accordance with subsection (i)(1)(C) to the Foreign Intelligence Surveillance Court for review pursuant to subsection (i).

(4) Limitation

A certification made under this subsection is not required to identify the specific facilities, places, premises, or property at which an acquisition authorized under subsection (a) will be directed or conducted.

(5) Maintenance of certification

The Attorney General or a designee of the Attorney General shall maintain a copy of a certification made under this subsection.

(6) Review

A certification submitted in accordance with this subsection shall be subject to judicial review pursuant to subsection (i).

(h) Directives and judicial review of directives

(1) Authority

With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target of the acquisition; and

(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

(2) Compensation

The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

(3) Release from liability

No cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

(4) Challenging of directives

(A) Authority to challenge

An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition to modify or set aside such directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such petition.

(B) Assignment

The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established under section 1803(e)(1) of this title not later than 24 hours after the filing of such petition.

(C) Standards for review

A judge considering a petition filed under subparagraph (A) may grant such petition only if the judge finds that the directive does not meet the requirements of this section, or is otherwise unlawful.

(D) Procedures for initial review

A judge shall conduct an initial review of a petition filed under subparagraph (A) not later than 5 days after being assigned such petition. If the judge determines that such petition does not consist of claims, defenses, or other legal contentions that are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, the judge shall immediately deny such petition and affirm the directive or any part of the directive that is the subject of such petition and order the recipient to comply with the directive or any part of it. Upon
(E) Procedures for plenary review

If a judge determines that a petition filed under subparagraph (A) requires plenary review, the judge shall affirm, modify, or set aside the directive that is the subject of such petition not later than 30 days after being assigned such petition. If the judge does not set aside the directive, the judge shall immediately affirm or affirm with modifications the directive, and order the recipient to comply with the directive in its entirety or as modified. The judge shall provide a written statement for the record of the reasons for a determination under this subparagraph.

(F) Continued effect

Any directive not explicitly modified or set aside under this paragraph shall remain in full effect.

(G) Contempt of Court

Failure to obey an order issued under this paragraph may be punished by the Court as contempt of court.

(5) Enforcement of directives

(A) Order to compel

If an electronic communication service provider fails to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel the electronic communication service provider to comply with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such petition.

(B) Assignment

The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established under section 1803(e)(1) of this title not later than 24 hours after the filing of such petition.

(C) Procedures for review

A judge considering a petition filed under subparagraph (A) shall, not later than 30 days after being assigned such petition, issue an order requiring the electronic communication service provider to comply with the directive or any part of it, as issued or as modified, if the judge finds that the directive meets the requirements of this section and is otherwise lawful. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

(D) Contempt of Court

Failure to obey an order issued under this paragraph may be punished by the Court as contempt of court.

(E) Process

Any process under this paragraph may be served in any judicial district in which the electronic communication service provider may be found.

(6) Appeal

(A) Appeal to the Court of Review

The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of a decision issued pursuant to paragraph (4) or (5). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this subparagraph.

(B) Certiorari to the Supreme Court

The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(i) Judicial review of certifications and procedures

(1) In general

(A) Review by the Foreign Intelligence Surveillance Court

The Foreign Intelligence Surveillance Court shall have jurisdiction to review a certification submitted in accordance with subsection (g) and the targeting and minimization procedures adopted in accordance with subsections (d) and (e), and amendments to such certification or such procedures.

(B) Time period for review

The Court shall review a certification submitted in accordance with subsection (g) and the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and shall complete such review and issue an order under paragraph (3) not later than 30 days after the date on which such certification and such procedures are submitted.

(C) Amendments

The Attorney General and the Director of National Intelligence may amend a certification submitted in accordance with subsection (g) or the targeting and minimization procedures adopted in accordance with subsections (d) and (e) as necessary at any time, including if the Court is conducting or has completed review of such certification or such procedures, and shall submit the amended certification or amended procedures to the Court not later than 7 days after amending such certification or such procedures. The Court shall review any amendment under this subparagraph under the procedures set forth in this subsection. The Attorney General and the Director of National Intelligence may authorize the use of an amended certification or amended pro-
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(2) Review

The Court shall review the following:

(A) Certification

A certification submitted in accordance with subsection (g) to determine whether the certification contains all the required elements.

(B) Targeting procedures

The targeting procedures adopted in accordance with subsection (d) to assess whether the procedures are reasonably designed to—

(i) ensure that an acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

(ii) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

(C) Minimization procedures

The minimization procedures adopted in accordance with subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 1801(h) of this title or section 1821(4) of this title, as appropriate.

(3) Orders

(A) Approval

If the Court finds that a certification submitted in accordance with subsection (g) contains all the required elements and that the targeting and minimization procedures adopted in accordance with subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the certification and the use, or continued use in the case of an acquisition authorized pursuant to a determination under subsection (c)(2), of the procedures for the acquisition.

(B) Correction of deficiencies

If the Court finds that a certification submitted in accordance with subsection (g) does not contain all the required elements, or that the procedures adopted in accordance with subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall enter an order directing the Government to, at the Government’s election and to the extent required by the Court’s order—

(i) correct any deficiency identified by the Court’s order not later than 30 days after the date on which the Court issues the order; or

(ii) cease, or not begin, the implementation of the authorization for which such certification was submitted.

(C) Requirement for written statement

In support of an order under this subsection, the Court shall provide, simultaneously with the order, for the record a written statement of the reasons for the order.

(4) Appeal

(A) Appeal to the Court of Review

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order under this subsection. The Court of Review shall have jurisdiction to consider such petition. For any decision under this subparagraph affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of the reasons for the decision.

(B) Continuation of acquisition pending rehearing or appeal

Any acquisition affected by an order under paragraph (3)(B) may continue—

(i) during the pendency of any rehearing of the order by the Court en banc; and

(ii) if the Government files a petition for review of an order under this section, until the Court of Review enters an order under subparagraph (C).

(C) Implementation pending appeal

Not later than 60 days after the filing of a petition for review of an order under paragraph (3)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order regarding, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the review.

(D) Certiorari to the Supreme Court

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(5) Schedule

(A) Reauthorization of authorizations in effect

If the Attorney General and the Director of National Intelligence seek to reauthorize or replace an authorization issued under subsection (a), the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Court the certification prepared in accordance with subsection (g) and the procedures adopted in accordance with subsections (d) and (e) at least 30 days prior to the expiration of such authorization.

(B) Reauthorization of orders, authorizations, and directives

If the Attorney General and the Director of National Intelligence seek to reauthorize or replace an authorization issued under subsection (a) by filing a certification pursuant to subparagraph (A), that authorization, and any directives issued thereunder and any order related thereto, shall remain in effect,
(2) Agency assessment

The Inspector General of the Department of Justice and the Inspector General of each element of the intelligence community authorized to acquire foreign intelligence information under subsection (a), with respect to the department or element of such Inspector General—

(A) are authorized to review compliance with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f);

(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States-person identity and the number of United States-person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed; and

(D) shall provide each such review to—

(i) the Attorney General;

(ii) the Director of National Intelligence; and

(iii) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(I) the congressional intelligence committees; and

(II) the Committees on the Judiciary of the House of Representatives and the Senate.

(3) Annual review

(A) Requirement to conduct

The head of each element of the intelligence community conducting an acquisition authorized under subsection (a) shall conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to acquisitions authorized under subsection (a)—

(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States-person identity;

(ii) an accounting of the number of United States-person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed; and

(iv) the congressional intelligence committees; and

(v) the Committees on the Judiciary of the House of Representatives and the Senate.
§ 1881b. Certain acquisitions inside the United States targeting United States persons outside the United States

(a) Jurisdiction of the Foreign Intelligence Surveillance Court

(1) In general

The Foreign Intelligence Surveillance Court shall have jurisdiction to review an application and to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if the acquisition constitutes electronic surveillance or the acquisition of stored electronic communications or stored electronic data that requires an order under this chapter, and such acquisition is conducted within the United States.

(2) Limitation

If a United States person targeted under this subsection is reasonably believed to be located in the United States during the effective period of an order issued pursuant to subsection (c), an acquisition targeting such United States person under this section shall cease unless the targeted United States person is again reasonably believed to be located outside the United States while an order issued pursuant to subsection (c) is in effect. Nothing in this section shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other subchapter of this chapter.

(b) Application

(1) In general

Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General’s finding that it satisfies the criteria and requirements of such application, as set forth in this section, and shall include—

(A) the identity of the Federal officer making the application;

(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

(C) a statement of the facts and circumstances relied upon to justify the applicant’s belief that the United States person who is the target of the acquisition is—

(i) a person reasonably believed to be located outside the United States; and

(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(D) a statement of proposed minimization procedures that meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate;

(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

(F) a certification made by the Attorney General or an official specified in section 1804(a)(6) of this title that—

(iv) a description of any procedures developed by the head of such element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, and the results of any such assessment.

(B) Use of review

The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element and, as appropriate, the application of the minimization procedures to a particular acquisition authorized under subsection (a).

(C) Provision of review

The head of each element of the intelligence community that conducts an annual review under subsection (a) shall provide such review to—

(i) the Foreign Intelligence Surveillance Court;

(ii) the Attorney General;

(iii) the Director of National Intelligence; and

(iv) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(I) the congressional intelligence committees; and

(II) the Committees on the Judiciary of the House of Representatives and the Senate.


REPEAL OF SECTION


REFERENCES IN TEXT

This chapter, referred to in subsec. (g)(2)(A)(ii), was in the original ‘‘this Act’’, meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables. Senate Resolution 400 of the 94th Congress, referred to in subsec. (i), was agreed to May 19, 1976, and was subsequently amended by both Senate resolution and public law. The Resolution, which established the Senate Select Committee on Intelligence, is not classified to the Code.

EFFECTIVE DATE OF REPEAL

(i) the certifying official deems the information sought to be foreign intelligence information;
(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;
(iii) such information cannot reasonably be obtained by normal investigative techniques;
(iv) designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and
(v) includes a statement of the basis for the certification that—
(I) the information sought is the type of foreign intelligence information designated; and
(II) such information cannot reasonably be obtained by normal investigative techniques;
(G) a summary statement of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition;
(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;
(I) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and
(J) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

(2) Other requirements of the Attorney General

The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(3) Other requirements of the judge

The judge may require the applicant to furnish such other information as may be necessary to make the findings required by subsection (c)(1).

(c) Order

(1) Findings

Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified by the Court approving the acquisition if the Court finds that—

(A) the application has been made by a Federal officer and approved by the Attorney General;
(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—
(i) a person reasonably believed to be located outside the United States; and
(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;
(C) the proposed minimization procedures meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate; and
(D) the application that has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

(2) Probable cause

In determining whether or not probable cause exists for purposes of paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target and facts and circumstances relating to current or future activities of the target. No United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(3) Review

(A) Limitation on review

Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1).

(B) Review of probable cause

If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause under paragraph (1)(B), the judge shall enter an order so stating and provide a written statement for the record of the reasons for the determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

(C) Review of minimization procedures

If the judge determines that the proposed minimization procedures referred to in paragraph (1)(C) do not meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate, the judge shall enter an order so stating and provide a written statement for the record of the reasons for the determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

(D) Review of certification

If the judge determines that an application pursuant to subsection (b) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for the determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).
(4) Specifications
An order approving an acquisition under this subsection shall specify—

(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

(C) the nature of the information sought to be acquired and the type of communications or activities to be subjected to acquisition;

(D) a summary of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition; and

(E) the period of time during which the acquisition is approved.

(5) Directives
An order approving an acquisition under this subsection shall direct—

(A) that the minimization procedures referred to in paragraph (1)(C), as approved or modified by the Court, be followed;

(B) if applicable, an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under such order in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target of the acquisition;

(C) if applicable, an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

(D) if applicable, that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

(6) Duration
An order approved under this subsection shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

(7) Compliance
At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(d) Emergency authorization
(1) Authority for emergency authorization
Notwithstanding any other provision of this chapter, if the Attorney General reasonably determines that—

(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained, and

(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize such acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this section is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

(2) Minimization procedures
If the Attorney General authorizes an acquisition under paragraph (1), the Attorney General shall require that the minimization procedures referred to in subsection (c)(1)(C) for the issuance of a judicial order be followed.

(3) Termination of emergency authorization
In the absence of a judicial order approving an acquisition under paragraph (1), such acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(4) Use of information
If an application for approval submitted pursuant to paragraph (1) is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(e) Release from liability
No cause of action shall lie in any court against any electronic communication service provider for providing any information, facili-
ties, or assistance in accordance with an order or request for emergency assistance issued pursuant to subsection (c) or (d), respectively.

(f) Appeal

(1) Appeal to the Foreign Intelligence Surveillance Court of Review

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

(2) Certiorari to the Supreme Court

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(g) Construction

Except as provided in this section, nothing in this chapter shall be construed to require an application for a court order for an acquisition that is targeted in accordance with this section at a United States person reasonably believed to be located outside the United States.


REPEAL OF SECTION


REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (d)(1), and (g), was in the original “this Act”, meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below under section 1801 of this title and Table.

EFFECTIVE DATE OF REPEAL


§ 1881c. Other acquisitions targeting United States persons outside the United States

(a) Jurisdiction and scope

(1) Jurisdiction

The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subsection (c).

(2) Scope

No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order with respect to such targeted United States person or the Attorney General has authorized an emergency acquisition pursuant to subsection (c) or (d), respectively, or any other provision of this chapter.

(3) Limitations

(A) Moving or misidentified targets

If a United States person targeted under this subsection is reasonably believed to be located in the United States during the effective period of an order issued pursuant to subsection (c), an acquisition targeting such United States person under this section shall cease unless the targeted United States person is again reasonably believed to be located outside the United States during the effective period of such order.

(B) Applicability

If an acquisition for foreign intelligence purposes is to be conducted inside the United States and could be authorized under section 1881b of this title, the acquisition may only be conducted if authorized under section 1881b of this title or in accordance with another provision of this chapter other than this section.

(C) Construction

Nothing in this paragraph shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other subchapter of this chapter.

(b) Application

Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General’s finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

(1) the identity of the Federal officer making the application;

(2) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

(3) a statement of the facts and circumstances relied upon to justify the applicant’s belief that the United States person who is the target of the acquisition is—

(A) a person reasonably believed to be located outside the United States; and

(B) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(4) a statement of proposed minimization procedures that meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate;
(5) a certification made by the Attorney General, an official specified in section 1804(a)(6) of this title, or the head of an element of the intelligence community that—

(A) the certifying official deems the information sought to be foreign intelligence information; and

(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

(6) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

(7) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

(c) Order

(1) Findings

Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified by the Court if the Court finds that—

(A) the application has been made by a Federal officer and approved by the Attorney General;

(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

(i) a person reasonably believed to be located outside the United States; and

(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(C) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate; and

(D) the application that has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(5) is not clearly erroneous on the basis of the information furnished under subsection (b).

(2) Probable cause

In determining whether or not probable cause exists for purposes of paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target and facts and circumstances relating to current or future activities of the target. No United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(3) Review

(A) Limitations on review

Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

(B) Review of probable cause

If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

(C) Review of minimization procedures

If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

(D) Scope of review of certification

An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

(5) Compliance

At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

(d) Emergency authorization

(1) Authority for emergency authorization

Notwithstanding any other provision of this section, if the Attorney General reasonably determines that—

(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection can, with due diligence, be obtained, and
(B) the factual basis for the issuance of an order under this section exists,
the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this section is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

(2) Minimization procedures

If the Attorney General authorizes an emergency acquisition under paragraph (1), the Attorney General shall require that the minimization procedures referred to in subsection (c)(1)(C) be followed.

(3) Termination of emergency authorization

In the absence of an order under subsection (c), an emergency acquisition under paragraph (1) shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(4) Use of information

If an application submitted to the Court pursuant to paragraph (1) is denied, or in any other case where the acquisition is terminated and no order with respect to the target of the acquisition is issued under subsection (c), no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(e) Appeal

(1) Appeal to the Court of Review

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

(2) Certiorari to the Supreme Court

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.


REPEAL OF SECTION


REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), (3)(B), (C), was in the original “this Act”, meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1763, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

EFFECTIVE DATE OF REPEAL


§1881d. Joint applications and concurrent authorizations

(a) Joint applications and orders

If an acquisition targeting a United States person under section 1881b or 1881c of this title is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 1881b(a)(1) or 1881c(a)(1) of this title may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of sections 1881b(b) and 1881c(b) of this title, orders under sections 1881b(c) and 1881c(c) of this title, as appropriate.

(b) Concurrent authorization

If an order authorizing electronic surveillance or physical search has been obtained under section 1805 or 1924 of this title, the Attorney General may authorize, for the effective period of that order, without an order under section 1881b or 1881c of this title, the targeting of that United States person for the purpose of acquiring foreign intelligence information while such person is reasonably believed to be located outside the United States.


REPEAL OF SECTION


EFFECTIVE DATE OF REPEAL

§ 1881e. Use of information acquired under this subchapter

(a) Information acquired under section 1881a

Information acquired from an acquisition conducted under section 1881a of this title shall be deemed to be information acquired from an electronic surveillance pursuant to subchapter I for purposes of section 1806 of this title, except for the purposes of subsection (j) of such section.

(b) Information acquired under section 1881b

Information acquired from an acquisition conducted under section 1881b of this title shall be deemed to be information acquired from an electronic surveillance pursuant to subchapter I for purposes of section 1806 of this title.


REPEAL OF SECTION


EFFECTIVE DATE OF REPEAL


§ 1881f. Congressional oversight

(a) Semiannual report

Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees and the Committees on the Judiciary of the Senate and the House of Representatives, consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution, concerning the implementation of this subchapter.

(b) Content

Each report under subsection (a) shall include—

(1) with respect to section 1881a of this title—

(A) any certifications submitted in accordance with section 1881a(g) of this title during the reporting period;

(B) with respect to each determination under section 1881a(c)(2) of this title, the reasons for exercising the authority under such section;

(C) any directives issued under section 1881a(h) of this title during the reporting period;

(D) a description of the judicial review during the reporting period of such certifications and targeting and minimization procedures adopted in accordance with subsections (d) and (e) of section 1881a of this title and utilized with respect to an acquisition under such section, including a copy of an order or pleading in connection with such review that contains a significant legal interpretation of the provisions of section 1881a of this title;

(E) any actions taken to challenge or enforce a directive under paragraph (4) or (5) of section 1881a(h) of this title;

(F) any compliance reviews conducted by the Attorney General or the Director of National Intelligence of acquisitions authorized under section 1881a(a) of this title;

(G) a description of any incidents of noncompliance—

(i) with a directive issued by the Attorney General and the Director of National Intelligence under section 1881a(h) of this title, including incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under section 1881a(h) of this title; and

(ii) by an element of the intelligence community with procedures and guidelines adopted in accordance with subsections (d), (e), and (f) of section 1881a of this title; and

(H) any procedures implementing section 1881a of this title;

(2) with respect to section 1881b of this title—

(A) the total number of applications made for orders under section 1881b(b) of this title;

(B) the total number of such orders—

(i) granted;

(ii) modified; and

(iii) denied; and

(C) the total number of emergency acquisitions authorized by the Attorney General under section 1881b(d) of this title and the total number of subsequent orders approving or denying such acquisitions; and

(3) with respect to section 1881c of this title—

(A) the total number of applications made for orders under section 1881c(b) of this title;

(B) the total number of such orders—

(i) granted;

(ii) modified; and

(iii) denied; and

(C) the total number of emergency acquisitions authorized by the Attorney General under section 1881c(d) of this title and the total number of subsequent orders approving or denying such applications.


REPEAL OF SECTION


REFERENCES IN TEXT

Senate Resolution 400 of the 94th Congress, referred to in subsec. (a), was agreed to May 19, 1976, and was subsequently amended by both Senate resolution and
§ 1885. Definitions

made by section 403(b)(1) are effective Dec. 31, 2012.

dures note under section 1801 of this title, the repeals

404 of Pub. L. 110–261, set out as a Transition Proce-

Stat. 2474, provided that, except as provided in section

provided in section 404 of Pub. L. 110–261, set

 EFFECTIVE DATE OF REPEAL


provided that, except as provided in section

provided that, except as provided in section

§ 1881g. Savings provision

Nothing in this subchapter shall be construed to

limit the authority of the Government to seek

an order or authorization under, or otherwise engage in any activity that is authorized under, any other subchapter of this chapter.


REPEAL OF SECTION


provided that, except as provided in section

provided that, except as provided in section

 EFFECTIVE DATE OF REPEAL


provided that, except as provided in section

provided that, except as provided in section

 SUBCHAPTER VII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

§ 1885. Definitions

In this subchapter:

(1) Assistance

The term “assistance” means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

(2) Civil action

The term “civil action” includes a covered civil action.

(3) Congressional intelligence committees

The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(4) Contents

The term “contents” has the meaning given that term in section 1801(n) of this title.

(5) Covered civil action

The term “covered civil action” means a civil action filed in a Federal or State court that—

(A) alleges that an electronic communication service provider furnished assistance to an element of the intelligence community; and

(B) seeks monetary or other relief from the electronic communication service provider related to the provision of such assistance.

(6) Electronic communication service provider

The term “electronic communication service provider” means—

(A) a telecommunications carrier, as that term is defined in section 153 of title 47;

(B) a provider of electronic communication service, as that term is defined in section 2512 of title 18;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

(7) Intelligence community

The term “intelligence community” has the meaning given the term in section 401a(4) of this title.

(8) Person

The term “person” means—

(A) an electronic communication service provider; or

(B) a landlord, custodian, or other person who may be authorized or required to furnish assistance pursuant to—

(i) an order of the court established under section 1803(a) of this title directing such assistance;

(ii) a certification in writing under section 2511(2)(a)(i)(B) or 2709(b) of title 18; or

(iii) a directive under section 1802(a)(4), 1805b(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110–55), or 1801a(h) of this title.

(9) State

The term “State” means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.


REFERENCES IN TEXT


§ 1885a. Procedures for implementing statutory defenses

(a) Requirement for certification

Notwithstanding any other provision of law, a civil action may not lie or be maintained in a Federal or State court against any person for
providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the district court of the United States in which such action is pending that—

(1) any assistance by that person was provided pursuant to an order of the court established under section 1803(a) of this title directing such assistance;

(2) any assistance by that person was provided pursuant to a certification in writing under section 2518(2)(a)(ii)(B) or 2709(b) of title 18;

(3) any assistance by that person was provided pursuant to a directive under section 1802(a)(4), 1805b(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110–55), or 1081a(h) of this title directing such assistance;

(4) in the case of a covered civil action, the assistance alleged to have been provided by the electronic communication service provider was—

(A) in connection with an intelligence activity involving communications that was—

(i) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(ii) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(B) the subject of a written request or directive, or a series of written requests or directives, from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(i) authorized by the President; and

(ii) determined to be lawful; or

(5) the person did not provide the alleged assistance.

(b) Judicial review

(1) Review of certifications

A certification under subsection (a) shall be given effect unless the court finds that such certification is not supported by substantial evidence provided to the court pursuant to this section.

(2) Supplemental materials

In its review of a certification under subsection (a), the court may examine the court order, certification, written request, or directive described in subsection (a) and any relevant court order, certification, written request, or directive submitted pursuant to subsection (d).

(c) Limitations on disclosure

If the Attorney General files a declaration under section 1746 of title 28 that disclosure of a certification made pursuant to subsection (a) or the supplemental materials provided pursuant to subsection (b) or (d) would harm the national security of the United States, the court shall—

(1) review such certification and the supplemental materials in camera and ex parte; and

(2) limit any public disclosure concerning such certification and the supplemental materials, including any public order following such in camera and ex parte review, to a statement as to whether the case is dismissed and a description of the legal standards that govern the order, without disclosing the paragraph of subsection (a) that is the basis for the certification.

(d) Role of the parties

Any plaintiff or defendant in a civil action may submit any relevant court order, certification, written request, or directive to the district court referred to in subsection (a) for review and shall be permitted to participate in the briefing or argument of any legal issue in a judicial proceeding conducted pursuant to this section, but only to the extent that such participation does not require the disclosure of classified information to such party. To the extent that classified information is relevant to the proceeding or would be revealed in the determination of an issue, the court shall review such information in camera and ex parte, and shall issue any part of the court’s written order that would reveal classified information in camera and ex parte and maintain such part under seal.

(e) Nondelegation

The authority and duties of the Attorney General under this section shall be performed by the Attorney General (or Acting Attorney General) or the Deputy Attorney General.

(f) Appeal

The courts of appeals shall have jurisdiction of appeals from interlocutory orders of the district courts of the United States granting or denying a motion to dismiss or for summary judgment under this section.

(g) Removal

A civil action against a person for providing assistance to an element of the intelligence community that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28.

(h) Relationship to other laws

Nothing in this section shall be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

(i) Applicability

This section shall apply to a civil action pending on or filed after July 10, 2008.


REFERENCES IN TEXT


§ 1885b. Preemption

(a) In general

No State shall have authority to—

(1) conduct an investigation into an electronic communication service provider’s alleged assistance to an element of the intelligence community;
§ 1885c. Reporting

(a) Semiannual report

(1) Not less frequently than once every 6 months, the Attorney General shall, in a manner consistent with national security, the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution, fully inform the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives concerning the implementation of this chapter.

(b) Content

Each report made under subsection (a) shall include—

(1) any certifications made under section 1885a of this title; and

(2) a description of the judicial review of the certifications made under section 1885a of this title.

(3) any actions taken to enforce the provisions of section 1885b of this title.

§ 1901. Short title, findings, and purposes

(a) Short title

This chapter may be cited as the “David L. Boren National Security Education Act of 1991”.

(b) Findings

The Congress makes the following findings:

(1) The security of the United States is and will continue to depend on the ability of the United States to exercise international leadership.

(2) The ability of the United States to exercise international leadership is, and will increasingly continue to be, based on the political and economic strength of the United States, as well as on United States military strength around the world.

(3) Recent changes in the world pose threats of a new kind to international stability as Cold War tensions continue to decline while economic competition, regional conflicts, terrorist activities, and weapon proliferations have dramatically increased.

(4) The future national security and economic well-being of the United States will depend substantially on the ability of its citizens to communicate and compete by knowing the languages and cultures of other countries.

(5) The Federal Government has an interest in ensuring that the employees of its departments and agencies with national security responsibilities are prepared to meet the challenges of this changing international environment.

(6) The Federal Government also has an interest in taking actions to alleviate the problem of American undergraduate and graduate students being inadequately prepared to meet the challenges posed by increasing global interaction among nations.

(7) American colleges and universities must place a new emphasis on improving the teaching of foreign languages, area studies, counterproliferation studies, and other international fields to help meet those challenges.

(c) Purposes

The purposes of this chapter are as follows:

(1) To provide the necessary resources, accountability, and flexibility to meet the national security education needs of the United States, especially as such needs change over time.

(2) To increase the quantity, diversity, and quality of the teaching and learning of subjects in the fields of foreign languages, area studies, counterproliferation studies, and other international fields that are critical to the Nation’s interest.

(3) To produce an increased pool of applicants for work in the departments and agencies of the United States Government with national security responsibilities.
(4) To expand, in conjunction with other Federal programs, the international experience, knowledge base, and perspectives on which the United States citizenry, Government employees, and leaders rely.

(5) To permit the Federal Government to advocate the cause of international education.

(A) Program required

§ 1902. Scholarship, fellowship, and grant program

(a) Program required

(1) In general

The Secretary of Defense shall carry out a program for—

(A) awarding scholarships to undergraduate students who—

(i) are United States citizens in order to enable such students to study, for at least one academic semester or equivalent term, in foreign countries that are critical countries (as determined under section 1903(d)(4)(A) of this title) in those languages and study areas where deficiencies exist (as identified in the assessments undertaken pursuant to section 1906(d) of this title); and

(ii) pursuant to subsection (b)(2)(A) of this section, enter into an agreement to work in a national security position or work in the field of higher education in the area of study for which the scholarship was awarded;

(B) awarding fellowships to graduate students who—

(i) are United States citizens who—

(I) are native speakers (referred to as "heritage community citizens") of a foreign language that is identified as critical to the national security interests of the United States who should be actively recruited for employment by Federal security agencies with a need for linguists; and

(II) are not proficient at a professional level in the English language with respect to reading, writing, and other skills required to carry out the national security interests of the United States, as determined by the Secretary, to enable such students to pursue English language studies at an institution of higher education of the United States to attain proficiency in those skills; and

(ii) pursuant to subsection (b)(2)(B) of this section, enter into an agreement to work in a position in a similar manner (as determined by the Secretary) as agreements entered into pursuant to subsection (b)(2)(A) of this section.

(2) Funding allocations

Of the amount available for obligation out of the National Security Education Trust Fund or from a transfer under section 1910(c) of this title for any fiscal year for the purposes stated in paragraph (1), the Secretary shall have a goal of allocating—

(A) $ of such amount for the awarding of scholarships pursuant to paragraph (1)(A);

(B) $ of such amount for the awarding of fellowships pursuant to paragraph (1)(B); and

(C) $ of such amount for the awarding of grants pursuant to paragraph (1)(C).

The funding allocation under this paragraph shall not apply to grants under paragraph (1)(D) for the National Flagship Language Initiative described in subsection (i) of this section or for the scholarship program under paragraph (1)(E). For the authorization of appropriations for the National Flagship Language Initiative, see section 1911 of this title. For the authorization of appropriations for the scholarship program under paragraph (1)(E), see section 1912 of this title.

(3) Consultation with National Security Education Board

The program required under this chapter shall be carried out in consultation with the National Security Education Board established under section 1903 of this title.

(4) Contract authority

The Secretary may enter into one or more contracts, with private national organizations having an expertise in foreign languages, area
studies, counterproliferation studies, and other international fields, for the awarding of the scholarships, fellowships, and grants described in paragraph (1) in accordance with the provisions of this chapter. The Secretary may enter into such contracts without regard to section 6101 of title 41 or any other provision of law that requires the use of competitive procedures. In addition, the Secretary may enter into personal service contracts for periods up to one year for program administration, except that no more than 10 such contracts may be in effect at any one time.

(b) Service agreement

In awarding a scholarship or fellowship under the program, the Secretary or contract organization referred to in subsection (a)(4) of this section, as the case may be, shall require a recipient of any fellowship or any scholarship to enter into an agreement that, in return for such assistance, the recipient—

(1) will maintain satisfactory academic progress, as determined in accordance with regulations issued by the Secretary, and agrees that failure to maintain such progress shall constitute grounds upon which the Secretary or contract organization referred to in subsection (a)(4) of this section may terminate such assistance;

(2)(A) will (in accordance with regulations prescribed by the Secretary of Defense in coordination with the heads of the other Federal departments and agencies concerned) begin work not later than three years after the recipient’s completion of degree study during which scholarship assistance was provided under the program—

(i) for not less than one year in a position certified by the Director of National Intelligence, the Secretary of Homeland Security, and the Secretary of State (as appropriate), as contributing to the national security of the United States in the Department of Defense, any element of the intelligence community, the Department of Homeland Security, or the Department of State;

(ii) for not less than one year in a position in a Federal agency or office that is identified by the Secretary of Defense under subsection (g) as having national security responsibilities if the recipient demonstrates to the Secretary that no position is available in the departments and agencies covered by clause (i); or

(iii) for not less than one academic year in a position in the field of education in a discipline related to the study supported by the program if the recipient demonstrates to the Secretary that no position is available in the departments, agencies, and offices covered by clauses (i) and (ii); and

(3) if the recipient fails to meet either of the obligations set forth in paragraph (1) or (2), will reimburse the United States Government for the amount of the assistance provided the recipient under the program, together with interest at a rate determined in accordance with regulations issued by the Secretary.

(c) Evaluation of progress in language skills

The Secretary shall, through the National Security Education Program office, administer a test of the foreign language skills of each recipient of a scholarship or fellowship under this chapter before the commencement of the study or education for which the scholarship or fellowship is awarded and after the completion of such study or education. The purpose of these tests is to evaluate the progress made by recipients of scholarships and fellowships in developing foreign language skills as a result of assistance under this chapter.

(d) Distribution of assistance

In selecting the recipients for awards of scholarships, fellowships, or grants pursuant to this chapter, the Secretary or a contract organization referred to in subsection (a)(4) of this section, as the case may be, shall take into consideration (1) the extent to which the selections will result in there being an equitable geographic distribution of such scholarships, fellowships, or grants (as the case may be) among the various regions of the United States, and (2) the extent to which the distribution of scholarships and fellowships to individuals reflects the cultural, racial, and ethnic diversity of the population of the United States.

(e) Merit review

The Secretary shall award scholarships, fellowships, and grants under the program based upon a merit review process.

(f) Limitation on use of program participants

No person who receives a grant, scholarship, or fellowship or any other type of assistance under this chapter shall, as a condition of receiving such assistance or under any other circumstances, be used by any department, agency, or entity of the United States Government en-
gaged in intelligence activities to undertake any activity on its behalf during the period such person is pursuing a program of education for which funds are provided under the program carried out under this chapter.

(g) Determination of agencies and offices of Federal Government having national security responsibilities

(1) The Secretary, in consultation with the Board, shall annually determine and develop a list identifying each agency or office of the Federal Government having national security responsibilities at which a recipient of a fellowship or scholarship under this chapter will be able to make the recipient’s foreign area and language skills available to such agency or office. The Secretary shall submit the first such list to the Congress and include each subsequent list in the annual report to the Congress, as required by section 1906(b)(6) of this title.

(2) Notwithstanding section 1904 of this title, funds may not be made available from the Fund to carry out this chapter for fiscal year 1997 until 30 days after the date on which the Secretary of Defense submits to the Congress the first such list required by paragraph (1).

(h) Temporary employment and retention of certain participants

(1) In general

The Secretary of Defense may—

(A) appoint or retain a person provided scholarship or fellowship assistance under the program in a position in the Department of Defense on an interim basis during the period of the person’s pursuit of a degree under the program and for a period not to exceed two years after completion of the degree, but only if, in the case of the period after completion of the degree, there is an active investigation to provide security clearance to the person for an appropriate permanent position in the Department of Defense under subsection (b)(2); and

(B) if there is no appropriate permanent position available for the person after the end of the periods described in subparagraph (A), separate the person from employment with the Department without regard to any other provision of law, in which event the Secretary identifies as being the most critical in the interests of the national security of the United States.

(2) Treatment of certain service

The period of service of a person covered by paragraph (1) in a position on an interim basis under that paragraph shall, after completion of the degree, be treated as a period of service for purposes of satisfying the obligated service requirements of the person under the service agreement of the person under subsection (b).

(i) Use of awards to attend the Foreign Language Center of the Defense Language Institute

(1) The Secretary shall provide for the admission of award recipients to the Foreign Language Center of the Defense Language Institute (hereinafter in this subsection referred to as the “Center”). An award recipient may apply a portion of the applicable scholarship or fellowship award for instruction at the Center on a space-available basis as a Department of Defense sponsored program to defray the additive instructional costs.

(2) Except as the Secretary determines necessary, an award recipient who receives instruction at the Center shall be subject to the same regulations with respect to attendance, discipline, discharge, and dismissal as apply to other persons attending the Center.

(3) In this subsection, the term “award recipient” means an undergraduate student who has been awarded a fellowship under subsection (a)(1)(A) of this section or a graduate student who has been awarded a scholarship under subsection (a)(1)(B) of this section who—

(A) is in good standing;

(B) has completed all academic study in a foreign country, as provided for under the scholarship or fellowship; and

(C) would benefit from instruction provided at the Center.

(j) National Flagship Language Initiative

(1) Under the National Flagship Language Initiative, institutions of higher education shall establish, operate, or improve activities designed to train students in programs in a range of disciplines to achieve advanced levels of proficiency in those foreign languages that the Secretary identifies as being the most critical in the interests of the national security of the United States.

(2) An undergraduate student who has been awarded a scholarship under subsection (a)(1)(A) of this section or a graduate student who has been awarded a fellowship under subsection (a)(1)(B) of this section may participate in the activities carried out under the National Flagship Language Initiative.

(3) An institution of higher education that receives a grant pursuant to subsection (a)(1)(D) of this section shall give special consideration to applicants who are employees of the Federal Government.

(4) For purposes of this subsection, the Foreign Language Center of the Defense Language Institute and any other educational institution that provides training in foreign languages operated by the Department of Defense or an agency of the intelligence community is deemed to be an institution of higher education, and may carry out the types of activities permitted under the National Flagship Language Initiative.

(5) An undergraduate or graduate student who participates in training in a program under paragraph (1) and has not already entered into a service agreement under subsection (b) of this section shall enter into a service agreement under subsection (b) of this section applicable to an undergraduate or graduate student, as the case may be, with respect to participation in such training in a program under paragraph (1).

(g) An employee of a department or agency of the Federal Government who participates in training in a program under paragraph (1) shall agree in writing—

(i) to continue in the service of the department or agency of the Federal Government employing the employee for the period of such training;

(ii) to continue in the service of such department or agency, following completion by the
employee of such training, for a period of two years for each year, or part of the year, of such training; 

(iii) if, before the completion by the employee of such training, the employment of the employee is terminated by such department or agency due to misconduct by the employee, or by the employee voluntarily, to reimburse the United States for the total cost of such training (excluding the employee’s pay and allowances) provided to the employee; and 

(iv) if, after the completion by the employee of such training but before the completion by the employee of the period of service required by clause (ii), the employment of the employee by such department or agency is terminated either by such department or agency due to misconduct by the employee, or by the employee voluntarily, to reimburse the United States in an amount that bears the same ratio to the total cost of such training (excluding the employee’s pay and allowances) provided to the employee as the unsevered portion of such period of service bears to the total period of service required by clause (ii).

(C) Subject to subparagraph (D), the obligation of the United States under an agreement under subparagraph (A) is for all purposes a debt owing the United States. 

(D) The head of the element of the intelligence community concerned may release an employee, in whole or in part, from the obligation to reimburse the United States under an agreement under subparagraph (A) when, in the discretion of the head of the element, the head of the element determines that equity or the interests of the United States so require.

(k) Employment of program participants

The Secretary of Defense, the Secretary of Homeland Security, the Secretary of State, or the head of a Federal agency or office identified by the Secretary of Defense under subsection (g) and the Secretary of Homeland Security, the Secretary of State, or the head of a Federal agency or office identified by the Secretary of Homeland Security under subsection (g) as having national security responsibilities—

(1) may, without regard to any provision of title 5 governing appointments in the competitive service, appoint to a position that is identified under subsection (b)(2)(A)(i) as having national security responsibilities, or to a position in such Federal agency or office, in the excepted service an individual who has successfully completed an academic program for which a scholarship or fellowship under this section was awarded and who, under the terms of the agreement for such scholarship or fellowship, at the time of such appointment owes a service commitment to such Department or such Federal agency or office; and

(2) may, upon satisfactory completion of two years of substantially continuous service by an incumbent who was appointed to an excepted service position under the authority of paragraph (1), convert the appointment of such individual, without competition, to a career or career conditional appointment.


MENDMENTS


2006—Subsec. (b)(2). Pub. L. 109–364, § 945(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ”will—

 ‘‘(A) in the case of a recipient of a scholarship, after the recipient’s completion of the study for which the scholarship assistance was provided under the program, work in a position in the Department of Defense or other element of the intelligence community that is certified by the Secretary as appropriate to utilize the unique language and region expertise acquired by the recipient pursuant to such study for a period specified by the Secretary, which period shall include one year of service for each year, or portion thereof, for which such scholarship assistance was provided; or

 ‘‘(B) in the case of a recipient of a fellowship, after the recipient’s completion of the study for which the fellowship assistance was provided under the program, work in a position described in subparagraph (A) that is certified by the Secretary as appropriate to utilize the unique language and region expertise acquired by the recipient pursuant to such study for a period specified by the Secretary, which period shall (at the discretion of the Secretary) include not less than one nor more than three years for each year, or portion thereof, for which such fellowship assistance was provided; and’’,

Subsecs. (h) to (j), Pub. L. 109–364, § 945(b), added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.


Subsec. (a)(2). Pub. L. 108–487, § 603(a)(2), which directed the amendment of the matter following par. (2) by inserting in the first sentence “or for the scholarship program under paragraph (1)(E)” after “under paragraph (1)(D)” for the National Flagship Language Initiative described in subsection (1) of this section and by inserting at end “For the authorization of appropriations for the scholarship program under paragraph (1)(E), see section 1912 of this title.”, was executed to the concluding provisions of par. (2) to reflect the probable intent of Congress.

Pub. L. 108–487, § 601(b), in introductory provisions, inserted “or from a transfer under section 1912(c) of this title” after “National Security Education Trust Fund.”

Subsecs. (i)(5), (6), Pub. L. 108–487, § 602(a)(1), added pars. (5) and (6).
2003—Subsec. (b)(2), Pub. L. 108–136 added subpars. (A) and (B) and struck out former subpars. (A) and (B) which also contained provisions relating to recipients of scholarships and fellowships, respectively.


Subsec. (a)(2). Pub. L. 107–306, § 333(a)(3), inserted at end of subsec. a period under which paragraph shall not apply to grants under paragraph (1)(D) for the National Flagship Language Initiative described in subsection (i) of this section. For the authorization of appropriations for the National Flagship Language Initiative, see section 1911 of this title.

Subsec. (b)(2)(A)(ii). Pub. L. 107–296, § 1332(b)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: “if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available, in the field of higher education in a discipline relating to the foreign country, foreign language, area study, counterproliferation study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with (i); and”.


1996—Subsec. (a)(1)(A). Pub. L. 104–201, § 1078(b)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “Awarding scholarships to undergraduate students who are United States citizens in order to enable such students to study, for at least one academic semester or equivalent term, in foreign countries that are critical countries (as determined under section 1906(d)(4)(A) of this title) in those languages and study areas where deficiencies exist (as identified in the assessments undertaken pursuant to section 1906(d) of this title).”

Subsec. (a)(1)(B)(i). Pub. L. 104–201, § 1078(b)(2)(A), inserted “relating to areas where deficiencies exist (as identified in the assessments undertaken pursuant to section 1906(d) of this title)”.


Subsec. (b). Pub. L. 104–201, § 1078(c)(1), in introductory provisions, substituted “or any scholarship” for “or of scholarships that provide assistance for periods that aggregate 12 months or more.”

Subsec. (b)(2). Pub. L. 104–201, § 1078(c)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “will, upon completion of such recipient’s baccalaureate degree or education under the program, as the case may be, and in accordance with regulations issued by the Secretary, work for the Federal Government or in the field of education in the area of study for which the scholarship or fellowship was awarded for a period specified by the Secretary, which period for the recipients of scholarships shall be not less than one and not more than three times the period for which the fellowship assistance was provided; and”. Subsecs. (c) to (f), Pub. L. 104–201, § 1078(d), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.


1993—Subsec. (a)(1)(A). Pub. L. 103–178, § 331(b)(2)(A), (d), struck out comma after “term,” and inserted before semicolon at end “in those language and study areas where deficiencies exist (as identified in the assessments undertaken pursuant to section 1906(d) of this title)”.

Subsec. (a)(1)(B)(i). Pub. L. 103–178, § 331(b)(2)(B), inserted before semicolon at end “in which deficiencies exist (as identified in the assessments undertaken pursuant to section 1906(d) of this title)”.


Subsec. (a)(1)(B)(i). Pub. L. 102–496, § 404(b)(2), substituted “as part of a graduate degree program of a United States institution of higher education” for “in the United States”.

Subsec. (a)(4). Pub. L. 102–496, § 404(b)(3), inserted at end “In addition, the Secretary may enter into personal service contracts for periods up to one year for program administration, except that not more than 10 such contracts may be in effect at any one time.”

Subsecs. (e), (f). Pub. L. 102–496, § 404(c), redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: “The Secretary shall administer the program through the Defense Intelligence College.”

Effective Date of 2004 Amendment
Pub. L. 108–487, title VI, § 602(a)(2), Dec. 23, 2004, 118 Stat. 3953, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to training under section 802(1) [now 802(j)] of the David L. Boren National Security Act of 1991 (50 U.S.C. 1902(1), now 1902(j)) that begins on or after the date that is 90 days after the date of the enactment of this Act [Dec. 23, 2004].”


Effective Date of 2003 Amendment

“(1) The amendment made by subsection (a) [amending this section] shall apply only with respect to service agreements entered into under the David L. Boren National Security Education Act of 1991 [50 U.S.C. 1901 et seq.] on or after the date of the enactment of this Act [Nov. 24, 2003].”

“(2) The amendment made by subsection (a) shall not affect the force, validity, or terms of any service agreement entered into under the David L. Boren National Security Education Act of 1991 before the date of the enactment of this Act that is in force as of that date.”

Effective Date of 2002 Amendment
Pub. L. 107–306, title III, § 333(c), Nov. 27, 2002, 116 Stat. 2397, provided that: “The amendments made by this section [enacting section 1911 of this title and amending this section and section 1903 of this title] shall take effect on the date the Secretary of Defense submits the report required under section 334 of this Act [116 Stat. 2397] and notifies the appropriate committees of Congress (as defined in subsection (c) of that section) that the programs carried out under the David L. Boren National Security Education Act of 1991 [50 U.S.C. 1901 et seq.] are being managed in a fiscally and programmatically sound manner.”

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.
CONSTRUCTION

Pub. L. 107–306, title III, §333(d), Nov. 27, 2002, 116 Stat. 2397, provided that: “Nothing in this section [enacting section 1911 of this title, amending this section and section 1903 of this title, and enacting provisions set out as notes under this section] shall be construed as affecting any program or project carried out under the David L. Boren National Security Education Act of 1991 [50 U.S.C. 1901 et seq.] as in effect on the date that precedes the date of the enactment of this Act [Nov. 27, 2002].”

INCREASE IN NUMBER OF PARTICIPATING EDUCATIONAL INSTITUTIONS

Pub. L. 108–487, title VI, §602(c), Dec. 23, 2004, 118 Stat. 3963, provided that: “The Secretary of Defense shall take such actions as the Secretary considers appropriate to increase the number of qualified educational institutions that receive grants under the National Flagship Language Initiative in order to expand the number of students studying abroad in critical foreign languages that the Secretary identifies as being the most critical to the national security of the United States.”

CLARIFICATION OF AUTHORITY TO SUPPORT STUDIES ABROAD

Pub. L. 108–487, title VI, §602(d), Dec. 23, 2004, 118 Stat. 3963, provided that: “Educational institutions that receive grants under the National Flagship Language Initiative may support students who pursue total immersion foreign language studies overseas of foreign languages that are critical to the national security of the United States.”

§ 1903. National Security Education Board

(a) Establishment

The Secretary of Defense shall establish a National Security Education Board.

(b) Composition

The Board shall be composed of the following individuals or the representatives of such individuals:

(1) The Secretary of Defense, who shall serve as the chairman of the Board.

(2) The Secretary of Education.

(3) The Secretary of State.

(4) The Secretary of Commerce.

(5) The Director of Central Intelligence.

(6) The Chairperson of the National Endowment for the Humanities.

(7) Six individuals appointed by the President, by and with the advice and consent of the Senate, who shall be experts in the fields of international, language, area, and counterproliferation studies education and who may not be officers or employees of the Federal Government.

(c) Term of appointees

Each individual appointed to the Board pursuant to subsection (b)(6) of this section shall be appointed for a period specified by the President at the time of the appointment, but not to exceed four years. Such individuals shall receive no compensation for service on the Board but may receive reimbursement for travel and other necessary expenses.

(d) Functions

The Board shall perform the following functions:

(1) Develop criteria for awarding scholarships, fellowships, and grants under this chapter, including an order of priority in such awards that favors individuals expressing an interest in national security issues or pursuing a career in a national security position.

(2) Provide for wide dissemination of information regarding the activities assisted under this chapter.

(3) Establish qualifications for students desiring scholarships or fellowships, and institutions of higher education desiring grants, under this chapter, including, in the case of students desiring a scholarship or fellowship, a requirement that the student have a demonstrated commitment to the study of the discipline for which the scholarship or fellowship is to be awarded.

(4) After taking into account the annual analyses of trends in language, international, area, and counterproliferation studies under section 1906(b)(1) of this title, make recommendations to the Secretary regarding:

(A) which countries are not emphasized in other United States study abroad programs, such as countries in which few United States students are studying and countries which are of importance to the national security interests of the United States, and are, therefore, critical areas for the purposes of section 1902(a)(1)(A) of this title;

(B) which areas within the disciplines described in section 1902(a)(1)(B) of this title relating to the national security interests of the United States are areas of study in which United States students are deficient in learning and are, therefore, critical areas within those disciplines for the purposes of that section;

(C) which areas within the disciplines described in section 1902(a)(1)(C) of this title are areas in which United States students, educators, and Government employees are deficient in learning and in which insubstantial numbers of United States institutions of higher education provide training and are, therefore, critical areas within those disciplines for the purposes of that section;

(D) how students desiring scholarships or fellowships can be encouraged to work for an agency or office of the Federal Government involved in national security affairs or national security policy upon completion of their education; and

(E) which foreign languages are critical to the national security interests of the United States for purposes of section 1902(a)(1)(D) of this title (relating to grants for the National Flagship Language Initiative) and section 1902(a)(1)(E) of this title (relating to the scholarship program for advanced English language studies by heritage community citizens).

(5) Encourage applications for fellowships under this chapter from graduate students having an educational background in any academic discipline, particularly in the areas of science or technology.

(6) Provide the Secretary biennially with a list of scholarship recipients and fellowship recipients, including an assessment of their for-
eign area and language skills, who are available to work in a national security position. (7) Not later than 30 days after a scholarship or fellowship recipient completes the study or education for which assistance was provided under the program, provide the Secretary with a report fully describing the foreign area and language skills obtained by the recipient as a result of the assistance. (8) Review the administration of the programs required under this chapter.


AMENDMENTS


1996—Subsec. (d)(1). Pub. L. 104–201, § 1078(e)(1), inserted before period at end "including an order of priority in such awards that favors individuals expressing an interest in national security issues or pursuing a career in a national security position".

Subsec. (d)(4). Pub. L. 104–201, § 1078(e)(2)(A), in introductory provisions, substituted "After taking into account the annual analyses of trends in language, international, and area studies under section 1906(b) of this title, make recommendations" for "Make recommendations".

Subsec. (d)(4)(A). Pub. L. 104–201, § 1078(e)(2)(B), substituted "countries and which are of importance to the national security interests of the United States" after "are studying".


2002—Subsec. (b)(7). Pub. L. 102–496, § 404(d)(1), (3), redesignated par. (7) as (8), substituted "Six individuals" for "Four individuals", and inserted before period at end "and who may not be officers or employees of the Federal Government".

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 Central 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.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–306 effective on the date the Secretary of Defense submits the report required under section 334 of Pub. L. 107–306 and notifies the appropriate committees of Congress that the programs carried out under this chapter are being managed in a fiscally and programmatically sound manner, see section 333(c) of Pub. L. 107–306, set out as a note under section 1902 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective on earlier of Oct. 1, 1999, or date of abolition of the United States Information Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1301 of Pub. L. 105–277, set out as an Effective Date note under section 6331 of Title 22.

§ 1904. National Security Education Trust Fund

(a) Establishment of Fund

There is established in the Treasury of the United States a trust fund to be known as the "National Security Education Trust Fund". The assets of the Fund consist of amounts appropriated to the Fund and amounts credited to the Fund under subsection (e) of this section.

(b) Availability of sums in Fund

Sums in the Fund shall, to the extent provided in appropriations Acts, be available—

(1) for awarding scholarships, fellowships, and grants in accordance with the provisions of this chapter; and

(2) for properly allocable costs of the Federal Government for the administration of the program under this chapter.

(c) Investment of Fund assets

The Secretary of the Treasury shall invest in full the amount in the Fund that is not immediately necessary for expenditure. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired on original issue at the issue price or by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is not a multiple of ¼ of 1 percent, the rate of interest of such special obligations shall be the multiple of ¼ of 1 percent next lower than such average rate. Such special obligations shall be issued...
only if the Secretary of the Treasury determines that the purchases of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States or original issue or at the market price, is not in the public interest.

(d) Authority to sell obligations

Any obligation acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(e) Amounts credited to Fund

(1) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(2) Any amount paid to the United States under section 1902(b)(3) of this title shall be credited to and form a part of the Fund.

(3) Any gifts of money shall be credited to and form a part of the Fund.

(d) Necessary expenditures

Expenditures necessary to conduct the program required by this chapter shall be paid from the Fund, subject to section 1904(b) of this title.

§ 1906. Annual report

(a) Annual report

(1) The Secretary shall submit to the President and to the congressional intelligence committees an annual report of the conduct of the program required by this chapter.

(2) The report submitted to the President shall be submitted each year at the time that the President’s budget for the next fiscal year is submitted to Congress pursuant to section 1105 of title 31.

(3) The report submitted to the congressional intelligence committees shall be submitted on the date provided in section 415b of this title.

(b) Contents of report

Each such report shall contain—

(1) an analysis of the trends within language, international, area, and counterproliferation studies, along with a survey of such areas as the Secretary determines are receiving inadequate attention;

(2) the effect on those trends of activities under the program required by this chapter;

(3) an analysis of the assistance provided under the program for the previous fiscal year, to include the subject areas being addressed and the nature of the assistance provided;

(4) an analysis of the performance of the individuals who received assistance under the program during the previous fiscal year, to include the degree to which assistance was terminated under the program and the extent to which individual recipients failed to meet their obligations under the program;

(5) an analysis of the results of the program for the previous fiscal year, and cumulatively, to include, at a minimum—

(A) the percentage of individuals who have received assistance under the program who subsequently became employees of the United States Government;

(B) in the case of individuals who did not subsequently become employees of the United States Government, an analysis of the reasons why they did not become employees and an explanation as to what use, if any, was made of the assistance by those recipients; and

(C) the uses made of grants to educational institutions;

(6) the current list of agencies and offices of the Federal Government required to be developed by section 1902(g) of this title; and

(7) any legislative changes recommended by the Secretary to facilitate the administration of the program or otherwise to enhance its objectives.

(c) Submission of initial report

The first report under this section shall be submitted at the time the budget for fiscal year 1994 is submitted to Congress.
(d) Consultation

During the preparation of each report required by subsection (a) of this section, the Secretary shall consult with the members of the Board specified in paragraphs (1) through (7) of section 1903(b) of this title. Each such member shall submit to the Secretary an assessment of their hiring needs in the areas of language and area studies and a projection of the deficiencies in such areas. The Secretary shall include all assessments in the report required by subsection (a) of this section.


AMENDMENTS

2002—Subsec. (a). Pub. L. 107–306 designated first and second sentences as pars. (1) and (2), respectively, in par. (1), substituted “the congressional intelligence committees” for “the Congress”, in par. (2), inserted “submitted to the President” after “The report”, and added par. (3).


1996—Subsec. (b)(5) to (7). Pub. L. 104–201 struck out “and” at end of par. (5), added par. (6), and redesignated former par. (6) as (7).


§ 1907. Government Accountability Office audits

The conduct of the program required by this chapter may be audited by the Government Accountability Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. Representatives of the Government Accountability Office shall have access to all books, accounts, records, reports, and files and all other papers, things, or property of the Department of Defense pertaining to such activities and necessary to facilitate the audit.


AMENDMENTS


§ 1908. Definitions

For the purpose of this chapter:

(1) The term “Board” means the National Security Education Board established pursuant to section 1903 of this title.

(2) The term “Fund” means the National Security Education Trust Fund established pursuant to section 1904 of this title.

(3) The term “institution of higher education” has the meaning given that term by section 1001 of title 20.

(4) The term “national security position” means a position—

(A) having national security responsibilities in an agency or office of the Federal Government that has national security responsibilities, as determined under section 1902(g) of this title; and

(B) in which the individual in such position makes their foreign language skills available to such agency or office.

(5) The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.


AMENDMENTS


1998—Par. (3). Pub. L. 105–244 substituted “section 1001” for “section 1141(a)”.


Effective Date of 1998 Amendment


§ 1909. Fiscal year 1992 funding

(a) Authorization of appropriations to Fund

There is hereby authorized to be appropriated to the Fund for fiscal year 1992 the sum of $150,000,000.

(b) Authorization of obligations from Fund

During fiscal year 1992, there may be obligated from the Fund such amounts as may be provided in appropriations Acts, not to exceed $35,000,000. Amounts made available for obligation from the Fund for fiscal year 1992 shall remain available until expended.


§ 1910. Funding

(a) Fiscal years 1993 and 1994

Amounts appropriated to carry out this chapter for fiscal years 1993 and 1994 shall remain available until expended.

(b) Fiscal years 1995 and 1996

There is authorized to be appropriated from, and may be obligated from, the Fund for each of the fiscal years 1995 and 1996 not more than the amount credited to the Fund in interest only for the preceding fiscal year under section 1904(e) of this title.

(c) Funding from Intelligence Community Management Account for fiscal years beginning with fiscal year 2005

In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, the Director of National Intelligence shall transfer to the Secretary from amounts appropriated for the Intelligence Community Management Account for each fiscal year, be-
beginning with fiscal year 2005, $8,000,000 to carry out the scholarship, fellowship, and grant programs under subparagraphs (A), (B), and (C), respectively, of section 1902(a)(1) of this title.


AMENDMENTS

§ 1911. Additional annual authorization of appropriations

(a) In general

In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, there is authorized to be appropriated to the Secretary for each fiscal year, beginning with fiscal year 2003, $10,000,000, to carry out the grant program for the National Flagship Language Initiative under section 1902(a)(1)(D) of this title.

(b) Funding from Intelligence Community Management Account for fiscal years beginning with fiscal year 2005

In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, the Director of National Intelligence shall transfer to the Secretary from amounts appropriated for the Intelligence Community Management Account for each fiscal year, beginning with fiscal year 2005, $6,000,000 to carry out the grant program for the National Flagship Language Initiative under section 1902(a)(1)(D) of this title.

(c) Availability of appropriated funds

Amounts made available under this section shall remain available until expended.


AMENDMENTS
2004—Subsecs. (b), (c). Pub. L. 108–487 added subsecs. (b) and (c) and struck out heading and text of former subsec. (b). Text read as follows: “Amounts appropriated pursuant to the authorization of appropriations under subsection (a) of this section shall remain available until expended.”

EFFECTIVE DATE
Section effective on the date the Secretary of Defense submits the report required under section 334 of Pub. L. 107–306 and notifies the appropriate committees of Congress that the programs carried out under this chapter are being managed in a fiscally and programmatically sound manner, see section 333(c) of Pub. L. 107–306, set out as an Effective Date of 2002 Amendment note under section 1902 of this title.

§ 1912. Funding for scholarship program for advanced English language studies by heritage community citizens

(a) Funding from Intelligence Community Management Account

In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, the Director of National Intelligence shall transfer to the Secretary from amounts appropriated for the Intelligence Community Management Account for each fiscal year, beginning with fiscal year 2005, $2,000,000 to carry out the scholarship programs for English language studies by certain heritage community citizens under section 1902(a)(1)(E) of this title.

(b) Availability of funds

Amounts made available under subsection (a) of this section shall remain available until expended.


CHAPTER 38—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SUBCHAPTER I—DEFINITIONS

Sec. 2001. Definitions relating to the system.
2002. Definitions relating to participants and annuitants.

SUBCHAPTER II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

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2012. Central Intelligence Agency Retirement and Disability Fund.
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PART H—RETIRED PARTICIPANTS RECALLED, REINSTATED, OR REEMPLOYED IN GOVERNMENT

2111. Recall.
SUBCHAPTER I—DEFINITIONS

§ 2001. Definitions relating to the system

When used in this chapter:

(1) **Agency**

The term "Agency" means the Central Intelligence Agency.

(2) **Director**

The term "Director" means the Director of the Central Intelligence Agency.

(3) **Qualifying service**

The term "qualifying service" means service determined by the Director to have been performed in carrying out duties described in section 2013 of this title.

(4) **Fund balance**

The term "fund balance" means the sum of:

(A) the investments of the fund calculated at par value; and

(B) the cash balance of the fund on the books of the Treasury.

(5) **Unfunded liability**

The term "unfunded liability" means the estimated amount by which—

(A) the present value of all benefits payable from the fund exceeds

(B) the sum of—

(i) the present value of deductions to be withheld from the future basic pay of participants subject to subchapter II of this chapter and of future Agency contributions to be made on the behalf of such participants;

(ii) the present value of Government payments to the fund under sections 2091(c) and 2091(d) of this title; and

(iii) the fund balance as of the date on which the unfunded liability is determined.

(6) **Normal cost**

The term "normal cost" means the level percentage of payroll required to be deposited in the fund to meet the cost of benefits payable under the system (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for government employees and less the cost of credit allowed for military service.

(7) **Lump-sum credit**

The term "lump-sum credit" means the unfunded amount consisting of retirement deductions made from a participant’s basic pay and amounts deposited by a participant covering earlier service, including any amounts deposited under section 2082(h) of this title.

(8) **Congressional intelligence committees**

The term "congressional intelligence committees" means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(9) **Employee**

The term "employee" includes an officer of the Agency.

Prior Provisions


Amendments

2004—Par. (2). Pub. L. 108–458 added par. (2) and struck out heading and text of former par. (2). Text read as follows: “The term ‘Director’ means the Director of Central Intelligence.”

1992—Par. (7). Pub. L. 102–183 substituted “basic pay and amounts deposited” for “basic pay, amounts deposited” and struck out “, and interest determined under section 2121 of this title” after “section 202(b) of this title”.

Effective Date of 2004 Amendment

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


Effective Date of 1993 Amendment

Section 202(b) of Pub. L. 103–178 provided that: “The amendments made by this section and sections 403n, 403r, and 403s of this title, sections 8347 and 8423 of Title 5, Government Organization and Employees, section 1605 of Title 10, Armed Forces, and provisions set out as a note under section 403 of Title 5 shall take effect as of February 1, 1993.”

Effective Date

Section 803 of Pub. L. 102–496 provided that: “The amendments made by sections 802 and 803 [enacting this chapter and amending sections 403n, 403r, and 403s of this title, sections 8347 and 8423 of Title 5, Government Organization and Employees, section 1605 of Title 10, Armed Forces, and provisions set out as a note under section 403 of Title 5] shall take effect as of the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 24, 1992].”

Effective Date of Amendments to Pub. L. 88–643 Prior to Enactment of Pub. L. 102–496

Pub. L. 102–183, title III, § 302(d), Dec. 4, 1991, 105 Stat. 1263, provided that: “The amendments made by this section (amending sections 204(b)(3), 221(c)(e), and 223(c)(e) of Pub. L. 88–643) shall take effect on the first day of the fourth month beginning after the date of the enactment of this Act [Dec. 4, 1991] and shall apply with respect to the death of a participant or annuitant on or after that date.”


“(2)(A) The amendment made by subsection (a)(2) [amending section 221(q) of Pub. L. 88–643] shall apply with respect to participants and former participants regardless of whether they retire before, on, or after the effective date specified in paragraph (1) of such section.

“(B) The amendment made by subsection (b)(2) of section 221(q) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (as added by subsection (a)(2)) shall apply only with respect to participants who retire on or after that effective date.

“(3) In applying the provisions of paragraph (1)(B) of section 221(q) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (as added by subsection (a)(2)) to a participant or former participant who retires before the effective date specified in paragraph (1)—

“(i) the 18-month period referred to in that paragraph shall be considered to begin on the effective date specified in paragraph (1) of such section and

“(ii) the amount referred to in paragraph (2) of that section (as added by subsection (a)(2)) shall be computed without regard to the provisions of subparagraphs (B)(ii) and (B)(iii) of such paragraph (relating to interest).”


“(1) The amendment made by subsection (a)(1) [amending section 226(a) of Pub. L. 88–643] shall be deemed to have become effective as of September 30, 1990, and shall apply in the case of annuitants whose divorce occurs on or after that date.

“(2) The amendments made by subsections (a)(2) and (a)(3) [amending section 226(a) of Pub. L. 88–643] shall be deemed to have become effective as of September 29, 1993, on and after Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

“(3) The amendments made by subsections (a)(2) and (a)(3) [amending section 226(a) of Pub. L. 88–643] shall take effect on the first day of the fourth month beginning after the date of the enactment of this Act [Dec. 4, 1991].”


“(1) The amendments made by subsection (a) [amending sections 221, 222, and 223 of Pub. L. 88–643] relating to widows or widowers shall apply in the case of a surviving spouse’s remarriage occurring on or after July 27, 1989, and with respect to periods beginning after such date.

“(2) The amendments made by subsection (a) relating to former spouses shall apply with respect to any former spouse whose remarriage occurs after the date of the enactment of this Act [Aug. 14, 1991].”

Amendment by section 307 of Pub. L. 102–496 (amending sections 221 and 225 of Pub. L. 88–643) effective as of Oct. 1, 1990, and no benefits provided pursuant to such amendment to be payable with respect to any period before such date, see section 307(d) of Pub. L. 102–496, set out as an Effective Date of 1991 Amendment note under section 463p of this title.


Pub. L. 100–453, title III, § 302(d)(3), Sept. 29, 1988, 102 Stat. 1907, provided that: “The amendments made by this subsection [amending section 221(m), (p) of Pub. L. 88–643] shall apply to marriages which occur on or after May 7, 1985.”

Pub. L. 100–178, title IV, § 402(c)(e), Dec. 2, 1987, 101 Stat. 1514, provided that: “(c)(1) Except as provided in paragraph (2), the amendments made by this section [amending section
403n of this title and sections 221(c)(2), 232(b), and 304 of Pub. L. 88–643] shall take effect on November 15, 1982, the effective date of the Central Intelligence Agency Spouses’ Retirement Equity Act of 1982.


“(d) Nothing in this section or any amendment made by this section shall be construed to require the forfeiture by any individual of benefits received before the date of the enactment of this Act [Dec. 2, 1987].

“(e) Nothing in this section or any amendment made by this section shall be construed to require a reduction in the level of benefits received by any individual who was receiving benefits under section 222 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88–643] before the date of enactment of this Act [Dec. 2, 1987].


Pub. L. 97–269, title VI, §613, Sept. 27, 1982, 96 Stat. 1154, provided that:

“(a) Except as provided in subsections (b) and (c) of this section, this title [enacting section 403n of this title and sections 222 and 223 of Pub. L. 88–643 and amending sections 204, 211, 221, 234, and 263 of Pub. L. 88–643] shall take effect on November 15, 1982.

“(b) The provisions of section 222(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88–643], as added by this title, regarding the rights of former spouses to an annuity shall apply in the case of any individual who after the effective date of this title [Nov. 15, 1982] becomes a former spouse of an individual who separates from service with the Agency after such date.

“(c) Except to the extent provided in section 223 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88–643], the provisions of subsection (b) and (c) of section 222 of such Act, as added by this title, regarding the rights of former spouses to receive survivor annuities shall apply in the case of any individual who after the effective date of this title [Nov. 15, 1982] becomes a former spouse of a participant or former participant in the Central Intelligence Agency Retirement and Disability System.


“(b) The amendments made by sections 201(a), (b), (c), and (d), 202, and 208 [amending sections 204(a), (b)(2), 231(c), 222(b), and 227(b) of Pub. L. 88–643] shall not apply in the case of participation in the Public Health Service which died before January 8, 1971. The rights of such persons and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.


“(d) The amendment made by section 210 [amending section 231 of Pub. L. 88–643] is effective only with respect to annuity accruing for full months beginning after January 6, 1971; but any part of a period of separation referred to in such amendment in which the participant or former participant was receiving benefits under chapter 61 of title 5, United States Code or any earlier statute on which such chapter is based shall be counted whether the person returns to duty before, on, or after January 8, 1971. With respect to any person re-
provided that: ‘‘This Act [enacting this chapter] may be cited as the ‘Central Intelligence Agency Retirement Act.’’

SAVINGS PROVISION

Section 804 of Pub. L. 102–496 provided that:

‘‘(a) PRIOR ELECTIONS.—Any election made under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88–643 prior to enactment of Pub. L. 102–496, formerly set out as a note under section 403 of this title] before the effective date specified in section 805 [set out as an Effective Date note above] shall not be affected by the amendment made by section 802 [enacting this chapter] and shall be deemed to have been made under the corresponding provision of that Act as restated by section 802 as the Central Intelligence Agency Retirement Act.

‘‘(b) REFERENCES.—Any reference in any other Act, or in any Executive order, rule, or regulation, to the Central Intelligence Agency Retirement and Disability System who are also required

FUNDING REQUIREMENTS FOR AMENDMENTS TO PUB. L. 88–643 PRIOR TO ENACTMENT OF PUB. L. 102–496

Pub. L. 100–453, title III, § 302(e), Sept. 29, 1988, 102 Stat. 1907, provided that: ‘‘Any new spending authority (within the meaning of section 401(c) of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)]) provided pursuant to the amendments made by this section [enacting section 226 and amending sections 221, 224, and 225 of Pub. L. 88–643] shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.’’

For provision that any new spending authority (within the meaning of section 401(c) of the Congressional Budget Act of 1974) provided pursuant to the amendments made by this section [enacting section 226 and amending sections 221, 224, and 225 of Pub. L. 88–643] shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts, see section 307(c) of Pub. L. 102–496, set out as a Compliance With Budget Act note under section 403 of this title.

CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY FUND: ANNUITY INCREASE PAYMENT: MONTHLY RATES


‘‘(a) An annuity payable from the Central Intelligence Agency Retirement and Disability Fund to an annuitant which is based on a separation occurring prior to October 20, 1969, is increased by $240 per annum.

‘‘(b) In lieu of any increase based on an increase under subsection (a) of this section, an annuity payable from the Central Intelligence Agency Retirement and Disability Fund to the surviving spouse of an annuitant, which is based on a separation occurring prior to October 20, 1969, shall be increased by $132 per annum.

‘‘(c) The monthly rate of an annuity resulting from an increase under this section shall be considered as the monthly rate of annuity payable under section 221(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended (78 Stat. 1953; 50 U.S.C. 403 note) (section 221 of Pub. L. 88–643 prior to enactment of Pub. L. 102–496; see 50 U.S.C. 2031(a)) for purposes of computing the minimum annuity under new section 221(l) of the Act, as added by section 204 of this Act.’’

TEMPORARY RETIREMENT CONTRIBUTIONS AND PROCEDURES FOR CERTAIN PARTICIPANTS

For temporary provisions providing modified contributions and procedures for officers and employees participating in the Central Intelligence Agency Retirement and Disability System who are also required to pay employment taxes relating to benefits under title II of the Social Security Act, 42 U.S.C. 401 et seq., until they are covered by a new Government retirement system or Jan. 1, 1986, whichever is earlier, see title II of Pub. L. 98–168, set out as a note under section 8331 of Title 5, Government Organization and Employees.

CONTINGENT ONCE-A-YEAR ADJUSTMENT IN ANNUITIES

For provisions which directed the President, subject to certain conditions, to provide for a single cost-of-living adjustment in the annuities paid under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88–643] during the period Sept. 1, 1980, to Aug. 31, 1981, and which further directed that, subject to the enactment of specified legislation providing for the adjustment of annuities paid under section 8331 et seq. of Title 5, Government Organization and Employees, the President exercise the authority vested in him under section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [Pub. L. 88–643] to provide for cost-of-living adjustments in the annuities paid under that Act on an identical basis, see Pub. L. 96–342, title VIII, § 812(a)(3), (4), (b)(3), (4), (c), Sept. 8, 1980, 94 Stat. 1098, set out as a note under section 1401(a) of Title 10, Armed Forces.

EXECUTIVE ORDER NO. 11950

Ex. Ord. No. 11950, Jan. 6, 1977, 42 F.R. 1451, concerning Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to allotments or assignments of moneys by annuitants.

EXECUTIVE ORDER NO. 12197

Ex. Ord. No. 12197, Mar. 5, 1980, 45 F.R. 14833, concerning Central Intelligence Agency Retirement and Disability System to amendments to Civil Service Retirement and Disability System with regard to restoration of previously reduced annuities.

EXECUTIVE ORDER NO. 12253

Ex. Ord. No. 12253, Nov. 25, 1980, 45 F.R. 17895, concerning Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to definition of ‘‘dependent’’

EXECUTIVE ORDER NO. 12273


EXECUTIVE ORDER NO. 12326


EXECUTIVE ORDER NO. 12443

Ex. Ord. No. 12443, Sept. 27, 1983, 48 F.R. 44751, concerning Central Intelligence Agency and Civil Service Retirement and Disability Systems with regard to restoration of disability retirement annuities, entitlement to and computation and payment of annuities, accuracy of information, and adjustments in amounts.

EXECUTIVE ORDER NO. 12485

Ex. Ord. No. 12485, July 13, 1984, 49 F.R. 28827, concerning Central Intelligence Agency Retirement and
Disability System and Civil Service Retirement and Disability System with regard to prior service credit.

EXECUTIVE ORDER NO. 12684

§ 2002. Definitions relating to participants and annuitants

(a) General definitions

When used in subchapter II of this chapter:

(1) Former participant

The term “former participant” means a person who—

(A) was an employee of the Agency who was a participant in the system; and

(B) separates from the Agency without entitlement to immediate receipt of an annuity from the fund.

(2) Retired participant

The term “retired participant” means a person who—

(A) was an employee of the Agency who was a participant in the system; and

(B) is entitled to receive an annuity from the fund based upon such person’s service as a participant.

(3) Surviving spouse

(A) In general

The term “surviving spouse” means the wife or husband of a participant, former participant, or retired participant who—

(i) died; or

(ii) who is the parent of a child born of the marriage.

(B) Treatment when participant dies less than 9 months after marriage

In a case in which the participant or retired participant dies within the 9-month period beginning on the date of the marriage, the requirement under subparagraph (A)(i) that a marriage have a duration of at least 9 months immediately preceding the participant’s or retired participant’s death, or (ii) who is the parent of a child born of the marriage.

(4) Former spouse

The term “former spouse” means a former wife or husband of a participant, former participant, or retired participant as follows:

(A) Divorces on or before December 4, 1991

In the case of a divorce that becomes final on or before December 4, 1991, such term means a former wife or husband of a participant, former participant, or retired participant who was married to such participant for not less than 10 years during periods of the participant’s creditable service, at least 5 years of which were spent outside the United States by both such participant and former wife or husband during the participant’s service as an employee of the Agency.

(B) Divorces after December 4, 1991

In the case of a divorce that becomes final after December 4, 1991, such term means a former wife or husband of a participant, former participant, or retired participant who was married to such participant for not less than 10 years during periods of the participant’s creditable service, at least 5 years of which were spent by the participant during the participant’s service as an employee of the Agency (i) outside the United States, or (ii) otherwise in a position the duties of which qualified the participant for designation by the Director as a participant under section 2013 of this title.

(C) Creditable service

For purposes of subparagraphs (A) and (B), the term “creditable service” means all periods of a participant’s service that are creditable under sections 2081, 2082, and 2083 of this title.

(5) Previous spouse

The term “previous spouse” means an individual who was married for at least 9 months to a participant, former participant, or retired participant who had at least 18 months of service which are creditable under sections 2081, 2082, and 2083 of this title.

(6) Spousal agreement

The term “spousal agreement” means an agreement between a participant, former participant, or retired participant and the participant, former participant, or retired participant’s spouse or former spouse that—

(A) is in writing, is signed by the parties, and is notarized;

(B) has not been modified by court order; and

(C) has been authenticated by the Director.

(7) Court order

The term “court order” means—

(A) a court decree of divorce, annulment, or legal separation; or

(B) a court order or court-approved property settlement agreement incident to such court decree of divorce, annulment, or legal separation.

(8) Court

The term “court” means a court of a State, the State of Alaska or Hawaii, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

(b) “Child” defined

For purposes of sections 2031 and 2052 of this title:

(1) In general

The term “child” means any of the following:
(A) Minor children

An unmarried dependent child under 18 years of age, including—

(i) an adopted child;

(ii) a stepchild, but only if the stepchild lived with the participant or retired participant in a regular parent-child relationship;

(iii) a recognized natural child; and

(iv) a child who lived with the participant, for whom a petition of adoption was filed by the participant or retired participant, and who is adopted by the surviving spouse after the death of the participant or retired participant.

(B) Disabled adult children

An unmarried dependent child, regardless of age, who is incapable of self-support because of a physical or mental disability incurred before age 18.

(C) Students

An unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

(2) Special rules for students

(A) Extension of age termination of status as "child"

For purposes of this subsection, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, shall be treated as having attained the age of 22 on the first day of July following that birthday.

(B) Treatment of interim period between school years

A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim does not exceed 5 months and if the child shows to the satisfaction of the Director that the child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately following the interim.

(3) "Dependent" defined

For purposes of this subsection, the term "dependent", with respect to the child of a participant or retired participant, means that the participant or retired participant was, at the time of the death of the participant or retired participant, either living with or contributing to the support of the child, as determined in accordance with regulations prescribed under subchapter II of this chapter.

(4) Exclusion of stepchildren from lump-sum payment

For purposes of section 2071(c) of this title, the term "child" includes an adopted child and a natural child, but does not include a stepchild.
3196, and is now known as the Central Intelligence Agency Retirement Act. As so revised, title II of Pub. L. 88–643 is classified generally to this subchapter.

PRIOR PROVISIONS


AMENDMENTS


EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.


EFFECTIVE DATE OF 1993 AMENDMENT


§ 2012. Central Intelligence Agency Retirement and Disability Fund

The Director shall maintain the fund in the Treasury known as the “Central Intelligence Agency Retirement and Disability Fund” (hereinafter in this chapter referred to, as the “fund”), originally created pursuant to title II of the Central Intelligence Agency Retirement Act of 1964 for certain employees. (Pub. L. 88–643, title II, §202, as added Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3201.)

REFERENCES IN TEXT


PRIOR PROVISIONS


§ 2013. Participants in CIARDS system

(a) Designation of participants

The Director may from time to time designate employees of the agency who shall be entitled to participate in the system. Employees so designated who elect to participate in the system are referred to in this chapter as “participants”.

(b) Qualifying service

Designation of employees under this section may be made only from among employees of the agency who have completed at least 5 years of qualifying service. For purposes of this chapter, qualifying service is service in the agency performed in carrying out duties that are determined by the Director—

(1) to be in support of agency activities abroad hazardous to life or health; or

(2) to be so specialized because of security requirements as to be clearly distinguishable from normal government employment.

(c) Election of employee to be participant

(1) Permanence of election

An employee of the agency who elects to accept designation as a participant in the system shall remain a participant of the system for the duration of that individual’s employment with the agency.

(2) Irrevocability of election

Such an election shall be irrevocable except as and to the extent provided in section 2151(d) of this title.

(3) Election not subject to approval

An election under this section is not subject to review or approval by the Director.


PRIOR PROVISIONS


§ 2014. Annuitants

Persons who are annuitants under the system are—

(1) those persons who, on the basis of their service in the agency, have met all requirements for an annuity under this subchapter or any other Act and are receiving an annuity from the fund; and

(2) those persons who, on the basis of someone else’s service, meet all the requirements under this subchapter or any other Act for an annuity payable from the fund.


PRIOR PROVISIONS

§ 2021. Contributions to fund

(a) In general

(1) Participant’s contributions

Except as provided in subsection (d) of this section, 7 percent of the basic pay received by a participant for any pay period shall be deducted and withheld from the pay of that participant and contributed to the fund.

(2) Agency contributions

An equal amount shall be contributed to the fund for that pay period from the appropriation or fund which is used for payment of the participant’s basic pay.

(3) Deposits to the fund

The amounts deducted and withheld from basic pay, together with the amounts so contributed from the appropriation or fund, shall be deposited by the Director to the credit of the fund.

(b) Consent of participant to deductions from pay

Each participant shall be deemed to consent and agree to such deductions from basic pay, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which the participant is entitled under this subchapter.

(c) Treatment of contributions after 35 years of service

(1) Accrual of interest

Amounts deducted and withheld from the basic pay of a participant under this section for pay periods after the first day of the first pay period beginning after the day on which the participant completes 35 years of creditable service computed under sections 2081 and 2082 of this title (excluding service credit for unused sick leave under section 2031(a)(2) of this title) shall accrue interest. Such interest shall accrue at the rate of 3 percent a year through December 31, 1984, and thereafter at the rate computed under section 8334(e) of title 5, and shall be compounded annually from the date on which the amount is so deducted and withheld until the date of the participant’s retirement or death.

(2) Use of amounts withheld after 35 years of service

(A) Use for deposits due under section 2082(b)

Amounts described in paragraph (1), including interest accrued on such amounts, shall be applied upon the participant’s retirement or death toward any deposit due under section 2082(b) of this title.

(B) Lump-sum payment

Any balance of such amounts not so required for such a deposit shall be refunded to the participant in a lump sum after the participant’s separation (or, in the event of a death in service, to a beneficiary in order of precedence specified in subsection (c) of this title), subject to prior notification of a current spouse, if any, unless the participant establishes to the satisfaction of the Director, in accordance with regulations which the Director may prescribe, that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse.

(C) Purchases of additional elective benefits

In lieu of such a lump-sum payment, the participant may use such amounts—

(i) to purchase an additional annuity in accordance with section 2121 of this title; or

(ii) provide any additional survivor benefit for a current or former spouse or spouses.

(d) Offset for social security taxes

(1) Persons covered

In the case of a participant who was a participant subject to this subchapter before January 1, 1984, and whose—

(A) is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of title 26, and

(B) is not creditable service for any purpose under subchapter III of this chapter or chapter 84 of title 5,

there shall be deducted and withheld from the basic pay of the participant under this section during any pay period only the amount computed under paragraph (2).

(2) Reduction in contribution

The amount deducted and withheld from the basic pay of a participant during any pay period pursuant to paragraph (1) shall be the excess of—

(A) the amount determined by multiplying the percent applicable to the participant under subsection (a) of this section by the basic pay payable to the participant for that pay period, over

(B) the amount of the taxes deducted and withheld from such basic pay under section 3101(a) of title 26 (relating to old-age, survivors, and disability insurance) for that pay period.


REFERENCES IN TEXT


1 So in original. Probably should be “section”. 
subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS


AMENDMENTS

1993—Subsec. (c)(2)(B). Pub. L. 103–178 substituted ‘‘prior notification of a current spouse, if any, unless the participant establishes to the satisfaction of the Director, in accordance with regulations which the Director may prescribe, that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse’’ for ‘‘the requirement under section 2071(b)(4) of this title’’.

EFFECTIVE DATE OF 1993 AMENDMENT


TEMPORARY ADJUSTMENT OF CONTRIBUTION LEVELS

Pub. L. 106–346, §101(a) [title V, §505(g)], Oct. 23, 2000, 114 Stat. 1356, 1356A–53, provided that: ‘‘Notwithstanding section 211(a)(2) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2021(a)(2)), during the period beginning on October 1, 2002, through December 31, 2002, to the Central Intelligence Agency shall contribute 7.5 percent of the basic pay of an employee participating in the Central Intelligence Agency Retirement and Disability System in lieu of the agency contribution otherwise required under section 211(a)(2) of such Act.’’


‘‘(1) AGENCY CONTRIBUTIONS.—Notwithstanding section 211(a)(2) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2021(a)(2)), during the period beginning on October 1, 1997, through September 30, 2002, the Central Intelligence Agency shall contribute 8.51 percent of the basic pay of an employee participating in the Central Intelligence Agency Retirement and Disability System in lieu of the agency contribution otherwise required under section 211(a)(2) of such Act.‘‘

‘‘(2) INDIVIDUAL DEDUCTIONS, WITHHOLDINGS, AND DEPOSITS.—Notwithstanding section 211(a)(1) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2021(a)(1)) beginning on January 1, 1999, through December 31, 2002, the percentage deducted and withheld from the basic pay of an employee participating in the Central Intelligence Agency Retirement and Disability System shall be as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Percentage</th>
</tr>
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<tbody>
<tr>
<td>January 1, 1999</td>
<td>7.25</td>
</tr>
<tr>
<td>January 1, 2000</td>
<td>7.4</td>
</tr>
</tbody>
</table>

PART C—COMPUTATION OF ANNUITIES

§2031. Computation of annuities

(a) Annuity of participant

(1) Computation of annuity

The annuity of a participant is the product of—

(A) the participant’s high-3 average pay (as defined in paragraph (4)); and (B) the number of years, not exceeding 35, of service credit (determined in accordance with sections 2081 and 2082 of this title) multiplied by 2 percent.

(2) Credit for unused sick leave

The total service of a participant who retires on an immediate annuity (except under section 2051 of this title) or who dies leaving a survivor or survivors entitled to an annuity shall include (without regard to the 35-year limitation prescribed in paragraph (1)) the days of unused sick leave to the credit of the participant. Days of unused sick leave may not be counted in determining average basic pay or eligibility for an annuity under this subchapter. A deposit shall not be required for days of unused sick leave credited under this paragraph.

(3) Crediting of part-time service

(A) In general

In the case of a participant whose service includes service on a part-time basis performed after April 6, 1986, the participant’s annuity shall be the sum of the amounts determined under subparagraphs (B) and (C).

(B) Computation of pre-April 7, 1986, annuity

The portion of an annuity referred to in subparagraph (A) with respect to service before April 7, 1986, shall be the amount computed under paragraph (1) using the participant’s length of service before that date (increased by the unused sick leave to the credit of the participant at the time of retirement) and the participant’s high-3 average pay.

(C) Computation of post-April 6, 1986, annuity

The portion of an annuity referred to in subparagraph (A) with respect to service after April 6, 1986, shall be the product of—

(i) the amount computed under paragraph (1), using the participant’s length of service after that date and the participant’s high-3 average pay, as determined by using the annual rate of basic pay that would be payable for full-time service; and (ii) the ratio which the participant’s actual service after April 6, 1986 (as determined by prorating the participant’s total service after that date to reflect the service that was performed on a part-time basis) bears to the total service after that date that would be creditable for the participant if all the service had been performed on a full-time basis.

(D) Treatment of employment on temporary or intermittent basis

Employment on a temporary or intermittent basis shall not be considered to be service on a part-time basis for purposes of this paragraph.

(4) High-3 average pay defined

For purposes of this subsection, a participant’s high-3 average pay is the amount of the participant’s average basic pay for the highest 3 consecutive years of the participant’s service for which full contributions have been made to the fund.
§ 2031

(5) Computation of service
In determining the aggregate period of service upon which an annuity is to be based, any fractional part of a month shall not be counted.

(b) Spouse or former spouse survivor annuity

(1) Reduction in participant's annuity to provide spouse or former spouse survivor annuity

(A) General rule
Except to the extent provided otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 55), the participant shall receive a reduced annuity and provide a survivor annuity for the participant's spouse under this subsection or former spouse under section 2032(b) of this title, or a combination of such annuities, as the case may be.

(B) Joint election for waiver or reduction of spouse survivor annuity
A married participant or former participant and the participant's spouse may jointly elect in writing at the time of retirement to waive a survivor annuity for that spouse under this section or to reduce such survivor annuity under this section by designating a portion of the annuity of the participant as the base for the survivor annuity. If the marriage is dissolved following an election for such a reduced annuity and the spouse qualifies as a former spouse, the base used in calculating any annuity of the former spouse under section 2032(b) of this title may not exceed the portion of the participant's annuity designated under this subparagraph.

(C) Joint election of participant and former spouse
If a participant or former participant has a former spouse, such participant and the participant's former spouse may jointly elect by spousal agreement under section 2034(b) of this title to waive, reduce, or increase a survivor annuity under section 2032(b) of this title for that former spouse. Any such election must be made (i) before the end of the 12-month period beginning on the date on which the divorce or annulment involving that former spouse becomes final, or (ii) at the time of retirement of the participant, whichever is later.

(D) Unilateral elections in absence of spouse or former spouse
The Director may prescribe regulations under which a participant or former participant may make an election under subparagraph (B) or (C) without the participant's spouse or former spouse if the participant establishes to the satisfaction of the Director that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse or former spouse.

(2) Amount of reduction in participant's annuity
The annuity of a participant or former participant providing a survivor annuity under this section (or section 2032(b) of this title), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 21⁄2 percent of the first $3,600 plus 10 percent of any amount over $3,600. The reduction under this paragraph shall be calculated before any reduction under section 2032(a)(6) of this title.

(3) Amount of surviving spouse annuity

(A) In general
If a retired participant receiving a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse. The amount of the annuity shall be equal to 55 percent of (i) the full amount of the participant's annuity computed under subsection (a) of this section, or (ii) any lesser amount elected as the base for the survivor annuity under paragraph (1)(B).

(B) Limitation
Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the retired participant who qualifies for an annuity under section 2032(b) of this title may not exceed 55 percent of the portion (if any) of the base for survivor annuities which remains available under section 2032(b)(4)(B) of this title.

(C) Effective date and termination of annuity
An annuity payable from the fund to a surviving spouse under this paragraph shall commence on the day after the retired participant dies and shall terminate on the last day of the month before the surviving spouse's death or remarriage before attaining age 55. If such survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is dissolved by death, annulment, or divorce if any lump sum paid upon termination of the annuity is returned to the fund.

(4) 18-month open period after retirement to provide spouse coverage

(1) Survivor annuity elections

(A) Election when spouse coverage waived at time of retirement
A participant or former participant who retires after March 31, 1992 and who—

(i) is married at the time of retirement; and

(ii) elects at that time (in accordance with subsection (b) of this section) to waive a survivor annuity for the spouse,

may, during the 18-month period beginning on the date of the retirement of the participant, elect to have a reduction under subsection (b) of this section made in the annuity of the participant (or in such portion thereof as the participant may designate) in
order to provide a survivor annuity for the participant’s spouse.

(B) Election when reduced spouse annuity elected

A participant or former participant who retires after March 31, 1992, and—

(i) who, at the time of retirement, is married, and

(ii) who, at that time designates (in accordance with subsection (b) of this section) that a portion of the annuity of such participant is to be used as the base for a survivor annuity,

may, during the 18-month period beginning on the date of the retirement of such participant, elect to have a greater portion of the annuity of such participant so used.

(2) Deposit required

(A) Requirement

An election under paragraph (1) shall not be effective unless the amount specified in subparagraph (B) is deposited into the fund before the end of that 18-month period.

(B) Amount of deposit

The amount to be deposited with respect to an election under this subsection is the amount equal to the sum of the following:

(i) Additional cost to system

The additional cost to the system that is associated with providing a survivor annuity under subsection (b) of this section and that results from such election, taking into account—

(I) the difference (for the period between the date on which the annuity of the participant or former participant commences and the date of the election) between the amount paid to such participant or former participant under this subchapter and the amount which would have been paid if such election had been made at the time the participant or former participant applied for the annuity; and

(II) the costs associated with providing for the later election.

(ii) Interest

Interest on the additional cost determined under clause (i), computed using the interest rate specified or determined under section 8334(e) of title 5 for the calendar year in which the amount to be deposited is determined.

(3) Voiding of previous elections

An election by a participant or former participant under this subsection voids prospectively any election previously made in the case of such participant under subsection (b) of this section.

(4) Reductions in annuity

An annuity that is reduced in connection with an election under this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the participant or former participant whose annuity is so reduced.

(5) Rights and obligations resulting from reduced annuity election

Rights and obligations resulting from the election of a reduced annuity under this subsection shall be the same as the rights and obligations that would have resulted had the participant involved elected such annuity at the time of retirement.

(d) Annuities for surviving children

(1) Participants dying before April 1, 1992

In the case of a retired participant who died before April 1, 1992, and who is survived by a child or children—

(A) if the retired participant was survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under paragraph (3)(A); and

(B) if the retired participant was not survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under paragraph (3)(B).

(2) Participants dying on or after April 1, 1992

In the case of a retired participant who dies on or after April 1, 1992, and who is survived by a child or children—

(A) if the retired participant is survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under paragraph (3)(A); and

(B) if the retired participant is not survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid to or on behalf of each such surviving child an annuity determined under paragraph (3)(B).

(3) Amount of annuity

(A) The annual amount of an annuity for the surviving child of a participant covered by paragraph (1)(A) or (2)(A) of this subsection (or covered by paragraph (1)(A) or (2)(A) of section 2052(c) of this title) is the smallest of the following:

(i) 60 percent of the participant’s high-3 average pay, as determined under subsection (a)(4) of this section, divided by the number of children.

(ii) $900, as adjusted under section 2131 of this title.

(iii) $2,700, as adjusted under section 2131 of this title, divided by the number of children.

(B) The amount of an annuity for the surviving child of a participant covered by paragraph (1)(B) or (2)(B) of this subsection (or covered by paragraph (1)(B) or (2)(B) of section 2052(c) of this title) is the smallest of the following:

(i) 75 percent of the participant’s high-3 average pay, as determined under subsection (a)(4) of this section, divided by the number of children.

(ii) $1,080, as adjusted under section 2131 of this title.
(4) Recomputation of child annuities

(A) In the case of a child annuity payable under paragraph (1), upon the death of a surviving spouse or the termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though the spouse or child had not survived the retired participant.

(B) In the case of a child annuity payable under paragraph (2), upon the death of a surviving spouse or former spouse or termination of the annuity of a child, the annuities of any remaining children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the retired participant. If the annuity of a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities of all currently eligible children were then being initiated.

(5) “Former spouse” defined

For purposes of this subsection, the term “former spouse” includes any former wife or husband of the retired participant, regardless of the length of marriage or the amount of creditable service completed by the participant.

(e) Commencement and termination of child annuities

(1) Commencement

An annuity payable to a child under subsection (a) of this title, or under section 2052(c) of this title, shall begin on the day after the date on which the participant or retired participant dies or, in the case of an individual over the age of 18 who is not a child within the meaning of section 2002(b) of this title, shall begin or resume on the first day of the month in which the individual later becomes or again becomes a student as described in section 2002(b) of this title. Such annuity may not commence until any lump-sum that has been paid is returned to the fund.

(2) Termination

Such an annuity shall terminate on the last day of the month before the month in which the recipient of the annuity dies or no longer qualifies as a child (as defined in section 2002(b) of this title).

(f) Participants not married at time of retirement

(1) Designation of persons with insurable interest

(A) Authority to make designation

Subject to the rights of former spouses under subsection (b) of this section and section 2032 of this title, at the time of retirement an unmarried participant found by the Director to be in good health may elect to receive an annuity reduced in accordance with subparagraph (B) and designate in writing an individual having an insurable interest in the participant to receive an annuity under the system after the participant’s death. The amount of such an annuity shall be equal to 55 percent of the participant’s reduced annuity.

(B) Reduction in participant’s annuity

The annuity payable to the participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) of this section and by an additional 5 percent for each full 5 years the designated individual is younger than the participant. The total reduction under this paragraph may not exceed 40 percent.

(C) Commencement of survivor annuity

The annuity payable to the designated individual shall begin on the day after the retired participant dies and terminate on the last day of the month before the designated individual dies.

(D) Recomputation of participant’s annuity on death of designated individual

An annuity which is reduced under this paragraph shall, effective the first day of the month following the death of the designated individual, be recomputed and paid as if the annuity had not been so reduced.

(2) Election of survivor annuity upon subsequent marriage

A participant who is unmarried at the time of retirement and who later marries may irrevocably elect, in a signed writing received by the Director within one year after the marriage, to receive a reduced annuity as provided in subsection (b) of this section. Such election and reduction shall be effective on the first day of the month beginning 9 months after the date of marriage. The election voids prospectively any election previously made under paragraph (1).

(g) Effect of divorce after retirement

(1) Recomputation of retired participant’s annuity upon divorce

An annuity which is reduced under this section (or any similar prior provision of law) to provide a survivor annuity for a spouse shall, if the marriage of the retired participant to such spouse is dissolved, be recomputed and paid for each full month during which a retired participant is not married (or is remarried, if there is no election in effect under paragraph (2)) as if the annuity had not been so reduced, subject to any reduction required to provide a survivor annuity under subsection (b) or (c) of section 2032 of this title or under section 2036 of this title.

(2) Election of survivor annuity upon subsequent remarriage

(A) In general

Upon remarriage, the retired participant may irrevocably elect, by means of a signed writing received by the Director within one year after such remarriage, to receive a reduced annuity for the purpose of providing an annuity for the new spouse of the retired participant in the event such spouse survives the retired participant. Such reduction shall be equal to the reduction in effect imme-
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(h) Coordination of annuities

(1) Surviving spouse

A surviving spouse whose survivor annuity was terminated because of remarriage before attaining age 55 shall not be entitled under subsection (b)(3)(C) of this section to the restoration of that survivor annuity payable from the fund unless the surviving spouse elects to receive it instead of any other survivor annuity to which the surviving spouse may be entitled under this or any other retirement system for Government employees by reason of the remarriage.

(2) Former spouse

A surviving former spouse of a participant or retired participant shall not become entitled under section 2032(b) or 2034 of this title to a survivor annuity or to the restoration of a survivor annuity payable from the fund unless the surviving former spouse elects to receive it instead of any other survivor annuity to which the surviving former spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(3) Surviving spouse of post-retirement marriage

A surviving spouse who married a participant after the participant’s retirement shall be entitled to a survivor annuity payable from the fund only upon electing that annuity instead of any other survivor annuity to which the surviving spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the retired participant.

(i) Supplemental survivor annuities

(1) Spouse of recalled annuitant

A married recalled annuitant who reverts to retired status with entitlement to a supplemental annuity under section 2111(b) of this title shall, unless the annuitant and the annuitant’s spouse jointly elect in writing to the contrary at the time of reversion to retired status, have the supplemental annuity reduced by 10 percent to provide a supplemental survivor annuity for the annuitant’s spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant.

(2) Regulations

The Director shall prescribe regulations to provide for the application of paragraph (1) of this subsection and of subsection (b) of section 2111 of this title in any case in which an annuitant has a former spouse who was married to the recalled annuitant at any time during the period of recall service and who qualifies for an annuity under section 2032(b) of this title.

(j) Offset of annuities by amount of social security benefit

Notwithstanding any other provision of this subchapter, an annuity (including a disability annuity) payable under this subchapter to an individual described in sections 2021(d)(1) and 2151(c)(1) of this title and any survivor annuity payable under this subchapter on the basis of the service of such individual shall be reduced in a manner consistent with section 2239 of title 5, under conditions consistent with the conditions prescribed in that section.

(k) Information from other agencies

(1) Other agencies

For the purpose of ensuring the accuracy of the information used in the determination of eligibility for and the computation of annuities payable from the fund under this subchapter, at the request of the Director—

(A) the Secretary of Defense shall provide information on retired or retainer pay paid under title 10;
(B) the Secretary of Veterans Affairs shall provide information on pensions or compensation paid under title 38;

(C) the Secretary of Health and Human Services shall provide information contained in the records of the Social Security Administration; and

(D) the Secretary of Labor shall provide information on benefits paid under subchapter I of chapter 81 of title 5.

(2) Limitation on information requested

The Director shall request only such information as the Director determines is necessary.

(3) Limitation on uses of information

The Director, in consultation with the officials from whom information is requested, shall ensure that information made available under this subsection is used only for the purposes authorized.

(i) Information on rights under system

The Director shall, on an annual basis—

(1) inform each retired participant of the participant’s right of election under subsections (c), (f)(2), and (g) of this section; and

(2) to the maximum extent practicable, inform spouses and former spouses of participants, former participants, and retired participants of their rights under this chapter.


PRIOR PROVISIONS


AMENDMENTS

1993—Subsec. (a)(4), Pub. L. 103–178, §202(a)(4)(A), struck out ‘‘(or, in the case of an annuity computed under section 2052 of this title and based on less than 3 years, over the total service)’’ after ‘‘years of the participant’s service’’.

Subsec. (f)(1)(A), Pub. L. 103–178, §202(a)(4)(B), inserted ‘‘after the participant’s death’’ after ‘‘under the system’’ and struck out ‘‘after the participant’s death’’ after ‘‘participant’s reduced annuity’’.

Subsec. (g)(1), Pub. L. 103–178, §202(a)(4)(C), substituted ‘‘(or is remarried, if’’ for ‘‘(or is remarried if’’.

Subsec. (j), Pub. L. 103–178, §202(a)(4)(D), struck out ‘‘(except as provided in paragraph (5))’’ after ‘‘individual shall be reduced’’.

EFFECTIVE DATE OF 1993 AMENDMENT

disability annuitant, or if any annuitant is reemployed as provided for under sections 2112 and 2113 of this title, the pay of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the fund.

(6) Disability annuitant

Notwithstanding paragraph (3), in the case of a former spouse of a disability annuitant—

(A) the annuity of that former spouse shall commence on the date on which the participant would qualify on the basis of the participant’s creditable service for an annuity under this subchapter (other than a disability annuity) or the date on which the disability annuity begins, whichever is later, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(7) Election of benefits

A former spouse of a participant, former participant, or retired participant shall not become entitled under this subsection to an annuity payable from the fund unless the former spouse elects to receive it instead of any survivor annuity to which the former spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(8) Limitation in case of multiple former spouse annuities

No spousal agreement or court order under section 2094(b) of this title involving a participant may provide for an annuity or a combination of annuities under this subsection that exceeds the annuity of the participant.

(b) Former spouse survivor annuity

(1) Pro rata share

Subject to any election under section 2031(b)(1)(B) and (C) of this title and unless otherwise expressly provided by a spousal agreement or court order under section 2094(b) of this title, if an annuitant is survived by a former spouse, the former spouse shall be entitled—

(A) if married to the annuitant throughout the creditable service of the annuitant, to a survivor annuity equal to 55 percent of the unreduced amount of the annuitant’s annuity, as computed under section 2031(a) of this title; and

(B) if not married to the annuitant throughout such creditable service, to a survivor annuity equal to that proportion of 55 percent of the unreduced amount of such annuity that is the proportion that the number of days of the marriage of the former spouse to the participant during periods of creditable service of such participant under this subchapter bears to the total number of days of such creditable service.

(2) Disqualification upon remarriage before age 55

A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 55 years of age.

(3) Commencement, termination, and restoration of annuity

An annuity payable from the fund under this subchapter to a surviving former spouse under this subsection shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the former spouse’s death or remarriage before attaining age 55. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is dissolved by death, annulment, or divorce if any lump sum paid upon termination of the annuity is returned to the fund.

(4) Survivor annuity amount

(A) Maximum amount

The maximum survivor annuity or combination of survivor annuities under this subsection (and section 2031(b)(3) of this title) with respect to any participant may not exceed 55 percent of the full amount of the participant’s annuity, as calculated under section 2031(a) of this title.

(B) Limitation on other survivor annuities based on service of same participant

Once a survivor annuity has been provided under this subsection for any former spouse, a survivor annuity for another individual may thereafter be provided under this subsection (or section 2031(b)(3) of this title) with respect to the participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) Finality of court order upon death of participant

After the death of a participant or retired participant, a court order under section 2094(b) of this title may not adjust the amount of the annuity of a former spouse of that participant or retired participant under this section.

(5) Effect of termination of former spouse entitlement

(A) Recomputation of participant’s annuity

If a former spouse of a retired participant dies or remarries before attaining age 55, the annuity of the retired participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid, effective on the first day of the month beginning after such death or remarriage, as if the annuity had not been so reduced, unless an election is in effect under subparagraph (B).

(B) Election of spouse annuity

Subject to paragraph (4)(B), the participant may elect in writing within one year
after receipt of notice of the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 2031(b)(3) of this title for any spouse of the participant.

(c) Optional additional survivor annuities for other former spouse or surviving spouse

(1) In general
In the case of any participant providing a survivor annuity under subsection (b) of this section for a former spouse—
(A) such participant may elect, or
(B) a spousal agreement or court order under section 2094(b) of this title may provide for,
an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Director.

(2) Limitation
Neither the total amount of survivor annuity or annuities under this subsection with respect to any participant, nor the survivor annuity or annuities under this subsection with respect to any other participant, may exceed 55 percent of the unreduced annuity or annuities for any one surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Director.

(3) Contribution for additional annuities

(A) Provision of additional survivor annuity
In accordance with regulations which the Director shall prescribe, the participant involved may provide for any annuity under this subsection—
(i) by a reduction in the annuity or an allotment from the basic pay of the participant;
(ii) by a lump-sum payment or installment payments to the fund; or
(iii) by any combination thereof.

(B) Actuarial equivalence to benefit

The present value of the total amount to accrue to the fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Director.

(C) Effect of former spouse's death or disqualification
If a former spouse predeceases the participant or remarries before attaining age 55 (or, in the case of a spouse, the spouse predeceases the participant or does not qualify as a former spouse upon dissolution of the marriage)—
(i) if an annuity reduction or pay allotment under subparagraph (A) is in effect for that spouse or former spouse, the annuity shall be recomputed and paid as if it had not been reduced or the pay allotment terminated, as the case may be; and
(ii) any amount accruing to the fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Director.

(D) Recomputation upon death or remarriage of former spouse
Under regulations prescribed by the Director, an annuity shall be recomputed (or a pay allotment terminated or adjusted), and a refund provided (if appropriate), in a manner comparable to that provided under subparagraph (C), in order to reflect a termination or reduction of future benefits under this subsection for a spouse in the event a former spouse of the participant dies or remarries before attaining age 55 and an increased annuity is provided for that spouse in accordance with this section.

(4) Commencement and termination of additional survivor annuity

An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the spouse’s or the former spouse’s death or remarriage before attaining age 55.

(5) Nonapplicability of COLA provision
Section 2131 of this title does not apply to an annuity under this subsection, unless authorized under regulations prescribed by the Director.


Prior Provisions


Amendments


Subsec. (c)(3)(C), Pub. L. 103–178, § 202(a)(5)(B), inserted “the participant” before “or does not qualify”.

Subsec. (c)(4), Pub. L. 103–178, § 202(a)(5)(C), substituted “the spouse’s or the former spouse’s death” for “before the former spouse’s death”.

Effective Date of 1993 Amendment


Survivor Annuity; Retirement Annuity, and Health Benefits for Certain Ex-Spouses of Central Intelligence Agency Employees; Effective Date

Section 203 of Pub. L. 103–178 provided that:
“(a) Survivor Annuity.—
“(1) In general.—
“(A) Entitlement of former wife or husband.—Any person who was divorced on or before December 4, 1991, from a participant or retired participant...
in the Central Intelligence Agency Retirement and Disability System and who was married to such participant for not less than 10 years during such participant's creditable service, at least five years of which were spent by the participant during the participant's service as an employee of the Central Intelligence Agency outside the United States, or otherwise in a position or duties of which qualified the participant for designation by the Director of Central Intelligence as a participant under section 203 of the Central Intelligence Agency Retirement Act (50 U.S.C. 203(b)), shall be entitled, except to the extent such person is disqualified under paragraph (2), to a survivor annuity equal to 55 percent of the greater of:

"(i) the unreduced amount of what such annuity as so computed would be if the participant had not elected payment of the lump-sum credit under section 294 of such Act (50 U.S.C. 2143);

"(ii) the unreduced amount of what such annuity as so computed would be if the participant had not elected payment of the lump-sum credit under section 294 of such Act (50 U.S.C. 2143); or

"(3) Cancellation of 'former spouse' that was in effect under section 8445 of title 5, United States Code.

"(B) REDUCTION IN SURVIVOR ANNUITY.—A survivor annuity payable under this subsection shall be reduced by an amount equal to any survivor annuity payments made to the former wife or husband under section 226 of such Act (50 U.S.C. 2036).

"(C) the former wife or husband meets the definition of 'former spouse' that was in effect under section 204(b)(4) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees before December 4, 1991 [section 204(b)(4) of Pub. L. 88–643] except to the extent such person is disqualified under paragraph (2), to a survivor annuity under this subsection if—

"(A) the former wife or husband remarries before age 55, except that the entitlement of the former wife or husband to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce;

"(B) the former wife or husband is less than 50 years of age; or

"(C) the former wife or husband meets the definition of 'former spouse' that was in effect under section 204(b)(4) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees before December 4, 1991 [section 204(b)(4) of Pub. L. 88–643 prior to enactment of Pub. L. 102–495, formerly set out as a note under section 403 of this title].

"(3) COMMENCEMENT AND TERMINATION OF ANNUITY.—

"(A) COMMENCEMENT OF ANNUITY.—The entitlement of a former wife or husband to a survivor annuity under this subsection shall commence—

"(i) in the case of a former wife or husband of a participant or retired participant who is deceased as of October 1, 1994, beginning on the later of—

"(I) the 60th day after such date; or

"(II) the date on which the former wife or husband reaches age 50; and

"(ii) in the case of any other former wife or husband, beginning on the later of—

"(I) the date on which the participant or retired participant to whom the former wife or husband was married dies; and

"(II) the 60th day after October 1, 1994; or

"(III) the date on which the former wife or husband attains age 50.

"(B) TERMINATION OF ANNUITY.—The entitlement of a former wife or husband to a survivor annuity under this subsection terminates on the last day of the month before the former wife's or husband's death or remarriage before attaining age 55. The entitlement of a former wife or husband to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce.

"(4) ELECTION OF BENEFITS.—A former wife or husband of a participant or retired participant shall not become entitled under this subsection to a survivor annuity or to the restoration of the survivor annuity unless the former wife or husband elects to receive it instead of any other survivor annuity to which the former wife or husband may be entitled under the Central Intelligence Agency Retirement and Disability System or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

"(5) APPLICATION.—

"(A) TIME LIMIT; WAIVER.—A survivor annuity under this subsection shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require. Any such application shall be submitted not later than October 1, 1995. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

"(B) RETROACTIVE BENEFITS.—Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former wife or husband with respect to all periods before such approval during which the former wife or husband was entitled to such annuity under this subsection, but in no event shall a survivor annuity be payable under this subsection with respect to any period before October 1, 1994.

"(6) RESTORATION OF ANNUITY.—Notwithstanding paragraph (5)(A), the deadline by which an application for a survivor annuity must be submitted shall not apply in cases in which a former spouse's entitlement to such a survivor annuity is restored after October 1, 1994, under paragraph (2)(A) or (3)(B).

"(7) APPLICABILITY IN CASES OF PARTICIPANTS TRANSFERRED TO FEHRS.—

"(A) ENTITLEMENT.—Except as provided in paragraph (2), this subsection shall apply to a former wife or husband of a participant under the Central Intelligence Agency Retirement and Disability System who has elected to become subject to chapter 84 of title 5, United States Code.

"(B) AMOUNT OF ANNUITY.—The survivor annuity of a person covered by subparagraph (A) shall be equal to 50 percent of the unreduced amount of the participant's annuity computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335, 5 U.S.C. 8331 note] and shall be reduced by an amount equal to any survivor annuity payments made to the former wife or husband under section 8445 of title 5, United States Code.

"(b) RETIREMENT ANNUITY.—

"(1) IN GENERAL.

"(A) ENTITLEMENT OF FORMER WIFE OR HUSBAND.—A person described in subsection (a)(1)(A) shall be entitled, except to the extent such former spouse is disqualified under paragraph (2), to an annuity payable to the former wife or husband pursuant to the terms of a court order incident to the dissolution of the marriage of such former spouse and the participant, former participant, or retired participant.

"(ii) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

"(I) if married to the participant throughout such creditable service, equal to that former wife's or husband's pro rata share of 50 percent of such annuity (determined in accordance with section 222(a)(1)(B) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2032 (a)(1)(B)).

"(B) REDUCTION IN RETIREMENT ANNUITY.

"(i) AMOUNT OF REDUCTION.—An annuity payable under this subsection shall be reduced by an amount equal to any annuities payable by the former wife or husband pursuant to the terms of a court order incident to the dissolution of the marriage of such former spouse and the participant, former participant, or retired participant.

"(ii) DEFINITION OF TERMS.—For purposes of clause (i):

"(I) APPOINTMENT.—The term 'appointment' means a portion of a retired participant's annuity payable to a former wife or husband either by the retired participant or the Government in accordance with the terms of a court order or order.

"(II) COURT ORDER.—The term 'court order' means any decree of divorce or annulment or...
any court order or court-approved property settlement agreement incident to such decree.

(2) LIMITATIONS.—A former wife or husband is not entitled to an annuity under this subsection if—

(A) the former wife or husband remarries before age 55, except that the entitlement of the former wife or husband to an annuity under this subsection shall be restored on the date such remarriage is dissolved by death, annulment, or divorce;

(B) the former wife or husband is less than 50 years of age;

(C) the former wife or husband meets the definition of ‘former spouse’ that was in effect under section 204(b)(4) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees before December 4, 1991 (section 204(b)(4) of Pub. L. 88–643 prior to enactment of Pub. L. 102–496, formerly set out as a note under section 403 of this title).

(3) COMMENCEMENT AND TERMINATION.—

(A) RETIREMENT ANNUITIES.—The entitlement of a former wife or husband to an annuity under this subsection—

(i) shall commence on the later of—

(I) October 1, 1994;

(II) the day the participant upon whose service the right to the annuity is based becomes entitled to an annuity [probably means Central Intelligence Agency Retirement Act, 50 U.S.C. 2001 et seq.]; or

(III) such former wife’s or husband’s 50th birthday; and

(ii) shall terminate on the earlier of—

(I) the last day of the month before the former wife or husband dies or remarries before 55 years of age, except that the entitlement of the former wife or husband to an annuity under this subsection shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(II) the date on which the annuity of the participant terminates.

(B) DISABILITY ANNUITIES.—Notwithstanding subparagraph (A)(i)(II), in the case of a former wife or husband of a disability annuitant—

(i) the annuity of the former wife or husband shall commence on the date on which the participant would qualify on the basis of the participant’s creditable service for an annuity under the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 et seq.) (other than a disability annuity) or the date the disability annuity begins, whichever is later; and

(ii) the amount of the annuity of the former wife or husband shall be calculated on the basis of the annuity for which the participant would otherwise qualify.

(C) ELECTION OF BENEFITS.—A former wife or husband of a participant or retired participant shall not become entitled under this subsection to an annuity or to the restoration of an annuity unless the former wife or husband elects to receive it instead of any survivor annuity to which the former wife or husband may be entitled under the Central Intelligence Agency Retirement and Disability System or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(D) APPLICATION.—

(i) TIME LIMIT; WAIVER.—An annuity under this subsection shall not be payable unless appropriate written application is provided to the Director of Central Intelligence, complete with any supporting documentation which the Director may by regulation require, not later than October 1, 1995. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

(ii) RETROACTIVE BENEFITS.—Upon approval of an application under clause (i), the appropriate annuity shall be payable to the former wife or husband with respect to all periods before such approval during which the former wife or husband was entitled to an annuity under this subsection, but in no event shall an annuity be payable under this subsection with respect to any period before October 1, 1994.

(4) RESTORATION OF ANNUITIES.—Notwithstanding paragraph (3)(D)(i), the deadline by which an application for a retirement annuity must be submitted shall not apply in cases in which a former spouse’s entitlement to such annuity is restored after October 1, 1994, under paragraph (2)(A) or (3)(A)(ii).

(5) APPLICABILITY IN CASES OF PARTICIPANTS TRANSFERRED TO FERS.—The provisions of this subsection shall apply to a former wife or husband of a participant under the Central Intelligence Agency Retirement and Disability System who has elected to become subject to chapter 84 of title 5, United States Code. For purposes of this paragraph, any reference in this section to a participant’s annuity under the Central Intelligence Agency Retirement and Disability System shall be deemed to refer to the time that participant’s annuity computed in accordance with section 302(a) of the Federal Employee’s Retirement System Act of 1966 (Pub. L. 98–335, 5 U.S.C. 8331 note).

(6) SAVINGS PROVISION.—Nothing in this subsection shall be construed to impair, reduce, or otherwise affect the right to the annuity or the entitlement to an annuity of a participant or former participant under title II or III of the Central Intelligence Agency Retirement Act [50 U.S.C. 2011 et seq., 2151 et seq.].

(c) HEALTH BENEFITS.—[Amended section 403p of this title.]

(d) SOURCE OF PAYMENT FOR ANNUITIES.—Annuities provided under subsections (a) and (b) shall be payable from the Central Intelligence Agency Retirement and Disability Fund maintained under section 302 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2012).

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsections (a) and (b) shall take effect as of October 1, 1994, the amendments made by subsection (c) (amending section 403p of this title) shall apply to individuals on and after October 1, 1994, and no benefits provided pursuant to those subsections shall be payable with respect to any period before October 1, 1994.

(2) Section 16(d) of the Central Intelligence Agency Act of 1949 (as added by subsection (c) of this section) (50 U.S.C. 403p(d)) shall apply to individuals beginning on the date of enactment of this Act (Dec. 3, 1993).

[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 Central 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 1061(a), (b) of Pub. L. 108–458, set out as a note under section 403 of this title.]

§ 2033. Election of survivor benefits for certain former spouses divorced as of November 15, 1982

(a) Former spouses as of November 15, 1982

A participant, former participant, or retired participant in the system who on November 15, 1982, had a former spouse may, by a spousal agreement, elect to receive a reduced annuity and provide a survivor annuity for such former spouse under section 2032(b) of this title.

(b) Time for making election

(1) If the participant or former participant has not retired under such system on or before No-
vember 15, 1982, an election under this section may be made at any time before retirement.

(2) If the participant or former participant has retired under such system on or before November 15, 1982, an election under this section may be made within such period after November 15, 1982, as the Director may prescribe.

(3) For the purposes of applying this subchapter, any such election shall be treated in the same manner as if it were a spousal agreement under section 2094(b) of this title.

c) Base for annuity

An election under this section may provide for a survivor annuity based on all or any portion of that part of the annuity of the participant which is not designated or committed as a base for a survivor annuity for a spouse or any other former spouse of the participant. The participant and the participant’s spouse may make an election under section 2033(b)(1)(A) of this title before the time of retirement for the purpose of allowing an election to be made under this section.

d) Reduction in participant’s annuity

(1) Computation

The amount of the reduction in the participant’s annuity shall be determined in accordance with section 2031(b)(2) of this title.

(2) Effective date of reduction

Such reduction shall be effective as of—

(A) the commencing date of the participant’s annuity, in the case of an election under subsection (b)(1) of this section; or

(B) November 15, 1982, in the case of an election under subsection (b)(2) of this section.


PRIOR PROVISIONS


§ 2034. Survivor annuity for certain other former spouses

(a) Survivor annuity

(1) In general

An individual who was a former spouse of a participant or retired participant on November 15, 1982, shall be entitled, except to the extent such former spouse is disqualified under subsection (b) of this section, to a survivor annuity equal to 55 percent of the greater of—

(A) the unreduced amount of the participant’s or retired participant’s annuity, as computed under section 2033(a) of this title; or

(B) the unreduced amount of what such annuity as so computed would be if the participant, former participant, or retired participant had not elected payment of the lump-sum credit under section 2143 of this title.

(2) Reduction in survivor annuity

A survivor annuity payable under this section shall be reduced by an amount equal to any survivor annuity payments made to the former spouse under section 2033 of this title.

(b) Limitations

A former spouse is not entitled to a survivor annuity under this section if—

(1) the former spouse remarries before age 55, except that the entitlement of the former spouse to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(2) the former spouse is less than 50 years of age.

c) Commencement and termination of annuity

(1) Commencement of annuity

The entitlement of a former spouse to a survivor annuity under this section shall commence—

(A) in the case of a former spouse of a participant or retired participant who is deceased as of October 1, 1986, beginning on the later of—

(i) the 60th day after such date; or

(ii) the date on which the former spouse reaches age 50; and

(B) in the case of any other former spouse, beginning on the latest of—

(i) the date on which the participant or retired participant to whom the former spouse was married dies;

(ii) the 60th day after October 1, 1986; or

(iii) the date on which the former spouse attains age 50.

(2) Termination of annuity

The entitlement of a former spouse to a survivor annuity under this section terminates on the last day of the month before the former spouse’s death or remarriage before attaining age 55. The entitlement of a former spouse to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce.

d) Application

(1) Time limit; waiver

A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require. Any such application shall be submitted not later than April 1, 1989. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

(2) Retroactive benefits

Upon approval of an application provided under paragraph (1), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before October 1, 1986.
(e) Restoration of annuity

Notwithstanding subsection (d)(1) of this section, the deadline by which an application for a survivor annuity must be submitted shall not apply in cases in which a former spouse’s entitlement to such a survivor annuity is restored under subsection (b)(1) or (c)(2) of this section.


PRIOR PROVISIONS


AMENDMENTS


EFFECTIVE DATE OF 1993 AMENDMENT


§ 2035. Retirement annuity for certain former spouses

(a) Retirement annuity

An individual who was a former spouse of a participant, former participant, or retired participant on November 15, 1982, and any former spouse divorced after November 15, 1982, from a participant or former participant who retired before November 15, 1982, shall be entitled, except to the extent such former spouse is disqualified under subsection (b) of this section, to an annuity—

(1) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(2) if not married to the participant throughout such creditable service, equal to that former spouse’s pro rata share of 50 percent of such annuity.

(b) Limitations

A former spouse is not entitled to an annuity under this section if—

(1) the former spouse remarries before age 55, except that the entitlement of the former spouse to an annuity under this section shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(2) the former spouse is less than 50 years of age.

(c) Commencement and termination

(1) Retirement annuities

The entitlement of a former spouse to an annuity under this section—

(A) shall commence on the later of—

(i) the day the participant upon whose service the right to the annuity is based

becomes entitled to an annuity under this subchapter;

(ii) the first day of the month in which the divorce or annulment involved becomes final; or

(iii) such former spouse’s 50th birthday; and

(B) shall terminate on the earlier of—

(i) the last day of the month before the former spouse dies or remarries before 55 years of age, except that the entitlement of the former spouse to an annuity under this section shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(ii) the date on which the annuity of the participant terminates.

(2) Disability annuities

Notwithstanding paragraph (1)(A)(i), in the case of a former spouse of a disability annuitant—

(A) the annuity of the former spouse shall commence on the date on which the participant would qualify on the basis of the participant’s creditable service for an annuity under this subchapter (other than disability annuity) or the date the disability annuity begins, whichever is later; and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(3) Election of benefits

A former spouse of a participant or retired participant shall not become entitled under this section to an annuity or to the restoration of an annuity payable from the fund unless the former spouse elects to receive it instead of any survivor annuity to which the former spouse may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(4) Application

(A) Time limit; waiver

An annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require, not later than June 2, 1990. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

(B) Retroactive benefits

Upon approval of an application under subparagraph (A), the appropriate annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to an annuity under this section, but in no event shall an annuity be payable under this section with respect to any period before December 2, 1987.

(d) Restoration of annuities

Notwithstanding subsection (c)(4)(A) of this section, the deadline by which an application for
a retirement annuity must be submitted shall not apply in cases in which a former spouse’s entitlement to such annuity is restored under subsection (b)(1) or (c)(1)(B) of this section.

(e) Savings provision

Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this subchapter.


PRIOR PROVISIONS


AMENDMENTS


Effective Date of 1993 Amendment


§ 2036. Survivor annuities for previous spouses

The Director shall prescribe regulations under which a previous spouse who is divorced after September 29, 1988, from a participant, former participant, or retired participant shall be eligible for a survivor annuity to the same extent and, to the greatest extent practicable, under the same conditions (including reductions to be made in the annuity of the participant) applicable to former spouses (as defined in section 8331(23) of title 5) of participants in the Civil Service Retirement Spouse Equity System (CSRS) as prescribed by the Civil Service Retirement Spouse Equity Act of 1981.


REFERENCES IN TEXT


PRIOR PROVISIONS


PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

§ 2051. Retirement for disability or incapacity; medical examination; recovery

(a) Disability retirement

(1) Eligibility

A participant who has become disabled shall, upon the participant’s own application or upon order of the Director, be retired on an annuity computed under subsection (b) of this section.

(2) Standard for disability determination

A participant shall be considered to be disabled only if the participant—

(A) is found by the Director to be unable, because of disease or injury, to render useful and efficient service in the participant’s position; and

(B) is not qualified for reassignment, under procedures prescribed by the Director, to a vacant position in the Agency at the same grade or level and in which the participant would be able to render useful and efficient service.

(3) Time limit for application

(A) One year requirement

A claim may be allowed under this section only if the application is submitted before the participant is separated from the Agency or within one year thereafter.

(B) Waiver for mentally incompetent participant

The time limitation may be waived by the Director for a participant who, at the date of separation from the Agency or within one year thereafter, is mentally incompetent, if the application is filed with the Agency within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

(b) Computation of disability annuity

(1) In general

Except as provided in paragraph (2), an annuity payable under subsection (a) of this section shall be computed under section 2031(a) of this title. However, if the disabled or incapacitated participant has less than 20 years of credit toward retirement under the system at the time of retirement, the annuity shall be computed on the assumption that the participant has had 20 years of service, but the additional service credit that may accrue to a participant under this paragraph may not exceed the difference between the participant’s age at the time of retirement and age 60.

(2) Coordination with military retired pay and veterans’ compensation and pension

If a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in section 2082(e)(3) of this title) or Department of Veterans Affairs compensation or pension in lieu of
such retired or retainer pay, the annuity of that participant shall be computed under section 2031(a) of this title, excluding credit for such military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532 of title 5, or the Department of Veterans Affairs compensation or pension in lieu of such retired or retainer pay, is less than the annuity that would be payable under this section in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity payable under section 2031(a) of this title.

(c) Medical examinations

(1) Medical examination required for determination of disability

In each case, the participant shall be given a medical examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons.

(2) Annual reexaminations until age 60

Unless the disability is permanent, like examinations shall be made annually until the annuitant becomes age 60. If the Director determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that the annuitant can return to duty, the annuitant may apply for reinstatement or reappointment in the Agency within one year from the date the annuitant’s recovery is determined.

(3) Reinstatement

Upon application, the Director may reinstate any such recovered disability annuitant in the grade held at time of retirement, or the Director may, taking into consideration the age, qualifications, and experience of such annuitant, and the present grade of the annuitant’s contemporaries in the Agency, appoint the annuitant to a grade higher than the one held before retirement.

(4) Termination of disability annuity

Payment of the annuity shall continue until a date one year after the date of examination showing recovery or until the date of reinstatement or reappointment in the Agency, whichever is earlier.

(5) Payment of fees

Fees for examinations under this subsection, together with reasonable traveling and other expenses incurred in order to submit to examination, may be paid out of the fund.

(6) Suspension of annuity pending required examination

If the annuitant fails to submit to examination as required under this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(7) Termination of annuity upon restoration of earning capacity

If the annuitant receiving a disability retirement annuity is restored to earning capacity before becoming age 60, payment of the annuity terminates on reemployment by the Government or 180 days after the end of the calendar year in which earning capacity is restored, whichever is earlier. Earning capacity shall be considered to be restored if in any calendar year the income of the annuitant from wages or self-employment, or both, equals at least 80 percent of the current rate of pay for the grade and step the annuitant held at the time of retirement.

(d) Treatment of recovered disability annuitant who is not reinstated

(1) Separation

If a recovered or restored disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Agency, the annuitant shall be considered, except that the annuitant may elect voluntary retirement under section 2054 of this title, as of the date of termination of the disability annuity.

(2) Retirement

After such termination, the recovered or restored annuitant shall be entitled to the benefits of section 2054 or 2071(a) of this title, except that the annuitant may elect voluntary retirement under section 2053 of this title, if qualified thereunder, or may be placed by the Director in an involuntary retirement status under section 2055(a) of this title, if qualified thereunder. Retirement rights under this paragraph shall be based on the provisions of this subchapter in effect as of the date on which the disability annuity is discontinued.

(3) Further disability before age 62

If, based on a current medical examination, the Director determines that a recovered annuitant has, before reaching age 62, again become totally disabled due to recurrence of the disability for which the annuitant was originally retired, the annuitant’s terminated disability annuity (same type and rate) shall be reinstated from the date of such medical examination. If a restored-to-earning-capacity annuitant has not medically recovered from the disability for which retired and establishes to the Director’s satisfaction that the annuitant’s income from wages and self-employment in any calendar year before reaching age 62 was less than 80 percent of the rate of pay for the grade and step the annuitant held at the time of retirement, the annuitant’s terminated disability annuity (same type and rate) shall be reinstated from the first of the next following year. If the annuitant has been allowed an involuntary or voluntary retirement annuity in the meantime, the annuitant’s reinstated disability annuity shall be substituted for it unless the annuitant elects to retain the former benefit.

(e) Coordination of benefits

(1) Workers’ compensation

A participant is not entitled to receive for the same period of time—

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1 See References in Text note below.
(A) an annuity under this subchapter, and
(B) compensation for injury to, or disability of, such participant under subchapter I of chapter 81 of title 5, other than compensation payable under section 8107 of such title.

(2) Survivor annuities

An individual is not entitled to receive an annuity under this subchapter and a concurrent benefit under subchapter I of chapter 81 of title 5 on account of the death of the same person.

(3) Greater benefit

Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this subchapter or subchapter I of chapter 81 of title 5.

(f) Offset from survivor annuity for workers' compensation payment

(1) Refund to Department of Labor

If an individual is entitled to an annuity under this subchapter and the individual receives a lump-sum payment for compensation under section 8135 of title 5 based on the disability or death of the same person, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Secretary of Labor, shall be refunded to the Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

(A) refund to the Secretary of Labor the amount representing the compensated payments for the extended period; or

(B) authorize the deduction of the amount from the annuity.

(2) Source of deduction

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Secretary for reimbursement to the Employees' Compensation Fund.

(3) Prorating deduction

If the Secretary finds that the financial circumstances of an individual entitled to an annuity under this subchapter warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Secretary determines appropriate.


REFERENCES IN TEXT


AMENDMENTS

1993—Subsec. (d)(2). Pub. L. 103–178 substituted ‘‘2071(a) of this title’’ for ‘‘2071(b) of this title’’.

EFFECTIVE DATE OF 1993 AMENDMENT


§ 2052. Death in service

(a) Return of contributions when no annuity payable

If a participant dies and no claim for an annuity is payable under this subchapter, the participant’s lump-sum credit and any voluntary contributions made under section 2121 of this title, with interest, shall be paid in the order of precedence shown in section 2071(c) of this title.

(b) Survivor annuity for surviving spouse or former spouse

(1) In general

If a participant dies before separation or retirement from the Agency and is survived by a spouse or by a former spouse qualifying for a survivor annuity under section 2032(b) of this title, such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with paragraphs (2) and (3) of this subsection and section 2031(a) of this title, and any such surviving former spouse shall be entitled to an annuity computed in accordance with section 2032(b) of this title and paragraph (2) of this subsection as if the participant died after being entitled to an annuity under this subchapter. The annuity of such surviving spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the death or remarriage before attaining age 55 of the surviving spouse or former spouse (subject to the payment and restoration provisions of sections 2031(b)(3)(C), 2031(h), and 2032(b)(3) of this title).

(2) Computation

The annuity payable under paragraph (1) shall be computed in accordance with section 2031(a) of this title, except that the computation of the annuity of the participant under such section shall be at least the smaller of (A) 40 percent of the participant’s high-3 average pay, or (B) the sum obtained under such section after increasing the participant’s length of service by the difference between the participant’s age at the time of death and age 60.

(3) Limitation

Notwithstanding paragraph (1), if the participant had a former spouse qualifying for an annuity under section 2032(b) of this title, the annuity of a surviving spouse under this section shall be subject to the limitation of sec-
ation 2031(b)(3)(B) of this title, and the annuity of a former spouse under this section shall be subject to the limitation of section 2032(b)(4)(B) of this title.

(4) Precedence of section 2034 survivor annuity over death-in-service annuity

If a former spouse who is eligible for a death-in-service annuity under this section is or becomes eligible for an annuity under section 2034 of this title, the annuity provided under this section shall not be payable and shall be superseded by the annuity under section 2034 of this title.

(c) Annuities for surviving children

(1) Participants dying before April 1, 1992

In the case of a participant who before April 1, 1992, died before separation or retirement from the Agency and who was survived by a child or children—

(A) if the participant was survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(A) of this title; and

(B) if the participant was not survived by a spouse, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(B) of this title.

(2) Participants dying on or after April 1, 1992

In the case of a participant who on or after April 1, 1992, dies before separation or retirement from the Agency and who is survived by a child or children—

(A) if the participant is survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid from the fund to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(A) of this title; and

(B) if the participant is not survived by a spouse or former spouse who is the natural or adoptive parent of a surviving child of the participant, there shall be paid to or on behalf of each such surviving child an annuity determined under section 2031(d)(3)(B) of this title.

(3) “Former spouse” defined

For purposes of this subsection, the term “former spouse” includes any former wife or husband of a participant, regardless of the length of marriage or the amount of creditable service completed by the participant.


Prior Provisions


§ 2054. Discontinued service benefits

(a) Deferred annuity

A participant who separates from the Agency may, upon separation or at any time before the commencement of an annuity under this subchapter, elect—

(1) to have the participant’s contributions to the fund returned to the participant in accordance with section 2071(a) of this title; or

(2) except in a case in which the Director determines that separation was based in whole or in part on the ground of disloyalty to the United States, to leave the contributions in the fund and receive an annuity, computed as prescribed in section 2031 of this title, commencing at age 62.

(b) Refund of contributions if former participant dies before age 62

If a participant who qualifies under subsection (a) of this section to receive a deferred annuity...
§ 2055. Mandatory retirement

(a) Involuntary retirement

(1) AUTHORITY OF DIRECTOR.—The Director may, in the Director's discretion, place in a retired status any participant in the system described in paragraph (2).

(2) Paragraph (1) applies with respect to any participant who has not less than 10 years of service with the Agency and who—

(A) has completed at least 25 years of service; or

(B) is at least 50 years of age and has completed at least 20 years of service.

(b) Mandatory retirement for age

(1) In general

A participant in the system shall be automatically retired from the Agency—

(A) upon reaching age 65, in the case of a participant in the system who is at the Senior Intelligence Service rank of level 4 or above; and

(B) upon reaching age 60, in the case of any other participant in the system.

(2) Effective date of retirement

Retirement under paragraph (1) shall be effective on the last day of the month in which the participant reaches the age applicable to that participant under that paragraph.

(3) Authority for extension

In any case in which the Director determines it to be in the public interest, the Director may extend the mandatory retirement date for a participant under this subsection by a period of not to exceed 5 years.

(c) Retirement benefits

A participant retired under this section shall receive retirement benefits in accordance with section 2031 of this title.

§ 2056. Eligibility for annuity

(a) One-out-of-two requirement

A participant must complete, within the last two years before any separation from service (except a separation because of death or disability) at least one year of creditable civilian service during which the participant is subject to subsection (b) of this section and in a pay status before the participant or the participant's survivors are eligible for an annuity under this subchapter based on that separation.

(b) Refund of contributions for time not allowed for credit

If a participant (other than a participant separated from the service because of death or disability) fails to meet the service and pay status requirement of subsection (a) of this section, any amounts deducted from the participant's pay during the period for which no eligibility is established based on the separation shall be returned to the participant on the separation.

(c) Exception

Failure to meet the service and pay status requirement of subsection (a) of this section shall not deprive the participant or the participant's survivors of any annuity to which they may be entitled under this subchapter based on a previous separation.

§ 2057. Lump-sum payments

(a) Entitlement to lump-sum credit

Subject to section 2082(d) of this title and subsection (b) of this section, a participant who—
(b) Conditions for payment of lump-sum credit

(1) In general

Whenever a former participant becomes entitled to receive payment of the lump-sum credit under subsection (a) of this section, such lump-sum credit shall be paid to the former participant and to any former spouse or former wife or husband of the former participant in accordance with paragraphs (2) through (4). The former participant’s lump-sum credit shall be reduced by the amount of the lump-sum credit payable to any former spouse or former wife or husband.

(2) Pro rata share for former spouse

Unless otherwise expressly provided by any spousal agreement or court order under section 2094(b) of this title, a former spouse of the former participant shall be entitled to receive a share of such participant’s lump-sum credit.

(A) if married to the participant throughout the period of creditable service of the participant, equal to 50 percent of such lump-sum credit; or

(B) if not married to the participant throughout such creditable service, equal to a proportion of 50 percent of such lump-sum credit which is the proportion that the number of days of the marriage of the former spouse to the participant during periods of creditable service of such participant bears to the total number of days of such creditable service.

(3) Share for former wife or husband

Payment of the former participant’s lump-sum credit shall be subject to the terms of a court order under section 2094(c) of this title concerning any former wife or husband of the former participant if—

(A) the court order expressly relates to any portion of such lump-sum credit; and

(B) payment of the lump-sum credit would extinguish entitlement of such former wife or husband to a survivor annuity under section 2036 of this title or to any portion of the participant’s annuity under section 2094(c) of this title.

(4) Notification

A lump-sum credit may be paid to or for the benefit of a former participant—

(A) only upon written notification to (i) the current spouse, if any, (ii) any former spouse, and (iii) any former wife or husband who has a court order covered by paragraph (3); and

(B) only if the express written concurrence of the current spouse has been received by the Director.

This paragraph may be waived under circumstances described in section 2031(b)(1)(D) of this title.

(c) Order of precedence of payment

A lump-sum payment authorized by subsection (d) or (e) of this section 2121(d) of this title and a payment of any accrued and unpaid annuity authorized by subsection (f) of this section shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon establishment of a valid claim therefor, and such payment bars recovery by any other individual:

(1) To the beneficiary or beneficiaries designated by such participant in a signed and witnessed writing received by the Director before the participant’s death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed with the Director shall have no force or effect.

(2) If there is no designated beneficiary, to the surviving wife or husband of such participant.

(3) If none of the above, to the child or children of such participant and descendent of deceased children by representation.

(4) If none of the above, to the parents of such participant or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of such participant.

(6) If none of the above, to such other next of kin of such participant as the Director determines to be legally entitled to such payment.

(d) Death of former participant before retirement

(1) In general

Except as provided in paragraph (2), if a former participant eligible for a deferred annuity under section 2054 of this title dies before reaching age 62, such former participant’s lump-sum credit shall be paid in accordance with subsection (c) of this section.

(2) Limitation

In any case where there is a surviving former spouse or surviving former wife or husband of such participant who is entitled to a share of such participant’s lump-sum credit under paragraphs (2) and (3) of subsection (b) of this section, the lump-sum credit payable under paragraph (1) shall be reduced by the lump-sum credit payable to such former spouse or former wife or husband.

(e) Termination of all annuity rights

If all annuity rights under this subchapter based on the service of a deceased participant or...
annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in accordance with subsection (c) of this section.

(f) Payment of accrued and unpaid annuity when retired participant dies

If a retired participant dies, any annuity accrued and unpaid shall be paid, in accordance with subsection (c) of this section.

(g) Termination of survivor annuity

An annuity accrued and unpaid on the termination, except by death, of the annuity of the survivor annuitant shall be paid to that individual. An annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other individual:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no executor or administrator, to such next of kin of the survivor annuitant as the Director determines to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days from the date of death of the survivor annuitant.


PRIOR PROVISIONS


AMENDMENTS

1993—Subsec. (c). Pub. L. 103–178, §202(a)(11)(A), substituted “A lump-sum payment authorized by subsection (f) of this section” for “A lump-sum benefit that would have been payable to a participant, former participant, or annuitant, or to a survivor annuitant, authorized by subsection (d) or (e) of this section or by section 2121(d) of this title”.

Subsecs. (f), (g). Pub. L. 103–178, §202(a)(11)(B), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1993 AMENDMENT


PART F—PERIOD OF SERVICE FOR ANNUITIES

§ 2081. Computation of length of service

(a) In general

(1) Crediting service as participant

For the purposes of this subchapter, the period of service of a participant shall be computed from the date on which the participant becomes a participant under this subchapter.

(2) Exclusion of certain periods

In computing the period of service of a participant, all periods of separation from the Agency and so much of any leave of absence without pay as may exceed six months in the aggregate in any calendar year shall be excluded, except leaves of absence while receiving benefits under chapter 81 of title 5 and leaves of absence granted participants while performing active and honorable service in the Armed Forces.

(3) Crediting certain periods of separation

A participant or former participant who returns to Government duty after a period of separation shall have included in the participant or former participant’s period of service that part of the period of separation in which the participant or former participant was receiving benefits under chapter 81 of title 5.

(b) Extra credit for periods served at unhealthful posts overseas

(1) Classification of certain posts as unhealthful

The Director may from time to time establish a list of places outside the United States that, by reason of climatic or other extreme conditions, are to be classed as unhealthful posts. Such list shall be established in consultation with the Secretary of State.

(2) Extra credit

Each year of duty at a post on the list established under paragraph (1), inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of service of a participant under this subchapter for the purpose of retirement. In computing such service, any fractional month shall be treated as a full month.

(3) Coordination with benefits under title 5

Extra credit for service at an unhealthful post may not be credited to a participant who is paid a differential under section 5925 or 5928 of title 5 for the same service.


PRIOR PROVISIONS


§ 2082. Prior service credit

(a) In general

A participant may, subject to the provisions of this section, include in the participant’s period of service—

(1) civilian service in the Government before becoming a participant that would be creditable toward retirement under subchapter III of chapter 80 of title 5 (as determined under section 8332(b) of such title); and

(2) honorable active service in the Armed Forces before the date of the separation upon which eligibility for an annuity is based, or honorable active service in the Regular or Re-
serve Corps of the Public Health Service after June 30, 1960, or as a commissioned officer of the National Oceanic and Atmospheric Administration after June 30, 1961.

(b) Limitations

(1) In general

Except as provided in paragraphs (2) and (3), the total service of any participant shall exclude—

(A) any period of civilian service on or after October 1, 1982, for which retirement deductions or deposits have not been made,

(B) any period of service for which a refund of contributions has been made, or

(C) any period of service for which contributions were not transferred pursuant to subsection (c)(1) of this section;

unless the participant makes a deposit to the fund in an amount equal to the percentages of basic pay received for such service as specified in the table contained in section 8334(c) of title 5, together with interest computed in accordance with section 8334(e) of such title. The deposit may be made in one or more installments (including by allotment from pay), as determined by the Director.

(2) Effect of retirement deductions not made

If a participant has not paid a deposit for civilian service performed before October 1, 1982, for which retirement deductions were not made, such participant’s annuity shall be reduced by 10 percent of the deposit described in paragraph (1) remaining unpaid, unless the participant elects to eliminate the service involved for the purpose of the annuity computation.

(3) Effect of refund of retirement contributions

A participant who received a refund of retirement contributions under this or any other retirement system for Government employees covering service for which the participant may be allowed credit under this subchapter may deposit the amount received, with interest computed under paragraph (1), remaining unpaid, unless the participant elects to eliminate the service involved for the purpose of the annuity computation.

(c) Transfer from other Government retirement systems

(1) In general

If an employee who is under another retirement system for Government employees becomes a participant in the system by direct transfer, the Government’s contributions (including interest accrued thereon computed in accordance with section 8334(e) of title 5) under such retirement system on behalf of the employee as well as such employee’s total contributions and deposits (including interest accrued thereon), except voluntary contributions, shall be transferred to the employee’s credit in the fund effective as of the date such employee becomes a participant in the system.

(2) Consent of employee

Each such employee shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered before becoming a participant in the system.

(3) Additional contributions; refunds

A participant whose contributions are transferred pursuant to paragraph (1) shall not be required to make additional contributions for periods of service for which full contributions were made to the other Government retirement fund, nor shall any refund be made to any such participant on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed for employees by section 8334(c) of title 5 for contributions to the fund.

(d) Transfer to other Government retirement systems

(1) In general

If a participant in the system becomes an employee under another Government retirement system by direct transfer to employment covered by such system, the Government’s contributions (including interest accrued thereon computed in accordance with section 8334(e) of title 5) to the fund on the participant’s behalf as well as the participant’s total contributions and deposits (including interest accrued thereon), except voluntary contributions, shall be transferred to the participant’s credit in the fund of such other retirement system effective as of the date on which the participant becomes eligible to participate in such other retirement system.

(2) Consent of employee

Each such employee shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the fund on account of service rendered before the participant’s becoming eligible for participation in that other system.
(e) Prior military service credit

(1) Application to obtain credit

If a deposit required to obtain credit for prior military service described in subsection (a)(2) of this section was not made to another Government retirement fund and transferred under subsection (c)(1) of this section, the participant may obtain credit for such military service, subject to the provisions of this subsection and subsections (f) through (h) of this section, by applying for it to the Director before retirement or separation from the Agency.

(2) Employment starting before, on, or after October 1, 1982

Except as provided in paragraph (3)—

(A) the service of a participant who first became a Federal employee before October 1, 1982, shall include credit for each period of military service performed before the date of separation on which entitlement to an annuity under this subchapter is based, subject to subsection (f) of this section; and

(B) the service of a participant who first became a Federal employee on or after October 1, 1982, shall include credit for—

(i) each period of military service performed before January 1, 1957, and

(ii) each period of military service performed after December 31, 1956, and before the separation on which entitlement to an annuity under this subchapter is based, subject to subsection (f) of this section.

(3) Effect of receipt of military retired pay

In the case of a participant who is entitled to retired pay based on a period of military service, the participant’s service may not include credit for such period of military service unless the retired pay is paid—

(A) on account of a service-connected disability—

(i) incurred in combat with an enemy of the United States; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war (as defined in section 1101 of title 10). 

(B) under chapter 671 of title 10.

(4) Survivor annuity

Notwithstanding paragraph (3), the survivor annuity of a survivor of a participant—

(A) who was awarded retired pay based on any period of military service, and

(B) whose death occurs before separation from the Agency,

shall be computed in accordance with section 8332(c)(3) of title 5.

(f) Effect of entitlement to social security benefits

(1) In general

Notwithstanding any other provision of this section (except paragraph (3) of this subsection) or section 2083 of this title, any military service (other than military service covered by military leave with pay from a civilian position) performed by a participant after December 1956 shall be included in determining the aggregate period of service on which an annuity payable under this subchapter to such participant or to the participant’s spouse, former spouse, previous spouse, or child is based, if such participant, spouse, former spouse, previous spouse, or child is entitled (or would upon proper application be entitled), at the time of such determination, to monthly old-age or survivors’ insurance benefits under section 402 of title 42, based on such participant’s wages and self-employment income. If the military service is not excluded under the preceding sentence, but upon attaining age 62, the participant or spouse, former spouse, or previous spouse attains age 62, so as to exclude such service.

(2) Limitation

The provisions of paragraph (1) relating to credit for military service do not apply to—

(A) any period of military service of a participant with respect to which the participant has made a deposit with interest, if any, under subsection (h) of this section; or

(B) the military service of any participant described in subsection (e)(2)(B) of this section.

(3) Effect of entitlement before September 8, 1982

(A) The annuity recomputation required by paragraph (1) shall not apply to any participant who was entitled to an annuity under this subchapter on or before September 8, 1982, or who is entitled to a deferred annuity based on separation from the Agency occurring on or before such date. Instead of an annuity recomputation, the annuity of such participant shall be reduced at age 62 by an amount equal to a fraction of the participant’s old-age or survivors’ insurance benefits under section 402 of title 42. The reduction shall be determined by multiplying the participant’s monthly Social Security benefit by a fraction, the numerator of which is the participant’s total military wages and deemed additional wages (within the meaning of section 429 of title 42) that were subject to Social Security deductions, and the denominator of which is the total of all the participant’s wages, including military wages, and all self-employment income that were subject to Social Security deductions before the calendar year in which the determination month occurs.

(B) The reduction determined in accordance with subparagraph (A) shall not be greater than the reduction that would be required under paragraph (1) if such paragraph applied to the participant. The new formula shall be applicable to any annuity payment payable after October 1, 1982, including annuity pay-
ments to participants who had previously reached age 62 and whose annuities had already been recomputed.

(C) For purposes of this paragraph, the term "determination month" means—

(i) the first month for which the participant is entitled to old-age or survivors' insurance benefits (or would be entitled to such benefits upon application therefor); or

(ii) October 1982, in the case of any participant entitled to such benefits for that month.

(g) Deposits paid by survivors

For the purpose of survivor annuities, deposits authorized by subsections (b) and (h) of this section may also be made by the survivor of a participant.

(h) Deposits for periods of military service

(1)(A) Each participant who has performed military service before the date of separation on which entitlement to an annuity under this subchapter is based may pay to the Agency an amount equal to 7 percent of the amount of basic pay paid under section 204 of title 37 to the participant for each period of military service after December 1956; except, the amount to be paid for military service performed beginning on January 1, 1999, through December 31, 2000, shall be as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Deposit Rate of Basic Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 1999 to December 31, 1999</td>
<td>7.25%</td>
</tr>
<tr>
<td>January 1, 2000 to December 31, 2000</td>
<td>7.4%</td>
</tr>
</tbody>
</table>

(B) The amount of such payments shall be based on such evidence of basic pay for military service as the participant may provide or, if the Director determines sufficient evidence has not been provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Director under paragraph (4).

(2) Any deposit made under paragraph (1) more than two years after the later of—

(A) October 1, 1983, or

(B) the date on which the participant making the deposit first becomes an employee of the Federal Government, shall include interest on such amount computed and compounded annually beginning on the date of expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under section 8333(e)(4) of title 5.

(3) Any payment received by the Director under this subsection shall be deposited in the Treasury of the United States to the credit of the fund.

(4) The provisions of section 2031(k) of this title shall apply with respect to such information as the Director determines to be necessary for the administration of this subsection in the same manner that such section applies concerning information described in that section.


REFERENCES IN TEXT


PRIOR PROVISIONS


AMENDMENTS


1997—Subsec. (h)(1). Pub. L. 105–33 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Each participant who has performed military service before the date of separation on which entitlement to an annuity under this subchapter is based may pay to the Agency an amount equal to 7 percent of the amount of basic pay paid under section 204 of title 37 to the participant for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the participant may provide or, if the Director determines sufficient evidence has not been provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Director under paragraph (4)."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–346 effective upon the close of calendar year 2000 and applicable thereafter, see section 101(a) (title V, §505(i)) of Pub. L. 106–346, set out as a note under section 8334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1997 AMENDMENT


§2083. Credit for service while on military leave

(a) General rule

A participant who, during the period of any war or of any national emergency as proclaimed by the President or declared by the Congress, leaves the participant's position in the Agency to enter military service shall not be considered, for purposes of this subchapter, as separated from the participant's position in the Agency by reason of such military service, unless the participant applies for and receives a refund of contributions under this subchapter. Such a participant may not be considered as retaining such position in the Agency after December 31, 1956, or upon the expiration of five years of such military service, whichever is later.
§ 2091. Estimate of appropriations needed

(a) Estimates of annual appropriations

The Director shall prepare the estimates of the annual appropriations required to be made to the fund.

(b) Actuarial valuations

The Director shall cause to be made actuarial valuations of the fund at such intervals as the Director determines to be necessary, but not less often than every five years.

(c) Changes in law affecting actuarial status of fund

Any statute which authorizes—

(1) new or increased benefits payable from the fund under this subchapter, including annuity increases other than under section 2131 of this title;

(2) extension of the coverage of this subchapter to new groups of employees; or

(3) increases in pay on which benefits are computed;

is deemed to authorize appropriations to the fund in order to provide funding for the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the system; and with the first payment thereof due as of the end of the fiscal year in which such new or liberalized benefit, extension of coverage, or increase in pay is effective.

(d) Authorization

There is hereby authorized to be appropriated to the fund for each fiscal year such sums as may be necessary to meet the amount of normal cost for each year that is not met by contributions under section 2021(a) of this title.

(e) Unfunded liability; credit allowed for military service

There is hereby authorized to be appropriated to the fund for each fiscal year such sums as may be necessary to provide the amount equivalent to—

(1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the system; and

(2) that portion of disbursement for annuities for that year that the Director estimates is attributable to credit allowed for military service.

less an amount determined by the Director to be appropriate to reflect the value of the deposits made to the credit of the fund under section 2082(h) of this title.

§ 2092. Investment of moneys in fund

The Director may, with the approval of the Secretary of the Treasury, invest from time to time in interest-bearing securities of the United States such portions of the fund as in the Director’s judgment may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances from the fund. The income derived from such investments shall be credited to and constitute a part of the fund.

§ 2093. Payment of benefits

(a) Annuities stated as annual amounts

Each annuity is stated as an annual amount, 1/12 of which, rounded to the next lowest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued.

(b) Commencement of annuity

(1) Commencement of annuity for participants generally

Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after separation from the Agency or after pay ceases and the service and age requirements for title to an annuity are met.

(2) Exceptions

The annuity of—

(A) a participant involuntarily separated from the Agency;

(B) a participant retiring under section 2051 of this title due to a disability; and

(C) a participant who serves 3 days or less in the month of retirement.
shall commence on the day after separation from the Agency or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(3) Other annuities

Any other annuity payable from the fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.

(e) Termination of annuity

An annuity payable from the fund shall terminate—

(1) in the case of a retired participant, on the day death or any other terminating event provided by this subchapter occurs; or

(2) in the case of a former spouse or a survivor, on the last day of the month before death or any other terminating event occurs.

(d) Application for survivor annuities

The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Director may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to the individual’s estate.

(c) Termination of annuity

An individual entitled to an annuity from the fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Director. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver is in effect.

(f) Limitations

(1) Application before 115th anniversary

No payment shall be made from the fund unless an application for benefits based on the service of the participant is received by the Director before the 115th anniversary of the participant’s birth.

(2) Application within 30 years

Notwithstanding paragraph (1), after the death of a participant or retired participant, no benefit based on that participant’s service may be paid from the fund unless an application for the benefit is received by the Director within 30 years after the death or other event which gives rise to eligibility for the benefit.

(g) Withholding of State income tax from annuities

(1) Agreements with States

The Director shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Director shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund¹ and disbursed to the States during the month following that calendar quarter.

(2) Limitation on multiple requests

An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests during any one calendar year.

(3) Change in State designation

Subject to paragraph (2), an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Director, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Director.

(4) General provisions

This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements of the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Director may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Director shall be repaid by the State in accordance with regulations prescribed by the Director.

(5) “State” defined

For the purpose of this subsection, the term “State” includes the District of Columbia and any territory or possession of the United States.


PRIOR PROVISIONS


§ 2094. Attachment of moneys

(a) Exemption from legal process

Except as provided in subsections (b), (c), and (e) of this section, none of the moneys mentioned in this subchapter shall be assignable either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

(b) Payment to former spouses under court order or spousal agreement

In the case of any participant, former participant, or retired participant who has a former

¹ So in original. Probably should not be capitalized.
spouse who is covered by a court order or who is a party to a spousal agreement—

(1) any right of the former spouse to any annuity under section 2032(a) of this title in connection with any retirement or disability annuity of the participant, and the amount of any such annuity;

(2) any right of the former spouse of a participant or retired participant to a survivor annuity under section 2032(b) or 2032(c) of this title, and the amount of any such annuity; and

(3) any right of the former spouse of a former participant to any payment of a lump-sum credit under section 2071(b) of this title, and the amount of any such payment;

shall be determined in accordance with that spousal agreement or court order, if and to the extent expressly provided for in the terms of the spousal agreement or court order that are not inconsistent with the requirements of this subchapter.

(c) Other payments under court orders

Payments under this subchapter that would otherwise be made to a participant, former participant, or retired participant based upon that participant’s service shall be paid, in whole or in part, by the Director to another individual if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation.

(d) Prospective payments; bar to recovery

(1) Subsections (b) and (c) of this section apply only to payments made under this subchapter for periods beginning after the date of receipt by the Director of written notice of such decree, order, or agreement and such additional information and documentation as the Director may require.

(2) Any payment under subsection (b) or (c) of this section to an individual bars recovery by such individual.

(e) Allotments

An individual entitled to an annuity from the fund may make allotments or assignments of amounts from such annuity for such purposes as the Director considers appropriate.


Prior Provisions


Amendments


Subsec. (b)(3). Pub. L. 103–178, § 202(a)(12)(B), substituted “and the amount of any such payment;” for “and to any payment of a return of contributions under section 2094(a) of this title; and”.

Subsec. (b)(4). Pub. L. 103–178, § 202(a)(12)(C), struck out par. (4) which read as follows: “any right of the former spouse of a participant or former participant to a lump-sum payment or additional annuity payable from a voluntary contribution account under section 2121 of this title;”.

Effective Date of 1993 Amendment


§ 2095. Recovery of payments

Recovery of payments under this subchapter may not be made from an individual when, in the judgment of the Director, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money payable pursuant to this subchapter on account of a certification or payment made by a former employee of the Agency in the discharge of the former employee’s official duties may be made if the Director certifies that the certification or payment involved fraud on the part of the former employee.


Amendments


Effective Date of 1993 Amendment


Part H—Retired Participants Recalled, Reinstated, or Reappointed in Agency or Reemployed in Government

§ 2111. Recall

(a) Authority to recall

The Director may, with the consent of a retired participant, recall that participant to service in the Agency whenever the Director determines that such recall is in the public interest.

(b) Pay of retired participant while serving

A retired participant recalled to duty in the Agency under subsection (a) of this section or reinstated or reappointed in accordance with section 2051(b) of this title shall, while so serving, be entitled, in lieu of the retired participant’s annuity, to the full basic pay of the grade in which the retired participant is serving. During such service, the retired participant shall make contributions to the fund in accordance with section 2031 of this title.

(c) Recomputation of annuity

When the retired participant reverts to retired status, the annuity of the retired participant shall be redetermined in accordance with section 2031 of this title.


Amendments

PART I—VOLUNTARY CONTRIBUTIONS

§ 2121. Voluntary contributions

(a) Authority for voluntary contributions

Under such regulations as may be prescribed by the Director, a participant may voluntarily contribute additional sums in multiples of one percent of the participant’s basic pay, but not in excess of 10 percent of such basic pay.

(2) Interest

The voluntary contribution account in each case is the sum of unrefunded contributions, plus interest—

(A) for periods before January 1, 1985, at 3 percent a year; and

(B) for periods on or after January 1, 1985, at the rate computed under section 8334(e) of title 5, compounded annually to the date of election under subsection (b) of this section or the date of payment under subsection (d) of this section.

(b) Treatment of voluntary contributions

Effective on the date of retirement and at the election of the participant, the participant’s account shall be—

(1) returned in a lump sum;
(2) used to purchase an additional life annuity;
(3) used to purchase an additional life annuity for the participant and to provide for a cash payment on the participant’s death to a beneficiary; or
(4) used to purchase an additional life annuity for the participant and a life annuity commencing on the participant’s death payable to a beneficiary, with a guaranteed return to the beneficiary or the beneficiary’s legal representative of an amount equal to the cash payment referred to in paragraph (3).

In the case of a benefit provided under paragraph (3) or (4), the participant shall notify the Director in writing of the name of the beneficiary of the cash payment or life annuity to be paid upon the participant’s death.

(c) Value of benefits

The benefits provided by subsection (b)(2), (3), or (4) of this section shall be actuarially equivalent in value to the payment provided for in subsection (b)(1) of this section and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Director.

(d) Lump-sum payment

A voluntary contribution account shall be paid in a lump sum at such time as the participant dies or separates from the Agency without entitlement to an annuity. In the case of death, the account shall be paid in the order of precedence specified in section 2071(c) of this title.

(e) Benefits in addition to other benefits

Any benefit payable to a participant or to the participant’s beneficiary with respect to the ad-
§ 2131. Cost-of-living adjustment of annuities

(a) In general

Each annuity payable from the fund shall be adjusted as follows:

(1) Each cost-of-living annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(b) of title 5.

(2) A cost-of-living increase made under paragraph (1) shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5. Except as provided in subsection (b) of this section, each such increase shall be applied to each annuity payable from the fund which has a commencement date not later than the effective date of the increase.

(b) Eligibility

Eligibility for an annuity increase under this section shall be governed by the commencement date of each annuity payable from the fund as of the effective date of an increase, except as follows:

(1) The first cost-of-living increase (if any) made under subsection (a) of this section to an annuity which is payable from the fund to a participant who retires, to the surviving spouse, former spouse, or previous spouse of a participant who dies in service, or to the surviving spouse, former spouse, previous spouse, or insurable interest designee of a deceased annuitant whose annuity has not been increased under this subsection or subsection (a) of this section, shall be equal to the product (adjusted to the nearest 1⁄2 of one percent) of—

(A) 1⁄2 of the applicable percent change computed under subsection (a) of this section, multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

(i) for which the annuity was payable from the fund before the effective date of the increase, or

(ii) in the case of a surviving spouse, former spouse, previous spouse, or insurable interest designee of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

(2) Effective from its commencing date, an annuity payable from the fund to an annuitant’s survivor (other than a child entitled to an annuity under section 2031(d) of this title) shall be increased by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing the annuity of a child under section 2031(d) of this title that commences after October 31, 1969, the dollar amounts specified in section 2031(d)(3) of this title shall each be increased by the total percentage increases allowed and in force under this section on or after such day and, in the case of a deceased annuitant, the percentages specified in that section shall be increased by the total percent allowed and in force to the annuitant under this section on or after such day.

(c) Limitation

An annuity increase provided by this section may not be computed on any additional annuity purchased at retirement by voluntary contributions.

(d) Rounding to next lower dollar

The monthly annuity installment, after adjustment under this section, shall be rounded to the next lowest dollar, except that such installment shall, after adjustment, reflect an increase of at least $1.

(e) Limitation on maximum amount of annuity

(1) In general

An annuity shall not be increased by reason of an adjustment under this section to an amount which exceeds the greater of—

(A) the maximum pay payable for GS–15 30 days before the effective date of the adjustment under this section; or

(B) the final pay (or average pay, if higher) of the participant with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in the rates of pay of the General Schedule under subchapter I of chapter 53 of title 5 during the period—

(i) beginning on the date on which the annuity commenced (or, in the case of a survivor of the retired participant, the date on which the participant’s annuity commenced), and

(ii) ending on the effective date of the adjustment under this section.

(2) “Pay” defined

For purposes of paragraph (1), the term “pay” means the rate of salary or basic pay as payable under any provision of law, including any provision of law limiting the expenditure of appropriated funds.


Prior Provisions


PART J—COST-OF-LIVING ADJUSTMENT OF ANNUITIES

§ 2131. Cost-of-living adjustment of annuities

Prior Provisions


References in Text


Prior Provisions

AMENDMENTS

1993—Subsec. (b)(2). Pub. L. 103–178 struck out ‘‘or section 2052(c) of this title’’ after ‘‘section 2031(d) of this title’’.

EFFECTIVE DATE OF 1993 AMENDMENT


Any cost-of-living increase scheduled to take effect during fiscal year 1994, 1995, or 1996 under this section delayed until first day of third calendar month after date such increase would otherwise take effect, see section 11001 of Pub. L. 103–66, set out as a note under section 11001 of Pub. L. 103–66, set out as a note under section 403 of this title prior to the effective date of law.

OPEN ENROLLMENT SEASON FOR PARTICIPANTS IN THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

The Director to provide an open enrollment period for employee participants in the Central Intelligence Agency Retirement and Disability System to elect the Federal Employees’ Retirement System, see Ex. Ord. No. 13185, § 2, Nov. 2, 1998, 63 F.R. 62901, set out as a note under section 4067 of Title 22, Foreign Relations and Intercourse.

EX. ORD. NO. 13236. WAIVER OF DUAL COMPENSATION PROVISIONS

Ex. Ord. No. 13236, Nov. 27, 2001, 66 F.R. 59671, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 292 of the Central Intelligence Agency Retirement Act of 1964 [Central Intelligence Agency Retirement Act], as amended (50 U.S.C. 2141), and in order to conform the Central Intelligence Agency Retirement and Disability System to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

SECTION 1. The Director of Central Intelligence may waive the application of the dual compensation reduction provisions of sections 271 and 273 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2111 and 2113) for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances. Employees who receive both salary and annuity pursuant to this authority may not earn additional retirement benefits during this period of employment. This authority may be delegated as appropriate.

SEC. 2. Nothing contained in this order is intended to create, nor does it create, any right, benefit, or privilege, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees, or any other person.
§ 2142. Thrift Savings Plan participation

(a) Eligibility for Thrift Savings Plan

Participants in the system shall be deemed to be employees for the purposes of section 8351 of title 5.

(b) Management of Thrift Savings Plan accounts by Director

Subsections (k) and (m) of section 8461 of title 5 shall apply with respect to contributions made by participants to the Thrift Savings Fund under section 8351 of such title and to earnings attributable to the investment of such contributions.


PRIOR PROVISIONS


§ 2143. Alternative forms of annuities

(a) Authority for alternative form of annuity

The Director shall prescribe regulations under which any participant who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this subchapter (other than under section 2051 of this title), elect annuity benefits under this section instead of any other benefits under this subchapter (including any survivor benefits under this subchapter) based on the service of the participant creditable under this subchapter.

(b) Basis for alternative forms of annuity

The regulations and alternative forms of annuity shall, to the maximum extent practicable, meet the requirements prescribed in section 8343a of title 5.

(c) Lump-sum credit

Any lump-sum credit provided pursuant to an election under subsection (a) of this section shall not preclude an individual from receiving other benefits provided under that subsection.

(d) Submission of regulations to congressional intelligence committees

The Director shall submit the regulations prescribed under subsection (a) of this section to the congressional intelligence committees before the regulations take effect.


PRIOR PROVISIONS


§ 2144. Payments from CIARDS fund for portions of certain Civil Service Retirement System annuities

The amount of the increase in any annuity that results from the application of section 403r of this title, if and when such increase is based on an individual's overseas service as an employee of the Central Intelligence Agency, shall be paid from the fund.


PRIOR PROVISIONS


SUBCHAPTER III—PARTICIPATION IN FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

§ 2151. Application of Federal Employees’ Retirement System to Agency employees

(a) General rule

Except as provided in subsections (b) and (c) of this section, all employees of the Agency, any of whose service after December 31, 1983, is employment for the purpose of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of title 5, shall be subject to chapter 84 of title 5.

(b) Exception for pre-1984 employees

Participants in the Central Intelligence Agency Retirement and Disability System who were participants in such system on or before December 31, 1983, and who have not had a break in service in excess of one year since that date, are not subject to chapter 84 of title 5 without regard to whether they are subject to title II of the Social Security Act [42 U.S.C. 401 et seq.].

(c) Nonapplicability of FERS to certain employees

(1) The provisions of chapter 84 of title 5 shall not apply with respect to—

(A) any individual who separates, or who has separated, from Federal Government service after having been an employee of the Agency subject to subchapter II of this chapter; and

(B) any employee of the Agency having at least 5 years of civilian service which was performed before January 1, 1987, and is creditable under subchapter II of this chapter (determined without regard to any deposit or re-
deposit requirement under subchapter III of chapter 83 of title 5, or under subchapter II of this chapter, or any requirement that the individual become subject to such subchapter or to subchapter II of this chapter after performing the service involved).

(2) Paragraph (1) shall not apply with respect to an individual who has elected under regulations prescribed under section 2157 of this title to become subject to chapter 84 of title 5 to the extent provided in such regulations.

(3) An individual described in paragraph (1) shall be deemed to be an individual excluded under section 8402(b)(2) of title 5.

(d) Election to become subject to FERS
An employee who is designated as a participant in the Central Intelligence Agency Retirement and Disability System after December 31, 1987, pursuant to section 2013 of this title may elect to become subject to chapter 84 of title 5. Such election—

(1) shall not be effective unless it is made during the six-month period beginning on the date on which the employee is so designated;

(2) shall take effect beginning with the first pay period beginning after the date of the election; and

(3) shall be irrevocable.

(e) Special rules
The application of the provisions of chapter 84 of title 5 to an employee referred to in subsection (a) of this section shall be subject to the exceptions and special rules provided in this subchapter. Any provision of that chapter which is inconsistent with a special rule provided in this subchapter shall not apply to such employee.


REFERENCES IN TEXT
The Social Security Act, referred to in subsecs. (a) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended.

Title II of the Act is classified generally to subchapter II (§ 801 et seq.) of chapter 7 of Title 22, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

§ 2153. Special rules for other employees for service abroad

(a) Special computation rule
Notwithstanding any provision of chapter 84 of title 5, the annuity under subchapter II of such chapter of a retired employee of the Agency who is not designated under section 2152(a) of this title and who has served abroad as an employee of the Agency after December 31, 1986, shall be computed as provided in subsection (b) of this section.

(b) Computation

(1) Service abroad
The portion of the annuity relating to such service abroad shall be computed as provided in section 8415(d) of title 5.

(2) Other service
The portions of the annuity relating to other creditable service shall be computed as provided in section 8415 of such title that is applicable to such service under the conditions prescribed in chapter 84 of such title.


PRIOR PROVISIONS
§ 2154. Special rules for former spouses

(a) General rule

Except as otherwise specifically provided in this section, the provisions of chapter 84 of title 5 shall apply in the case of an employee of the Agency who is subject to chapter 84 of title 5 and who has a former spouse (as defined in section 8401(12) of title 5) or a qualified former spouse.

(b) Definitions

For purposes of this section:

(1) Employee

The term “employee” means an employee of the Agency who is subject to chapter 84 of title 5, including an employee referred to in section 2152(a) of this title.

(2) Qualified former spouse

The term “qualified former spouse” means a former spouse of an employee or retired employee who—

(A) in the case of a former spouse whose divorce from such employee became final on or before December 4, 1991, was married to such employee for not less than 10 years during periods of the employee’s service which are creditable under section 8411 of title 5, at least 5 years of which were spent outside the United States by both the employee and the former spouse during the employee’s service with the Agency; and

(B) in the case of a former spouse whose divorce from such employee becomes final after December 4, 1991, was married to such employee for not less than 10 years during periods of the employee’s service which are creditable under section 8411 of title 5, at least 5 years of which were spent by the employee outside the United States during the employee’s service with the Agency or otherwise in a position the duties of which qualified the employee for designation by the Director under the criteria prescribed in section 2013 of this title.

(3) Pro rata share

The term “pro rata share” means the percentage that is equal to (A) the number of days of the marriage of the qualified former spouse to the employee during the employee’s periods of creditable service under chapter 84 of title 5, divided by (B) the total number of days of the employee’s creditable service.

(4) Spousal agreement

The term “spousal agreement” means an agreement between an employee, former employee, or retired employee and such employee’s spouse or qualified former spouse that—

(A) is in writing, is signed by the parties, and is notarized;

(B) has not been modified by court order; and

(C) has been authenticated by the Director.

(5) Court order

The term “court order” means any court decree of divorce, annulment or legal separation, or any court order or court-approved property settlement agreement incident to such court decree of divorce, annulment, or legal separation.

(c) Entitlement of qualified former spouse to retirement benefits

(1) Entitlement

(A) In general

Unless otherwise expressly provided by a spousal agreement or court order governing disposition of benefits payable under subchapter II or V of chapter 84 of title 5, a qualified former spouse of an employee is entitled to a share (determined under subparagraph (B)) of all benefits otherwise payable to such employee under subchapter II or V of chapter 84 of title 5.

(B) Amount of share

The share referred to in subparagraph (A) equals—

(i) 50 percent, if the qualified former spouse was married to the employee throughout the entire period of the employee’s service which is creditable under chapter 84 of title 5; 1 or

(ii) a pro rata share of 50 percent, if the qualified former spouse was not married to the employee throughout such creditable service.

(2) Annuity supplement

The benefits payable to an employee under subchapter II of chapter 84 of title 5 shall include, for purposes of this subsection, any annuity supplement payable to such employee under sections 8421 and 8421a of such title.

(3) Disqualification upon remarriage before age 55

A qualified former spouse shall not be entitled to any benefit under this subsection if, before the commencement of any benefit, the qualified former spouse remarries before becoming 55 years of age.

(4) Commencement and termination

(A) Commencement

The benefits of a qualified former spouse under this subsection commence on the later of—

(i) the day on which the employee upon whose service the benefits are based becomes entitled to the benefits; or

(ii) the first day of the second month beginning after the date on which the Director receives written notice of the court order or spousal agreement, together with such additional information or documentation as the Director may prescribe.

(B) Termination

The benefits of the qualified former spouse and the right thereunder to receive benefits payable under subsection (a) shall terminate on—

(i) the last day of the month before the qualified former spouse remarries before 55 years of age or dies; or

(ii) the date on which the retired employee’s benefits terminate (except in the case of benefits subject to paragraph (5)(B)).

1 So in original. Probably should be title “5”.

§ 2154. Special rules for former spouses

(a) General rule

Except as otherwise specifically provided in this section, the provisions of chapter 84 of title 5 shall apply in the case of an employee of the Agency who is subject to chapter 84 of title 5 and who has a former spouse (as defined in section 8401(12) of title 5) or a qualified former spouse.

(b) Definitions

For purposes of this section:

(1) Employee

The term “employee” means an employee of the Agency who is subject to chapter 84 of title 5, including an employee referred to in section 2152(a) of this title.

(2) Qualified former spouse

The term “qualified former spouse” means a former spouse of an employee or retired employee who—

(A) in the case of a former spouse whose divorce from such employee became final on or before December 4, 1991, was married to such employee for not less than 10 years during periods of the employee’s service which are creditable under section 8411 of title 5, at least 5 years of which were spent outside the United States by both the employee and the former spouse during the employee’s service with the Agency; and

(B) in the case of a former spouse whose divorce from such employee becomes final after December 4, 1991, was married to such employee for not less than 10 years during periods of the employee’s service which are creditable under section 8411 of title 5, at least 5 years of which were spent by the employee outside the United States during the employee’s service with the Agency or otherwise in a position the duties of which qualified the employee for designation by the Director under the criteria prescribed in section 2013 of this title.

(3) Pro rata share

The term “pro rata share” means the percentage that is equal to (A) the number of days of the marriage of the qualified former spouse to the employee during the employee’s periods of creditable service under chapter 84 of title 5, divided by (B) the total number of days of the employee’s creditable service.

(4) Spousal agreement

The term “spousal agreement” means an agreement between an employee, former employee, or retired employee and such employee’s spouse or qualified former spouse that—

(A) is in writing, is signed by the parties, and is notarized;

(B) has not been modified by court order; and

(C) has been authenticated by the Director.

(5) Court order

The term “court order” means any court decree of divorce, annulment or legal separation, or any court order or court-approved property settlement agreement incident to such court decree of divorce, annulment, or legal separation.

(c) Entitlement of qualified former spouse to retirement benefits

(1) Entitlement

(A) In general

Unless otherwise expressly provided by a spousal agreement or court order governing disposition of benefits payable under subchapter II or V of chapter 84 of title 5, a qualified former spouse of an employee is entitled to a share (determined under subparagraph (B)) of all benefits otherwise payable to such employee under subchapter II or V of chapter 84 of title 5.

(B) Amount of share

The share referred to in subparagraph (A) equals—

(i) 50 percent, if the qualified former spouse was married to the employee throughout the entire period of the employee’s service which is creditable under chapter 84 of title 5; 1 or

(ii) a pro rata share of 50 percent, if the qualified former spouse was not married to the employee throughout such creditable service.

(2) Annuity supplement

The benefits payable to an employee under subchapter II of chapter 84 of title 5 shall include, for purposes of this subsection, any annuity supplement payable to such employee under sections 8421 and 8421a of such title.

(3) Disqualification upon remarriage before age 55

A qualified former spouse shall not be entitled to any benefit under this subsection if, before the commencement of any benefit, the qualified former spouse remarries before becoming 55 years of age.

(4) Commencement and termination

(A) Commencement

The benefits of a qualified former spouse under this subsection commence on the later of—

(i) the day on which the employee upon whose service the benefits are based becomes entitled to the benefits; or

(ii) the first day of the second month beginning after the date on which the Director receives written notice of the court order or spousal agreement, together with such additional information or documentation as the Director may prescribe.

(B) Termination

The benefits of the qualified former spouse and the right thereunder to receive benefits payable under subsection (a) shall terminate on—

(i) the last day of the month before the qualified former spouse remarries before 55 years of age or dies; or

(ii) the date on which the retired employee’s benefits terminate (except in the case of benefits subject to paragraph (5)(B)).

1 So in original. Probably should be title “5”.
(5) Payments to retired employees

(A) Calculation of survivor annuity

Any reduction in payments to a retired employee as a result of payments to a qualified former spouse under this subsection shall be disregarded in calculating—

(i) the survivor annuity for any spouse, former spouse (qualified or otherwise), or other survivor under chapter 84 of title 5, and

(ii) any reduction in the annuity of the retired employee to provide survivor benefits under subsection (d) of this section or under sections 8442 or 8445 of title 5.

(B) Reduction in basic pay upon recall to service

If a retired employee whose annuity is reduced under paragraph (1) is recalled to service under section 2152(c) of this title, the basic pay of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

(6) Special rules for disability annuants

Notwithstanding paragraphs (1) and (4), in the case of any qualified former spouse of a disability annuitant—

(A) the annuity of such former spouse shall commence on the date on which the employee would qualify, on the basis of the employee’s creditable service, for benefits under subchapter II of chapter 84 of title 5 or on the date on which the disability annuity begins, whichever is later; and

(B) the amount of the annuity of the qualified former spouse shall be calculated on the basis of creditable service for which the employee would otherwise qualify under subchapter II of chapter 84 of such title.

(7) Pro rata share in case of employees transferred to FERS

Notwithstanding paragraph (1)(B), in the case of an employee who has elected to become subject to chapter 84 of title 5, the share of such employee’s qualified former spouse shall equal the sum of—

(A) 50 percent of the employee’s annuity under subchapter III of chapter 83 of title 5 or under subchapter II of this chapter (computed in accordance with section 302(a) of the Federal Employees’ Retirement System Act of 1986 or section 2157 of this title), multiplied by the proportion that the number of days of marriage during the period of the employee’s creditable service on and after the effective date of the election to transfer bears to the employee’s total creditable service after such effective date.

(B) Any calculation under section 8442(f) of title 5 of the supplementary annuity payable to a widow or widower of an employee referred to in section 2152(a) of this title shall be based on an “assumed CIARDS annuity” rather than an “assumed CSRS annuity” as stated in section 8442(f) of such title. For the purpose of this subparagraph, the term “assumed CIARDS annuity” means the amount of the survivor annuity to which the widow or widower would be entitled under subchapter II of this chapter based on the service of the deceased annuitant determined under section 8442(f)(5) of such title.

(3) Disqualification upon remarriage before age 55

A qualified former spouse shall not be entitled to any benefit under this subsection if, before commencement of any benefit, the quali-
§ 2154

(4) Restoration

If the survivor annuity payable under this subsection to a surviving qualified former spouse is terminated because of remarriage before becoming age 55, the annuity shall be restored at the same rate commencing on the date such remarriage is dissolved by death, divorce, or annulment, if—

(A) such former spouse elects to receive this survivor annuity instead of any other survivor benefit to which such former spouse may be entitled under subchapter IV of chapter 84 of title 5, or under another retirement system for Government employees by reason of the remarriage; and

(B) any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund.

(5) Modification of court order or spousal agreement

A modification in a court order or spousal agreement to adjust a qualified former spouse’s share of the survivor benefit shall not be effective if issued after the remarriage or death of the employee, former employee, or annuitant, whichever occurs first.

(6) Effect of termination of qualified former spouse’s entitlement

After a qualified former spouse of a retired employee remarries before becoming age 55 or dies, the reduction in the retired employee’s annuity for the purpose of providing a survivor annuity for such former spouse shall be terminated. The annuitant may elect, in a signed writing received by the Director within 2 years after the qualified former spouse’s remarriage or death, to continue the reduction in order to provide or increase the survivor annuity for such annuitant’s spouse. The annuitant making such election shall pay a deposit in accordance with the provisions of section 8418 of title 5.

(7) Pro rata share in case of employees transferred to FERS

Notwithstanding paragraph (1)(B), in the case of an employee who has elected to become subject to chapter 84 of title 5, the share of such employee’s qualified former spouse to survivor benefits shall equal the sum of—

(A) 50 percent of the employee’s annuity under subchapter III of chapter 83 of title 5 or under subchapter II of this chapter (computed in accordance with section 302(a) of the Federal Employees’ Retirement System Act of 1986 or section 2157 of this title), plus

(ii) the survivor benefits referred to in subsection (d)(2)(A) of this section, multiplied by the proportion that the number of days of marriage during the period of the employee’s creditable service on and after the effective date of the election to transfer bears to the employee’s total creditable service after such effective date.

(e) Qualified former spouse Thrift Savings Plan benefit

(1) Entitlement

(A) In general

Unless otherwise expressly provided by a spousal agreement or court order governing disposition of the balance of an account in the Thrift Savings Fund under subchapter III of chapter 84 of title 5, a qualified former spouse of an employee is entitled to a share (determined under subparagraph (B) of the balance in the employee’s account in the Thrift Savings Fund on the date the divorce of the qualified former spouse and employee becomes final.

(B) Amount of share

The share referred to in subparagraph (A) equals 50 percent of the employee’s account balance in the Thrift Savings Fund that accrued during the period of marriage. For purposes of this subsection, the employee’s account balance shall not include the amount of any outstanding loan.

(2) Payment of benefit

(A) Time of payment

The entitlement of a qualified former spouse under paragraph (1) shall be effective on the date the divorce of the qualified former spouse and employee becomes final. The qualified former spouse’s share will be payable after the date on which the Director receives the divorce decree or any applicable court order or spousal agreement, together with such additional information or documentation as the Director may require.

(B) Method of payment

The qualified former spouse’s benefit under this subsection shall be paid in a lump sum.

(C) Limitation

A spousal agreement or court order may provide for payment to a qualified former spouse under this subsection of an amount that exceeds the employee’s account balance in the Thrift Savings Fund.

(D) Death of qualified former spouse

If the qualified former spouse dies before payment of the benefit provided under this subsection, such payment shall be made to the estate of the qualified former spouse.

(E) Bar to recovery

Any payment under this subsection to an individual bars recovery by any other individual.
(3) Closed account

No payment under this subsection may be made by the Director if the date on which the divorce becomes final is after the date on which the total amount of the employee’s account balance has been withdrawn or transferred, or the date on which any annuity contract has been purchased, in accordance with section 8433 of title 5.

(f) Preservation of rights of qualified former spouses

An employee may not make an election or modification of election under section 8417 or 8418 of title 5, or other section relating to the employee’s annuity under subchapter II of chapter 84 of title 5, that would diminish the entitlement of a qualified former spouse to any benefit granted to such former spouse by this section or by court order or spousal agreement.

(g) Payment of share of lump-sum credit

Whenever an employee or former employee becomes entitled to receive the lump-sum credit under section 8424(a) of title 5, a share (determined under subsection (c)(1)(B) of this section) of that lump-sum credit shall be paid to any qualified former spouse of such employee, unless otherwise expressly provided by any spousal agreement or court order governing disposition of the lump-sum credit involved.

(h) Payment to qualified former spouses under court order or spousal agreement

In the case of any employee or retired employee who has a qualified former spouse who is covered by a court order or who is a party to a spousal agreement—

(1) any right of the qualified former spouse to any retirement benefits under subsection (c) of this section and to any survivor benefits under subsection (d) of this section, and the amount of any such benefits; and

(2) any right of the qualified former spouse to any Thrift Savings Plan benefit under subsection (e) of this section, and the amount of any such benefit; and

(3) any right of the qualified former spouse to any payment of a lump-sum credit under subsection (g) of this section, and the amount of any such payment;

shall be determined in accordance with that spousal agreement or court order, if and to the extent expressly provided for in the terms of the spousal agreement or court order that are not inconsistent with the requirements of this section.

(i) Applicability of CIARDS former spouse benefits

(1) Except as provided in paragraph (2), in the case of an employee who has elected to become subject to chapter 84 of title 5, the provisions of sections 2034 and 2035 of this title shall apply to such employee’s former spouse (as defined in section 2002(a)(4) of this title) who would otherwise be eligible for benefits under sections 2034 and 2035 of this title but for the employee having elected to become subject to such chapter.

(2) For the purposes of computing such former spouse’s benefits under sections 2034 and 2035 of this title—

(A) the retirement benefits shall be equal to the amount determined under subsection (c)(7)(A) of this section; and

(B) the survivor benefits shall be equal to 55 percent of the full amount of the employee’s annuity computed in accordance with section 302(a) of the Federal Employees’ Retirement System Act of 1986 or regulations prescribed under section 2157 of this title.

(3) Benefits provided pursuant to this subsection shall be payable from the Central Intelligence Agency Retirement and Disability Fund.

chapter. Such regulations shall be prescribed in consultation with the Director of the Office of Personnel Management and the Executive Director of the Federal Retirement Thrift Investment Board.

(b) Congressional review

The Director shall submit regulations prescribed under subsection (a) of this section to the congressional intelligence committees before they take effect.


PRIOR PROVISIONS


§ 2157. Transition regulations

(a) Regulations

The Director shall prescribe regulations providing for the transition from the Central Intelligence Agency Retirement and Disability System to the Federal Employees’ Retirement System provided in chapter 84 of title 5 in a manner consistent with sections 301 through 304 of the Federal Employees’ Retirement System Act of 1986.

(b) Congressional review

The Director shall submit regulations prescribed under subsection (a) of this section to the congressional intelligence committees before they take effect.


REFERENCES IN TEXT


PRIOR PROVISIONS


CHAPTER 39—SPOILS OF WAR

Sec. 2201. Transfers of spoils of war.
2202. Prohibition on transfers to countries which support terrorism.
2203. Report on previous transfers.
2204. Definitions.
2205. Construction.

§ 2201. Transfers of spoils of war

(a) Eligibility for transfer

Spoils of war in the possession, custody, or control of the United States may be transferred to any other party, including any government, group, or person, by sale, grant, loan or in any other manner, only to the extent and in the same manner that property of the same type, if otherwise owned by the United States, may be so transferred.

(b) Terms and conditions

Any transfer pursuant to subsection (a) of this section shall be subject to all of the terms, conditions, and requirements applicable to the transfer of property of the same type otherwise owned by the United States.


SHORT TITLE

Section 551 of Pub. L. 103–236 provided that: ‘‘This part [part B (§§ 551–556) of title V of Pub. L. 103–236, enacting this chapter] may be cited as the ‘Spoils of War Act of 1994’.‘‘

§ 2202. Prohibition on transfers to countries which support terrorism

Spoils of war in the possession, custody, or control of the United States may not be transferred to any country determined by the Secretary of State, for purposes of section 2780 of title 22, to be a nation whose government has repeatedly provided support for acts of international terrorism.


§ 2203. Report on previous transfers

Not later than 90 days after April 30, 1994, the President shall submit to the appropriate congressional committees a report describing any spoils of war obtained subsequent to August 2, 1990 that were transferred to any party, including any government, group, or person, before April 30, 1994. Such report shall be submitted in unclassified form to the extent possible.


§ 2204. Definitions

As used in this chapter—

(1) the term ‘‘appropriate congressional committees’’ means the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, or, where required by law for certain reporting purposes, the Select Committee on Intelligence of the Senate and the Select Committee on Intelligence of the House of Representatives;

(2) the term ‘‘enemy’’ means any country, government, group, or person that has been engaged in hostilities, whether or not lawfully authorized, with the United States;

(3) the term ‘‘person’’ means—

(A) any natural person;

(B) any corporation, partnership, or other legal entity; and

(C) any organization, association, or group; and

1So in original. Probably should be preceded by ‘‘Permanent’’. 


(4) the term “spoils of war” means enemy movable property lawfully captured, seized, confiscated, or found which has become United States property in accordance with the laws of war.


§ 2205. Construction

Nothing in this chapter shall apply to—

(1) the abandonment or failure to take possession of spoils of war by troops in the field for valid military reasons related to the conduct of the immediate conflict, including the burden of transporting such property or a decision to allow allied forces to take immediate possession of certain property solely for use during an ongoing conflict;

(2) the abandonment or return of any property obtained, borrowed, or requisitioned for temporary use during military operations without intent to retain possession of such property;

(3) the destruction of spoils of war by troops in the field;

(4) the return of spoils of war to previous owners from whom such property had been seized by enemy forces; or

(5) minor articles of personal property which have lawfully become the property of individual members of the armed forces as war trophies pursuant to public written authorization from the Department of Defense.


CHAPTER 40—DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION

Sec.

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2302. Definitions.

SUBCHAPTER I—DOMESTIC PREPAREDNESS

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2312. Repealed.
2313. Nuclear, chemical, and biological emergency response.
2314. Chemical, biological, radiological, nuclear, and high-yield explosives response team.
2315. Testing of preparedness for emergencies involving nuclear, radiological, chemical, and biological weapons.
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§ 2301. Findings

Congress makes the following findings:

(1) Weapons of mass destruction and related materials and technologies are increasingly available from worldwide sources. Technical information relating to such weapons is readily available on the Internet, and raw materials for chemical, biological, and radiological weapons are widely available for legitimate commercial purposes.

(2) The former Soviet Union produced and maintained a vast array of nuclear, biological, and chemical weapons of mass destruction.

(3) Many of the states of the former Soviet Union retain the facilities, materials, and
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The disintegration of the former Soviet Union was accompanied by disruptions of command and control systems, deficiencies in accountability for weapons, weapons-related materials and technologies, economic hardships, and significant gaps in border control among the states of the former Soviet Union. The problems of organized crime and corruption in the states of the former Soviet Union increase the potential for proliferation of nuclear, radiological, biological, and chemical weapons and related materials.

(5) The conditions described in paragraph (4) have substantially increased the ability of potentially hostile nations, terrorist groups, and individuals to acquire weapons of mass destruction and related materials and technologies from within the states of the former Soviet Union and from unemployed scientists who worked on those programs.

(6) As a result of such conditions, the capability of potentially hostile nations and terrorist groups to acquire nuclear, radiological, biological, and chemical weapons is greater than at any time in history.

(7) The President has identified North Korea, Iraq, Iran, and Libya as hostile states which already possess some weapons of mass destruction and are developing others.

(8) The acquisition or the development and use of weapons of mass destruction is well within the capability of many extremist and terrorist movements, acting independently or as proxies for foreign states.

(9) Foreign states can transfer weapons to or otherwise aid extremist and terrorist movements indirectly and with plausible deniability.

(10) Terrorist groups have already conducted chemical attacks against civilian targets in the United States and Japan, and a radiological attack in Russia.

(11) The potential for the national security of the United States to be threatened by nuclear, radiological, chemical, or biological terrorism must be taken seriously.

(12) There is a significant and growing threat of attack by weapons of mass destruction on targets that are not military targets in the usual sense of the term.

(13) Concomitantly, the threat posed to the citizens of the United States by nuclear, radiological, biological, and chemical weapons delivered by unconventional means is significant and growing.

(14) Mass terror may result from terrorist incidents involving nuclear, radiological, biological, or chemical materials.

(15) Facilities required for production of radiological, biological, and chemical weapons are much smaller and harder to detect than nuclear weapons facilities, and biological and chemical weapons can be deployed by alternative delivery means other than long-range ballistic missiles.

(16) Covert or unconventional means of delivery of nuclear, radiological, biological, and chemical weapons include cargo ships, passenger aircraft, commercial and private vehicles and vessels, and commercial cargo shipments routed through multiple destinations.

(17) Traditional arms control efforts assume large state efforts with detectable manufacturing programs and weapons production programs, but are ineffective in monitoring and controlling smaller, though potentially more dangerous, unconventional proliferation efforts.

(18) Conventional counterproliferation efforts would do little to detect or prevent the rapid development of a capability to suddenly manufacture several hundred chemical or biological weapons with nothing but commercial supplies and equipment.

(19) The United States lacks adequate planning and countermeasures to address the threat of nuclear, radiological, biological, and chemical terrorism.

(20) The Department of Energy has established a Nuclear Emergency Response Team which is available in case of nuclear or radiological emergencies, but no comparable units exist to deal with emergencies involving biological or chemical weapons or related materials.

(21) State and local emergency response personnel are not adequately prepared or trained for incidents involving nuclear, radiological, biological, or chemical materials.

(22) Exercises of the Federal, State, and local response to nuclear, radiological, biological, or chemical terrorism have revealed serious deficiencies in preparedness and severe problems of coordination.

(23) The development of, and allocation of responsibilities for, effective countermeasures to nuclear, radiological, biological, or chemical terrorism in the United States requires well-coordinated participation of many Federal agencies, and careful planning by the Federal Government and State and local governments.

(24) Training and exercises can significantly improve the preparedness of State and local emergency response personnel for emergencies involving nuclear, radiological, biological, or chemical weapons or related materials.

(25) Sharing of the expertise and capabilities of the Department of Defense, which traditionally has provided assistance to Federal, State, and local officials in neutralizing, dismantling, and disposing of explosive ordnance, as well as radiological, biological, and chemical materials, can be a vital contribution to the development and deployment of countermeasures against nuclear, biological, and chemical weapons of mass destruction.

The United States lacks effective policy coordination regarding the threat posed by the proliferation of weapons of mass destruction.


SHORT TITLE OF 1996 AMENDMENT

SHORT TITLE
Section 1401 of title XIV of div. A of Pub. L. 104-201 provided that: ‘‘This title [enacting this chapter, section 382 of Title 10, Armed Forces, and sections 175a and 2925 of Title 18, C.P., amending section 7605 of this title, section 372 of Title 10, and provisions set out as a note under section 5955 of Title 22, Foreign Relations and Intercourse] may be cited as the Defense Against Weapons of Mass Destruction Act of 1996.’’


Utilization of Contributions to International Nuclear Materials Protection and Cooperation Program and Russian Plutonium Disposition Program

‘‘(a) In General.—The Secretary of Energy may, with the concurrence of the Secretary of State, enter into one or more agreements with any person (including a foreign government, international, or multinational entity) that the Secretary of Energy considers appropriate under which the person contributes funds for purposes of the International Nuclear Materials Protection and Cooperation program or Russian Plutonium Disposition program of the National Nuclear Security Administration.

‘‘(b) Retention and Use of Amounts.—Notwithstanding section 2622 of title 31, United States Code, the Secretary of Energy may retain and use amounts contributed under an agreement under subsection (a) for purposes of the International Nuclear Materials Protection and Cooperation program or Russian Plutonium Disposition program. Amounts so contributed shall be retained in a separate fund established in the Treasury for such purposes and shall be available for use without further appropriation and without fiscal year limitation.

‘‘(c) Return of Amounts Not Used Within 5 Years.—If an amount contributed under an agreement under subsection (a) is not used within this section within 5 years after it was contributed, the Secretary of Energy shall return that amount to the person who contributed it.

‘‘(d) Notice to Congressional Defense Committees.—Not later than 30 days after the receipt of an amount contributed under subsection (a), the Secretary of Energy shall submit to the congressional defense committees (Committees on Armed Services and Appropriations of the Senate and the House of Representatives) a notice specifying the purpose and value of the contribution and identifying the person who contributed it. The Secretary may not use the amount until 15 days after the notice is submitted.

‘‘(e) Annual Report.—Not later than October 31 of each year, the Secretary of Energy shall submit to the congressional defense committees (Committees on Armed Services and Appropriations of the Senate and the House of Representatives) a report on the receipt and use of amounts under this section during the preceding fiscal year. Each report for a fiscal year shall set forth—

‘‘(1) a statement of any amounts received under this section, including, for each such amount, the purpose for which the amount was used; and

‘‘(2) a statement of any amounts used under this section, including, for each such amount, the purpose for which the amount was used; and

‘‘(3) a statement of the amounts retained but not used under this section, including, for each such amount, the purposes (if known) for which the Secretary intends to use the amount.

‘‘(f) Expiration.—The authority to accept, retain, and use contributions under this section expires on December 31, 2015.’’

Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack
Pub. L. 109-163, div. A, title X, §§ 1052(a)-(c), Jan. 6, 2006, 119 Stat. 3434, reestablished the Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack (see below) with the same membership that the Commission had as of the date the Commission’s report was submitted, provided that Commissioners could elect to terminate service, and defined ‘‘Commission charter’’.


‘‘(1) A statement of any amounts received under this section, including, for each such amount, the purposes (if known) for which the Secretary intends to use the amount.

‘‘(2) The authority to accept, retain, and use contributions under this section expires on December 31, 2015.’’

Domestic Preparedness for Defense Against Weapons of Mass Destruction

‘‘SEC. 1401. SHORT TITLE.
‘‘This title may be cited as the ‘Defense Against Weapons of Mass Destruction Act of 1998’.

‘‘SEC. 1402. DOMESTIC PREPAREDNESS FOR RESPONSE TO THREATS OF TERRORIST USE OF WEAPONS OF MASS DESTRUCTION.

‘‘(a) Enhanced Response Capability.—In light of the continuing potential for terrorist use of weapons of mass destruction against the United States and the need to develop a more fully coordinated response to that threat on the part of Federal, State, and local agencies, the President shall act to increase the effectiveness at the Federal, State, and local level of the domestic emergency preparedness program for response to terrorist incidents involving weapons of mass destruction by utilizing the President’s existing authorities to develop an integrated program that builds upon the program established under the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104-201: 110 Stat. 2174; 50 U.S.C. 2301 et seq.),

‘‘(b) Report.—Not later than January 31, 1999, the President shall submit to Congress a report containing information on the actions taken at the Federal, State, and local level to develop an integrated program to prevent and respond to terrorist incidents involving weapons of mass destruction.
SEC. 1406. REPORT ON DOMESTIC EMERGENCY PREPAREDNESS.


"SEC. 1406. THREAT AND RISK ASSESSMENTS.

(a) THREAT AND RISK ASSESSMENTS.—Assistance to Federal, State, and local agencies provided under the program under section 1402 shall include the performance of assessments of the threat and risk of terrorist employment of weapons of mass destruction against cities and other local areas. Such assessments shall be used by Federal, State, and local agencies to determine the training and equipment requirements under this program and shall be performed as a collaborative effort with State and local agencies.

(b) CONDUCT OF ASSESSMENTS.—The Department of Justice, as lead Federal agency for domestic crisis management in response to terrorism involving weapons of mass destruction, shall—

"(1) conduct any threat and risk assessment performed under subsection (a) in coordination with appropriate Federal, State, and local agencies; and

"(2) develop procedures and guidance for conduct of the threat and risk assessment in consultation with officials from the intelligence community.

"SEC. 1406. ADVISORY PANEL TO ASSESS DOMESTIC RESPONSE CAPABILITIES FOR TERRORISM INVOLVING WEAPONS OF MASS DESTRUCTION.

(a) REQUIREMENT FOR PANEL.—The Secretary of Defense, in consultation with the Attorney General, the Secretary of Energy, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency, shall enter into a contract with a federally funded research and development center to establish a panel to assess the capabilities for domestic response to terrorism involving weapons of mass destruction.

(b) COMPOSITION OF PANEL; SELECTION.—(1) The panel shall be composed of members who shall be private citizens of the United States with knowledge and expertise in emergency response matters.

"(2) Members of the panel shall be selected by the federally funded research and development center in accordance with the terms of the contract established pursuant to subsection (a).

(c) PROCEDURES FOR PANEL.—The federally funded research and development center shall be responsible for establishing appropriate procedures for the panel, including procedures for selection of a panel chairman.

(d) DURATION OF PANEL.—The panel shall—

"(1) assess Federal agency efforts to enhance domestic preparedness for incidents involving weapons of mass destruction;

"(2) assess the progress of Federal training programs for local emergency responses to incidents involving weapons of mass destruction;

"(3) assess deficiencies in programs for response to incidents involving weapons of mass destruction, including a review of unfunded communications, equipment, and planning requirements, and the needs of maritime regions;

"(4) recommend strategies for ensuring effective coordination with respect to Federal agency weapons of mass destruction response efforts, and for ensuring fully effective local response capabilities for weapons of mass destruction incidents; and

"(5) assess the appropriate roles of State and local government in funding effective local response capabilities.

(e) DEADLINE TO ENTER INTO CONTRACT.—The Secretary of Defense shall enter into the contract required under subsection (a) not later than 60 days after the date of the enactment of this Act [Oct. 17, 1998].

(f) DEADLINE FOR SELECTION OF PANEL MEMBERS.—Selection of panel members shall be made not later than 30 days after the date on which the Secretary enters into the contract required by subsection (a).

(g) INITIAL MEETING OF THE PANEL.—The panel shall conduct its first meeting not later than 30 days after the date that all the selections to the panel have been made.

(h) REPORTS.—(1) Not later than 6 months after the date of the first meeting of the panel, the panel shall submit to the President and to Congress an initial report setting forth its findings, conclusions, and recommendations for improving Federal, State, and local domestic emergency preparedness to respond to incidents involving weapons of mass destruction.

"(2) Not later than December 15 of each year, beginning in 1999 and ending in 2003, the panel shall submit to the President and to the Congress a report setting forth its findings, conclusions, and recommendations for improving Federal, State, and local domestic emergency preparedness to respond to incidents involving weapons of mass destruction.

(i) COOPERATION OF OTHER AGENCIES.—(1) The panel may secure directly from the Department of Defense, the Department of Energy, the Department of Health and Human Services, the Department of Justice, and the Federal Emergency Management Agency, and any other Federal department or agency information that the panel considers necessary for the panel to carry out its duties.

"(2) The Attorney General, the Secretary of Defense, the Secretary of Energy, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and any other official of the United States shall provide the panel with full and timely cooperation in carrying out its duties under this section.

(j) FUNDING.—The Secretary of Defense shall provide the funds necessary for the panel to carry out its duties from the funds available to the Department of Defense for weapons of mass destruction preparedness initiatives.

(k) COMPENSATION OF PANEL MEMBERS.—The provisions of paragraph (4) of section 591(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999 (as contained in section 1514 of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277; 112 Stat. 2681–212)), shall apply to members of the panel in the same manner as to members of the National Commission on Terrorism under that paragraph.

(l) TERMINATION OF THE PANEL.—The panel shall terminate five years after the date of the appointment of the member selected as chairman of the panel.

(m) DEFINITION.—In this section, the term ‘weapon of mass destruction’ has the meaning given that term in section 1403(1) of the Defense Against Weapons of Mass Destruction Act of 1996 (32 U.S.C. 2001).


[For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.]
§ 2302. Definitions

In this chapter:

(1) The term ‘‘weapon of mass destruction’’ means any weapon or device that is intended, or has the capability, to cause death or serious bodily injury to a significant number of people through the release, dissemination, or impact of—

(A) toxic or poisonous chemicals or their precursors;
(B) a disease organism; or
(C) radiation or radioactivity.

(2) The term ‘‘independent states of the former Soviet Union’’ has the meaning given that term in section 5801 of title 22.

(3) The term ‘‘highly enriched uranium’’ means uranium enriched to 20 percent or more in the isotope U-235.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original ‘‘this title’’, meaning title XIV of div. A of Pub. L. 104–201, Sept. 23, 1996, 110 Stat. 2714, which is classified principally to this chapter. For complete classification of title XIV to the Code, see Short Title note set out under section 2301 of this title and Tables.

SUBCHAPTER I—DOMESTIC PREPAREDNESS

§ 2311. Response to threats of terrorist use of weapons of mass destruction

(a) Enhanced response capability

In light of the potential for terrorist use of weapons of mass destruction against the United States, the President shall take immediate action—

(1) to enhance the capability of the Federal Government to prevent and respond to terrorist incidents involving weapons of mass destruction; and

(2) to provide enhanced support to improve the capabilities of State and local emergency response agencies to prevent and respond to such incidents at both the national and the local level.

(b) Report required

Not later than January 31, 1997, the President shall transmit to Congress a report containing—

(1) an assessment of the capabilities of the Federal Government to prevent and respond to terrorist incidents involving weapons of mass destruction and to support State and local prevention and response efforts;

(2) requirements for improvements in those capabilities; and

(3) the measures that should be taken to achieve such improvements, including additional resources and legislative authorities that would be required.


§ 2313. Nuclear, chemical, and biological emergency response

(a) Department of Defense

The Assistant Secretary of Defense for Homeland Defense is responsible for the coordination of Department of Defense assistance to Federal, State, and local officials in responding to threats involving nuclear, radiological, biological, chemical weapons, or high-yield explosives or related materials or technologies, including assistance in identifying, neutralizing, dismantling, and disposing of nuclear, radiological, biological, chemical weapons, and high-yield explosives and related materials and technologies.

(b) Department of Energy

The Secretary of Energy shall designate an official within the Department of Energy as the executive agent for—

(1) the coordination of Department of Energy assistance to Federal, State, and local officials in responding to threats involving nuclear, chemical, and biological weapons or related materials or technologies, including assistance in identifying, neutralizing, dismantling, and disposing of nuclear weapons and related materials and technologies; and

(2) the coordination of Department of Energy assistance to the Department of Defense in carrying out that department’s responsibilities under subsection (a) of this section.

(c) Funding

Of the total amount authorized to be appropriated under subsection (a) of this section, $15,000,000 is available for providing assistance described in subsection (a) of this section.


REFERENCES IN TEXT


AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ‘‘The Secretary of Defense shall designate an official within the Department of Defense as the executive agent for—

(1) the coordination of Department of Defense assistance to Federal, State, and local officials in responding to threats involving biological or chemical weapons or related materials or technologies, includ-

1 See References in Text note below.
ing assistance in identifying, neutralizing, dismantling, and disposing of biological and chemical weapons and related materials and technologies; and

(2) the coordination of Department of Defense assistance to the Department of Energy in carrying out that department’s responsibilities under subsection (b) of this section.’’

TRANSFER OF TECHNOLOGY ITEMS AND EQUIPMENT IN SUPPORT OF HOMELAND SECURITY


“(a) RESPONSIBLE SENIOR OFFICIAL.—The Secretary of Defense shall designate a senior official of the Department of Defense to coordinate all Department of Defense efforts to identify, evaluate, deploy, and transfer to Federal, State, and local first responders technology items and equipment in support of homeland security.

“(b) SUPPORT AGREEMENT.—The official designated pursuant to subsection (a) shall—

(1) identify technology items and equipment developed or being developed by Department of Defense components that have the potential to enhance public safety and improve homeland security;

(2) cooperate with appropriate Federal Government officials outside the Department of Defense to evaluate whether such technology items and equipment would be useful to first responders;

(3) facilitate the timely transfer, through identification of appropriate technology items and equipment to Federal, State, and local first responders, in coordination with appropriate Federal Government officials outside the Department of Defense;

(4) identify and eliminate redundant and unnecessary research efforts within the Department of Defense with respect to technologies to be deployed to first responders;

(5) expedite the advancement of high priority Department of Defense projects from research through initial manufacturing; and

(6) participate in outreach programs established by appropriate Federal Government officials outside the Department of Defense to communicate with first responders and to facilitate awareness of available technology items and equipment to support responses to crises.

(c) SUPPORT AGREEMENT.—The official designated pursuant to subsection (a) shall enter into an appropriate agreement with a nongovernmental entity for such entity to assist the official designated under subsection (a) in carrying out that official’s duties under this section. Any such agreement shall be entered into using competitive procedures in compliance with applicable requirements of law and regulation.

(d) REPORT.—Not later than 180 days after the date of the enactment of this Act (Dec. 2, 2002), the Secretary of Defense shall submit to the congressional defense committees (Committees on Armed Services and Appropriations of the Senate and the House of Representatives) a report on the actions taken to carry out this section. The report shall include the following:

(1) Identification of the senior official designated pursuant to subsection (a).

(2) A summary of the actions taken or planned to be taken to implement subsection (b), including a schedule for planned actions.

(3) An initial list of technology items and equipment identified pursuant to subsection (b)(1), together with a summary of any program schedule for the development, deployment, or transfer of such items and equipment.

(4) A description of any agreement entered into pursuant to subsection (c).

§ 2314. Chemical, biological, radiological, nuclear, and high-yield explosives response team

(a) Department of Defense rapid response team

The Secretary of Defense shall develop and maintain at least one domestic terrorism rapid response team composed of members of the Armed Forces and employees of the Department of Defense who are capable of aiding Federal, State, and local officials in the detection, neutralization, containment, dismantlement, and disposal of weapons of mass destruction containing chemical, biological, radiological, nuclear, and high-yield explosives.

(b) Addition to Federal response plans

The Secretary of Homeland Security shall incorporate into the National Response Plan prepared pursuant to section 312(b) of title 6, other existing Federal emergency response plans, and programs prepared under section 5186(b) of title 42 guidance on the use and deployment of the rapid response teams established under this section to respond to emergencies involving weapons of mass destruction. The Secretary of Homeland Security shall carry out this subsection in coordination with the Secretary of Defense and the heads of other Federal agencies involved with the emergency response plans.


AMENDMENTS


Subsec. (a). Pub. L. 109–163, §1033(2), substituted “radiological, nuclear, and high-yield explosives” for “or related materials”.

Subsec. (b). Pub. L. 109–163, §1033(3), in heading, substituted “plans” for “plan” and, in text, substituted “The Secretary of Homeland Security shall incorporate into the National Response Plan prepared pursuant to section 312(b) of title 6, other existing Federal emergency response plans, and” for “Not later than December 31, 1997, the Director of the Federal Emergency Management Agency shall develop and incorporate into existing Federal emergency response plans and” in first sentence and “Secretary of Homeland Security” for “Director” and “coordination” for “consultation” in second sentence.

§ 2315. Testing of preparedness for emergencies involving nuclear, radiological, chemical, and biological weapons

(a) Emergencies involving nuclear, radiological, chemical, or biological weapons

(1) The Secretary of Homeland Security shall develop and carry out a program for testing and improving the responses of Federal, State, and local agencies to emergencies involving nuclear, radiological, biological, and chemical weapons and related materials.

(2) The program shall include exercises to be carried out in accordance with sections 112(c) and 238(e)(1) of title 6.

(3) In developing and carrying out the program, the Secretary shall coordinate with the Secretary of Defense, the Director of the Federal Bureau of Investigation, the Secretary of Energy, and the heads of any other Federal, State, and local government agencies that have an expertise or responsibilities relevant to emergencies described in paragraph (1).

(b) Annual revisions of programs

The Secretary of Homeland Security shall revise the program developed under subsection (a)
of this section not later than June 1 in each fiscal year covered by the program. The revisions shall include adjustments that the Secretary determines necessary or appropriate on the basis of the lessons learned from the exercise or exercises carried out under the program during the fiscal year, including lessons learned regarding coordination problems and equipment deficiencies.


AMENDMENTS


Subsec. (a)(2). Pub. L. 109–163, §1032(a)(3), substituted “in accordance with sections 112(c) and 238(c)(1) of title 10” for “during each of fiscal years 1997 through 2013”.

Subsec. (a)(3). Pub. L. 109–163, §1032(a)(4), inserted “the Secretary of Homeland Security” and “nuclear, radiological, chemical, or” before “the Secretary of Energy,”.

Subsecs. (b), (c), (d), Pub. L. 109–163, §1032(b), (c), redesignated subsec. (c) as (b), substituted “The Secretary of Homeland Security shall revise the program developed under subsection (a) of this section” for “The official responsible for carrying out a program developed under subsection (a) or (b) of this section shall revise the program” in first sentence and “the Secretary” for “the official” in second sentence, and struck out heading and text of former subsec. (b) which related to emergencies involving nuclear and radiological weapons.

Subsecs. (d), (e). Pub. L. 109–163, §1032(d), struck out heading and text of subsecs. (d) and (e) which related to option to transfer responsibility for programs under this section and to funding, respectively.


CONSTRUCTION OF EXTENSION WITH DESIGNATION OF ATTORNEY GENERAL AS LEAD OFFICIAL


§ 2316. Actions to increase civilian expertise

(a) to (c) Omitted

(d) Civilian expertise

The President shall take reasonable measures to reduce the reliance of civilian law enforcement officials on Department of Defense resources to counter the threat posed by the use or potential use of biological and chemical weapons of mass destruction within the United States. The measures shall include—

(1) actions to increase civilian law enforcement expertise to counter such a threat; and

(2) actions to improve coordination between civilian law enforcement officials and other civilian sources of expertise, within and outside the Federal Government, to counter such a threat.

(e) Reports

The President shall submit to Congress the following reports:

(1) Not later than 90 days after September 23, 1996, a report describing the respective policy functions and operational roles of Federal agencies in countering the threat posed by the use or potential use of biological and chemical weapons of mass destruction within the United States.

(2) Not later than one year after September 23, 1996, a report describing—

(A) the actions planned to be taken to carry out subsection (d) of this section; and

(B) the costs of such actions.

(3) Not later than three years after September 23, 1996, a report updating the information provided in the reports submitted pursuant to paragraphs (1) and (2), including the measures taken pursuant to subsection (d) of this section.


CODIFICATION

Section is comprised of subsecs. (d) and (e) of section 1416 of Pub. L. 104–201. Subsecs. (a) to (c) of section 1416 enacted section 382 of Title 10, Armed Forces, and sections 175a and 2332d of Title 18, Crimes and Criminal Procedure, and amended section 372 of Title 10.

§ 2317. Rapid response information system

(a) Inventory of rapid response assets

(1) The head of each Federal Response Plan agency shall develop and maintain an inventory of physical equipment and assets under the jurisdiction of that agency that could be made available to aid State and local officials in search and rescue and other disaster management and mitigation efforts associated with an emergency involving weapons of mass destruction. The agency head shall submit a copy of the inventory, and any updates of the inventory, to the Administrator of the Federal Emergency Management Agency for inclusion in the master inventory required under subsection (b) of this section.

(2) Each inventory shall include a separate listing of any equipment that is excess to the needs of that agency and could be considered for disposal as excess or surplus property for use for response and training with regard to emergencies involving weapons of mass destruction.

(b) Master inventory

The Administrator of the Federal Emergency Management Agency shall compile and maintain a comprehensive listing of all inventories prepared under subsection (a) of this section. The first such master list shall be completed not later than December 31, 1997, and shall be updated annually thereafter.
§ 2331. Procurement of detection equipment for United States border security

Of the amount authorized to be appropriated by section 231, $15,000,000 is available for the procurement of—

(1) equipment capable of detecting the movement of weapons of mass destruction and related materials into the United States;

(2) equipment capable of interdicting the movement of weapons of mass destruction and related materials into the United States; and

(3) materials and technologies related to use of equipment described in paragraph (1) or (2).

(c) Addition to Federal response plan

Not later than December 31, 1997, the Administrator of the Federal Emergency Management Agency shall develop and incorporate into existing Federal emergency response plans and programs prepared under section 5196(b) of title 42 guidance on accessing and using the physical equipment and assets included in the master list developed under subsection 1 to respond to emergencies involving weapons of mass destruction.

(d) Database on chemical and biological materials

The Administrator of the Federal Emergency Management Agency, in consultation with the Secretary of Defense, shall prepare a database on chemical and biological agents and munitions characteristics and safety precautions for civilian use. The initial design and compilation of the database shall be completed not later than December 31, 1997.

(e) Access to inventory and database

The Administrator of the Federal Emergency Management Agency shall design and maintain a system to give Federal, State, and local officials access to the inventory listing and database maintained under this section in the event of an emergency involving weapons of mass destruction or to prepare and train to respond to such an emergency. The system shall include a secure but accessible emergency response hotline to access information and request assistance.

§ 2332. Sense of Congress concerning criminal penalties

(a) Sense of Congress concerning inadequacy of sentencing guidelines

It is the sense of Congress that the sentencing guidelines prescribed by the United States Sentencing Commission for the offenses of importation, attempted importation, exportation, and attempted exportation of nuclear, biological, and chemical weapons materials constitute inadequate punishment for such offenses.

(b) Urging of revision to guidelines

Congress urges the United States Sentencing Commission to revise the relevant sentencing guidelines to provide for increased penalties for offenses relating to importation, attempted importation, exportation, and attempted exportation of nuclear, biological, or chemical weapons or related materials or technologies under the following provisions of law:

(1) Section 2140 of the Appendix to this title.

(2) Sections 2778 and 2780 of title 22.


(4) Section 2139a(c) of title 42.

§ 2333. International border security

(a) Secretary of Defense responsibility

The Secretary of Defense, in consultation and cooperation with the Commissioner of Customs, shall carry out programs for assisting customs officials and border guard officials in the independent states of the former Soviet Union, the Baltic states, and other countries of Eastern Europe in preventing unauthorized transfer and transportation of nuclear, biological, and chemical weapons and related materials. Training, expert advice, maintenance of equipment, loan of equipment, and audits may be provided under or in connection with the programs.
(b) Other countries

The Secretary of Defense may carry out programs under subsection (a) of this section in a country other than a country specified in that subsection if the Secretary determines that there exists in that country a significant threat of the unauthorized transfer and transportation of nuclear, biological, or chemical weapons or related materials.

(c) Assistance to states of former Soviet Union

Assistance under programs referred to in subsection (a) of this section may (notwithstanding any provision of law prohibiting the extension of foreign assistance to any of the newly independent states of the former Soviet Union) be extended to include an independent state of the former Soviet Union if the President certifies to Congress that it is in the national interest of the United States to extend assistance under this section to that state.

SUBCHAPTER III—CONTROL AND DISPOSITION OF WEAPONS OF MASS DESTRUCTION AND RELATED MATERIALS THREATENING THE UNITED STATES

§ 2341. Elimination of plutonium production

(a) Replacement program

The Secretary of Energy, in consultation with the Secretary of Defense, shall develop a cooperative program with the Government of Russia to eliminate the production of weapons grade plutonium by modifying or replacing the reactor cores at Tomsk–7 and Krasnoyarsk–26 with reactor cores that are less suitable for the production of weapons-grade plutonium.

(b) Program requirements

(1) The program shall be designed to achieve completion of the modifications or replacements of the reactor cores within three years after the modification or replacement activities under the program are begun.

(2) The plan for the program shall—

(A) specify—

(i) successive steps for the modification or replacement of the reactor cores; and

(ii) clearly defined milestones to be achieved; and

(B) include estimates of the costs of the program.

(c) Submission of program plan to Congress

Not later than 180 days after September 23, 1996, the Secretary of Defense shall submit to Congress—

(1) a plan for the program under subsection (a) of this section;

(2) an estimate of the United States funding that is necessary for carrying out the activities under the program for each fiscal year covered by the program; and

(3) a comparison of the benefits of the program with the benefits of other nonproliferation programs.

§ 2342. Cooperative program on research, development, and demonstration of technology regarding nuclear or radiological terrorism

(a) Program required

The Administrator for Nuclear Security shall carry out with the Russian Federation a cooper-
active program on the research, development, and demonstration of technologies for protection from and response to nuclear or radiological terrorism.

(b) Program elements

In carrying out the program required by subsection (a) of this section, the Administrator shall—

(1) conduct research and development of technology for protection from nuclear or radiological terrorism, including technology for the detection, identification, assessment, control, and disposition of radiological materials that could be used for nuclear terrorism; and

(2) provide, where feasible, for the demonstration to other countries of technologies or methodologies on matters relating to nuclear or radiological terrorism, including—

(A) the demonstration of technologies developed under the program to respond to nuclear or radiological terrorism;

(B) the demonstration of methodologies developed under the program for the disposal of radioactive materials;

(C) the demonstration of methodologies developed under the program for use in evaluating the radiological threat of radiological materials identified as not under current accounting programs in the audit report of the Inspector General of the Department of Energy titled “Accounting for Sealed Sources of Nuclear Material Provided to Foreign Countries” (DOE/IG–0546);

(D) in coordination with the Nuclear Regulatory Commission, the demonstration of methodologies developed under the program to facilitate the development of a regulatory framework for licensing and controlling radioactive sources; and

(E) in coordination with the Office of Environment, Safety, and Health of the Department of Energy, the demonstration of methodologies developed under the program to facilitate development of consistent criteria for screening international transfers of radiological materials.

(c) Consultation

In carrying out activities in accordance with subsection (b)(2) of this section, the Administrator shall consult with—

(1) the Secretary of Defense, Secretary of State, and Secretary of Commerce; and

(2) the International Atomic Energy Agency.

(d) Amount for activities

Of the amount authorized to be appropriated by section 3101(a)(2) for the Department of Energy for the National Nuclear Security Administration for defense nuclear nonproliferation, up to $5,000,000 may be available for carrying out this section.


REPRESENTATIVE OF TEXT


CODIFICATION

Section was enacted as part of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, and not as part of the Defense Against Weapons of Mass Destruction Act of 1996 which comprises this chapter.

§ 2343. Matters relating to the international materials protection, control, and accounting program of the Department of Energy

(a) Radiological dispersal device materials protection, control, and accounting

The Secretary of Energy may establish within the International Materials Protection, Control, and Accounting program of the Department of Energy a program on the protection, control, and accounting of materials usable in radiological dispersal devices. In establishing such program, the Secretary shall—

(1) identify the sites and radiological materials to be covered by such program;

(2) carry out a risk assessment of such radiological materials; and

(3) identify and establish the costs of and schedules for such program.

(b) Revised focus for materials protection, control, and accounting program of Russian Federation

(1) The Secretary of Energy shall work cooperatively with the Russian Federation to develop, as soon as practicable but not later than January 1, 2018, a sustainable nuclear materials protection, control, and accounting system for the nuclear materials of the Russian Federation that is supported solely by the Russian Federation.

(2) The Secretary shall work with the Russian Federation to identify various alternatives to provide the United States adequate transparency in the nuclear materials protection, control, and accounting program of the Russian Federation to assure that such program is meeting applicable goals for nuclear materials protection, control, and accounting.

(c) Amount for activities

Of the amount authorized to be appropriated by section 3101(a)(2) for the Department of Energy for the National Nuclear Security Administration for defense nuclear nonproliferation, up to $5,000,000 may be available for carrying out this section.


REFERENCES IN TEXT


CODIFICATION

Section was enacted as part of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, and not as part of the Defense Against Weapons of Mass Destruction Act of 1996 which comprises this chapter.

AMENDMENTS


1 See References in Text note below.
§ 2344. Strengthened international security for nuclear materials and security of nuclear operations

(a) Report on options for international program to strengthen security

(1) Not later than 270 days after December 2, 2002, the Secretary of Energy shall submit to Congress a report on options for an international program to develop strengthened security for nuclear reactors and associated materials outside the United States.

(2) In evaluating options for purposes of the report, the Secretary shall consult with the Nuclear Regulatory Commission and the International Atomic Energy Agency on the feasibility and advisability of actions to reduce the risks associated with terrorist attacks on nuclear reactors outside the United States.

(b) Joint programs with Russia on proliferation-resistant nuclear energy technologies

(1) The Secretary shall pursue with the Ministry of Atomic Energy of the Russian Federation joint programs between the United States and the Russian Federation on the development of proliferation-resistant nuclear energy technologies, including advanced fuel cycles.

(2) Of the amount authorized to be appropriated by section 3101(a)(2) for the Department of Energy for the National Nuclear Security Administration for defense nuclear nonproliferation, up to $10,000,000 may be available for carrying out the joint programs referred to in paragraph (1).

(c) Assistance regarding hostile insiders

The Secretary may, utilizing appropriate expertise of the Department of Energy and the Nuclear Regulatory Commission, provide technical assistance to nuclear reactor facilities outside the United States with respect to the interdiction of hostile insiders at such facilities in order to prevent incidents arising from the disablement of the vital systems of such facilities.

References in Text


Codification

Section was enacted as part of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, and not as part of the Defense Against Weapons of Mass Destruction Act of 1996 which comprises this chapter.

SUBCHAPTER IV—COORDINATION OF POLICY AND COUNTERMEASURES AGAINST PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

§ 2351. National coordinator on nonproliferation

(a) Designation of position

The President shall designate an individual to serve in the Executive Office of the President as the National Coordinator for Nonproliferation Matters.

(b) Duties

The Coordinator, under the direction of the National Security Council, shall advise and assist the President by—

(1) advising the President on nonproliferation of weapons of mass destruction, including issues related to terrorism, arms control, and international organized crime;

(2) chairing the Committee on Nonproliferation of the National Security Council; and

(3) taking such actions as are necessary to ensure that there is appropriate emphasis in, cooperation on, and coordination of, nonproliferation research efforts of the United States, including activities of Federal agencies as well as activities of contractors funded by the Federal Government.

(c) Allocation of funds

Of the total amount authorized to be appropriated under section 301, $2,000,000 is available to the Department of Energy for carrying out research referred to in subsection (b)(3) of this section.

References in Text


1 See References in Text note below.

2 See References in Text note below.
§ 2352 National Security Council Committee on Nonproliferation

(a) Establishment

The Committee on Nonproliferation (in this section referred to as the “Committee”) is established as a committee of the National Security Council.

(b) Membership

(1) The Committee shall be composed of representatives of the following:
   (A) The Secretary of State.
   (B) The Secretary of Defense.
   (C) The Director of Central Intelligence.
   (D) The Attorney General.
   (E) The Secretary of Energy.
   (G) The Secretary of Commerce.
   (H) The Secretary of the Treasury.
   (I) Such other members as the President may designate.

(2) The National Coordinator for Nonproliferation Matters shall chair the Committee on Nonproliferation.

(c) Responsibilities

The Committee has the following responsibilities:

(1) To review and coordinate Federal programs, policies, and directives relating to the proliferation of weapons of mass destruction and related materials and technologies, including matters relating to terrorism and international organized crime.

(2) To make recommendations through the National Security Council to the President regarding the following:

   (A) Integrated national policies for countering the threats posed by weapons of mass destruction.

   (B) Options for integrating Federal agency budgets for countering such threats.

   (C) Means to ensure that Federal, State, and local governments have adequate capabilities to manage crises involving nuclear, radiological, biological, or chemical weapons or related materials or technologies, and to manage the consequences of a use of such weapon or related materials or technologies, and that use of those capabilities is coordinated.

   (D) Means to ensure appropriate cooperation on, and coordination of, the following:

      (i) Preventing the smuggling of weapons of mass destruction and related materials and technologies.

      (ii) Promoting domestic and international law enforcement efforts against proliferation-related efforts.

      (iii) Countering the involvement of organized crime groups in proliferation-related activities.

      (iv) Safeguarding weapons of mass destruction materials and related technologies.

      (v) Improving coordination and cooperation among intelligence activities, law enforcement, and the Departments of Defense, State, Commerce, and Energy in support of nonproliferation and counterproliferation efforts.

      (vi) Improving export controls over materials and technologies that can contribute to the acquisition of weapons of mass destruction.

      (vii) Reducing proliferation of weapons of mass destruction and related materials and technologies.

§ 2353 Comprehensive preparedness program

(a) Program required

The President, acting through the Committee on Nonproliferation established under section 2352 of this title, shall develop a comprehensive program for carrying out this chapter.

(b) Content of program

The program set forth in the report shall include specific plans as follows:
(1) Plans for countering proliferation of weapons of mass destruction and related materials and technologies.

(2) Plans for training and equipping Federal, State, and local officials for managing a crisis involving a use or threatened use of a weapon of mass destruction, including the consequences of the use of such a weapon.

(3) Plans for providing for regular sharing of information among intelligence, law enforcement, and customs agencies.

(4) Plans for training and equipping law enforcement units, customs services, and border security personnel to counter the smuggling of weapons of mass destruction and related materials and technologies.

(5) Plans for establishing appropriate centers for analyzing seized nuclear, radiological, biological, and chemical weapons, and related materials and technologies.

(6) Plans for establishing in the United States appropriate legal controls and authorities relating to the exporting of nuclear, radiological, biological, and chemical weapons, and related materials and technologies.

(7) Plans for encouraging and assisting governments of foreign countries to implement and enforce laws that set forth appropriate penalties for offenses regarding the smuggling of weapons of mass destruction and related materials and technologies.

(8) Plans for building the confidence of the United States and Russia in each other's controls over United States and Russian nuclear weapons and fissile materials, including plans for verifying the dismantlement of nuclear weapons.

(9) Plans for reducing United States and Russian stockpiles of excess plutonium, reflecting—

(A) consideration of the desirability and feasibility of a United States-Russian agreement governing fissile material disposition and the specific technologies and approaches to be used for disposition of excess plutonium; and

(B) an assessment of the options for United States cooperation with Russia in the disposition of Russian plutonium.

(10) Plans for studying the merits and costs of establishing a global network of means for detecting and responding to terrorist or other criminal use of biological agents against people or other forms of life in the United States or any foreign country.

(c) Report

(1) At the same time that the President submits the budget for fiscal year 1998 to Congress pursuant to section 1105(a) of title 31, the President shall submit to Congress a report that sets forth the comprehensive program developed under subsection (a) of this section.

(2) The report shall include the following:

(A) The specific plans for the program that are required under subsection (b) of this section.

(B) Estimates of the funds necessary, by agency or department, for carrying out such plans in fiscal year 1998 and the following five fiscal years.

(3) The report shall be in an unclassified form. If there is a classified version of the report, the President shall submit the classified version at the same time.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this title”, meaning title XIV of div. A of Pub. L. 104–201, Sept. 23, 1996, 110 Stat. 2714, which is classified principally to this chapter. For complete classification of title XIV to the Code, see Short Title note set out under section 2301 of this title and Tables.

§ 2354. Termination

After September 30, 1999, the President—

(1) is not required to maintain a National Coordinator for Nonproliferation Matters under section 2351 of this title; and

(2) may terminate the Committee on Nonproliferation established under section 2352 of this title.


AMENDMENTS

1998—Pub. L. 105–261 made technical amendments to references in original act which appear in par. (1) as reference to section 2351 of this title and in par. (2) as reference to section 2352 of this title.

SUBCHAPTER IV–A—NONPROLIFERATION ASSISTANCE COORDINATION

CODIFICATION

Subchapter was enacted as part of the Nonproliferation Assistance Coordination Act of 2002, and also as part of the Security Assistance Act of 2002 and the Foreign Relations Authorization Act, Fiscal Year 2003, and not as part of the Defense Against Weapons of Mass Destruction Act of 1996 which comprises this chapter.

§ 2357. Findings

Congress finds that—

(1) United States nonproliferation efforts in the independent states of the former Soviet Union have achieved important results in ensuring that weapons of mass destruction, weapons-usable material and technology, and weapons-related knowledge remain beyond the reach of terrorists and weapons-proliferating states;

(2) although these efforts are in the United States national security interest, the effectiveness of these efforts has suffered from a lack of coordination within and among United States Government agencies;

(3) increased spending and investment by the United States private sector on nonproliferation efforts in the independent states of the former Soviet Union, specifically, spending and investment by the United States private sector in job creation initiatives and proposals for unemployed Russian Federation weapons scientists and technicians, are making an important contribution in ensuring that knowledge related to weapons of mass destruction remains beyond the reach of terrorists and weapons-proliferating states; and
(4) increased spending and investment by the United States private sector on nonproliferation efforts in the independent states of the former Soviet Union make advisable the establishment of a coordinating body to ensure that United States public and private efforts are not in conflict, and to ensure that public spending on efforts by the independent states of the former Soviet Union is maximized to ensure efficiency and further United States national security interests.


Short Title


§2357a. Definitions

(a) Independent states of the former Soviet Union

In this subchapter, the term "independent states of the former Soviet Union" has the meaning given the term in section 5801 of title 22.

(b) Appropriate committees of Congress

In this subchapter, the term "the appropriate committees of Congress" means the Committees on Foreign Relations, Armed Services, and Appropriations of the Senate and the Committees on International Relations, Armed Services, and Appropriations of the House of Representatives.


Change of Name

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.

§2357b. Establishment of Committee on Nonproliferation Assistance

(a) In general

The President shall establish a mechanism to coordinate, with the maximum possible effectiveness and efficiency, the efforts of United States Government departments and agencies engaged in formulating policy and carrying out programs for achieving nonproliferation and threat reduction.

(b) Membership

The coordination mechanism established pursuant to subsection (a) of this section shall include—

(1) representatives designated by—

(A) the Secretary of State;

(B) the Secretary of Defense;

(C) the Secretary of Energy;

(D) the Secretary of Commerce;

(E) the Attorney General; and

(F) the Director of the Office of Homeland Security, or the head of a successor department or agency; and

(2) such other executive branch officials as the President may select.

(c) Level of representation

To the maximum extent possible, each department1 or agency's representative designated pursuant to subsection (b)(1) of this section shall be an official of that department or agency who has been appointed by the President with the advice and consent of the Senate.

(d) Chair

The President shall designate an official to direct the coordination mechanism established pursuant to subsection (a) of this section. The official so designated may invite the head of any other department or agency of the United States to designate a representative of that department or agency to participate from time to time in the activities of the Committee.


§2357c. Purposes and authority

(a) Purposes

(1) In general

The primary purpose of the coordination mechanism established pursuant to section 2357b of this title should be—

(A) to exercise continuing responsibility for coordinating worldwide United States nonproliferation and threat reduction efforts to ensure that they effectively implement United States policy; and

(B) to enhance the ability of participating departments and agencies to anticipate growing nonproliferation areas of concern.

(2) Program monitoring and coordination

The coordination mechanism established pursuant to section 2357b of this title should have primary continuing responsibility within the executive branch of the Government for—

(A) United States nonproliferation and threat reduction efforts, and particularly such efforts in the independent states of the former Soviet Union; and

(B) coordinating the implementation of United States policy with respect to such efforts.

(b) Authority

In carrying out the responsibilities described in subsection (a) of this section, the coordination mechanism established pursuant to section 2357b of this title should have, at a minimum, the authority to—

(1) establish such subcommittees and working groups as it deems necessary;

(2) direct the preparation of analyses on issues and problems relating to coordination within and among United States departments and agencies on nonproliferation and threat reduction efforts;

(3) direct the preparation of analyses on issues and problems relating to coordination between the United States public and private sectors on nonproliferation and threat reduction efforts, including coordination between public and private spending on nonproliferation and threat reduction programs and co-

1So in original. Probably should be "department's".
ordination between public spending and private investment in defense conversion activities of the independent states of the former Soviet Union;

(4) provide guidance on arrangements that will coordinate, deconflict, and maximize the utility of United States public spending on nonproliferation and threat reduction programs, and particularly such efforts in the independent states of the former Soviet Union;

(5) encourage companies and nongovernmental organizations involved in nonproliferation efforts of the independent states of the former Soviet Union or other countries of concern to voluntarily report these efforts to it;

(6) direct the preparation of analyses on issues and problems relating to the coordination between the United States and other countries with respect to nonproliferation efforts, and particularly such efforts in the independent states of the former Soviet Union; and

(7) consider, and make recommendations to the President with respect to, proposals for such new legislation or regulations relating to United States nonproliferation efforts as may be necessary.


§ 2357d. Administrative support

All United States departments and agencies shall provide, to the extent permitted by law, such information and assistance as may be requested by the coordination mechanism established pursuant to section 2357b of this title, in carrying out its functions and activities under this subchapter.


§ 2357e. Confidentiality of information

Information which has been submitted to or received by the coordination mechanism established pursuant to section 2357b of this title in confidence shall not be publicly disclosed, except to the extent required by law, and such information shall be used by it only for the purpose of carrying out the functions set forth in this subchapter.


§ 2357f. Statutory construction

Nothing in this subchapter—

(1) applies to the data-gathering, regulatory, or enforcement authority of any existing United States department or agency over nonproliferation efforts in the independent states of the former Soviet Union, and the review of those efforts undertaken by the coordination mechanism established pursuant to section 2357b of this title shall not in any way supersede or prejudice any other process provided by law; or

(2) applies to any activity that is reportable pursuant to title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).


§ 2357g. Reporting and consultation

(a) Presidential report

Not later than 120 days after each inauguration of a President, the President shall submit a report to the Congress on his general and specific nonproliferation and threat reduction objectives and how the efforts of executive branch agencies will be coordinated most effectively, pursuant to section 2357b of this title, to achieve those objectives.


SUBCHAPTER V—MISCELLANEOUS

§ 2361. Sense of Congress concerning contracting policy

It is the sense of Congress that the Secretary of Defense, the Secretary of Energy, the Secretary of the Treasury, and the Secretary of State, to the extent authorized by law, should—

(1) contract directly with suppliers in independent states of the former Soviet Union when such action would—

(A) result in significant savings of the programs referred to in subchapter III of this chapter; and

(B) substantially expedite completion of the programs referred to in subchapter III of this chapter; and

(2) seek means to use innovative contracting approaches to avoid delay and increase the effectiveness of such programs and of the exercise of such authorities.


§ 2362. Transfers of allocations among cooperative threat reduction programs

Congress finds that—

(1) the various Cooperative Threat Reduction programs are being carried out at different rates in the various countries covered by such programs; and

(2) it is necessary to authorize transfers of funding allocations among the various programs in order to maximize the effectiveness of United States efforts under such programs.


SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS

§ 2363. Sense of Congress concerning assistance to states of former Soviet Union

It is the sense of Congress that—

(A) the Cooperative Threat Reduction programs and other United States programs authorized in title XIV of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–444; 22 U.S.C. 5901 et seq.) shall be expanded by offering assistance under those programs to other independent states of the former Soviet Union in addition to Russia, Ukraine, Kazakhstan, and Belarus; and

(B) the President should offer assistance to additional independent states of the former Soviet Union in each case in which the participation of such states would benefit national security interests of the United States by improving border controls and safeguards over materials and technology associated with weapons of mass destruction.


References in Text


Amendments


Specification of Cooperative Threat Reduction Program

For specification of Cooperative Threat Reduction programs, see section 1501(b) of Pub. L. 104–201, set out as a note under section 2362 of this title.

§ 2364. Purchase of low-enriched uranium derived from Russian highly enriched uranium

(a) Sense of Congress

It is the sense of Congress that the allies of the United States and other nations should participate in efforts to ensure that stockpiles of weapons-grade nuclear material are reduced.

(b) Actions by Secretary of State

Congress urges the Secretary of State to encourage, in consultation with the Secretary of Energy, other countries to purchase low-enriched uranium that is derived from highly enriched uranium extracted from Russian nuclear weapons.


§ 2365. Sense of Congress concerning purchase, packaging, and transportation of fissile materials at risk of theft

It is the sense of Congress that—

(1) the Secretary of Defense, the Secretary of Energy, the Secretary of the Treasury, and the Secretary of State should purchase, package, and transport to secure locations weapons-grade nuclear materials from a stockpile of such materials if such officials determine that—

(A) there is a significant risk of theft of such materials; and

(B) there is no reasonable and economically feasible alternative for securing such materials; and

(2) if it is necessary to do so in order to secure the materials, the materials should be imported into the United States, subject to the laws and regulations that are applicable to the importation of such materials into the United States.


§ 2366. Reports on acquisition of technology relating to weapons of mass destruction and advanced conventional munitions

(a) Reports

The Director of Central Intelligence shall submit to Congress a report on—
(1) the acquisition by foreign countries during the preceding 6 months of dual-use and other technology useful for the development or production of weapons of mass destruction (including nuclear weapons, chemical weapons, and biological weapons) and advanced conventional munitions; and
(2) trends in the acquisition of such technology by such countries.

(b) Submittal dates
(1) The report required by subsection (a) of this section shall be submitted each year to the congressional intelligence committees and the congressional leadership on an annual basis on the dates provided in section 415b of this title.
(2) In this subsection:
(A) The term "congressional intelligence committees" has the meaning given that term in section 401a of this title.
(B) The term "congressional leadership" means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.

(c) Form of reports
Each report submitted under subsection (a) of this section shall be submitted in unclassified form, but may include a classified annex.


Codification
Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 1997, and also as part of the Combating Proliferation of Weapons of Mass Destruction Act of 1996, and not as part of the Defense Against Weapons of Mass Destruction Act of 1996 which comprises this chapter.

Amendments
2002—Subsec. (a). Pub. L. 107–306, § 811(b)(5)(C)(i), substituted "The Director" for "Not later than 6 months after October 11, 1996, and every 6 months thereafter, the Director".
Subsec. (c). Pub. L. 107–306, § 811(b)(5)(C)(i), (iv), redesignated subsec. (b) as (c) and substituted "Each report" for "The reports".

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 Central 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 1018(a), (b) of Pub. L. 108–458, set out as a note under section 401 of this title.

Effective Date of 2003 Amendment

§ 2367. Annual report on threat posed to United States by weapons of mass destruction, ballistic missiles, and cruise missiles

(a) Annual report
The Secretary of Defense shall submit to Congress by January 30 of each year a report on the threats posed to the United States and allies of the United States—
(1) by weapons of mass destruction, ballistic missiles, and cruise missiles; and
(2) by the proliferation of weapons of mass destruction, ballistic missiles, and cruise missiles.

(b) Consultation
Each report submitted under subsection (a) of this section shall be prepared in consultation with the Director of Central Intelligence.

(c) Matters to be included
Each report submitted under subsection (a) of this section shall include the following:
(1) Identification of each foreign country and non-State organization that possesses weapons of mass destruction, ballistic missiles, or cruise missiles, and a description of such weapons and missiles with respect to each such foreign country and non-State organization.
(2) A description of the means by which any foreign country and non-State organization that has achieved capability with respect to weapons of mass destruction, ballistic missiles, or cruise missiles has achieved that capability, including a description of the international network of foreign countries and private entities that provide assistance to foreign countries and non-State organizations in achieving that capability.
(3) An examination of the doctrines that guide the use of weapons of mass destruction in each foreign country that possesses such weapons.
(4) An examination of the existence and implementation of the control mechanisms that exist with respect to nuclear weapons in each foreign country that possesses such weapons.
(5) Identification of each foreign country and non-State organization that seeks to acquire or develop (indigenously or with foreign assistance) weapons of mass destruction, ballistic missiles, or cruise missiles, and a description of such weapons and missiles with respect to each such foreign country and non-State organization.
(6) An assessment of various possible timelines for the achievement by foreign countries and non-State organizations of capability with respect to weapons of mass destruction, ballistic missiles, and cruise missiles, taking into account the probability of whether the Russian Federation and the People's Republic of China will comply with the Missile Technology Control Regime, the potential availability of assistance from foreign technical specialists, and the potential for independent sales by foreign private entities without authorization from their national governments.
(7) For each foreign country or non-State organization that has not achieved the capability to target the United States or its terri-
§ 2368. Annual reports on the proliferation of missiles and essential components of nuclear, biological, chemical, and radiological weapons

(a) Report

Not later than March 1, 2003, and annually thereafter, the President shall transmit to the designated congressional committees an annual report on the transfer by any country of weapons, technology, components, or materials that can be used to deliver, manufacture (including research and experimentation), or weaponize nuclear, biological, chemical or radiological weapons (in this section referred to as “NBC weapons”) to any country other than a country referred to in subsection (d) of this section that is seeking to possess or otherwise acquire such weapons, technology, or materials, or other systems that the Secretary or the Secretary of Defense has reason to believe could be used to develop, acquire, or deliver NBC weapons.

(b) Matters to be included

Each such report shall include—

(1) the transfer of all aircraft, cruise missiles, artillery weapons, unguided rockets and multiple rocket systems, and related bombs, shells, warheads and other weaponization technology and materials that the Secretary or the Secretary of Defense has reason to believe may be intended for the delivery of NBC weapons;

(2) international transfers of MTCR equipment or technology to any country that is seeking to acquire such equipment or any other system that the Secretary or the Secretary of Defense has reason to believe may be used to deliver NBC weapons; and

(3) the transfer of technology, test equipment, radioactive materials, feedstocks and cultures, and all other specialized materials that the Secretary or the Secretary of Defense has reason to believe could be used to manufacture NBC weapons.

(c) Content of report

Each such report shall include the following with respect to preceding calendar year:

(1) The status of missile, aircraft, and other NBC weapons delivery and weaponization programs in any such country, including efforts by such country or by any subnational group to acquire MTCR-controlled equipment, NBC-capable aircraft, or any other weapon or major}

1 So in original. Probably should be preceded by “the”. 

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weapon component which may be utilized in the delivery of NBC weapons, whose primary use is the delivery of NBC weapons, or that the Secretary or the Secretary of Defense has reason to believe could be used to deliver NBC weapons.

(2) The status of NBC weapons development, acquisition, manufacture, stockpiling, and deployment programs in any such country, including efforts by such country or by any subnational group to acquire essential test equipment, manufacturing equipment and technology, weaponization equipment and technology, and radioactive material, feedstocks or components of feedstocks, and biological cultures and toxins.

(3) A description of assistance provided by any person or government, after September 30, 2002, to any such country or subnational group in the acquisition or development of—
(A) NBC weapons;
(B) missile systems, as defined in the MTCR or that the Secretary or the Secretary of Defense has reason to believe may be used to deliver NBC weapons; and
(C) aircraft and other delivery systems and weapons that the Secretary or the Secretary of Defense has reason to believe could be used to deliver NBC weapons.

(4) A listing of those persons and countries that continue to provide such equipment or technology described in paragraph (3) to any country or subnational group as of the date of submission of the report, including the extent to which foreign persons and countries were found to have knowingly and materially assisted such programs.

(5) A description of the use of, or substantial preparations to use, the equipment of technology described in paragraph (3) by any foreign country or subnational group.

(6) A description of the diplomatic measures that the United States, and that other adherents to the MTCR and other arrangements affecting the acquisition and delivery of NBC weapons, have made with respect to activities and private persons and governments suspected of violating the MTCR and such other arrangements.

(7) An analysis of the effectiveness of the regulatory and enforcement regimes of the United States and other countries that adhere to the MTCR and other arrangements affecting the acquisition and delivery of NBC weapons in controlling the export of MTCR and other NBC weapons and delivery system equipment or technology.

(8) A summary of advisory opinions issued under section 2410b(b)(4) of the Appendix to this title and under section 2797b(d) of title 22.

(9) An explanation of United States policy regarding the transfer of MTCR equipment or technology to foreign missile programs, including programs involving launches of space vehicles.

(10) A description of each transfer by any person or government during the preceding 12-month period which is subject to sanctions under the Iran-Iraq arms Non-Proliferation Act of 1992 (title XVI of Public Law 102–484).

(d) Exclusions

The countries excluded under subsection (a) of this section are Australia, Belgium, Canada, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Turkey, the United Kingdom, and the United States.

(e) Classification of report

The Secretary shall make every effort to submit all of the information required by this section in unclassified form. Whenever the Secretary submits any such information in classified form, the Secretary shall submit such classified information in an addendum and shall also submit concurrently a detailed summary, in unclassified form, of that classified information.

(f) Definitions

In this section:

(1) Designated congressional committees

The term “designated congressional committees” means—
(A) the Committee on Appropriations, the Committee on Armed Services, and the Committee on International Relations of the House of Representatives; and
(B) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Foreign Relations of the Senate.

(2) Missile; MTCR; MTCR equipment or technology

The terms “missile” “MTCR,” and “MTCR equipment or technology” have the meanings given those terms in section 2797c of title 22.

(3) Person

The term “person” means any United States or foreign individual, partnership, corporation, or other form of association, or any of its successor entities, parents, or subsidiaries.

(4) Weaponize; weaponization

The term “weaponize” or “weaponization” means to incorporate into, or the incorporation into, usable ordnance or other militarily useful means of delivery.


References in Text


Codification

Section is comprised of section 1308 of Pub. L. 107–228. Subsec. (g) of section 1308 of Pub. L. 107–228 repealed section 5606 of Title 22, Foreign Relations and Intercourse, amended provisions set out as notes under section 1701 of this title and section 2656 of Title 22, and repealed provisions set out as a note under section 2751 of Title 22.

Section was enacted as part of the Security Assistance Act of 2002, and also as part of the Foreign Relations Authorization Act, Fiscal Year 2003, and not as part of the Defense Against Weapons of Mass Destruction Act of 1996 which comprises this chapter.

Change of Name

Committee on International Relations of House of Representatives changed to Committee on Foreign Af-


§ 2370. Notification of Committees on Armed Services with respect to certain nonproliferation and proliferation activities

(a) Notification with respect to nonproliferation activities

The Secretary of Defense, the Secretary of Energy, the Secretary of Commerce, the Secretary of State, and the Nuclear Regulatory Commission shall keep the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives informed with respect to—

(1) any activities undertaken by any such Secretary or the Commission to carry out the purposes and policies of the Secretaries and the Commission with respect to nonproliferation programs; and

(2) any other activities undertaken by any such Secretary or the Commission to prevent the proliferation of nuclear, chemical, or biological weapons or the means of delivery of such weapons.

(b) Notification with respect to proliferation activities in foreign nations

(1) In general

The Director of National Intelligence shall keep the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives fully and currently informed with respect to any activities of foreign nations that are significant with respect to the proliferation of nuclear, chemical, or biological weapons or the means of delivery of such weapons.

(2) Fully and currently informed defined

For purposes of paragraph (1), the term "fully and currently informed" means the transmittal of credible information with respect to an activity described in such paragraph not later than 60 days after becoming aware of the activity.

(8) An description of the location and production capability of any fissile materials production facilities in such country or controlled by such non-state entity, the current status of any such facilities, and any plans by such country or non-state entity to develop such facilities.

(9) An identification of the source of any fissile materials used by such country or non-state entity, if such materials are not produced in facilities referred to in paragraph (8).

(10) An assessment of the intentions of such country or non-state entity to leverage civilian nuclear capabilities for a nuclear weapons program.

(11) A description of any delivery systems available to such country or non-state entity and an assessment of whether nuclear warheads have been mated, or there are plans for such warheads to be mated, to any such delivery system.

(12) An assessment of the physical security of the storage facilities for nuclear weapons in such country or controlled by such non-state entity.

(13) An assessment of whether such country is modernizing or otherwise improving the safety, security, and reliability of the nuclear weapons stockpile of such country.

(14) An assessment of the industrial capability and capacity of such country or non-state entity to produce nuclear weapons.

(15) In the case of a country, an assessment of the policy of such country on the employment and use of nuclear weapons.

c) References to other reports

Each report submitted under subsection (a) shall include a copy of any other report that is incorporated by reference into the report submitted under subsection (a).

d) Unclassified summary

Each report submitted under subsection (a) shall include an unclassified summary of such report.

e) Submittal to Congress

(1) In general

Except as provided in paragraph (2), the Director of National Intelligence shall submit to the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives the first report required under subsection (a) by not later than September 1, 2010.

(2) Notification of delay in submittal

If the Director of National Intelligence determines that it will not be possible for the Director to submit the first report required under subsection (a) by September 1, 2010, the Director shall, not later than August 1, 2010, submit to the committees specified in paragraph (1) a notice:

(A) that such report will not be submitted by September 1, 2010; and

(B) setting forth the date by which the Director will submit such report.

(f) Omitted

g) Definitions

In this section:

(1) Foreign person

The term “foreign person” means any of the following:

(A) A natural person who is not a citizen of the United States.

(B) A corporation, business association, partnership, society, trust, or other non-governmental entity, organization, or group that is organized under the laws of a foreign country or has its principal place of business in a foreign country.

(C) Any foreign government or foreign governmental entity operating as a business enterprise or in any other capacity.

(D) Any successor, subunit, or subsidiary of any entity described in subparagraph (B) or (C).

(2) Country of proliferation concern

The term “country of proliferation concern” means any country identified by the Director of Central Intelligence as having engaged in the acquisition of dual-use and other technology useful for the development or production of weapons of mass destruction (including nuclear weapons, chemical weapons, and biological weapons) or advanced conventional munitions—

(A) in the most recent report under section 2366 of this title; or

(B) in any successor report on the acquisition by foreign countries of dual-use and other technology useful for the development or production of weapons of mass destruction.


Codification

Section is comprised of section 1055 of Pub. L. 111–84. Subsec. (f) of section 1055 of Pub. L. 111–84 repealed section 2369 of this title.

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2010, and not as part of the Defense Against Weapons of Mass Destruction Act of 1996 which comprises this chapter.

Amendments


Effective Date of 2011 Amendment


“Congressional Defense Committees” Defined

Congressional defense committees means the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, see section 3 of Pub. L. 111–84, 123 Stat. 2298. See note under section 101 of Title 10, Armed Forces.

Footnote

1 So in original. Probably should be “A”.
CHAPTER 41—NATIONAL NUCLEAR SECURITY ADMINISTRATION

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SUBCHAPTER I—ESTABLISHMENT AND ORGANIZATION

§ 2401. Establishment and mission

There is established within the Department of Energy a separately organized agency to be known as the National Nuclear Security Administration (in this chapter referred to as the “Administration”).

(b) Mission

The mission of the Administration shall be the following:

(1) To enhance United States national security through the military application of nuclear energy.

(2) To maintain and enhance the safety, reliability, and performance of the United States nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements.

(3) To provide the United States Navy with safe, militarily effective nuclear propulsion plants and to ensure the safe and reliable operation of those plants.

(4) To promote international nuclear safety and nonproliferation.

(5) To reduce global danger from weapons of mass destruction.

(6) To support United States leadership in science and technology.

(c) Operations and activities to be carried out consistent with certain principles

In carrying out the mission of the Administration, the Administrator shall ensure that all operations and activities of the Administration are consistent with the principles of protecting the environment and safeguarding the safety and health of the public and of the workforce of the Administration.


REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this title”, meaning title XXXII of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 953, as amended, which is classified principally to this chapter. For complete classification of title XXXII to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE


“(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this title (see Short Title note below) shall take effect on March 1, 2000.

“(b) EXCEPTIONS.—(1) Sections 3292, 3294, 3251, 3295, and 3297 [enacting sections 2451 and 2483 of this title and sections 714a to 714c of Title 42, amending section 7132 of Title 42, and enacting provisions set out as a note below] shall take effect on the date of the enactment of this Act [Oct. 5, 1999].

“(2) Sections 3231 and 3235 [enacting sections 2424 and 2425 of this title] shall take effect on the date of the enactment of this Act. During the period beginning on the date of the enactment of this Act and ending on the
effective date of this title, the Secretary of Energy shall carry out those sections and any reference in those sections to the Administrator and the Administration shall be treated in accordance with the Secretary and the Department of Energy, respectively.”

**SHORT TITLE**

Pub. L. 106–65, div. C, title XXXII, §3201, Oct. 5, 1999, 113 Stat. 953, provided that: “This title [enacting this chapter and sections 714 to 714c of Title 42, the Public Health and Welfare, amending sections 5314, 5315, 5565, and 6065 of Title 5, Government Organization and Employees, and sections 7132, 7133, and 7158 of Title 42, repealing sections 2122a, 7143, and 7271b of Title 42, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 435 of this title] may be cited as the ‘National Nuclear Security Administration Act.’”

**PREPARATION OF INFRASTRUCTURE PLAN FOR THE NUCLEAR WEAPONS COMPLEX**


“(a) INFRASTRUCTURE PLAN FOR NUCLEAR WEAPONS COMPLEX.—

“(1) PREPARATION AND SUBMISSION.—Not later than the date on which the budget for the Department of Energy for fiscal year 2000 is submitted to Congress, the Secretary of Energy shall submit to Congress an infrastructure plan for the nuclear weapons complex adequate to support the nuclear weapons stockpile, the naval reactors program, and nonproliferation and national security activities.

“(2) SPECIAL CONSIDERATIONS.—In preparing the infrastructure plan, the Secretary shall take into consideration the following:


“(B) Any efficiencies and security benefits of consolidation of facilities of the nuclear weapons complex.

“(C) The necessity to have a residual production capability.

“(b) RECOMMENDATIONS REGARDING REALLOCATIONS AND CLOSURES.—On the basis of the infrastructure plan prepared under subsection (a), the Secretary shall make such recommendations regarding the need to close or realign facilities of the nuclear weapons complex as the Secretary considers appropriate, including the Secretary’s recommendations on whether to establish a process by which a round of closures and realignments would be carried out and any additional legislative authority necessary to implement the recommendations. The Secretary shall submit the recommendations as part of the infrastructure plan under subsection (a).

“(c) DEFINITIONS.—In this section:

“(1) The terms ‘Secretary’ and ‘Secretary of Energy’ mean the Secretary of Energy, acting after consideration of the recommendations of the Administrator for Nuclear Security.

“(2) The term ‘nuclear weapons complex’ means the national security laboratories and nuclear weapons production facilities (as such terms are defined in section 3281 of the National Nuclear Security Administration Act (50 U.S.C. 2471)) and the facilities of the Naval Nuclear Propulsion Program provided for under the Naval Nuclear Propulsion Executive Order (as such term is defined in section 3281 of such Act (50 U.S.C. 2406)).”

**STUDY AND REPORT RELATED TO IMPROVING MISSION EFFICIENCY, PARTNERSHIPS, AND TECHNOLOGY TRANSFER AT NATIONAL SECURITY LABORATORIES AND NUCLEAR WEAPONS PRODUCTION FACILITIES**


“(a) STUDY AND REPORT REQUIRED.—The Secretary of Energy shall direct the Secretary of Energy Advisory Board to study and to submit to the Secretary not later than one year after the date of the enactment of this Act (Oct. 30, 2000) a report regarding the following topics:

“(1) The advantages and disadvantages of providing the Administrator for Nuclear Security with authority, notwithstanding the limitations otherwise imposed by the Federal Acquisition Regulation, to enter into transactions with public agencies, private organizations, or individuals on terms the Administrator considers appropriate to the furtherance of basic, applied, and advanced research functions. The Advisory Board shall consider, in its assessment of this authority, the management history of the Department of Energy and the effect of this authority on the National Nuclear Security Administration’s use of contractors to operate the national security laboratories.

“(2) The advantages and disadvantages of establishing and implementing policies and procedures to facilitate the transfer of scientific, technical, and professional personnel among national laboratories and nuclear weapons production facilities.

“(3) The advantages and disadvantages of making changes in—

“(A) the indemnification requirements for patents or other intellectual property licensed from a national security laboratory or nuclear weapons production facility;

“(B) the royalty and fee schedules and types of compensation that may be used for patents or other intellectual property licensed to a small business concern from a national security laboratory or nuclear weapons production facility;

“(C) the licensing procedures and requirements for patents and other intellectual property;

“(D) the rights given to a small business concern that has licensed a patent or other intellectual property from a national security laboratory or nuclear weapons production facility to bring suit against third parties infringing such intellectual property;

“(E) the advance funding requirements for a small business concern funding a project at a national security laboratory or nuclear weapons production facility through a funds-in-agreement;

“(F) the intellectual property rights allocated to a business when it is funding a project at a national security laboratory or nuclear weapons production facility through a funds-in-agreement; and

“(G) policies on royalty payments to inventors employed by a contractor operating a national security laboratory or nuclear weapons production facility, including those for inventions made under a funds-in-agreement.

“(b) DEFINITION OF FUNDS-IN AGREEMENT.—For the purposes of this section, the term ‘funds-in-agreement’ means a contract between the Department and a non-Federal organization under which that organization pays the Department to provide a service or material not otherwise available in the domestic private sector.

“(c) SUBMISSION TO CONGRESS.—Not later than one month after receiving the report under subsection (a), the Secretary shall submit to Congress that report, along with the Secretary’s recommendations for action and proposals for legislation to implement the recommendations.”

**DEFINITIONS FOR PURPOSES OF PUB. L. 106–388**

Pub. L. 106–398, §1 (div. C, title XXXI, §3165), Oct. 30, 2000, 114 Stat. 1654, 1654A–475, provided that: “For purposes of this subtitle [subtitle E (§§3161–3165) of title XXXI of div. C of H.R. 5408, as enacted by section 1 of Pub. L. 106–398, enacting provisions set out as notes under this section and section 2402 of this title], the terms ‘national security laboratory’ and ‘nuclear weapons production facility’ have the meanings given such terms in section 3281 of the National Nuclear Security Authority.”

**NOTE**

Pub. L. 106–398, §1 (div. C, title XXXI, §3165), Oct. 30, 2000, 114 Stat. 1654, 1654A–475, provided that: “For purposes of this subtitle [subtitle E (§§3161–3165) of title XXXI of div. C of H.R. 5408, as enacted by section 1 of Pub. L. 106–398, enacting provisions set out as notes under this section and section 2402 of this title], the terms ‘national security laboratory’ and ‘nuclear weapons production facility’ have the meanings given such terms in section 3281 of the National Nuclear Security Authority.”
Administration Act (title XXXII of Public Law 106–65; 113 Stat. 968; 50 U.S.C. 2471)."

REPORT CONTAINING IMPLEMENTATION PLAN OF SECRETARY OF ENERGY

Pub. L. 106–65, div. C, title XXXII, §3297, Oct. 5, 1999, 113 Stat. 971, provided that: "Not later than January 1, 2000, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the Secretary’s plan for the implementation of the provisions of this title [see Short Title note set out above]."

CLASSIFICATION IN UNITED STATES CODE


§ 2402. Administrator for Nuclear Security

(a) In general

(1) There is at the head of the Administration an Administrator for Nuclear Security (in this chapter referred to as the "Administrator").

(2) Pursuant to subsection (c) of section 7132 of title 42, the Under Secretary for Nuclear Security of the Department of Energy serves as the Administrator.

(b) Functions

The Administrator has authority over, and is responsible for, all programs and activities of the Administration (except for the functions of the Deputy Administrator for Naval Reactors specified in the Executive order referred to in section 2406(b) of this title), including the following:

(1) Strategic management.

(2) Policy development and guidance.

(3) Budget formulation, guidance, and execution, and other financial matters.

(4) Resource requirements determination and allocation.

(5) Program management and direction.

(6) Safeguards and security.

(7) Emergency management.

(8) Integrated safety management.

(9) Environment, safety, and health operations.

(10) Administration of contracts, including the management and operations of the nuclear weapons production facilities and the national security laboratories.

(11) Intelligence.

(12) Counterintelligence.

(13) Personnel, including the selection, appointment, distribution, supervision, establishing of compensation, and separation of personnel in accordance with subchapter III of this chapter.

(14) Procurement of services of experts and consultants in accordance with section 3109 of title 5.

(15) Legal matters.

(16) Legislative affairs.

(17) Public affairs.

(18) Eliminating inventories of surplus fissile materials usable for nuclear weapons.

(19) Liaison with other elements of the Department of Energy and with other Federal agencies, State, tribal, and local governments, and the public.

(c) Procurement authority

The Administrator is the senior procurement executive for the Administration for the purposes of section 414(3) of title 41.\(^1\)

(d) Policy authority

The Administrator may establish Administration-specific policies, unless disapproved by the Secretary of Energy.

(e) Membership on Nuclear Weapons Council

The Administrator serves as a member of the Nuclear Weapons Council under section 179 of title 10.

(f) Reorganization authority

Except as provided by subsections (b) and (c) of section 2481 of this title:

(1) The Administrator may establish, abolish, alter, consolidate, or discontinue any organizational unit or component of the Administration, or transfer any function of the Administration.

(2) Such authority does not apply to the abolition of organizational units or components established by law or the transfer of functions vested by law in any organizational unit or component.


REFERENCES IN TEXT

Section 414 of title 41, referred to in subsec. (c), was amended generally by Pub. L. 106–196, div. A, title XIV, §1421(a)(1), Nov. 24, 2003, 117 Stat. 1666, and, as so amended, the substance of par. (3) was restated in subsec. (c)(1) of section 414. Section 414(c) of title 41 was subsequently repealed and restated as section 1792(c) of Title 10, Public Law 113–291, Nov. 28, 2014, 128 Stat. 3440.

AMENDMENTS


TECHNOLOGY INFRASTRUCTURE PILOT PROGRAM


“(a) ESTABLISHMENT.—The Administrator for Nuclear Security shall establish a Technology Infrastructure Pilot Program in accordance with this section.

\(^1\) See References in Text note below.
“(b) PURPOSE.—The purpose of the program shall be to explore new methods of collaboration and improvements in the management and effectiveness of collaborative programs carried out by the national security laboratories and nuclear weapons production facilities in partnership with private industry and institutions of higher education and to improve the ability of those laboratories and facilities to support missions of the Administration.

“(c) FUNDING.—(1) Except as provided in paragraph (2), funding shall be available for the pilot program only to the extent of specific authorizations and appropriations enacted after the date of the enactment of this Act [Oct. 30, 2000].

“(2) From amounts available in fiscal years 2001 and 2002 for technology partnership programs of the Administration, the Administrator may allocate to carry out the pilot program not more than $5,000,000.

“(d) PROJECT REQUIREMENTS.—A project may not be approved for the pilot program unless the project meets the following requirements:

“(1) The participants in the project include—

“(A) a national security laboratory or nuclear weapons production facility; and

“(B) one or more of the following:

“(i) A business;

“(ii) An institution of higher education;

“(iii) A nonprofit institution;

“(iv) An agency of a State, local, or tribal government.

“(2)(A) Not less than 50 percent of the costs of the project are to be provided by non-Federal sources.

“(B)(i) The calculation of the amount of the costs of the project provided by non-Federal sources shall include cash, personnel, services, equipment, and other resources expended on the project.

“(ii) No funds or other resources expended before the start of the project or outside the project’s scope of work may be credited toward the costs provided by non-Federal sources to the project.

“(3) The project (other than in the case of a project under which the participating laboratory or facility receives funding under this section) shall be competitively selected by that laboratory or facility using procedures determined to be appropriate by the Administrator.

“(4) No Federal funds shall be made available under this section for—

“(A) construction; or

“(B) any project for more than five years.

“(e) SELECTION CRITERIA.—(1) The projects selected for the pilot program shall—

“(A) stimulate the development of technology expertise and capabilities in private industry and institutions of higher education that can support the nuclear weapons and nuclear nonproliferation missions of the national security laboratories and nuclear weapons production facilities on a continuing basis;

“(B) improve the ability of those laboratories and facilities to benefit from commercial research, technology, products, processes, and services that can support the nuclear weapons and nuclear nonproliferation missions of those laboratories and facilities on a continuing basis; and

“(C) encourage the exchange of scientific and technological expertise between those laboratories and facilities and—

“(i) institutions of higher education;

“(ii) technology-related business concerns;

“(iii) nonprofit institutions; and

“(iv) agencies of State, tribal, or local governments that can support the missions of those laboratories and facilities.

“(2) The Administrator may authorize the provision of Federal funds for a project under this section only if the director of the laboratory or facility managing the project determines that the project is likely to improve the ability of that laboratory or facility to achieve technical success in meeting nuclear weapons and nuclear nonproliferation missions of the Administration.

“(3) The Administrator shall require the director of the laboratory or facility to consider the following criteria in selecting a project to receive Federal funds:

“(A) The potential of the project to promote the development of a commercially sustainable technology, determined by considering whether the project will derive sufficient demand for its products or services from the private sector to support the nuclear weapons and nuclear nonproliferation missions of the participating laboratory or facility on a continuing basis.

“(B) The potential of the project to promote the use of commercial research, technology, products, processes, and services by the participating laboratory or facility to achieve its nuclear weapons and nuclear nonproliferation missions.

“(C) The commitment shown by non-Federal organizations to the project, based primarily on the nature and amount of the financial and other resources they will risk on the project.

“(D) The extent to which the project involves a wide variety and number of institutions of higher education, nonprofit institutions, and technology-related business concerns that can support the nuclear weapons and nuclear nonproliferation missions of the participating laboratory or facility on a continuing basis and that will make substantive contributions to achieving the goals of the project.

“(E) The extent to which the project involves agencies of State, tribal, or local governments that will make substantive contributions to achieving the goals of the project.

“(F) The extent to which the project focuses on promoting the development of technology-related business concerns that are small business concerns or involves small business concerns substantively in the project.

“(g) REPORT ON IMPLEMENTATION.—No funds may be allocated for the pilot program until 30 days after the date on which the Administrator submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for the implementation of the pilot program. The plan shall, at a minimum—

“(1) identify the national security laboratories and nuclear weapons production facilities that have been designated by the Administrator to participate in the pilot program; and

“(2) with respect to each laboratory or facility identified under paragraph (1)—

“(A) identify the businesses, institutions of higher education, nonprofit institutions, and agencies of State, local, or tribal government that are expected to participate in the pilot program at that laboratory or facility;

“(B) identify the technology areas to be addressed by the pilot program at that laboratory or facility and the manner in which the pilot program will support high-priority missions of that laboratory or facility on a continuing basis; and

“(C) describe the management controls that have been put in place to ensure that the pilot program as conducted at that laboratory or facility is conducted in a cost-effective manner consistent with the objectives of the pilot program.

“(h) REPORT ON PROGRESS.—(1) Not later than February 1, 2002, the Administrator shall submit to the congressional defense committees a report on the implementation and management of the pilot program. The report shall take into consideration the results of the pilot program to date and the views of the directors of the participating laboratories and facilities. The report shall include any recommendations the Administrator may have concerning the future of the pilot program.

“(2) Not later than 30 days after the date on which the Administrator submits the report required by para-
§ 2403. Principal Deputy Administrator for Nuclear Security

(a) In general

(1) There is in the Administration a Principal Deputy Administrator, who is appointed by the President, by and with the advice and consent of the Senate.

(2) The Principal Deputy Administrator shall be appointed from among persons who have extensive background in organizational management and are well qualified to manage the nuclear weapons, nonproliferation, and materials disposition programs of the Administration in a manner that advances and protects the national security of the United States.

(b) Duties

Subject to the authority, direction, and control of the Administrator, the Principal Deputy Administrator shall perform such duties and exercise such powers as the Administrator may prescribe, including the coordination of activities among the elements of the Administration. The Principal Deputy Administrator shall act for, and exercise the powers of, the Administrator when the Administrator is disabled or the position of Administrator is vacant.


PRIOR PROVISIONS


§ 2404. Deputy Administrator for Defense Programs

(a) In general

There is in the Administration a Deputy Administrator for Defense Programs, who is appointed by the President, by and with the advice and consent of the Senate.

(b) Duties

Subject to the authority, direction, and control of the Administrator, the Deputy Administrator for Defense Programs shall perform such duties and exercise such powers as the Administrator may prescribe, including the following:

(1) Maintaining and enhancing the safety, reliability, and performance of the United States nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements.

(2) Directing, managing, and overseeing the nuclear weapons production facilities and the national security laboratories.

(3) Directing, managing, and overseeing assets to respond to incidents involving nuclear weapons and materials.


AMENDMENTS

2001—Subsec. (c). Pub. L. 107–107 struck out heading and text of subsec. (c). Text read as follows: "The head of each national security laboratory and nuclear weapons production facility shall, consistent with applicable contractual obligations, report to the Deputy Administrator for Defense Programs."

§ 2405. Deputy Administrator for Defense Nuclear Nonproliferation

(a) In general

There is in the Administration a Deputy Administrator for Defense Nuclear Nonproliferation, who is appointed by the President, by and with the advice and consent of the Senate.

(b) Duties

Subject to the authority, direction, and control of the Administrator, the Deputy Administrator for Defense Nuclear Nonproliferation shall perform such duties and exercise such powers as the Administrator may prescribe, including the following:

(1) Preventing the spread of materials, technology, and expertise relating to weapons of mass destruction.

(2) Detecting the proliferation of weapons of mass destruction worldwide.

(3) Eliminating inventories of surplus fissile materials usable for nuclear weapons.

(4) Providing for international nuclear safety.


§ 2406. Deputy Administrator for Naval Reactors

(a) In general

(1) There is in the Administration a Deputy Administrator for Naval Reactors. The director of the Naval Nuclear Propulsion Program provided for under the Naval Nuclear Propulsion Executive Order shall serve as the Deputy Administrator for Naval Reactors.

(2) Within the Department of Energy, the Deputy Administrator shall report to the Secretary of Energy through the Administrator and shall have direct access to the Secretary and other senior officials in the Department.

(b) Duties

The Deputy Administrator shall be assigned the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors under the Naval Nuclear Propulsion Executive Order.

(c) Effect on Executive Order

Except as otherwise specified in this section and notwithstanding any other provision of this chapter, the provisions of the Naval Nuclear Propulsion Executive Order remain in full force and effect until changed by law.

(d) Naval Nuclear Propulsion Executive Order

As used in this section, the Naval Nuclear Propulsion Executive Order is Executive Order No.
§ 2407. General Counsel

There is a General Counsel of the Administration. The General Counsel is the chief legal officer of the Administration.


§ 2408. Staff of Administration

(a) In general

The Administrator shall maintain within the Administration sufficient staff to assist the Administrator in carrying out the duties and responsibilities of the Administrator.

(b) Responsibilities

The staff of the Administration shall perform, in accordance with applicable law, such of the functions of the Administrator as the Administrator shall prescribe. The Administrator shall assign to the staff responsibility for the following functions:

(1) Personnel.
(2) Legislative affairs.
(3) Public affairs.
(4) Liaison with the Department of Energy’s Office of Intelligence and Counterintelligence.
(5) Liaison with other elements of the Department of Energy and with other Federal agencies, State, tribal, and local governments, and the public.


AMENDMENTS

2006—Subsec. (b)(4), (5). Pub. L. 109-364 added par. (4) and redesignated former par. (4) as (5).

§ 2409. Scope of authority of Secretary of Energy to modify organization of Administration

Notwithstanding the authority granted by section 7253 of title 42 or any other provision of law, the Secretary of Energy may not establish, abolish, alter, consolidate, or discontinue any organizational unit or component, or transfer any function, of the Administration, except as authorized by subsection (b) or (c) of section 2481 of this title.

1 See References in Text note below.
§ 2421. Protection of national security information

(a) Policies and procedures required

The Administrator shall establish procedures to ensure the maximum protection of classified information in the possession of the Administration.

(b) Prompt reporting

The Administrator shall establish procedures to ensure prompt reporting to the Administrator of any significant problem, abuse, violation of law or Executive order, or deficiency relating to the management of classified information by personnel of the Administration.


AMENDMENTS


SUBCHAPTER II—MATTERS RELATING TO SECURITY

§ 2422. Office of Defense Nuclear Security

(a) Establishment

There is within the Administration an Office of Defense Nuclear Security, headed by a Chief appointed by the Secretary of Energy. The Administrator shall recommend to the Secretary suitable candidates for such position.

(b) Chief of Defense Nuclear Security

(1) The head of the Office of Defense Nuclear Security is the Chief of Defense Nuclear Security, who shall report to the Administrator and shall implement the security policies directed by the Secretary and Administrator.

(2) The Chief shall have direct access to the Secretary and all other officials of the Department and the contractors of the Department concerning security matters.

(3) The Chief shall be responsible for the development and implementation of security programs for the Administration, including the protection, control and accounting of materials, and for the physical and cyber security for all facilities of the Administration.


AMENDMENTS


§ 2423. Counterintelligence programs

(a) National security laboratories and nuclear weapons production facilities

The Secretary of Energy shall, at each national security laboratory and nuclear weapons production facility, establish and maintain a counterintelligence program adequate to protect national security information at that laboratory or production facility.

(b) Other facilities

The Secretary of Energy shall, at each Administration facility not described in subsection (a) of this section at which Restricted Data is located, assign an employee of the Office of Counterintelligence of the Department of Energy who shall be responsible for and assess counterintelligence matters at that facility.


AMENDMENTS


§ 2424. Procedures relating to access by individuals to classified areas and information of Administration

The Administrator shall establish appropriate procedures to ensure that any individual is not
permitted unescorted access to any classified area, or access to classified information, of the Administration until that individual has been verified to hold the appropriate security clearances.


§ 2425. Government access to information on Administration computers

(a) Procedures required

The Administrator shall establish procedures to govern access to information on Administration computers. Those procedures shall, at a minimum, provide that any individual who has access to information on an Administration computer shall be required as a condition of such access to provide to the Administrator written consent which permits access by an authorized investigative agency to any Administration computer used in the performance of the duties of such employee during the period of that individual’s access to information on an Administration computer and for a period of three years thereafter.

(b) Expectation of privacy in Administration computers

Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no user of an Administration computer shall have any expectation of privacy in the use of that computer.

(c) Definition

For purposes of this section, the term “authorized investigative agency” means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigations 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.


REFERENCES IN TEXT


§ 2426. Congressional oversight of special access programs

(a) Annual report on special access programs

(1) Not later than February 1 of each year, the Administrator shall submit to the congressional defense committees a report on special access programs of the Administration.

(2) Each such report shall set forth—

(A) the total amount requested for such programs in the President’s budget for the next fiscal year submitted under section 1105 of title 31; and

(B) for each such program in that budget, the following:

(i) A brief description of the program.

(ii) A brief discussion of the major milestones established for the program.

(iii) The actual cost of the program for each fiscal year during which the program has been conducted before the fiscal year during which that budget is submitted.

(iv) The estimated total cost of the program and the estimated cost of the program for (I) the current fiscal year, (II) the fiscal year for which the budget is submitted, and (III) each of the four succeeding fiscal years during which the program is expected to be conducted.

(b) Annual report on new special access programs

(1) Not later than February 1 of each year, the Administrator shall submit to the congressional defense committees a report that, with respect to each new special access program, provides—

(A) notice of the designation of the program as a special access program; and

(B) justification for such designation.

(2) A report under paragraph (1) with respect to a program shall include—

(A) the current estimate of the total program cost for the program; and

(B) an identification of existing programs or technologies that are similar to the technology, or that have a mission similar to the mission, of the program that is the subject of the notice.

(3) In this subsection, the term “new special access program” means a special access program that has not previously been covered in a notice and justification under this subsection.

(c) Reports on changes in classification of special access programs

(1) Whenever a change in the classification of a special access program of the Administration is planned to be made or whenever classified information concerning a special access program of the Administration is to be declassified and made public, the Administrator shall submit to the congressional defense committees a report containing a description of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.

(2) Except as provided in paragraph (3), any report referred to in paragraph (1) shall be submitted not less than 14 days before the date on which the proposed change or public announcement is to occur.

(3) If the Administrator determines that because of exceptional circumstances the requirement of paragraph (2) cannot be met with respect to a proposed change or public announcement concerning a special access program of the Administration, the Administrator may submit the report required by paragraph (1) regarding the proposed change or public announcement at any time before the proposed change or public announcement is made and shall include in the report an explanation of the exceptional circumstances.

(d) Notice of change in SAP designation criteria

Whenever there is a modification or termination of the policy and criteria used for des-
ignoring a program of the Administration as a special access program, the Administrator shall promptly notify the congressional defense committees of such modification or termination. Any such notification shall contain the reasons for the modification or termination and, in the case of a modification, the provisions of the policy as modified.

(e) Waiver authority

(1) The Administrator may waive any requirement under subsection (a), (b), or (c) of this section that certain information be included in a report under that subsection if the Administrator determines that inclusion of that information in the report would adversely affect the national security. The Administrator may waive the report-and-wait requirement in subsection (f) of this section if the Administrator determines that compliance with such requirement would adversely affect the national security.

Any waiver under this paragraph shall be made on a case-by-case basis.

(2) If the Administrator exercises the authority provided under paragraph (1), the Administrator shall provide the information described in that subsection with respect to the special access program concerned, and the justification for the waiver, jointly to the chairman and ranking minority member of each of the congressional defense committees.

(f) Report and wait for initiating new programs

A special access program may not be initiated until

(1) the congressional defense committees are notified of the program; and
(2) a period of 30 days elapses after such notification is received.


PRIOR PROVISIONS


SUBCHAPTER III—MATTERS RELATING TO PERSONNEL

§ 2441. Authority to establish certain scientific, engineering, and technical positions

The Administrator may, for the purposes of carrying out the responsibilities of the Administrator under this chapter, establish not more than 300 scientific, engineering, and technical positions in the Administration, appoint individuals to such positions, and fix the compensation of such individuals. Subject to the limitations in the preceding sentence, the authority of the Administrator to make appointments and fix compensation with respect to positions in the Administration under this section shall be equivalent to, and subject to the limitations of, the authority under section 2201(d) of title 42 to make appointments and fix compensation with respect to officers and employees described in such section.


References in Text

This chapter, referred to in text, was in the original “‘this title’, meaning title XXXII of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 963, as amended, which is classified principally to this chapter. For complete classification of title XXXII to the Code, see Short Title note set out under section 2401 of this title and Tables.

§ 2442. Voluntary early retirement authority

(a) Authority

An employee of the Department of Energy who is separated from the service under conditions described in subsection (b) of this section after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity in accordance with the provisions in chapter 83 or 84 of title 5, as applicable.

(b) Conditions of separation

Subsection (a) of this section applies to an employee who—

(1) has been employed continuously by the Department of Energy for more than 30 days before the date on which the Secretary of Energy makes the determination required under paragraph (4)(A); and
(2) is serving under an appointment that is not limited by time;

(3) has not received a decision notice of involuntary separation for misconduct or unacceptable performance that is pending decision; and
(4) is separated from the service voluntarily during a period with respect to which—

(A) the Secretary of Energy determines that the Department of Energy is undergoing a major reorganization as a result of the establishment of the National Nuclear Security Administration; and
(B) the employee is within the scope of an offer of voluntary early retirement (as defined by organizational unit, occupational series or level, geographical location, any other similar factor that the Office of Personnel Management determines appropriate, or any combination of such definitions of scope), as determined by the Secretary under regulations prescribed by the Office.

(c) Treatment of employees

For purposes of chapters 83 and 84 of title 5 (including for purposes of computation of an annuity under such chapters), an employee entitled to an annuity under this section shall be treated as an employee entitled to an annuity under section 8336(d) or 8414(b) of such title, as applicable.

(d) Definitions

As used in this section, the terms “employee” and “annuity”—

(1) with respect to individuals covered by the Civil Service Retirement System established in subchapter III of chapter 83 of title 5 have the meaning of such terms as used in such chapter; and
(2) with respect to individuals covered by the Federal Employees Retirement System established in chapter 84 of such title, have the meaning of such terms as used in such chapter.
(e) Limitation and termination of authority

The authority provided in subsection (a) of this section—

(1) may be applied with respect to a total of not more than 600 employees of the Department of Energy; and

(2) shall expire on September 30, 2003.


§ 2444. Nonproliferation and national security scholarship and fellowship program

(a) Establishment

The Administrator for Nuclear Security shall carry out a program to provide scholarships and fellowships for the purpose of enabling individuals to qualify for employment in the nonproliferation and national security programs of the Department of Energy.

(b) Eligible individuals

An individual shall be eligible for a scholarship or fellowship under the program established under this section if the individual—

(1) is a citizen or national of the United States or an alien lawfully admitted to the United States for permanent residence;

(2) has been accepted for enrollment or is currently enrolled as a full-time student at an institution of higher education (as defined in section 101(a)(18) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)));

(3) is pursuing a program of education that leads to an appropriate higher education degree in a qualifying field of study, as determined by the Administrator;

(4) enters into an agreement described in subsection (c); and

(5) meets such other requirements as the Administrator prescribes.

(c) Agreement

An individual seeking a scholarship or fellowship under the program established under this section shall enter into an agreement, in writing, with the Administrator that includes the following:

(1) The agreement of the Administrator to provide such individual with a scholarship or fellowship in the form of educational assistance for a specified number of school years (not to exceed five school years) during which such individual is pursuing a program of education in a qualifying field of study, which educational assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.

(2) The agreement of such individual—

(A) to accept such educational assistance;

(B) to maintain enrollment and attendance in a program of education described in subsection (b)(2) until such individual completes such program;

(C) while enrolled in such program, to maintain satisfactory academic progress in such program, as determined by the institution of higher education in which such individual is enrolled; and

(D) after completion of such program, to serve as a full-time employee in a nonproliferation or national security position in the Department of Energy or at a laboratory of the Department for a period of not less than 12 months for each school year or part of a school year for which such individual receives a scholarship or fellowship under the program established under this section.

(3) The agreement of such individual with respect to the repayment requirements specified in subsection (d).

(d) Repayment

(1) In general

An individual receiving a scholarship or fellowship under the program established under this section shall agree to pay to the United States the total amount of educational assistance provided to such individual under such program, plus interest at the rate prescribed by paragraph (4), if such individual—

(A) does not complete the program of education agreed to pursuant to subsection (c)(2)(B);

(B) completes such program of education but declines to serve in a position in the Department of Energy or at a laboratory of the Department as agreed to pursuant to subsection (c)(2)(D); or

(C) is voluntarily separated from service or involuntarily separated for cause from the Department of Energy or a laboratory of the Department before the end of the period for which such individual agreed to continue in the service of the Department pursuant to subsection (c)(2)(D).

(2) Failure to repay

If an individual who received a scholarship or fellowship under the program established under this section is required to repay, pursuant to an agreement under paragraph (1), the total amount of educational assistance provided to such individual under such program, plus interest at the rate prescribed by paragraph (4), and fails to repay such amount, a sum equal to such amount (plus such interest) is recoverable by the United States Government from such individual or the estate of such individual by—

(A) in the case of an individual who is an employee of the United States Government, setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; or

(B) such other method as is provided by law for the recovery of amounts owed to the Government.

(3) Waiver of repayment

The Administrator may waive, in whole or in part, repayment by an individual under this subsection if the Administrator determines that seeking recovery under paragraph (2)
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would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) Rate of interest

For purposes of repayment under this subsection, the total amount of educational assistance provided to an individual under the program established under this section shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

(e) Preference for cooperative education students

In evaluating individuals for the award of a scholarship or fellowship under the program established under this section, the Administrator may give a preference to an individual who is enrolled in, or accepted for enrollment in, an institution of higher education that has a cooperative education program with the Department of Energy.

(f) Coordination of benefits

A scholarship or fellowship awarded under the program established under this section shall be taken into account in determining the eligibility of an individual receiving such scholarship or fellowship for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) and 42 U.S.C. 2751 et seq.

(g) Report to Congress

Not later than January 1, 2010, the Administrator shall submit to the congressional defense committees a report on the activities carried out under the program established under this section, including any recommendations for future activities under such program.

(h) Funding

Of the amounts authorized to be appropriated by section 3101(a)(2) for defense nuclear non-proliferation activities, $3,000,000 shall be available to carry out the program established under this section.


“Congressional Defense Committees” Defined


SUBCHAPTER IV—BUDGET AND FINANCIAL MANAGEMENT

§ 2451. Separate treatment in budget

(a) President's budget

In each budget submitted by the President to the Congress under section 1105 of title 31, amounts requested for the Administration shall be set forth separately within the other amounts requested for the Department of Energy.

(b) Budget justification materials

In the budget justification materials submitted to Congress in support of each such budget, the amounts requested for the Administration shall be specified in individual, dedicated program elements.


Ten-Year Plan for Use and Funding of Certain Department of Energy Facilities


“(a) in general.—The Administrator for Nuclear Security and the Under Secretary for Science of the Department of Energy shall jointly develop a plan to use and fund, over a ten-year period, the following facilities of the Department of Energy:

“(1) the National Ignition Facility at the Lawrence Livermore National Laboratory, California.

“(2) the Los Alamos Neutron Science Center at the Los Alamos National Laboratory, New Mexico.

“(3) the Z Machine at the Sandia National Laboratories, New Mexico.

“(4) the Microsystems and Engineering Sciences Application Facility at the Sandia National Laboratories, New Mexico.

“(b) submittal of plan.—Not later than 45 days after the date of the enactment of this Act (Oct. 28, 2009), the Administrator for Nuclear Security and the Under Secretary for Science of the Department of Energy shall submit to the appropriate congressional committees the plan required by subsection (a).

“(c) requirement to specify source of facility funding in budget requests.—In any budget request for the Department of Energy for a fiscal year that is submitted to Congress after the date of the enactment of this Act (Oct. 28, 2009), the Secretary of Energy shall identify for that fiscal year the portion of the funding for each facility specified in subsection (a) that is to be provided by the National Nuclear Security Administration and by the Office of Science of the Department of Energy.

“(d) appropriate congressional committees defined.—In this section, the term ‘appropriate congressional committees’ means—

“(1) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Science and Technology of the House of Representatives; and

“(2) the Committee on Armed Services, the Committee on Appropriations, and the Committee on Energy and Natural Resources of the Senate.”
§ 2452. Planning, programming, and budgeting process

(a) Procedures required

The Administrator shall establish procedures to ensure that the planning, programming, budgeting, and financial activities of the Administration comport with sound financial and fiscal management principles. Those procedures shall, at a minimum, provide for the planning, programming, and budgeting of activities of the Administration using funds that are available for obligation for a limited number of years.

(b) Annual plan for obligation of funds

(1) Each year, the Administrator shall prepare a plan for the obligation of the amounts that, in the President's budget submitted to Congress that year under section 1105(a) of title 31, are proposed to be appropriated for the Administration for the fiscal year that begins in that year (in this section referred to as the "budget year") and the two succeeding fiscal years.

(2) For each program element and construction line item of the Administration, the plan shall provide the goal of the Administration for the obligation of those amounts for that element or item for each fiscal year of the plan, expressed as a percentage of the total amount proposed to be appropriated in that budget for that element or item.

(c) Submission of plan and report

The Administrator shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress under section 1105(a) of title 31, a future-years nuclear security program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years nuclear security program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(d) Submission to Congress

The Administrator shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, a future-years nuclear security program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years nuclear security program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

§ 2453. Future-years nuclear security program

(a) Submission to Congress

The Administrator shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, a future-years nuclear security program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years nuclear security program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(b) Elements

Each future-years nuclear security program shall contain the following:

(1) A detailed description of the program elements (and the projects, activities, and construction projects associated with each such program element) during the applicable five-fiscal year period for at least each of the following:

(A) For defense programs—
   (i) directed stockpile work;
   (ii) campaigns;
   (iii) readiness in technical base and facilities; and
   (iv) secure transportation asset.

(B) For defense nuclear nonproliferation—
   (i) nonproliferation and verification, research, and development;
   (ii) arms control; and
   (iii) fissile materials disposition.

(C) For naval reactors, naval reactors operations and maintenance.

(2) A statement of proposed budget authority, estimated expenditures, and proposed appropriations necessary to support each program element specified pursuant to paragraph (1).

(3) A detailed description of how the funds identified for each program element specified pursuant to paragraph (1) in the budget for the Administration for each fiscal year during that five-fiscal year period will help ensure that the nuclear weapons stockpile is safe and reliable, as determined in accordance with the criteria established under section 3158 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (42 U.S.C. 2121 note).

(4) A description of the anticipated workload requirements for each Administration site during that five-fiscal year period.

(5) A statement of proposed budget authority, estimated expenditures, and proposed appropriations necessary to support the programs required to implement the plan to transform the nuclear weapons complex under section 2534 of this title, together with a detailed description of how the funds identified...
for each program element specified pursuant to paragraph (1) in the budget for the Administration for each fiscal year during that five-fiscal-year period will help ensure that those programs are implemented. The statement shall assume year-to-year funding profiles that account for increases only for projected inflation.

(6) A plan, developed in consultation with the Director of the Office of Health, Safety, and Security of the Department of Energy, for the research and development, deployment, and lifecycle sustainment of the technologies employed within the nuclear weapons complex to address physical and cyber security threats during the applicable five-fiscal year period, together with—

(A) for each site in the nuclear weapons complex, a description of the technologies deployed to address the physical and cyber security threats posed to that site;

(B) for each site and for the nuclear weapons complex, the methods used by the National Nuclear Security Administration to establish priorities among investments in physical and cyber security technologies; and

(C) a detailed description of how the funds identified for each program element specified pursuant to paragraph (1) in the budget for the Administration for each fiscal year during that five-fiscal year period will help carry out that plan.

(c) Consistency in budgeting

(1) The Administrator shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Administrator in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31 for any fiscal year, as shown in the future-years nuclear security program submitted pursuant to subsection (a) of this section.

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Administration included pursuant to paragraph (5) of section 1105(a) of such title in the budget submitted to Congress under that section for any fiscal year.

(d) Treatment of management contingencies

Nothing in this section shall be construed to preclude the inclusion in the future-years nuclear security program of amounts for management contingencies, subject to the requirements of subsection (c) of this section.


2000—Subsec. (b). Pub. L. 106–398, § 1 (div. C, title XXXI, § 3154(b)(2), (3)), redesignated subsec. (e) as (d) and substituted “subsection (c)” for “subsection (d)”.


1999—Pub. L. 106–398, § 1 [div. C, title XXXI, § 3154(b)(1), (2)], redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “The estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Administration for any fiscal year that is submitted to Congress in support of the budget for the Administration for such fiscal year will help ensure that the nuclear weapons stockpile is safe and reliable as determined in accordance with the criteria established under section 3158 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 106–266).”

1998—Pub. L. 105–261, div. C, title XXXI, § 3110, redesignated section 3154(b)(2) as (3) and struck out “subsection (c)” for “subsection (d)”.

1996—Subsec. (d). Pub. L. 104–134, § 1 [div. C, title XXXI, § 3154(b)(5)], redesignated subsec. (e) as (d) and substituted “subsection (c)” for “subsection (d)”.

1994—Pub. L. 103–162, div. C, title XXXI, § 3105, redesignated section 3154(b)(5) as (d) and substituted “subsection (c)” for “subsection (d)”.

1993—Pub. L. 103–162, div. C, title XXXI, § 3154(b)(5), redesignated section 3154(b)(3) as (d) and substituted “subsection (c)” for “subsection (d)”.

1992—Pub. L. 102–419, div. C, title XXXI, § 3154(b)(5), redesignated section 3154(b)(3) as (d) and substituted “subsection (c)” for “subsection (d)”.

1991—Pub. L. 102–115, div. C, title XXXI, § 3154(b)(5), redesignated section 3154(b)(3) as (d) and substituted “subsection (c)” for “subsection (d)”.

1990—Pub. L. 101–189, div. C, title XXXI, § 3154(b)(5), redesignated section 3154(b)(3) as (d) and substituted “subsection (c)” for “subsection (d)”.

1989—Pub. L. 100–457, div. C, title XXXI, § 3154(b)(5), redesignated section 3154(b)(3) as (d) and substituted “subsection (c)” for “subsection (d)”.

1988—Pub. L. 100–457, div. C, title XXXI, § 3154(b)(5), redesignated section 3154(b)(3) as (d) and substituted “subsection (c)” for “subsection (d)”.

1987—Pub. L. 100–121, div. C, title XXXI, § 3154(b)(5), redesignated section 3154(b)(3) as (d) and substituted “subsection (c)” for “subsection (d)”.

date on which the Administrator submits to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a notice on the project, including a description of the project and the nature of the project, a statement explaining why the project was not included in the Facilities and Infrastructure Recapitalization Program under paragraph (1), and a statement explaining why the project was not included in any other program under the jurisdiction of the Administrator.

(3) Such guidelines shall ensure that the maintenance activities referred to in paragraph (2)(C) are carried out in a timely and efficient manner designed to avoid maintenance backlogs.

(4) OPERATIONS OF FACILITIES PROGRAM.—(1) The Administrator shall continue the Operations of Facilities program of the National Nuclear Security Administration as a subprogram within the Readiness in Technical Base and Facilities program.

(2) The Deputy Administrator for Defense Programs shall designate a single manager to be responsible for overseeing the operations of the Operations of Facilities subprogram within the Readiness in Technical Base and Facilities program.

(3) For fiscal year 2005, and for each fiscal year thereafter, the Secretary of Energy shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives, together with the budget justification materials submitted to Congress in support of the National Nuclear Security Administration budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code), a separate statement of the amounts requested for such fiscal year for each element of the Operations of Facilities subprogram, as follows:

(A) Maintenance.

(B) Facilities management and support.

(C) Utilities.

(D) Environment, safety, and health.

(E) Each other element of the subprogram.

§ 2454. Semiannual financial reports on defense nuclear nonproliferation programs

(a) Semiannual reports required

The Administrator shall submit to the Committees on Armed Services of the Senate and the House of Representatives a semiannual report on the amounts available for the defense nuclear nonproliferation programs of the Administration. Each such report shall cover a half of a fiscal year (in this section referred to as a ‘‘fiscal half’’) and shall be submitted not later than 30 days after the end of that fiscal half.

(b) Contents

Each report for a fiscal half shall, for each such defense nuclear nonproliferation program for which amounts are available for the fiscal year that includes that fiscal half, set forth the following:

(1) The aggregate amount available for such program as of the beginning of such fiscal half and, within such amount, the uncommitted balances, the unobligated balances, and the unexpended balances.

(2) The aggregate amount newly made available for such program during such fiscal half and, within such amount, the amount made available by appropriations, by transfers, by reprogrammings, and by other means.

(3) The aggregate amount available for such program as of the end of such fiscal half and, within such amount, the uncommitted balances, the unobligated balances, and the unexpended balances.

§ 2455. Comptroller General assessment of adequacy of budget requests with respect to the modernization and refurbishment of the nuclear weapons stockpile

(a) GAO study and reports

(1) For the nuclear security budget materials submitted in each fiscal year by the Administrator, the Comptroller General of the United States shall conduct a study on whether both the budget for the fiscal year following the fiscal year in which such budget materials are submitted and the future-years nuclear security
program submitted to Congress in relation to such budget under section 2453 of this title provide for funding of the nuclear security complex at a level that is sufficient for the modernization and refurbishment of the nuclear security complex.

(2) Not later than 90 days after the date on which the Administrator submits the nuclear security budget materials, the Comptroller General shall submit to the congressional defense committees a report on the study under paragraph (1), including—

(A) the findings of such study; and

(B) whether the nuclear security budget materials support the requirements for infrastructure recapitalization of the facilities of the nuclear security complex.

(b) Definitions

In this section:

(1) The term "budget" means the budget for a fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(2) The term "nuclear security budget materials" means the materials submitted to Congress by the Administrator in support of the budget for a fiscal year.

(3) The term "nuclear security complex" means the physical facilities, technology, and human capital of the following:

(A) the national security laboratories.

(B) The Kansas City Plant, Kansas City, Missouri.

(C) The Nevada Test Site, Nevada.

(D) The Savannah River Site, Aiken, South Carolina.


(F) The Pantex Plant, Amarillo, Texas.


AMENDMENTS


§ 2455a. National Nuclear Security Administration authority for urgent nonproliferation activities

(a) In general

Subject to the notification requirement under subsection (b), not more than 10 percent of the total amounts appropriated or otherwise made available in any fiscal year for the nonproliferation programs of the Department of Energy National Nuclear Security Administration may be expended, notwithstanding any other law, for activities described under subsection (b)(1)(B).

(b) Determination and notice

(1) Determination

The Secretary of Energy, with the concurrence of the Secretary of State and the Secretary of Defense, may make a written determination that—

(A) threats arising from the proliferation of nuclear or radiological weapons or weapon-related materials, technologies, and expertise must be addressed urgently;

(B) certain provisions of law would unnecessarily impede the Secretary's ability to carry out nonproliferation activities of the National Nuclear Security Administration to address such threats; and

(C) it is necessary to expend amounts described in subsection (a) to carry out such activities.

(2) Notice required

Not later than 15 days before obligating or expending funds under the authority provided in subsection (a), the Secretary of Energy shall notify the appropriate congressional committees of the determination made under paragraph (1). The notice shall include—

(A) the determination;

(B) the activities to be undertaken by the nonproliferation programs of the National Nuclear Security Administration;

(C) the expected time frame for such activities; and

(D) the expected costs of such activities.

(c) Appropriate congressional committees

In this section, the term "appropriate congressional committees" means—

(1) the Committee on Foreign Affairs, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives; and

(2) the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on Appropriations of the Senate.


CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2010, and not as part of the National Nuclear Security Administration Act which comprises this chapter.

SUBCHAPTER V—MISCELLANEOUS

PROVISIONS

§ 2461. Environmental protection, safety, and health requirements

(a) Compliance required

The Administrator shall ensure that the Administration complies with all applicable environmental, safety, and health statutes and substantive requirements.

(b) Procedures required

The Administrator shall develop procedures for meeting such requirements.

(c) Rule of construction

Nothing in this chapter shall diminish the authority of the Secretary of Energy to ascertain and ensure that such compliance occurs.


REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this title", meaning title XXXII of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 953, as amended, which is classified principally to this chapter. For con-
§ 2462. Compliance with Federal Acquisition Regulation

The Administrator shall establish procedures to ensure that the mission and programs of the Administration are executed in full compliance with all applicable provisions of the Federal Acquisition Regulation issued pursuant to division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41.


Codification


§ 2463. Sharing of technology with Department of Defense

The Administrator shall, in cooperation with the Secretary of Defense, establish procedures and programs to provide for the sharing of technology, technical capability, and expertise between the Administration and the Department of Defense to further national security objectives.


§ 2464. Use of capabilities of national security laboratories by entities outside the Administration

The Secretary, in consultation with the Administrator, shall establish appropriate procedures to provide for the use, in a manner consistent with the national security mission of the Administration under section 2401(b) of this title, of the capabilities of the national security laboratories by elements of the Department of Energy not within the Administration, other Federal agencies, and other appropriate entities, including the use of those capabilities to support efforts to defend against weapons of mass destruction.


§ 2465. Enhancing private-sector employment through cooperative research and development activities

(a) In general

The Administrator for Nuclear Security shall encourage cooperative research and development activities at the national security laboratories (as defined in section 2471 of this title) that lead to the creation of new private-sector employment opportunities.

(b) Reports

Not later than January 31 of each year from 2012 through 2017, the Administrator shall submit to Congress a report detailing the number of new private-sector employment opportunities created as a result of the previous years’ cooperative research and development activities at each national security laboratory.


Codification

Section was enacted as part of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, and not as part of the National Nuclear Security Administration Act which comprises this chapter.

SUBCHAPTER VI—DEFINITIONS

§ 2471. Definitions

For purposes of this chapter:

(1) The term “national security laboratory” means any of the following:

(A) Los Alamos National Laboratory, Los Alamos, New Mexico.

(B) Sandia National Laboratories, Albuquerque, New Mexico, and Livermore, California.

(C) Lawrence Livermore National Laboratory, Livermore, California.

(2) The term “nuclear weapons production facility” means any of the following:

(A) The Kansas City Plant, Kansas City, Missouri.

(B) The Pantex Plant, Amarillo, Texas.

(C) The Y–12 Plant, Oak Ridge, Tennessee.

(D) The tritium operations facilities at the Savannah River Site, Aiken, South Carolina.

(E) The Nevada Test Site, Nevada.

(F) Any facility of the Department of Energy that the Secretary of Energy, in consultation with the Administrator and the Congress, determines to be consistent with the mission of the Administration.

(3) The term “classified information” means any information that has been determined pursuant to Executive Order No. 12333 of December 4, 1981 (50 U.S.C. 401 note), Executive Order No. 12958 of April 17, 1995 (50 U.S.C. 435 note), or successor orders, to require protection against unauthorized disclosure and that is so designated.

(4) The term “Restricted Data” has the meaning given such term in section 2014(y) of title 42.

(5) The term “congressional defense committees” means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.


References in Text

This chapter, referred to in text, was in the original “this title”, meaning title XXXII of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 933, as amended, which is classified principally to this chapter. For complete classification of title XXXII to the Code, see Short Title note set out under section 2401 of this title and Tables.
Executive Order No. 12958, referred to in par. (3), which was formerly set out as a note under section 435 of this title, was revoked by Ex. Ord. No. 13526, § 6.2(g), Dec. 29, 2009, 75 F.R. 731.

SUBCHAPTER VII—TRANSITION PROVISIONS

§ 2481. Functions transferred

(a) Transfers

There are hereby transferred to the Administrator all national security functions and activities performed immediately before October 5, 1999, by the following elements of the Department of Energy:

(1) The Office of Defense Programs.
(2) The Office of Nonproliferation and National Security.
(3) The Office of Fissile Materials Disposition.
(4) The nuclear weapons production facilities.
(5) The national security laboratories.
(6) The Office of Naval Reactors.

(b) Authority to transfer additional functions

The Secretary of Energy may transfer to the Administrator any other facility, mission, or function that the Secretary, in consultation with the Administrator and Congress, determines to be consistent with the mission of the Administration.

(c) Environmental remediation and waste management activities

In the case of any environmental remediation and waste management activity of any element specified in subsection (a) of this section, the Secretary of Energy may determine to transfer responsibility for that activity to another element of the Department.


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory, including the functions of the Secretary of Homeland Security, see sections 183(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2482. Transfer of funds and employees

(a) Transfer of funds

(1) Any balance of appropriations that the Secretary of Energy determines is available and needed to finance or discharge a function, power, or duty or an activity that is transferred to the Administration shall be transferred to the Administration and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—

(A) be credited to any applicable appropriation account of the Administration; or

(B) be credited to a new account that may be established on the books of the Department of the Treasury;

and shall be merged with the funds already credited to that account and accounted for as one fund.

(2) Balances of appropriations credited to an account under paragraph (1)(A) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under paragraph (1)(B) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

(b) Personnel

(1) With respect to any function, power, or duty or activity of the Department of Energy that is transferred to the Administration, those employees of the element of the Department of Energy from which the transfer is made that the Secretary of Energy determines are needed to perform that function, power, or duty, or for that activity, as the case may be, shall be transferred to the Administration.

(2) The authorized strength in civilian employees of any element of the Department of Energy from which employees are transferred under this section is reduced by the number of employees so transferred.


§ 2483. Transition provisions

(a) Compliance with financial principles

(1) The Under Secretary of Energy for Nuclear Security shall ensure that the compliance with sound financial and fiscal management principles specified in section 2452 of this title is achieved not later than October 1, 2000.

(2) In carrying out paragraph (1), the Under Secretary of Energy for Nuclear Security shall conduct a review and develop a plan to bring applicable activities of the Administration into full compliance with those principles not later than such date.

(3) Not later than January 1, 2000, the Under Secretary of Energy for Nuclear Security shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of that review and a description of that plan.

(b) Initial report for future-years nuclear security program

The first report under section 2453 of this title shall be submitted in conjunction with the budget submitted for fiscal year 2001.

(c) Procedures for computer access

The regulations to implement the procedures under section 2425 of this title shall be prescribed not later than 90 days after the effective date of this chapter.

(d) Compliance with FAR

(1) The Under Secretary of Energy for Nuclear Security shall ensure that the compliance with the Federal Acquisition Regulation specified in section 2462 of this title is achieved not later than October 1, 2000.

(2) In carrying out paragraph (1), the Under Secretary of Energy for Nuclear Security shall conduct a review and develop a plan to bring ap-
applicable activities of the Administration into full compliance with the Federal Acquisition Regulation not later than such date.

(3) Not later than January 1, 2000, the Under Secretary of Energy for Nuclear Security shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of that review and a description of that plan.


REFERENCES IN TEXT
For effective date of this chapter, referred to in subsec. (c), see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of this title.

§ 2484. Applicability of preexisting laws and regulations

Unless otherwise provided in this chapter, all provisions of law and regulations in effect immediately before the effective date of this chapter that are applicable to functions of the Department of Energy specified in section 2481 of this title shall continue to apply to the corresponding functions of the Administration.


REFERENCES IN TEXT
This chapter, referred to in text, was in the original ‘‘this title’’, meaning title XXXII of div. C of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 933, as amended, which is classified principally to this chapter. For effective date of this chapter, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of this title. For complete classification of title XXXII to the Code, see Short Title note set out under section 2401 of this title and Tables.

CHAPTER 42—ATOMIC ENERGY DEFENSE PROVISIONS

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PART A—ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT
2581. Defense Environmental Restoration and Waste Management Account.
2582. Requirement to develop future use plans for environmental management programs.
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2586. Defense waste cleanup technology program.
2588. Public participation in planning for environmental restoration and waste management at defense nuclear facilities.
2589. Policy of Department of Energy regarding future defense environmental management matters.
Title 50—War and National Defense

§ 2511. Naval Nuclear Propulsion Program

The provisions of Executive Order Numbered 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program, shall remain in force until changed by law.

References in Text
Executive Order Numbered 12344, referred to in text, is set out as a note below.

Codification
Section was formerly set out as a note under section 7158 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

Transfer of Functions
All national security functions and activities performed immediately before Oct. 5, 1999, by the Office of Naval Reactors transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, and the Deputy Administrator for Naval Reactors of the Administration to be assigned the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors under Executive Order No. 12344, set out below, see sections 2406 and 2481 of this title.

Executive Order No. 12344 To Remain in Force
Except as otherwise specified in section 2406 of this title and notwithstanding any other provision of title XXXII of Pub. L. 106–65 (see Short Title note set out under section 2401 of this title), the provisions of Executive Order No. 12344 (set out below) to remain in full force and effect until changed by law, see section 2406 of this title.

Ex.Ord. No. 12344. Naval Nuclear Propulsion Program
Ex.Ord. No. 12344, Feb. 1, 1982, 47 F.R. 4979, provided: By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States of America, with recognition of the crucial importance to national security of the Naval Nuclear Propulsion Program, and for the purpose of preserving the basic structure, policies, and practices developed for this Program in the past and assuring that the Program will continue to function with excellence, it is hereby ordered as follows:

Section I. The Naval Nuclear Propulsion Program is an integrated program carried out by two organizational units, one in the Department of Energy and the other in the Department of the Navy.
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Sect. 2. Both organizational units shall be headed by the same individual so that the activities of each may continue in practice under common management. This individual shall direct the Naval Nuclear Propulsion Program in both departments. The director shall be qualified by reason of technical background and experience in naval nuclear propulsion. The director may be either a civilian or an officer of the United States Navy, active or retired.

Sect. 3. The Secretary of the Navy (through the Secretary of Defense) and the Secretary of Energy shall obtain the approval of the President to appoint the director of the Naval Nuclear Propulsion Program for their respective Departments. The director shall be appointed to serve a term of eight years, except that the Secretary of Energy and the Secretary of the Navy may, with mutual concurrence, terminate or extend the term of the respective appointments.

Sect. 4. An officer of the United States Navy appointed as director shall be nominated for the grade of Admiral. A civilian serving as director shall be compensated at a rate to be specified at the time of appointment.

Sect. 5. Within the Department of Energy, the Secretary of Energy shall assign to the director the responsibility of performing the functions of the Division of Naval Reactors transferred to the Department of Energy by Section 396(a) of the Department of Energy Organization Act (42 U.S.C. 7158), including assigned civilian power reactor programs, and any nuclear propulsion functions of the Department of Energy, including:

(a) direct supervision over the Bettis and Knolls Atomic Power Laboratories, the Expended Core Facility and naval reactor prototype plants;
(b) research, development, design, acquisition, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition, of naval nuclear propulsion plants, including components thereof, and any special maintenance and service facilities related thereto;
(c) the safety of reactors and associated naval (nuclear) propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities, including prescribing and enforcing standards and regulations for these areas as they affect the environment and the safety and health of workers, operators, and the general public.
(d) training, including training conducted at the naval prototype reactors of the Department of Energy, and training conducted at the Naval Nuclear Propulsion Program, including oversight of program support in areas such as security, nuclear safeguards and transportation, public information, procurement, logistics, and fiscal management.

Sect. 6. Within the Department of Energy, the director shall report to the Secretary of Energy, through the Assistant Secretary assigned nuclear energy functions and shall serve as a Deputy Assistant Secretary. The director shall have direct access to the Secretary of Energy and other senior officials in the Department of Energy concerning naval nuclear propulsion matters, and to all other Government personnel who supervise, operate, or maintain naval nuclear propulsion plants and support facilities for the Department of Energy.

Sect. 7. Within the Department of the Navy, the Secretary of the Navy shall assign to the director responsibility to supervise all technical aspects of the Navy's nuclear propulsion work, including:

(a) research, development, design, procurement, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition, of naval nuclear propulsion plants, including components thereof, and any special maintenance and service facilities related thereto; and
(b) training programs, including Nuclear Power Schools of the Navy, and assistance and concurrence in the selection, training, qualification, and assignment of personnel reporting to the director and of Government personnel who supervise, operate, or maintain naval nuclear propulsion plants.

Sect. 8. Within the Department of the Navy, the Secretary of the Navy shall assign to the director responsibility within the Navy for:

(a) the safety of reactors and associated naval nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities, including prescribing and enforcing standards and regulations for these areas as they affect the environment and the safety and health of workers, operators, and the general public.
(b) administration of the Naval Nuclear Propulsion Program, including oversight of program support in areas such as security, nuclear safeguards and transportation, public information, procurement, logistics, and fiscal management.

Sect. 9. In addition to any other organizational assignments within the Department of the Navy, the director shall report directly to the Chief of Naval Operations. The director shall have direct access to the Secretary of the Navy and other senior officials in the Department of the Navy concerning naval nuclear propulsion matters, and to all other Government personnel who supervise, operate, or maintain naval nuclear propulsion plants and support facilities.

Sect. 10. This Order is effective on February 1, 1982.

RONALD REAGAN.

§ 2512. Reorganization of field activities and management of national security functions

(a) Limitation on delegation of authority

(1) The Secretary of Energy, in carrying out national security programs, may delegate specific management and planning authority over matters relating to site operation of the facilities and laboratories covered by this section only to the Assistant Secretary of Energy for Defense Programs. Such Assistant Secretary may redelegate such authority only to managers of area offices of the Department of Energy located at such facilities and laboratories.

(2) Nothing in this section may be construed as affecting the delegation of authority by the Secretary of Energy of authority relating to reporting, management, and oversight of matters relating to the Department of Energy generally, or safety, environment, and health at such facilities and laboratories.

(b) Requirement to consult with area offices

The Assistant Secretary of Energy for Defense Programs, in exercising any delegated authority to oversee management of matters relating to site operation of a facility or laboratory, shall exercise such authority only after direct consultation with the manager of the area office of the Department of Energy located at the facility or laboratory.

(c) Requirement for direct communication from area offices

The Secretary of Energy, acting through the Assistant Secretary of Energy for Defense Programs, shall require the head of each area office of the Department of Energy located at each facility and laboratory covered by this section to report on matters relating to site operation other than those matters set forth in subsection (a)(2) directly to the Assistant Secretary of En-
ergy for Defense Programs, without obtaining the approval or concurrence of any other official within the Department of Energy.

(d) Defense programs reorganization plan and report

(1) The Secretary of Energy shall develop a plan to reorganize the field activities and management of the national security functions of the Department of Energy.

(2) Not later than January 21, 1997, the Secretary shall submit to Congress a report on the plan developed under paragraph (1). The report shall specifically identify all significant functions performed by the operations offices relating to any of the facilities and laboratories covered by this section and which of those functions could be performed—

(A) by the area offices of the Department of Energy located at the facilities and laboratories covered by this section; or

(B) by the Assistant Secretary of Energy for Defense Programs.

(3) The report also shall address and make recommendations with respect to other internal streamlining and reorganization initiatives that the Department could pursue with respect to military or national security programs.

(e) Defense Programs Management Council

The Secretary of Energy shall establish a council to be known as the “Defense Programs Management Council”. The Council shall advise the Secretary on policy matters, operational concerns, strategic planning, and development of priorities relating to the national security functions of the Department of Energy. The Council shall be composed of the directors of the facilities and laboratories covered by this section and shall report directly to the Assistant Secretary of Energy for Defense Programs.

(f) Covered site operations

For purposes of this section, matters relating to site operation of a facility or laboratory include matters relating to personnel, budget, and procurement in national security programs.

(g) Covered facilities and laboratories

This section applies to the following facilities and laboratories of the Department of Energy:

(1) The Kansas City Plant, Kansas City, Missouri.

(2) The Pantex Plant, Amarillo, Texas.


(4) The Savannah River Site, Aiken, South Carolina.

(5) Los Alamos National Laboratory, Los Alamos, New Mexico.

(6) Sandia National Laboratories, Albuquerque, New Mexico.

(7) Lawrence Livermore National Laboratory, Livermore, California.

(8) The Nevada Test Site, Nevada.


CODIFICATION

Section was formerly set out as a note under section 7252 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


TRANSFER OF FUNCTIONS

All national security functions and activities performed immediately before Oct. 5, 1999, by covered facilities listed in subsec. (g) of this section transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, see section 2481 of this title.

§ 2513. Restriction on licensing requirement for certain defense activities and facilities

None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96–540) or any other Act may be used for any purpose related to licensing of any defense activity or facility of the Department of Energy by the Nuclear Regulatory Commission.


REFERENCES IN TEXT


CODIFICATION

Section was formerly classified to section 7272 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriations act:


AMENDMENTS


TRANSFER OF FUNCTIONS

§ 2521. Stockpile stewardship program

(a) Establishment

The Secretary of Energy, acting through the Administrator for Nuclear Security, shall establish a stewardship program to ensure—

1. The preservation of the core intellectual and technical competencies of the United States in nuclear weapons, including weapons design, system integration, manufacturing, security, use control, reliability assessment, and certification; and

2. That the nuclear weapons stockpile is safe, secure, and reliable without the use of underground nuclear weapons testing.

(b) Program elements

The program shall include the following:

1. An increased level of effort for advanced computational capabilities to enhance the simulation and modeling capabilities of the United States with respect to the performance over time of nuclear weapons.

2. An increased level of effort for above-ground experimental programs, such as hydrotesting, high-energy lasers, inertial confinement fusion, plasma physics, and materials research.

3. Support for new facilities construction projects that contribute to the experimental capabilities of the United States, such as an advanced hydrodynamics facility, the National Ignition Facility, and other facilities for above-ground experiments to assess nuclear weapons effects.

4. Support for the use of, and experiments facilitated by, the advanced experimental facilities of the United States, including—
   - (A) the National Ignition Facility at Lawrence Livermore National Laboratory;
   - (B) the Dual Axis Radiographic Hydrodynamic Test Facility at Los Alamos National Laboratory;
   - (C) the Z Machine at Sandia National Laboratories; and
   - (D) the experimental facilities at the Nevada test site.

5. Support for the sustainment and modernization of facilities with production and manufacturing capabilities that are necessary to ensure the safety, security, and reliability of the nuclear weapons stockpile, including—
   - (A) the Pantex Plant;
   - (B) the Y–12 National Security Complex;
   - (C) the Kansas City Plant;
   - (D) the Savannah River Site; and
   - (E) production and manufacturing capabilities resident in the national security laboratories (as defined in section 2471 of this title).

§ 2522. Report on stockpile stewardship criteria

(a) Requirement for criteria

The Secretary of Energy shall develop clear and specific criteria for judging whether the science-based tools being used by the Department of Energy for determining the safety and reliability of the nuclear weapons stockpile are performing in a manner that will provide an adequate degree of certainty that the stockpile is safe and reliable.

(b) Coordination with Secretary of Defense

The Secretary of Energy, in developing the criteria required by subsection (a), shall coordinate with the Secretary of Defense.

(c) Report

1. In each odd-numbered year, beginning in 2011, the Secretary of Energy shall include in the stockpile stewardship plan required by section 2523 of this title a report containing the following elements:
   - (A) A description of the information needed to determine that the nuclear weapons stockpile is safe and reliable and the relationship of the science-based tools to the collection of that information.
   - (B) A description of any updates to the criteria established under subsection (a) during—
     - (i) the previous two years; or
     - (ii) with respect to the report in 2011, the period beginning on the date of the submission of the report under section 3133 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1751; 50 U.S.C. 2523 note) and ending on the...
date of the submission of the 2011 stockpile stewardship plan required by section 2523 of this title.

(C) For each science-based tool to collect information needed to determine that the nuclear weapons stockpile is safe, secure, and reliable that is developed or modified by the Department of Energy during the relevant period described in subparagraph (B)—

(i) a description of the relationship of the science-based tool to the collection of such information; and

(ii) a description of criteria for assessing the effectiveness of the science-based tool in collecting such information.

(D) An assessment described in paragraph (2).

(2) An assessment described in this paragraph is an assessment of the stockpile stewardship program conducted by the Administrator for Nuclear Security in consultation with the directors of the national security laboratories. Such assessment shall set forth the following:

(A) An identification and description of—

(i) any key technical challenges to the stockpile stewardship program; and

(ii) the strategies to address such challenges without the use of nuclear testing.

(B) A strategy for using the science-based tools (including advanced simulation and computing capabilities) of each national security laboratory to ensure that the nuclear weapons stockpile is safe, secure, and reliable without the use of nuclear testing.

(C) An assessment of the science-based tools (including advanced simulation and computing capabilities) of each national security laboratory that exist at the time of the assessment compared with the science-based tools expected to exist during the period covered by the future-years nuclear security program.

(D) An assessment of the core scientific and technical competencies required to achieve the objectives of the stockpile stewardship program and other weapons activities and weapons-related activities of the Department of Energy, including—

(i) the number of scientists, engineers, and technicians, by discipline, required to maintain such competencies; and

(ii) a description of any shortage of such individuals that exists at the time of the assessment compared with any shortage expected to exist during the period covered by the future-years nuclear security program.

(d) Definitions

In this section:

(1) The term “future-years nuclear security program” means the program required by section 2453 of this title.

(2) The term “national security laboratory” has the meaning given such term in section 2471 of this title.

(3) The term “weapons activities” means each activity within the budget category of weapons activities in the budget of the National Nuclear Security Administration.

(4) The term “weapons-related activities” means each activity under the Department of Energy that involves nuclear weapons, nuclear weapons technology, or fissile or radioactive materials, including activities related to—

(A) nuclear nonproliferation;

(B) nuclear forensics;

(C) nuclear intelligence;

(D) nuclear safety; and

(E) nuclear incident response.


Codification

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

Amendments

2009—Subsec. (c). Pub. L. 111–84, § 3112(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) required submission of report not later than Mar. 1, 2000, to Congressional committees on Department of Energy efforts to develop subsec. (a) criteria.


§ 2523. Plan for stewardship, management, and certification of warheads in the nuclear weapons stockpile

(a) Plan requirement

The Secretary of Energy shall develop and annually update a plan for maintaining the nuclear weapons stockpile. The plan shall cover, at a minimum, stockpile stewardship, stockpile management, and program direction and shall be consistent with the programmatic and technical requirements of the most recent annual Nuclear Weapons Stockpile Memorandum.

(b) Plan elements

The plan and each update of the plan shall set forth the following:

(1) The number of warheads (including active and inactive warheads) for each warhead type in the nuclear weapons stockpile.

(2) The current age of each warhead type, and any plans for stockpile lifetime extensions and modifications or replacement of each warhead type.

(3) The process by which the Secretary of Energy is assessing the lifetime, and requirements for lifetime extension or replacement, of the nuclear and nonnuclear components of the warheads (including active and inactive warheads) in the nuclear weapons stockpile.

(4) The process used in recertifying the safety, security, and reliability of each warhead type in the nuclear weapons stockpile.

(5) Any concerns which would affect the ability of the Secretary of Energy to recertify the safety, security, or reliability of warheads in the nuclear weapons stockpile (including active and inactive warheads).

(c) Annual submission of plan to Congress

The Secretary of Energy shall submit to Congress the plan developed under subsection (a)
not later than March 15, 1998, and shall submit an updated version of the plan not later than May 1 of each year thereafter. The plan shall be submitted in both classified and unclassified form.


CODIFICATION
Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

PRIOR PROVISIONS
Provisions similar to those in this section were contained in the following prior authorization act:

AMENDMENTS
2004—Subsec. (c). Pub. L. 108–375 substituted “May 1 of each year thereafter” for “March 15 of each year thereafter”.

INCLUSION IN 2005 STOCKPILE STEWARDSHIP PLAN OF CERTAIN INFORMATION RELATING TO STOCKPILE STEWARDSHIP CRITERIA
“(a) INCLUSION IN 2005 STOCKPILE STEWARDSHIP PLAN.—In submitting to Congress the updated version of the 2005 stockpile stewardship plan, the Secretary of Energy shall include the matters specified in subsection (b).
“(b) MATTERS INCLUDED.—The matters referred to in subsection (a) are the following:
“(1) An update of any information or criteria described in the report on stockpile stewardship criteria submitted under section 4202 of the Atomic Energy Defense Act (50 U.S.C. 2522) (as transferred and redesignated by section 316(e)(3) [probably should be “314(e)(3)”] of this Act).
“(2) A description of any additional information identified, or criteria established, on matters covered by such section 4202 during the period beginning on the date of the submittal of the report under such section 4202 and ending on the date of the submittal of the updated version of the plan under subsection (a) of this section.
“(3) For each science-based tool developed by the Department of Energy during such period—
“(A) a description of the relationship of such science-based tool to the collection of information needed to determine that the nuclear weapons stockpile is safe and reliable; and
“(B) a description of the criteria for judging whether or not such science-based tool provides for the collection of such information.
“(c) PLAN ELEMENTS.—In this section, the term ‘2005 stockpile stewardship plan’ means the updated version of the plan for maintaining the nuclear weapons stockpile developed under section 4203 of the Atomic Energy Defense Act [50 U.S.C. 2523] (as transferred and redesignated by section 316(e)(4) [probably should be “314(e)(4)”] of this Act) that is required to be submitted to Congress not later than March 15, 2005.”

§ 2523a. Biennial plan on modernization and refurbishment of the nuclear security complex

(a) In general
In each even-numbered year, beginning in 2012, the Administrator for Nuclear Security shall include in the plan for maintaining the nuclear weapons stockpile required by section 2523 of this title a plan for the modernization and refurbishment of the nuclear security complex.

(b) Plan design
(1) In general
The plan required by subsection (a) shall be designed to ensure that the nuclear security complex is capable of supporting the following:
(A) Except as provided in paragraph (2), the national security strategy of the United States as set forth in the most recent national security strategy report of the President under section 404a of this title.
(B) The nuclear posture of the United States as set forth in the most recent Nuclear Posture Review.

(2) Exception
If, at the time the plan is submitted under subsection (a), a national security strategy report has not been submitted to Congress under section 404a of this title, the plan required by subsection (a) shall be designed to ensure that the nuclear security complex is capable of supporting the national defense strategy recommended in the report of the most recent Quadrennial Defense Review.

(c) Plan elements
The plan required by subsection (a) shall include the following:
(1) A description of the modernization and refurbishment measures the Administrator determines necessary to meet the requirements of—
(A) the national security strategy of the United States as set forth in the most recent national security strategy report of the President under section 404a of this title or the national defense strategy recommended in the report of the most recent Quadrennial Defense Review, as applicable under subsection (b); and
(B) the Nuclear Posture Review.

(2) A schedule for implementing the measures described in paragraph (1) during the ten years following the date on which the plan for maintaining the nuclear weapons stockpile required by section 2523 of this title and into which the plan required by subsection (a) is incorporated is submitted to Congress under section 2523(c) of this title.

(3) Consistent with the budget justification materials submitted to Congress in support of the Department of Energy budget for the fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), an estimate of the annual funds the Administrator determines necessary to carry out the plan required by subsection (a), including a discussion of the criteria, evidence, and strategies on which the estimate is based.
(d) Form
The plan required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(e) Nuclear Weapons Council assessment

(1) Assessment required

For each plan required by subsection (a), the Nuclear Weapons Council established by section 179 of title 10 shall conduct an assessment that includes the following:

(A) An analysis of the plan, including—

(i) whether the plan supports the requirements of the national security strategy of the United States or the most recent Quadrennial Defense Review, whichever is applicable under subsection (b), and the Nuclear Posture Review; and

(ii) whether the modernization and refurbishment measures described under paragraph (1) of subsection (c) and the schedule described under paragraph (2) of such subsection are adequate to support such requirements.

(B) An analysis of whether the plan adequately addresses the requirements for infrastructure recapitalization of the facilities of the nuclear security complex.

(C) If the Nuclear Weapons Council determines that the plan does not adequately support modernization and refurbishment requirements under subparagraph (A) or the nuclear security complex facilities infrastructure recapitalization requirements under subparagraph (B), a risk assessment with respect to—

(i) supporting the annual certification of the nuclear weapons stockpile under section 2523 of this title; and

(ii) maintaining the long-term safety, security, and reliability of the nuclear weapons stockpile.

(2) Report required

Not later than 180 days after the date on which the Administrator submits the plan required by subsection (a), the Nuclear Weapons Council shall submit to the congressional defense committees a report detailing the assessment required under paragraph (1).

(f) Definitions

In this section:

(1) The term “nuclear security complex” means the physical facilities, technology, and human capital of the following:

(A) The national security laboratories (as defined in section 2471 of this title).

(B) The Kansas City Plant, Kansas City, Missouri.

(C) The Nevada Test Site, Nevada.

(D) The Savannah River Site, Aiken, South Carolina.


(F) The Pantex Plant, Amarillo, Texas.

(2) The term “Quadrennial Defense Review” means the review of the defense programs and policies of the United States that is carried out every four years under section 118 of title 10.

§ 2524. Stockpile management program

(a) Program required

The Secretary of Energy, acting through the Administrator for Nuclear Security and in consultation with the Secretary of Defense, shall carry out a program, in support of the stockpile stewardship program, to provide for the effective management of the weapons in the nuclear weapons stockpile, including the extension of the effective life of such weapons. The program shall have the following objectives:

(1) To increase the reliability, safety, and security of the nuclear weapons stockpile of the United States.

(2) To further reduce the likelihood of the resumption of underground nuclear weapons testing.

(3) To achieve reductions in the future size of the nuclear weapons stockpile.

(4) To reduce the risk of an accidental detonation of an element of the stockpile.

(5) To reduce the risk of an element of the stockpile being used by a person or entity hostile to the United States, its vital interests, or its allies.

(b) Program limitations

In carrying out the stockpile management program under subsection (a), the Secretary of Energy shall ensure that—

(1) any changes made to the stockpile shall be made to achieve the objectives identified in subsection (a); and

(2) any such changes made to the stockpile shall—

(A) remain consistent with basic design parameters by including, to the maximum extent feasible, components that are well understood or are certifiable without the need to resume underground nuclear weapons testing; and

(B) use the design, certification, and production expertise resident in the nuclear complex to fulfill current mission requirements of the existing stockpile.

(c) Program plan

In carrying out the stockpile management program under subsection (a), the Secretary of Energy shall develop a long-term plan to extend the effective life of the weapons in the nuclear weapons stockpile without the use of nuclear weapons testing. The plan shall include the following:

(1) Mechanisms to provide for the manufacture, maintenance, and modernization of each weapon design in the nuclear stockpile, as needed.

(2) Mechanisms to expedite the collection of information necessary for carrying out the program, including information relating to the aging of materials and components, new manufacturing techniques, and the replacement or substitution of materials.

(3) Mechanisms to ensure the appropriate assignment of roles and missions for each nuclear weapons laboratory and production plant.
of the Department of Energy, including mechanisms for allocation of workload, mechanisms to ensure the carrying out of appropriate modernization activities, and mechanisms to ensure the retention of skilled personnel.

(4) Mechanisms to ensure that each national laboratory of the National Nuclear Security Administration has full and complete access to all weapons data to enable a rigorous peer review process to support the annual assessment of the condition of the nuclear weapons stockpile required under section 2525 of this title.

(5) Mechanisms for allocating funds for activities under the program, including allocations of funds by weapon type and facility.

(6) An identification of the funds needed, in the fiscal year in which the plan is developed and in each of the following five fiscal years, to carry out the program.

(d) Annual updates

The Secretary of Energy shall annually update the plan required under subsection (c) and shall submit the updated plan to Congress as part of the stockpile stewardship plan required by section 2523(c) of this title.

(e) Program budget

In accordance with the requirements under section 2529 of this title, for each budget submitted by the President to Congress under section 1105 of title 31, the amounts requested for the program under this section shall be clearly identified in the budget justification materials submitted to Congress in support of that budget.


CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


Subsec. (c)(1). Pub. L. 108–136, §3141(e)(5)(D), substituted “October 5, 1999” for “the date of the enactment of this Act”.

Subsecs. (d) to (f). Pub. L. 108–136, § 3111, struck out subsecs. (d) to (f). Prior to amendment, subsec. (d) required submittal to committees of the House and Senate of a plan for the extension of the effective life of the weapons in the nuclear weapons stockpile and annual updates of the plan, subsec. (e) required a GAO assessment of the plan and updates, and subsec. (f) stated the sense of Congress regarding funding of the program under subsec. (a).

EFFECTIVE DATE OF 2003 AMENDMENT


§ 2525. Annual assessments and reports to the President and Congress regarding the condition of the United States nuclear weapons stockpile

(a) Annual assessments required

For each nuclear weapon type in the stockpile of the United States, each official specified in subsection (b) on an annual basis shall, to the extent such official is directly responsible for the safety, reliability, performance, or military effectiveness of that nuclear weapon type, complete an assessment of the safety, reliability, performance, or military effectiveness (as the case may be) of that nuclear weapon type.

(b) Covered officials

The officials referred to in subsection (a) are the following:

(1) The head of each national security laboratory.

(2) The commander of the United States Strategic Command.

(c) Dual validation teams in support of assessments

In support of the assessments required by subsection (a), the Administrator for Nuclear Security may establish teams, known as “dual validation teams”, to provide each national security laboratory responsible for weapons design with independent evaluations of the condition of each warhead for which such laboratory has lead responsibility. A dual validation team established by the Administrator shall—

(1) be comprised of weapons experts from the laboratory that does not have lead responsibility for fielding the warhead being evaluated;

(2) have access to all surveillance and underground test data for all stockpile systems for use in the independent evaluations;

(3) use all relevant available data to conduct independent calculations; and

(4) pursue independent experiments to support the independent evaluations.

(d) Use of teams of experts for assessments

The head of each national security laboratory shall establish and use one or more teams of experts, known as “red teams”, to assist in the assessments required by subsection (a). Each such team shall include experts from both of the other national security laboratories. Each such team for a national security laboratory shall—

(1) review both the matters covered by the assessments under subsection (a) performed by the head of that laboratory and any independent evaluations conducted by a dual validation team under subsection (c);

(2) subject such matters to challenge; and

(3) submit the results of such review and challenge, together with the findings and rec-
ommendations of such team with respect to such review and challenge, to the head of that laboratory.

(e) Report on assessments

Not later than December 1 of each year, each official specified in subsection (b) shall submit to the Secretary concerned, and to the Nuclear Weapons Council, a report on the assessments that such official was required by subsection (a) to complete. The report shall include the following:

(1) The results of each such assessment.
(2)(A) Such official’s determination as to whether or not one or more underground nuclear tests are necessary to resolve any issues identified in the assessments and, if so—
(i) an identification of the specific underground nuclear tests that are necessary to resolve such issues; and
(ii) a discussion of why options other than an underground nuclear test are not available or would not resolve such issues.

(B) An identification of the specific underground nuclear tests which, while not necessary, might have value in resolving any such issues and a discussion of the anticipated value of conducting such tests.

(C) Such official’s determination as to the readiness of the United States to conduct the underground nuclear tests identified under subparagraphs (A) and (B), if directed by the President to do so.

(3) In the case of a report submitted by the head of a national security laboratory—

(A) a concise statement regarding the adequacy of science-based tools and methods being used to determine the matters covered by the assessments;

(B) a concise statement regarding the adequacy of the tools and methods employed by the manufacturing infrastructure required by section 2532 of this title to identify and fix any inadequacy with respect to the matters covered by the assessments;

(C) a concise summary of the findings and recommendations of any teams under subsection (d) that relate to the assessments, together with a discussion of those findings and recommendations; and

(D) a concise summary of the results of any independent evaluation conducted by a dual validation team under subsection (c).

(4) In the case of a report submitted by the Commander of the United States Strategic Command, a discussion of the relative merits of other nuclear weapon types (if any), or compensatory measures (if any) that could be taken, that could enable accomplishment of the missions of the nuclear weapon types to which the assessments relate, should such assessments identify any deficiency with respect to such nuclear weapon types.

(5) An identification and discussion of any matter having an adverse effect on the capability of the official submitting the report to accurately determine the matters covered by the assessments.

(f) Submittals to the President and Congress

(1) Not later than March 1 of each year, the Secretary of Defense and the Secretary of Energy shall submit to the President—

(A) each report, without change, submitted to either Secretary under subsection (e) during the preceding year;

(B) any comments that the Secretaries individually or jointly consider appropriate with respect to each such report;

(C) the conclusions that the Secretaries individually or jointly reach as to the safety, reliability, performance, and military effectiveness of the nuclear weapons stockpile of the United States; and

(D) any other information that the Secretaries individually or jointly consider appropriate.

(2) Not later than March 15 of each year, the President shall forward to Congress the matters received by the President under paragraph (1) for that year, together with any comments the President considers appropriate.

(g) Classified form

Each submittal under subsection (f) shall be in classified form only, with the classification level required for each portion of such submittal marked appropriately.

(h) Definitions

In this section:

(1) The term “national security laboratory” has the meaning given such term in section 2471 of this title.

(2) The term “Secretary concerned” means—

(A) the Secretary of Energy, with respect to matters concerning the Department of Energy; and

(B) the Secretary of Defense, with respect to matters concerning the Department of Defense.

(i) First submissions

(1) The first submissions made under subsection (e) shall be the submissions required to be made in 2003.

(2) The first submissions made under subsection (f) shall be the submissions required to be made in 2004.

(j) Section was formerly classified to section 7274s of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

(k) Amendments


Subsec. (d). Pub. L. 111-84, § 3114(a)(2)(A), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 111-84, § 3114(b), inserted “both” after “review” and “any independent evaluations conducted by a dual validation team under subsection (c)” after “that laboratory”.


Subsec. (e)(3)(C). Pub. L. 111-84, § 3114(d)(1), substituted “subsection (d)” for “subsection (c)”.

§ 2526. Form of certifications regarding the safety or reliability of the nuclear weapons stockpile

Any certification submitted to the President by the Secretary of Defense or the Secretary of Energy regarding confidence in the safety or reliability of a nuclear weapon type in the United States nuclear weapons stockpile shall be submitted in classified form only.


CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 110–136.

§ 2527. Nuclear test ban readiness program

(a) Findings

The Congress makes the following findings:

(1) On September 17, 1987, the United States and the Soviet Union announced that they would resume full-scale, stage-by-stage negotiations on issues relating to nuclear testing, including further intermediate limitations on nuclear testing leading to the ultimate objective of a comprehensive nuclear test ban.

(2) It was agreed that the first step in these negotiations would be to reach agreement on verification measures that will make possible the ratification of the Threshold Test Ban Treaty of 1974 and the Peaceful Nuclear Explosions Treaty of 1976.

(3) To achieve the agreement on verification measures, the United States and the Soviet Union have agreed to design and conduct a Joint Verification Experiment at the test sites of each country during the summer of 1988.

(4) At the Moscow summit in May 1988, President Reagan and General Secretary Gorbachev reaffirmed their commitment to negotiations on “effective verification measures which will make it possible to ratify the Threshold Test Ban Treaty of 1974 and Peaceful Nuclear Explosions Treaty of 1976, and proceed to negotiating further intermediate limitations on nuclear testing leading to the ultimate objective of the complete cessation of nuclear testing as part of an effective disarmament process”.

(b) Establishment of program

The Secretary of Energy shall establish and support a program to assure that the United States is in a position to maintain the reliability, safety, and continued deterrent effect of its stockpile of existing nuclear weapons designs in the event that a low-threshold or comprehensive test ban on nuclear explosives testing is negotiated and ratified within the framework agreed to by the United States and the Soviet Union.

(c) Purposes of program

The purposes of the program under subsection (b) shall be the following:

(1) To assure that the United States maintains a vigorous program of stockpile inspection and non-explosive testing so that, if a low-threshold or comprehensive test ban is entered into, the United States remains able to detect and identify potential problems in stockpile reliability and safety in existing designs of nuclear weapons.

(2) To assure that the specific materials, components, processes, and personnel needed for the remanufacture of existing nuclear weapons or the substitution of alternative nuclear warheads are available to support such remanufacture or substitution if such action becomes necessary in order to satisfy reliability and safety requirements under a low-threshold or comprehensive test ban agreement.

(3) To assure that a vigorous program of research in areas related to nuclear weapons science and engineering is supported so that, if a low-threshold or comprehensive test ban agreement is entered into, the United States is able to maintain a base of technical knowledge about nuclear weapons design and nuclear weapons effects.

(d) Conduct of program

The Secretary of Energy shall carry out the program provided for in subsection (b). The program shall be carried out with the participation of representatives of the Department of Defense, the nuclear weapons production facilities, and the national nuclear weapons laboratories.


CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 110–136.

AMENDMENTS


1997—Subsec. (e), Pub. L. 105–85 struck out heading and text of subsec. (e). Text read as follows: “The Secretary of Energy shall submit to Congress each year an
§ 2528. Reports on nuclear test readiness

(a) In general

Not later than March 1, 2009, and every odd-numbered year thereafter, the Secretary of Energy shall submit to the congressional defense committees a report on the nuclear test readiness of the United States.

(b) Elements

Each report under subsection (a) shall include, current as of the date of such report, the following:

(1) An estimate of the period of time that would be necessary for the Secretary of Energy to conduct an underground test of a nuclear weapon once directed by the President to conduct such a test.

(2) A description of the level of test readiness that the Secretary of Energy, in consultation with the Secretary of Defense, determines to be appropriate.

(3) A list and description of the workforce skills and capabilities that are essential to carrying out an underground nuclear test at the Nevada Test Site.

(4) A list and description of the infrastructure and physical plant that are essential to carrying out an underground nuclear test at the Nevada Test Site.

(5) An assessment of the readiness status of the skills and capabilities described in paragraph (3) and the infrastructure and physical plant described in paragraph (4).

(c) Form

Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(D) Definitions

In this section:

(A) The term "modified nuclear weapon" means a nuclear weapon that contains a pit or cannéd subassembly, either of which—

(1) is in the nuclear weapons stockpile as of December 2, 2002; and

(B) is being modified in order to meet a military requirement that is other than the military requirements applicable to such nu-
clear weapon when first placed in the nuclear weapons stockpile.

(2) The term "new nuclear weapon" means a nuclear weapon that contains a pit or canned subassembly, either of which is neither—

(A) in the nuclear weapons stockpile on December 2, 2002; nor

(B) in production as of that date.


CODIFICATION

Section was formerly classified to section 7271d of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–84, § 3115(1), substituted "necessary to address proliferation concerns." for "necessary—"

"(1) for the nuclear weapons life extension program;

"(2) to modify an existing nuclear weapon solely to address safety or reliability concerns; or

"(3) to address proliferation concerns."

Subsec. (d). Pub. L. 111–84, § 3115(2), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1), which read as follows: "The term 'life extension program' means the program to repair or reassemble, or to modify the pit or canned subassembly, of nuclear weapons that are in the nuclear weapons stockpile on December 2, 2002, in order to assure that such nuclear weapons retain the ability to meet the military requirements applicable to such nuclear weapons when first placed in the nuclear weapons stockpile."

LIMITATION ON DEVELOPMENT OF LOW-YIELD NUCLEAR WEAPONS


§ 2530. Limitation on underground nuclear weapons tests

No underground test of nuclear weapons may be conducted by the United States after September 30, 1996, unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted.


CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


§ 2532. Manufacturing infrastructure for refabrication and certification of nuclear weapons stockpile

(a) Manufacturing program

(1) The Secretary of Energy shall carry out a program for purposes of establishing within the Government a manufacturing infrastructure that has the capabilities of meeting the following objectives as specified in the Nuclear Posture Review:

(A) To provide a stockpile surveillance engineering base.

(B) To refabricate and certify weapon components and types in the enduring nuclear weapons stockpile, as necessary.

(C) To fabricate and certify new nuclear warheads, as necessary.
(D) To support nuclear weapons.
(E) To supply sufficient tritium in support of nuclear weapons to ensure an upload hedge in the event circumstances require.

(2) The purpose of the program carried out under paragraph (1) shall also be to develop manufacturing capabilities and capacities necessary to meet the requirements specified in the annual Nuclear Weapons Stockpile Review.

(b) Required capabilities

The manufacturing infrastructure established under the program under subsection (a) shall include the following capabilities (modernized to attain the objectives referred to in that subsection):

(1) The weapons assembly capabilities of the Pantex Plant.
(2) The weapon secondary fabrication capabilities of the Y–12 Plant, Oak Ridge, Tennessee.
(3) The capabilities of the Savannah River Site relating to tritium recycling and fissile materials components processing and fabrication.
(4) The non-nuclear component capabilities of the Kansas City Plant.

(c) Nuclear Posture Review

For purposes of subsection (a), the term “Nuclear Posture Review” means the Department of Defense Nuclear Posture Review as contained in the Report of the Secretary of Defense to the President and the Congress dated February 19, 1995, or subsequent such reports.

(d) Funding

Of the funds authorized to be appropriated under section 3101(b) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), $143,000,000 shall be available for carrying out the program required under this section, of which—

(1) $35,000,000 shall be available for activities at the Pantex Plant;
(2) $30,000,000 shall be available for activities at the Y–12 Plant, Oak Ridge, Tennessee;
(3) $35,000,000 shall be available for activities at the Savannah River Site; and
(4) $43,000,000 shall be available for activities at the Kansas City Plant.

(e) Plan and report

The Secretary shall develop a plan for the implementation of this section. Not later than March 1, 1996, the Secretary shall submit to Congress a report on the obligations the Secretary has incurred, and plans to incur, during fiscal year 1996 for the program referred to in subsection (a).

References in Text


Codification

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

Amendments


1996—Subsec. (a), Pub. L. 104–201, § 3132(a), designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, and added par. (2).

Subsec. (b)(3), Pub. L. 104–201, § 3132(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The tritium production, recycling, and other weapons-related capabilities of the Savannah River Site.”

§ 2533. Reports on critical difficulties at nuclear weapons laboratories and nuclear weapons production plants

(a) Reports by heads of laboratories and plants

In the event of a difficulty at a nuclear weapons laboratory or a nuclear weapons production plant that has a significant bearing on confidence in the safety or reliability of a nuclear weapon or nuclear weapon type, the head of the laboratory or plant, as the case may be, shall submit to the Assistant Secretary of Energy for Defense Programs a report on the difficulty. The head of the laboratory or plant shall submit the report as soon as practicable after discovery of the difficulty.

(b) Transmittal by Assistant Secretary

Not later than 10 days after receipt of a report under subsection (a), the Assistant Secretary shall transmit the report (together with the comments of the Assistant Secretary) to the congressional defense committees, to the Secretary of Energy and the Secretary of Defense, and to the President.

(c) Omitted

(d) Inclusion of reports in annual stockpile certification

Any report submitted pursuant to subsection (a) shall also be included with the decision documents that accompany the annual certification of the safety and reliability of the United States nuclear weapons stockpile which is provided to the President for the year in which such report is submitted.

(e) Definitions

In this section:

(1) The term “nuclear weapons laboratory” means the following:
(A) Lawrence Livermore National Laboratory, California.
(B) Los Alamos National Laboratory, New Mexico.
(C) Sandia National Laboratories.

(2) The term “nuclear weapons production plant” means the following:
(A) The Pantex Plant, Texas.
§ 2534. Plan for transformation of National Nuclear Security Administration nuclear weapons complex

(a) Plan required

The Secretary of Energy shall develop a plan to transform the nuclear weapons complex so as to achieve a responsive infrastructure by 2030. The plan shall be designed to accomplish the following objectives:

1. To maintain the safety, reliability, and security of the United States nuclear weapons stockpile.

2. To continue Stockpile Life Extension Programs that the Nuclear Weapons Council considers necessary.

3. To prepare to produce replacement warheads under the Reliable Replacement Warhead program at a rate necessary to meet future stockpile requirements, commencing with a first production unit in 2012 and achieving steady-state production using modern manufacturing processes by 2025.

4. To eliminate, within the nuclear weapons complex, duplication of production capability except to the extent required to ensure the safety, reliability, and security of the stockpile.

5. To maintain the current philosophy within the national security laboratories of peer review of nuclear weapons designs while eliminating duplication of laboratory capabilities except to the extent required to ensure the safety, reliability, and security of the stockpile.

6. To maintain the national security mission, and in particular the science-based Stockpile Stewardship Program, as the primary mission of the national security laboratories while optimizing the work-for-others activities of those laboratories to support other national security objectives in fields such as defense, intelligence, and homeland security.

7. To consolidate to the maximum extent practicable, and to provide for the ultimate disposition of, special nuclear material throughout the nuclear weapons complex, with the ultimate goal of eliminating Category I and II special nuclear material from the national security laboratories no later than March 1, 2012, so as to further reduce the footprint of the nuclear weapons complex, reduce security costs, and reduce transportation costs for special nuclear material. This objective does not preclude the retention of Category I and II special nuclear materials at a national security laboratory if the transformation plan required by this subsection envisions a pit production capability (including interim pit production) at a national security laboratory.

8. To employ a risk-based approach to ensure compliance with Design Basis Threat security requirements.

9. To expeditiously dismantle inactive nuclear weapons to reduce the size of the stockpile to the lowest level required by the Nuclear Weapons Council.

10. To operate the nuclear weapons complex in a more cost-effective manner.

(b) Report

Not later than February 1, 2007, the Secretary of Energy shall submit to the congressional defense committees a report on the transformation plan required by subsection (a). The report shall address each of the objectives required by subsection (c) and also include each of the following:

1. A comprehensive list of the capabilities, facilities, and project staffing that the National Nuclear Security Administration will need to have in place at the nuclear weapons complex as of 2030 to meet the requirements of the transformation plan.

2. A comprehensive list of the capabilities and facilities that the National Nuclear Security Administration currently has in place at the nuclear weapons complex that will not be needed as of 2030 to meet the requirements of the transformation plan.

3. A plan for implementing the transformation plan, including a schedule with incremental milestones.

Footnote: ¹So in original. Probably should be subsection "(a)".
(c) Consultation

The Secretary of Energy shall develop the transformation plan required by subsection (a) in consultation with the Secretary of Defense and the Nuclear Weapons Council.

(d) Definition

In this section, the term “national security laboratory” has the meaning given such term in section 2471 of this title.

(e) Report

Not later than 45 days after February 10, 1996, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the tritium production program established pursuant to subsection (a). The report shall include a specification of—

(1) the planned expenditures of the Department during fiscal year 1996 for any of the alternative means for tritium production assessed under subsection (a)(2);

(2) the amount of funds required to be expended by the Department, and the program milestones (including feasibility demonstrations) required to be met, during fiscal years 1997 through 2001 to ensure tritium production beginning not later than 2005 that is adequate to meet the tritium requirements of the United States for nuclear weapons; and

(3) the amount of such funds to be expended and such program milestones to be met during such fiscal years to ensure such tritium production beginning not later than 2011.

(f) Tritium targets

Of the funds made available pursuant to subsection (b), not more than $5,000,000 shall be available for the Idaho National Engineering Laboratory for the test and development of nuclear reactor tritium targets for the types of reactors assessed under subsection (a)(2)(A).

References in Text


Codification

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to being redesignated as this section.

Amendments


CHANGE OF NAME

Committee on National Security of House of Representatives changed to Committee on Armed Services of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.
§ 2542. Tritium recycling
(a) In general
Except as provided in subsection (b), the following activities shall be carried out at the Savannah River Site, South Carolina:
(1) All tritium recycling for weapons, including tritium refitting.
(2) All activities regarding tritium formerly carried out at the Mound Plant, Ohio.
(b) Exception
The following activities may be carried out at the Los Alamos National Laboratory, New Mexico:
(1) Research on tritium.
(2) Work on tritium in support of the defense inertial confinement fusion program.
(3) Provision of technical assistance to the Savannah River Site regarding the weapons surveillance program.

§ 2543. Tritium production
(a) New tritium production facility
The Secretary of Energy shall commence planning and design activities and infrastructure development for a new tritium production facility.
(b) In-reactor tests
The Secretary may perform in-reactor tests of tritium target rods as part of the activities carried out under the commercial light water reactor program.

§ 2544. Modernization and consolidation of tritium recycling facilities
(a) In general
The Secretary of Energy shall carry out activities at the Savannah River Site, South Carolina, to—
(1) modernize and consolidate the facilities for recycling tritium from weapons; and
(2) provide a modern tritium extraction facility so as to ensure that such facilities have a capacity to recycle tritium from weapons that is adequate to meet the requirements for tritium for weapons specified in the Nuclear Weapons Stockpile Memorandum.
(b) Funding
Of the funds authorized to be appropriated to the Department of Energy pursuant to section 3101 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201), not more than $9,000,000 shall be available for activities under subsection (a).

§ 2545. Procedures for meeting tritium production requirements
(a) Production of new tritium
The Secretary of Energy shall produce new tritium to meet the requirements of the Nuclear Weapons Stockpile Memorandum at the Tennessee Valley Authority Watts Bar or Sequoyah nuclear power plants consistent with the Secretary’s December 22, 1998, decision document designating the Secretary’s preferred tritium production technology.
(b) Support
To support the method of tritium production set forth in subsection (a), the Secretary shall design and construct a new tritium extraction facility in the H-Area of the Savannah River Site, Aiken, South Carolina.
(c) Design and engineering development
The Secretary shall—
(1) complete preliminary design and engineering development of the Accelerator Production of Tritium technology design as a backup source of tritium to the source set forth in subsection (a) and consistent with the Secretary’s December 22, 1998, decision document; and
(2) make available those funds necessary to complete engineering development and demonstration, preliminary design, and detailed design of key elements of the system consistent with the Secretary’s decision document of December 22, 1998.

§ 2562. Nonproliferation initiatives and activities

(a) Initiative for Proliferation Prevention program

(1) Not more than 35 percent of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program (IPP) may be obligated or expended by the Department of Energy national laboratories to carry out or provide oversight of any activities under that program.

(2)(A) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be used to increase or otherwise supplement the pay or benefits of a scientist or engineer if the scientist or engineer—

(i) is currently engaged in activities directly related to the design, development, production, or testing of chemical or biological weapons or a missile system to deliver such weapons; or

(ii) was not formerly engaged in activities directly related to the design, development, production, or testing of weapons of mass destruction or a missile system to deliver such weapons.

(B) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be made available to an institute if the institute—

(i) is currently involved in activities described in subparagraph (A)(i); or

(ii) was not formerly involved in activities described in subparagraph (A)(ii).

(3)(A) No funds available for the Initiatives for Proliferation Prevention program may be provided to an institute or scientist under the program if the Secretary of Energy determines that the institute or scientist has made a scientific or business contact in any way associated with or related to weapons of mass destruction with a representative of a country of proliferation concern.

(B) For purposes of this paragraph, the term "country of proliferation concern" means any country so designated by the Director of Central Intelligence for purposes of the Initiatives for Proliferation Prevention program.

(4)(A) The Secretary of Energy shall prescribe procedures for the review of projects under the Initiatives for Proliferation Prevention program. The purpose of the review shall be to ensure the following:

(i) That the military applications of such projects, and any information relating to such applications, is not inadvertently transferred or utilized for military purposes;

(ii) That activities under the projects are not redirected toward work relating to weapons of mass destruction.

(iii) That the national security interests of the United States are otherwise fully considered before the commencement of the projects.

(B) Not later than 30 days after the date on which the Secretary prescribes the procedures required by subparagraph (A), the Secretary shall submit to Congress a report on the procedures. The report shall set forth a schedule for the implementation of the procedures.

(5)(A) The Secretary shall evaluate the projects carried out under the Initiatives for Proliferation Prevention program for commercial purposes to determine whether or not such projects are likely to achieve their intended commercial objectives.

(B) If the Secretary determines as a result of the evaluation that a project is not likely to achieve its intended commercial objective, the Secretary shall terminate the project.

(6) Funds appropriated for the Initiatives for Proliferation Prevention program may not be used to pay any tax or customs duty levied by the government of the Russian Federation. In the event payment of such a tax or customs duty with such funds is unavoidable, the Secretary of Energy shall—

(A) after such payment, submit a report to the congressional defense committees explaining the particular circumstances making such payment under the Initiatives for Proliferation Prevention program with such funds unavoidable; and

(B) ensure that sufficient additional funds are provided to the Initiatives for Proliferation Prevention Program to offset the amount of such payment.

(b) Nuclear Cities Initiative

(1) No amounts authorized to be appropriated by title XXXI of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) for the Nuclear Cities Initiative may be obligated or expended for purposes of the initiative until the Secretary of Energy certifies to Congress that Russia has agreed to close some of its facilities engaged in work on weapons of mass destruction.

(2) Notwithstanding a certification under paragraph (1), amounts authorized to be appropriated by this title for the Nuclear Cities Initiative may not be obligated or expended for purposes of providing assistance under the initiative to more than three nuclear cities, and more than two serial production facilities, in Russia in fiscal year 2000.

(3)(A) The Secretary shall conduct a study of the potential economic effects of each commercial program proposed under the Nuclear Cities Initiative before providing assistance for the conduct of the program. The study shall include an assessment regarding whether or not the mechanisms for job creation under each program are likely to lead to the creation of the jobs intended to be created by that program.

(B) If the Secretary determines as a result of the study that the intended commercial benefits of a program are not likely to be achieved, the Secretary may not provide assistance for the conduct of that program.

(4) Not later than January 1, 2000, the Secretary shall submit to Congress a report describ-
ing the participation in or contribution to the Nuclear Cities Initiative of each department and agency of the United States Government that participates in or contributes to the initiative. The report shall describe separately any interagency participation in or contribution to the initiative.

(c) Report

(1) Not later than January 1, 2000, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the Initiatives for Proliferation Prevention program and the Nuclear Cities Initiative.

(2) The report shall include the following:

(A) A strategic plan for the Initiatives for Proliferation Prevention program and for the Nuclear Cities Initiative, which shall establish objectives for the program or initiative, as the case may be, and means for measuring the achievement of such objectives.

(B) A list of the most successful projects under the Initiatives for Proliferation Prevention program, including for each such project the name of the institute and scientists who are participating or have participated in the project, the number of jobs created through the project, and the manner in which the project has met the nonproliferation objectives of the United States.

(C) A list of the institutes and scientists associated with systems described in paragraph (1), including—

(i) a description of the work performed by such institutes and scientists under such systems described in paragraph (1) as of the date of such report and systems described in paragraph (2); and

(ii) a description of any work proposed to be performed by such institutes and scientists under systems described in paragraph (1) as of the date of such report.

(d) Nuclear Cities Initiative defined

For purposes of this section, the term “Nuclear Cities Initiative” means the initiative arising pursuant to the March 1998 discussions between the Vice President of the United States and the Prime Minister of the Russian Federation and between the Secretary of Energy of the United States and the Minister of Atomic Energy of the Russian Federation.


REFERENCES IN TEXT


This title, referred to in subsec. (b)(2), probably means title XXXI of Pub. L. 106–65. See above.

AMENDMENTS


§ 2563. Annual report on status of Nuclear Materials Protection, Control, and Accounting Program

(a) Report required

Not later than January 1 of each year, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the status of efforts during the preceding fiscal year under the Nuclear Materials Protection, Control, and Accounting Program of the Department of Energy to secure weapons-usable nuclear materials in countries where such materials have been identified as being at risk for theft or diversion.

(b) Contents

Each report under subsection (a) shall include the following:

(1) The number of buildings, including building locations, in each country covered by subsection (a) that received complete and integrated materials protection, control, and accounting systems for nuclear materials described in subsection (a) during the year covered by such report.

(2) The amounts of highly enriched uranium and plutonium in each such country that have been secured under systems described in paragraph (1) as of the date of such report.

(3) The amount of nuclear materials described in subsection (a) in each such country that continues to require securing under systems described in paragraph (1) as of the date of such report.

(4) A plan for actions to secure the nuclear materials identified in paragraph (3) under systems described in paragraph (1), including an estimate of the cost of such actions.

(5) The amounts expended through the fiscal year preceding the date of such report to secure nuclear materials described in paragraph (1), set forth by total amount per country and by amount per fiscal year per country.

(c) Limitation on use of certain funds

(1) No amounts authorized to be appropriated for the Department of Energy by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398) or any other Act for purposes of the Nuclear Materials Protection, Control, and Accounting Program may be obligated or expended after September 30, 2000, for any project under the program at a site controlled by the Russian Ministry of Atomic Energy (MINATOM) in Russia until the Secretary submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the access policy established with respect to such project, including a certification that the access policy has been implemented.
(2) The access policy with respect to a project under this subsection shall—

(A) permit appropriate determinations by United States officials regarding security requirements, including security upgrades, for the project; and

(B) ensure verification by United States officials that Department of Energy assistance at the project is being used for the purposes intended.


REFERENCES IN TEXT


AMENDMENTS


2002—Subsec. (a). Pub. L. 107–314, § 3153(a), substituted “countries where such materials” for “Russia that”.

Subsec. (b)(1). Pub. L. 107–314, § 3153(b)(1), inserted “in each such country” after “country covered by subsection (a)” and “each such country” after “locations”.

Subsec. (b)(2). Pub. L. 107–314, § 3153(b)(2), substituted “in each such country” for “in Russia”.

Subsec. (b)(3). Pub. L. 107–314, § 3153(b)(3), inserted “in each such country” after “subsection (a)”.

Subsec. (b)(5). Pub. L. 107–314, § 3153(b)(4), substituted “by total amount per country and by amount per fiscal year per country” for “by total amount and by amount per fiscal year”.

§ 2564. Nuclear Cities Initiative

(a) In general

(1) The Secretary of Energy may, in accordance with the provisions of this section, expand and enhance the activities of the Department of Energy under the Nuclear Cities Initiative.

(2) In this section, the term “Nuclear Cities Initiative” means the initiative arising pursuant to the joint statement dated July 24, 1998, signed by the Vice President of the United States and the Prime Minister of the Russian Federation and the agreement dated September 22, 1998, between the United States and the Russian Federation.

(b) Funding for fiscal year 2001

There is hereby authorized to be appropriated for the Department of Energy for fiscal year 2001 $30,000,000 for purposes of the Nuclear Cities Initiative.

(c) Limitation pending submission of agreement

No amount authorized to be appropriated or otherwise made available for the Department of Energy for fiscal year 2001 for the Nuclear Cities Initiative may be obligated or expended to provide assistance under the Initiative for more than three nuclear cities in Russia and two serial production facilities in Russia until 30 days after the date on which the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a copy of a written agreement between the United States Government and the Government of the Russian Federation which provides that Russia will close some of its facilities engaged in nuclear weapons assembly and disassembly work.

(d) Limitation pending implementation of project review procedures

(1) Not more than $8,750,000 of the amounts referred to in subsection (b) may be obligated or expended for purposes of the Initiative until the Secretary of Energy establishes and implements project review procedures for projects under the Initiative and submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the project review procedures so established and implemented.

(2) The project review procedures established under paragraph (1) shall ensure that any scientific, technical, or commercial project initiated under the Initiative—

(A) will not enhance the military or weapons of mass destruction capabilities of Russia;

(B) will not result in the inadvertent transfer or utilization of products or activities under such project for military purposes;

(C) will be commercially viable; and

(D) will be carried out in conjunction with an appropriate commercial, industrial, or nonprofit entity as partner.

(e) Limitation pending certification and report

No amount in excess of $17,500,000 authorized to be appropriated for the Department of Energy for fiscal year 2001 for the Nuclear Cities Initiative may be obligated or expended for purposes of providing assistance under the Initiative until 30 days after the date on which the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the following:

(1) A copy of the written agreement between the United States and the Russian Federation which provides that Russia will close some of its facilities engaged in nuclear weapons assembly and disassembly work within five years of the date of the agreement in exchange for receiving assistance through the Initiative.

(2) A certification by the Secretary—

(A) that project review procedures for all projects under the Initiative have been established and are being implemented; and

(B) that those procedures will ensure that any scientific, technical, or commercial project initiated under the Initiative—

(i) will not enhance the military or weapons of mass destruction capabilities of Russia;

(ii) will not result in the inadvertent transfer or utilization of products or activities under such project for military purposes;
(III) will be commercially viable within three years after the date of the initiation of the project; and

(iv) will be carried out in conjunction with an appropriate commercial, industrial, or other nonprofit entity as partner.

(3) A report setting forth the following:

(A) A description of the project review procedure.

(B) A list of the projects under the Initiative that have been reviewed under such project review procedures.

(C) A description for each project listed under subparagraph (B) of the purpose, expected life-cycle costs, out-year budget costs, participants, commercial viability, expected time for income generation, and number of Russian jobs created.

(f) **Plan for restructuring the Russian nuclear complex**

(1) The President, acting through the Secretary of Energy, is urged to enter into discussions with the Russian Federation for purposes of the development by the Russian Federation of a plan to restructure the Russian nuclear complex in order to meet changes in the national security requirements of Russia by 2010.

(2) The plan under paragraph (1) should include the following:

(A) Mechanisms to consolidate the nuclear weapons production capacity in Russia to a capacity that is consistent with the obligations of Russia under current and future arms control agreements.

(B) Mechanisms to increase transparency regarding the restructuring of the Russian nuclear complex and weapons-surplus nuclear materials inventories in Russia to the levels of transparency for such matters in the United States, including the participation of Department of Energy officials with expertise in transparency of such matters.

(C) Measurable milestones that will permit the United States and the Russian Federation to monitor progress under the plan.

(g) **Encouragement of careers in nonproliferation**

(1) In carrying out actions under this section, the Secretary of Energy may carry out a program to encourage students in the United States and in the Russian Federation to pursue careers in areas relating to nonproliferation.

(2) Of the amounts made available under the Initiative for fiscal year 2001 in excess of $17,500,000, up to $2,000,000 shall be available for purposes of the program under paragraph (1).

(3) The Administrator for Nuclear Security shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives before any funds are expended pursuant to paragraph (2). Any such notification shall include—

(A) an identification of the amount to be expended under paragraph (2) during fiscal year 2001;

(B) the recipients of the funds; and

(C) specific information on the activities that will be conducted using those funds.

(h) **Definitions**

In this section:

(1) The term “nuclear city” means any of the closed nuclear cities within the complex of the Russian Ministry of Atomic Energy as follows:

(A) Sarov (Arzamas–16).

(B) Zarechnyy (Penza–19).

(C) Novoural’sk (Sverdlovsk–44).

(D) Lesnoy (Sverdlovsk–45).

(E) Ozersk (Chelyabinsk–65).

(F) Snezhinsk (Chelyabinsk–70).

(G) Trechgor’nyy (Zlatoust–36).

(H) Seversk (Tomsk–7).

(I) Zheleznogorsk (Krasnoyarsk–26).

(J) Zelenogorsk (Krasnoyarsk–45).

(2) The term “Russian nuclear complex” means all of the nuclear cities.

(3) The term “serial production facilities” means the facilities in Russia that are located at the following cities:

(A) Avanguard.

(B) Lesnoy (Sverdlovsk–45).

(C) Trechgor’nyy (Zlatoust–36).

(D) Zarechnyy (Penza–19).

(E) Ozersk (Chelyabinsk–65).

(F) Snezhinsk (Chelyabinsk–70).

(G) Trechgor’nyy (Zlatoust–36).

(H) Seversk (Tomsk–7).

(I) Zheleznogorsk (Krasnoyarsk–26).

(J) Zelenogorsk (Krasnoyarsk–45).

§ 2565. Authority to conduct program relating to fissile materials

The Secretary of Energy may conduct programs designed to improve the protection, control, and accountability of fissile materials in Russia.

§ 2566. Disposition of weapons-usable plutonium at Savannah River Site

(a) **Plan for construction and operation of MOX facility**

(1) Not later than February 1, 2003, the Secretary of Energy shall submit to Congress a plan for the construction and operation of the MOX facility at the Savannah River Site, Aiken, South Carolina.

(2) The plan under paragraph (1) shall include—

(A) a schedule for construction and operations so as to achieve, as of January 1, 2012, and thereafter, the MOX production objective,
and to produce 1 metric ton of mixed-oxide fuel by December 31, 2012; and

(B) a schedule of operations of the MOX facility designed so that 34 metric tons of defense plutonium and defense plutonium materials at the Savannah River Site will be processed into mixed-oxide fuel by January 1, 2019.

(3)(A) Not later than February 15 each year, beginning in 2004 and continuing for as long as the MOX facility is in use, the Secretary shall submit to Congress a report on the implementation of the plan required by paragraph (1). The report shall include:

(i) an assessment of compliance with the schedules included with the plan under paragraph (2); and

(ii) a certification by the Secretary whether or not the MOX production objective can be met by January 2012.

(C) Each report under subparagraph (A) for years after 2012 shall—

(i) address whether the MOX production objective has been met; and

(ii) assess progress toward meeting the obligations of the United States under the Plutonium Management and Disposition Agreement.

(D) Each report under subparagraph (A) for years after 2017 shall also include an assessment of compliance with the MOX production objective and, if not in compliance, the plan of the Secretary for achieving one of the following:

(i) Removal of all remaining defense plutonium and defense plutonium materials from the State of South Carolina.

(b) Corrective actions

(1) If a report under subsection (a)(3) indicates that construction or operation of the MOX facility is behind the applicable schedule under subsection (g) by 12 months or more, the Secretary shall submit to Congress, not later than August 1 of the year in which such report is submitted, a plan for corrective actions to be implemented by the Secretary to ensure that the MOX facility project is capable of meeting the MOX production objective by January 1, 2012.

(2) If a plan is submitted under paragraph (1) in any year after 2008, the plan shall include corrective actions to be implemented by the Secretary to ensure that the MOX production objective is met.

(3) Any plan for corrective actions under paragraph (1) or (2) shall include established milestones under such plan for achieving compliance with the MOX production objective.

(4) If, before January 1, 2012, the Secretary determines that there is a substantial and material risk that the MOX production objective will not be achieved by 2012 because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until such risk is addressed and the Secretary certifies that the MOX production objective can be met by 2012.

(5) If, after January 1, 2012, the Secretary determines that the MOX production objective has not been achieved because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until the Secretary certifies that the MOX production objective can be met.

(6)(A) Upon making a determination under paragraph (4) or (5), the Secretary shall submit to Congress a report on the options for removing from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the State of South Carolina after April 15, 2002.

(B) Each report under subparagraph (A) shall include an analysis of each option set forth in the report, including the cost and schedule for implementation of such option, and any requirements under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] relating to consideration or selection of such option.

(C) Upon submittal of a report under paragraph (A), the Secretary shall commence any analysis that may be required under the National Environmental Policy Act of 1969 in order to select among the options set forth in the report.

(c) Contingent requirement for removal of plutonium and materials from Savannah River Site

If the MOX production objective is not achieved as of January 1, 2012, the Secretary shall, consistent with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other applicable laws, remove from the State of South Carolina, for storage or disposal elsewhere—

(1) not later than January 1, 2014, not less than 1 metric ton of defense plutonium or defense plutonium materials; and

(2) not later than January 1, 2020, an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002 and January 1, 2020, but not processed by the MOX facility.

(d) Economic and impact assistance

(1) If the MOX production objective is not achieved as of January 1, 2014, the Secretary shall, subject to the availability of appropriations, pay to the State of South Carolina each year beginning on or after that date through 2019 for economic and impact assistance an amount equal to $1,000,000 per day, not to exceed $100,000,000 per year, until the later of—

(A) the date on which the MOX production objective is achieved in such year; or

(B) the date on which the Secretary has removed from the State of South Carolina in such year at least 1 metric ton of defense plutonium or defense plutonium materials.

(2)(A) If, as of January 1, 2020, the MOX facility has not processed mixed-oxide fuel from defense plutonium and defense plutonium materials in the amount of not less than—
(i) one metric ton, in each of any two consecutive calendar years; and
(ii) three metric tons total,
the Secretary shall, from funds available to the Secretary, pay to the State of South Carolina for economic and impact assistance an amount equal to $1,000,000 per day, not to exceed $100,000,000 per year, until the removal by the Secretary from the State of South Carolina of an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002, and January 1, 2020, but not processed by the MOX facility.

(B) Nothing in this paragraph may be construed to terminate, supersede, or otherwise affect any other requirements of this section.

(3) If the State of South Carolina obtains an injunction that prohibits the Department from taking any action necessary for the Department to meet any deadline specified by this subsection, that deadline shall be extended for a period of time equal to the period of time during which the injunction is in effect.

(e) Failure to complete planned disposition program

If on July 1 each year beginning in 2023 and continuing for as long as the MOX facility is in use, less than 34 metric tons of defense plutonium or defense plutonium materials have been processed by the MOX facility, the Secretary shall submit to Congress a plan for

(1) completing the processing of 34 metric tons of defense plutonium and defense plutonium material by the MOX facility; or
(2) removing from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site after April 15, 2002, but not processed by the MOX facility.

(f) Removal of mixed-oxide fuel upon completion of operations of MOX facility

If, one year after the date on which operation of the MOX facility permanently ceases, any mixed-oxide fuel remains at the Savannah River Site, the Secretary shall submit to Congress—

(1) a report on when such fuel will be transferred for use in commercial nuclear reactors; or
(2) a plan for removing such fuel from the State of South Carolina.

(g) Baseline

Not later than December 31, 2006, the Secretary shall submit to Congress a report on the construction and operation of the MOX facility that includes a schedule for revising the requirements of this section during fiscal year 2007 to conform with the schedule established by the Secretary for the MOX facility, which shall be based on estimated funding levels for the fiscal year.

(h) Definitions

In this section:

(1) MOX production objective

The term “MOX production objective” means production at the MOX facility of mixed-oxide fuel from defense plutonium and defense plutonium materials at an average rate equivalent to not less than one metric ton of mixed-oxide fuel per year. The average rate shall be determined by measuring production at the MOX facility from the date the facility is declared operational to the Nuclear Regulatory Commission through the date of assessment.

(2) MOX facility

The term “MOX facility” means the mixed-oxide fuel fabrication facility at the Savannah River Site, Aiken, South Carolina.

(3) Defense plutonium; defense plutonium materials

The terms “defense plutonium” and “defense plutonium materials” mean weaponsusable plutonium.

References in Text

The National Environmental Policy Act of 1969, referred to in subsecs. (b)(6)(B), (C) and (c), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4231 of Title 42 and Tables.

Amendments


Subsecs. (g), (h). Pub. L. 109–103, § 313(6), (7), added subsec. (g) and redesignated former subsec. (g) as (h).

§ 2567. Disposition of surplus defense plutonium at Savannah River Site, Aiken, South Carolina

(a) Consultation required

The Secretary of Energy shall consult with the Governor of the State of South Carolina regarding any decisions or plans of the Secretary.
related to the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, Aiken, South Carolina.

(b) Notice required

For each shipment of defense plutonium or defense plutonium materials to the Savannah River Site, the Secretary shall, not less than 30 days before the commencement of such shipment, submit to the congressional defense committees a report providing notice of such shipment.

(c) Plan for disposition

The Secretary shall prepare a plan for disposal of the surplus defense plutonium and defense plutonium materials currently located at the Savannah River Site and for disposal of defense plutonium and defense plutonium materials to be shipped to the Savannah River Site in the future. The plan shall include the following:

1. A review of each option considered for disposal.
2. An identification of the preferred option for such disposal.
3. With respect to the facilities for such disposal that are required by the Department of Energy's Record of Decision for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement dated January 14, 1997—
   (A) a statement of the cost of construction and operation of such facilities;
   (B) a schedule for the expeditious construction of such facilities, including milestones; and
   (C) a firm schedule for funding the cost of such facilities.
4. A specification of the means by which all such defense plutonium and defense plutonium materials will be removed in a timely manner from the Savannah River Site for storage or disposal elsewhere.

(d) Plan for alternative disposition

If the Secretary determines not to proceed at the Savannah River Site with construction of the plutonium immobilization plant, or with the mixed oxide fuel fabrication facility, the Secretary shall prepare a plan that identifies a disposition path for all defense plutonium and defense plutonium materials that would otherwise have been disposed of at such plant or such facility, as applicable.

(e) Submission of plans

Not later than February 1, 2002, the Secretary shall submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable).

(f) Limitation on plutonium shipments

If the Secretary does not submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable) by February 1, 2002, the Secretary shall be prohibited from shipping defense plutonium or defense plutonium materials to the Savannah River Site during the period beginning on February 1, 2002, and ending on the date on which such plans are submitted to Congress.

(g) Rule of construction

Nothing in this section may be construed to prohibit or limit the Secretary from shipping defense plutonium or defense plutonium materials to sites other than the Savannah River Site during the period referred to in subsection (f) or any other period.

(h) Annual report on funding for fissile materials disposition activities

The Secretary shall include with the budget justification materials submitted to Congress in support of the Department of Energy budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) a report setting forth the extent to which amounts requested for the Department for such fiscal year for fissile materials disposition activities will enable the Department to meet commitments for the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, and for any other fissile materials disposition activities, in such fiscal year.

§ 2568. Authority to use international nuclear materials protection and cooperation program funds outside the former Soviet Union

(a) Authority

Subject to the provisions of this section, the President may obligate and expend international nuclear materials protection and cooperation program funds for a fiscal year, and any such funds for a fiscal year before such fiscal year that remain available for obligation, for a defense nuclear nonproliferation project or activity outside the states of the former Soviet Union that has not previously been authorized by Congress if the President determines each of the following:

1. That such project or activity will—
   (A)(i) assist the United States in the resolution of a critical emerging proliferation threat; or
   (B) be completed in a short period of time.
2. That the Department of Energy is the entity of the Federal Government that is most capable of carrying out such project or activity.

(b) Scope of authority

The authority in subsection (a) to obligate and expend funds for a project or activity includes authority to provide equipment, goods, and services for such project or activity utilizing such funds, but does not include authority to provide cash directly to such project or activity.

(c) Limitation on availability of funds

1. The President may not obligate funds for a project or activity under the authority in sub-
section (a) until the President makes each determination specified in that subsection with respect to such project or activity.

(2) Not later than 10 days after obligating funds under the authority in subsection (a) for a project or activity, the President shall notify Congress in writing of the determinations made under paragraph (1) with respect to such project or activity, together with—

(A) a justification for such determinations; and

(B) a description of the scope and duration of such project or activity.

(d) Additional limitations and requirements

Except as otherwise provided in subsections (a) and (b), the exercise of the authority in subsection (a) shall be subject to any requirement or limitation under another provision of law as follows:

(1) Any requirement for prior notice or other reports to Congress on the use of international nuclear materials protection and cooperation program funds or on international nuclear materials protection and cooperation program projects or activities.

(2) Any limitation on the obligation or expenditure of international nuclear materials protection and cooperation program funds.

(3) Any limitation on international nuclear materials protection and cooperation program projects or activities.

(e) Funds

As used in this section, the term ‘‘international nuclear materials protection and cooperation program funds’’ means the funds appropriated pursuant to an authorization of appropriations for the International Nuclear Materials Protection and Cooperation Program.


CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2004, and not as part of the Atomic Energy Defense Act which comprises this chapter.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375, § 3131(a), inserted ‘‘that has not previously been authorized by Congress’’ after ‘‘states of the former Soviet Union’’.

Subsec. (c). Pub. L. 108–375, § 3131(b), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: ‘‘The amount that may be obligated in a fiscal year under the authority in subsection (a) may not exceed $50,000,000.’’

Subsec. (d). Pub. L. 108–375, § 3131(b)(2), redesignated subsec. (e) as (d), former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 108–375, § 3131(c), substituted ‘‘the funds appropriated pursuant to an authorization of appropriations for the International Nuclear Materials Protection and Cooperation Program’’ for ‘‘the funds appropriated pursuant to the authorization of appropriations in section 3101(a)(2) for such program’’.

Subsec. (f), Pub. L. 108–375, § 3131(b)(2), redesignated subsec. (f) as (e), former subsec. (e), redesignated (d).

Subsec. (f). Pub. L. 108–375, § 3131(b)(2), redesignated subsec. (f) as (e), former subsec. (f) redesignated (f), redesignated (d) as (c), and inserted (d) as a new subsec. (d).

§ 2569. Acceleration of removal or security of fissile materials, radiological materials, and related equipment at vulnerable sites worldwide

(a) Sense of Congress

(1) It is the sense of Congress that the security, including the rapid removal or secure storage, of high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment at vulnerable sites worldwide should be a top priority among the activities to achieve the national security of the United States.

(2) It is the sense of Congress that the President may establish in the Department of Energy a task force to be known as the Task Force on Nuclear Materials to carry out the program authorized by subsection (b).

(b) Program authorized

The Secretary of Energy may carry out a program to undertake an accelerated, comprehensive worldwide effort to mitigate the threats posed by high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment located at sites potentially vulnerable to theft or diversion.

(c) Program elements

(1) Activities under the program under subsection (b) may include the following:

(A) Accelerated efforts to secure, remove, or eliminate proliferation-attractive fissile materials or radiological materials in research reactors, other reactors, and other facilities worldwide.

(B) Arrangements for the secure shipment of proliferation-attractive fissile materials, radiological materials, and related equipment to other countries willing to accept such materials and equipment, or to the United States if such countries cannot be identified, and the provision of secure storage or disposition of such materials and equipment following shipment.

(C) The transportation of proliferation-attractive fissile materials, radiological materials, and related equipment from sites identified as proliferation risks to secure facilities in other countries or in the United States.

(D) The processing and packaging of proliferation-attractive fissile materials, radiological materials, and related equipment in accordance with required standards for transport, storage, and disposition.

(E) The provision of interim security upgrades for vulnerable, proliferation-attractive fissile materials, radiological materials, and related equipment pending their removal from their current sites.

(F) The utilization of funds to upgrade security and accounting at sites where proliferation-attractive fissile materials or radiological materials will remain for an extended period of time in order to ensure that such materials are secure against plausible potential threats and will remain so in the future.

(G) The management of proliferation-attractive fissile materials, radiological materials, and related equipment at secure facilities.

(H) Actions to ensure that security, including security upgrades at sites and facilities for
the storage or disposition of proliferation-attractive fissile materials, radiological materials, and related equipment, continues to function as intended.

(1) The provision of technical support to the International Atomic Energy Agency (IAEA), other countries, and other entities to facilitate removal of, and security upgrades to facilities that contain, proliferation-attractive fissile materials, radiological materials, and related equipment worldwide.

(2) The development of alternative fuels and irradiation targets based on low-enriched uranium to convert research or other reactors fueled by highly-enriched uranium to such alternative fuels, as well as the conversion of reactors and irradiation targets employing highly-enriched uranium to employment of such alternative fuels and targets.

(L) The provision of assistance in the closure and decommissioning of sites identified as presenting risks of proliferation of proliferation-attractive fissile materials, radiological materials, and related equipment.

(M) Programs to—

(i) assist in the placement of employees displaced as a result of actions pursuant to the program in enterprises not representing a proliferation threat; and

(ii) convert sites identified as presenting risks of proliferation regarding proliferation-attractive fissile materials, radiological materials, and related equipment to purposes not representing a proliferation threat to the extent necessary to eliminate the proliferation threat.

(2) The Secretary of Energy shall, in coordination with the Secretary of State, carry out the program in consultation with, and with the assistance of, appropriate departments, agencies, and other entities of the United States Government.

(3) The Secretary of Energy shall, with the concurrence of the Secretary of State, carry out activities under the program in collaboration with such foreign governments, non-governmental organizations, and other international entities as the Secretary of Energy considers appropriate for the program.

(d) Reports

(1) Not later than March 15, 2005, the Secretary of Energy shall submit to Congress a classified interim report on the program under subsection (b).

(2) Not later than January 1, 2006, the Secretary shall submit to Congress a classified final report on the program under subsection (b) that includes the following:

(A) A survey by the Secretary of the facilities and sites worldwide that contain proliferation-attractive fissile materials, radiological materials, or related equipment.

(B) A list of sites determined by the Secretary to be of the highest priority, taking into account risk of theft from such sites, for removal or security of proliferation-attractive fissile materials, radiological materials, or related equipment.

(C) A plan, including activities under the program under this section, for the removal, security, or both of proliferation-attractive fissile materials, radiological materials, or related equipment at vulnerable facilities and sites worldwide, including measurable milestones, metrics, and estimated costs for the implementation of the plan.

(3) A summary of each report under this subsection shall also be submitted to Congress in unclassified form.

(e) Funding

Amounts authorized to be appropriated to the Secretary of Energy for defense nuclear non-proliferation activities shall be available for purposes of the program under this section.

(f) Participation by other governments and organizations

(1) In general

The Secretary of Energy may, with the concurrence of the Secretary of State, enter into one or more agreements with any person (including a foreign government, international organization, or multinational entity) that the Secretary of Energy considers appropriate under which the person contributes funds for purposes of the programs described in paragraph (2).

(2) Programs covered

The programs described in this paragraph are the following international programs within the Global Threat Reduction Initiative:

(A) The International Radiological Threat Reduction program.

(B) The Emerging Threats and Gap Materials program.

(C) The Reduced Enrichment for Research and Test Reactors program.

(D) The Russian Research Reactor Fuel Return program.

(E) The Global Research Reactor Security program.

(F) The Kazakhstan Spent Fuel program.

(3) Retention and use of amounts

Notwithstanding section 3302 of title 31, the Secretary of Energy may retain and use amounts contributed under an agreement under paragraph (1) for purposes of the programs described in paragraph (2). Amounts so contributed shall be retained in a separate fund established in the Treasury for such purposes and shall be available for use without further appropriation and without fiscal year limitation.

(4) Return of amounts not used within 5 years

If an amount contributed under an agreement under paragraph (1) is not used under this subsection within 5 years after it was contributed, the Secretary of Energy shall return that amount to the person who contributed it.

(5) Notice to congressional defense committees

Not later than 30 days after the receipt of an amount contributed under paragraph (1), the Secretary of Energy shall submit to the con-
gessional defense committees a notice specifying the purpose and value of the contribution and identifying the person who contributed it. The Secretary may not use the amount until 15 days after the notice is submitted.

(6) Annual report

Not later than October 31 of each year, the Secretary of Energy shall submit to the congressional defense committees a report on the receipt and use of amounts under this subsection during the preceding fiscal year. Each report for a fiscal year shall set forth—

(A) a statement of any amounts received under this subsection, including, for each such amount, the value of the contribution and the person who contributed it;

(B) a statement of any amounts used under this subsection, including, for each such amount, the purposes for which the amount was used; and

(C) a statement of the amounts retained but not used under this subsection, including, for each such amount, the purposes (if known) for which the Secretary intends to use the amount.

(7) Expiration

The authority to accept, retain, and use contributions under this subsection expires on December 31, 2013.

(g) Definitions

In this section:

(1) The term “fissile materials” means plutonium, highly-enriched uranium, or other material capable of sustaining an explosive nuclear chain reaction, including irradiated items containing such materials if the irradiation field from such items is not sufficient to prevent the theft or misuse of such items.

(2) The term “radiochemical materials” includes Americium-241, Californium-252, Cesium-137, Cobalt-60, Iridium-192, Plutonium-238, Radium-226, Strontium-90, Curium-244, and irradiated items containing such materials, or other materials designated by the Secretary of Energy for purposes of this paragraph.

(3) The term “related equipment” includes equipment useful for enrichment of uranium in the isotope 235 and for extraction of fissile materials from irradiated fuel rods and other equipment designated by the Secretary of Energy for purposes of this section.

(4) The term “highly-enriched uranium” means uranium enriched to or above 20 percent in the isotope 235.

(5) The term “low-enriched uranium” means uranium enriched below 20 percent in the isotope 235.

(6) The term “proliferation-attractive”, in the case of fissile materials and radiochemical materials, means quantities and types of such materials that are determined by the Secretary of Energy to present a significant risk to the national security of the United States if diverted to a use relating to proliferation.

§ 2570. Silk Road Initiative

(a) Program authorized

(1) The Secretary of Energy may carry out a program, to be known as the Silk Road Initiative, to promote non-weapons-related employment opportunities for scientists, engineers, and technicians formerly engaged in activities to develop and produce weapons of mass destruction in Silk Road nations. The program should—

(A) incorporate best practices under the Initiatives for Proliferation Prevention program; and

(B) facilitate commercial partnerships between private entities in the United States and scientists, engineers, and technicians in the Silk Road nations.

(2) Before implementing the program with respect to multiple Silk Road nations, the Secretary of Energy shall carry out a pilot program with respect to one Silk Road nation selected by the Secretary. It is the sense of Congress that the Secretary should select the Republic of Georgia.

(b) Silk Road nations defined

In this section, the Silk Road nations are Armenia, Azerbaijan, the Republic of Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

(c) Funding

Of the funds authorized to be appropriated to the Department of Energy for nonproliferation and international security for fiscal year 2005, up to $10,000,000 may be used to carry out this section.

Codification

Section was enacted as part of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, and not as part of the Atomic Energy Defense Act which comprises this chapter.

Amendments

2006—Subsecs. (f), (g). Pub. L. 109–364 added subsec. (f) and redesignated former subsec. (f) as (g).

“Congressional Defense Committees” Defined

Congressional defense committees has the meaning given that term in section 101(a)(16) of Title 10, Armed Forces, see section 3 of Pub. L. 108–375, Oct. 28, 2004, 118 Stat. 1825. See note under section 101 of Title 10.

§ 2571. Nuclear Nonproliferation Fellowships for scientists employed by United States and Russian Federation

(a) In general

(1) From amounts made available to carry out this section, the Administrator for Nuclear Security may carry out a program under which the Administrator awards, to scientists employed at nonproliferation research laboratories of the Russian Federation and the United States,
international exchange fellowships, to be known as Nuclear Nonproliferation Fellowships, in the nuclear nonproliferation sciences.

(2) The purpose of the program shall be to provide opportunities for advancement in the nuclear nonproliferation sciences to scientists who, as demonstrated by their academic or professional achievements, show particular promise of making significant contributions in those sciences.

(3) A fellowship awarded to a scientist under the program shall be for collaborative study and training or advanced research at—
(A) a nonproliferation research laboratory of the Russian Federation, in the case of a scientist employed at a nonproliferation research laboratory of the United States; and
(B) a nonproliferation research laboratory of the United States, in the case of a scientist employed at a nonproliferation research laboratory of the Russian Federation.

(4) The duration of a fellowship under the program may not exceed two years, except that the Administrator may provide for a longer duration in an individual case to the extent warranted by extraordinary circumstances, as determined by the Administrator.

(5) In a calendar year, the Administrator may not award more than—
(A) one fellowship to a scientist employed at a nonproliferation research laboratory of the Russian Federation; and
(B) one fellowship to a scientist employed at a nonproliferation research laboratory of the United States.

(6) A fellowship under the program shall include—
(A) travel expenses; and
(B) any other expenses that the Administrator considers appropriate, such as room and board.

(b) Definitions

In this section:
(1) The term ‘nonproliferation research laboratory’ means, with respect to a country, a national laboratory of that country at which research in the nuclear nonproliferation sciences is carried out.

(2) The term ‘nuclear nonproliferation sciences’ means bodies of scientific knowledge relevant to developing or advancing the means to prevent or impede the proliferation of nuclear weaponry.

(3) The term ‘scientist’ means an individual who has a degree from an institution of higher education in a science that has practical application in the nuclear nonproliferation sciences.

(c) Funding

Amounts available to the Department of Energy for defense nuclear nonproliferation activities shall be available for the fellowships authorized by subsection (a).


Codification

Section was enacted as part of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, and not as part of the Atomic Energy Defense Act which comprises this chapter.

§ 2572. International agreements on nuclear weapons data

The Secretary of Energy may, with the concurrence of the Secretary of State and in coordination with the Secretary of Defense, the Secretary of Homeland Security, and the Director of National Intelligence, enter into agreements with countries or international organizations to conduct data collection and analysis to determine accurately and in a timely manner the source of any components of, or fissile material used or attempted to be used in, a nuclear device or weapon.


§ 2573. International agreements on information on radioactive materials

The Secretary of Energy may, with the concurrence of the Secretary of State and in coordination with the Secretary of Defense, the Secretary of Homeland Security, and the Director of National Intelligence, enter into agreements with countries or international organizations—
(1) to acquire for the materials information program of the Department of Energy validated information on the physical characteristics of radioactive material produced, used, or stored at various locations, in order to facilitate the ability to determine accurately and in a timely manner the source of any components of, or fissile material used or attempted to be used in, a nuclear device or weapon; and
(2) to obtain access to information described in paragraph (1) in the event of—
(A) a nuclear detonation; or
(B) the interdiction or discovery of a nuclear device or weapon or nuclear material.


§ 2574. Enhancing nuclear forensics capabilities

(a) Research and development plan for nuclear forensics and attribution

(1) Research and development

The Secretary of Energy shall prepare and implement a research and development plan to improve nuclear forensics capabilities in the Department of Energy and at the national laboratories overseen by the Department of Energy. The plan shall focus on improving the technical capabilities required—
(A) to enable a robust and timely nuclear forensic response to a nuclear explosion or to the interdiction of nuclear material or a nuclear weapon anywhere in the world; and
(B) to develop an international database that can attribute nuclear material or a nuclear weapon to its source.

(2) Reports

(A) The Secretary of Energy shall submit to the congressional defense committees—
(i) not later than 6 months after October 14, 2008, a report on the contents of the re-
search and development plan described in paragraph (1), and any legislative changes required to implement the plan; and
(ii) not later than 18 months after October 14, 2008, a report on the status of implementing the plan.

(B) The Secretary shall submit each report required by this subsection in unclassified form, but may include a classified annex with such report.

(b) Omitted

(c) Presidential report

(1) In general

Not later than 90 days after October 14, 2008, the President shall submit to the appropriate committees of Congress a report on the involvement of senior-level executive branch leadership in nuclear terrorism preparedness exercises that include nuclear forensics analysis.

(2) Appropriate committees of Congress

In this subsection, the term “appropriate committees of Congress” means—

(A) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Homeland Security of the House of Representatives; and

(B) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Homeland Security and Governmental Affairs of the Senate.

§ 2581. Defense Environmental Restoration and Waste Management Account

(a) Establishment

There is hereby established in the Treasury of the United States for the Department of Energy an account to be known as the "Defense Environmental Restoration and Waste Management Account" (hereafter in this section referred to as the "Account").

(b) Amounts in Account

All sums appropriated to the Department of Energy for environmental restoration and waste management at defense nuclear facilities shall be credited to the Account. Such appropriations shall be authorized annually by law. To the extent provided in appropriations Acts, amounts in the Account shall remain available until expended.

(b) Requirement to develop future use plans

The Secretary of Energy may develop future use plans for any defense nuclear facility at which environmental restoration and waste management activities are occurring.

(c) Citizen advisory board

(1) At each defense nuclear facility for which the Secretary of Energy intends or is required to develop a future use plan under this section and for which no citizen advisory board has been established, the Secretary shall establish a citizen advisory board.

(2) The Secretary may authorize the manager of a defense nuclear facility for which a future use plan is developed under this section (or, if there is no such manager, an appropriate official of the Department of Energy designated by the Secretary) to pay routine administrative expenses of a citizen advisory board established for that facility. Such payments shall be made from funds available to the Secretary for program direction in carrying out environmental restoration and waste management activities necessary for national security programs.

(d) Requirement to consult with citizen advisory board

In developing a future use plan under this section with respect to a defense nuclear facility, the Secretary of Energy shall consult with a citizen advisory board established pursuant to subsection (c) or a similar advisory board already in existence as of September 23, 1996, for such facility, affected local governments (including any local future use redevelopment authorities), and other appropriate State agencies.

(e) 50-year planning period

A future use plan developed under this section shall cover a period of at least 50 years.
§ 2582a. Future-years defense environmental management plan

(a) In general

The Secretary of Energy shall submit to Congress each year, at or about the same time that the President’s budget is submitted to Congress for a fiscal year under section 1105(a) of title 31, a future-years defense environmental management plan that—

(1) reflects the estimated expenditures and proposed appropriations included in that budget for the Department of Energy for environmental management; and

(2) covers a period that includes the fiscal year for which that budget is submitted and not less than the four succeeding fiscal years.

(b) Elements

Each future-years defense environmental management plan required by subsection (a) shall contain the following:

(1) A detailed description of the projects and activities relating to defense environmental management to be carried out during the period covered by the plan at the sites specified in subsection (c) and with respect to the activities specified in subsection (d).

(2) A statement of proposed budget authority, estimated expenditures, and proposed appropriations necessary to support such projects and activities.

(3) With respect to each site specified in subsection (c), the following:

(A) A statement of each milestone included in an enforceable agreement governing cleanup and waste remediation for that site for each fiscal year covered by the plan.

(B) For each such milestone, a statement with respect to whether each such milestone will be met in each such fiscal year.

(C) For any milestone that will not be met, an explanation of why the milestone will not be met and the date by which the milestone is expected to be met.

(c) Sites specified

The sites specified in this subsection are the following:

(1) The Idaho National Laboratory, Idaho.

(2) The Waste Isolation Pilot Plant, Carlsbad, New Mexico.

(3) The Savannah River Site, Aiken, South Carolina.

(4) The Oak Ridge National Laboratory, Oak Ridge, Tennessee.


(6) Any defense closure site of the Department of Energy.

(7) Any site of the National Nuclear Security Administration.

(d) Activities specified

The activities specified in this subsection are the following:

(1) Program support.

(2) Program direction.

(3) Safeguards and security.

(4) Technology development and deployment.

(5) Federal contributions to the Uranium Enrichment Decontamination and Decommissioning Fund established under section 2297g of title 42.

§ 2582a. Future-years defense environmental management plan

(a) In general

The Secretary of Energy shall submit to Congress each year, at or about the same time that the President’s budget is submitted to Congress for a fiscal year under section 1105(a) of title 31, a future-years defense environmental management plan that—

(1) reflects the estimated expenditures and proposed appropriations included in that budget for the Department of Energy for environmental management; and

(2) covers a period that includes the fiscal year for which that budget is submitted and not less than the four succeeding fiscal years.

(b) Elements

Each future-years defense environmental management plan required by subsection (a) shall contain the following:

(1) A detailed description of the projects and activities relating to defense environmental management to be carried out during the period covered by the plan at the sites specified in subsection (c) and with respect to the activities specified in subsection (d).

(2) A statement of proposed budget authority, estimated expenditures, and proposed appropriations necessary to support such projects and activities.

(3) With respect to each site specified in subsection (c), the following:

(A) A statement of each milestone included in an enforceable agreement governing cleanup and waste remediation for that site for each fiscal year covered by the plan.

(B) For each such milestone, a statement with respect to whether each such milestone will be met in each such fiscal year.

(C) For any milestone that will not be met, an explanation of why the milestone will not be met and the date by which the milestone is expected to be met.

(c) Sites specified

The sites specified in this subsection are the following:

(1) The Idaho National Laboratory, Idaho.

(2) The Waste Isolation Pilot Plant, Carlsbad, New Mexico.

(3) The Savannah River Site, Aiken, South Carolina.

(4) The Oak Ridge National Laboratory, Oak Ridge, Tennessee.


(6) Any defense closure site of the Department of Energy.

(7) Any site of the National Nuclear Security Administration.

(d) Activities specified

The activities specified in this subsection are the following:

(1) Program support.

(2) Program direction.

(3) Safeguards and security.

(4) Technology development and deployment.

(5) Federal contributions to the Uranium Enrichment Decontamination and Decommissioning Fund established under section 2297g of title 42.
achieve budgetary and other efficiencies in the discharge of those responsibilities; and

(2) identify any expenditures necessary at the sites that are anticipated to have an enduring mission for plutonium management in order to achieve the integrated management of fissile materials by the Department.

(b) Submittal to Congress

The Secretary shall submit the plan required by subsection (a) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than March 31, 2000.


§ 2584. Baseline environmental management reports

(a) Annual environmental restoration reports

(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on the activities and projects necessary to carry out the environmental restoration of all Department of Energy defense nuclear facilities.

(2) Reports under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than March 1, 1995.

(B) A report after the initial report shall be submitted in each year after 1995 during which the Secretary of Energy conducts, or plans to conduct, environmental restoration activities and projects, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(b) Biennial waste management reports

(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on all activities and projects necessary to carry out the pollution prevention and transition of operational facilities to safe shutdown status, that are necessary for Department of Energy defense nuclear facilities.

(2) Reports required under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than June 1, 1995.

(B) A report after the initial report shall be submitted in each odd-numbered year after 1997, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(c) Contents of reports

A report required under subsection (a) or (b) shall be based on compliance with all applicable provisions of law, permits, regulations, orders, and agreements, and shall—

(1) provide the estimated total cost of, and the complete schedule for, the activities and projects covered by the report;

(2) with respect to each such activity and project, contain—

(A) a description of the activity or project;

(B) a description of the problem addressed by the activity or project;

(C) the proposed remediation of the problem, if the remediation is known or decided;

(D) the estimated cost to complete the activity or project, including, where appropriate, the cost for every five-year increment;

(E) the estimated date for completion of the activity or project, including, where appropriate, progress milestones for every five-year increment; and

(F) a description of the personnel and facilities required to complete the activity or project; and

(3) contain a description of the research and development necessary to develop the technology to conduct the activities and projects covered by the report.

(d) Biennial status and variance reports

(1)(A) The Secretary of Energy shall (in the years and at the time specified in subparagraph (B)) submit to the Congress a status and variance report on environmental restoration and waste management activities and projects at Department of Energy defense nuclear facilities.

(B) A report under subparagraph (A) shall be submitted in 1995 and in each odd-numbered year thereafter during which the Secretary of Energy conducts environmental restoration and waste management activities, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(2) Each status and variance report under paragraph (1) shall contain the following:

(A) Information on each such activity and project for which funds were appropriated for the two fiscal years immediately before the fiscal year during which the report is submitted, including the following:

(i) Information on whether or not the activity or project has been completed, and information on the estimated date of completion for activities or projects that have not been completed.

(ii) The total amount of funds expended for the activity or project during such prior fiscal years, including the amount of funds expended from amounts made available as the result of supplemental appropriations or a transfer of funds, and an estimate of the total amount of funds required to complete the activity or project.

(iii) Information on whether the President requested an amount of funds for the activity or project in the budget for the fiscal year during which the report is submitted, and whether such funds were appropriated or transferred.

(iv) An explanation of the reasons for any projected cost variance between actual and estimated expenditures of more than 15 percent or $10,000,000, or any schedule delay of more than six months, for the activity or project.

(B) For the fiscal year during which the report is submitted, a disaggregation of the
funds appropriated for Department of Energy defense environmental restoration and waste management into the activities and projects (including discrete parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(C) For the fiscal year for which the budget is submitted, a disaggregation of the Department of Energy defense environmental restoration and waste management budget request into the activities and projects (including discrete parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(e) Compliance tracking

In preparing a report under this section, the Secretary of Energy shall provide, with respect to each activity and project identified in the report, information which is sufficient to track the Department of Energy’s compliance with relevant Federal and State regulatory milestones.

(f) Public participation in development of information

(1) The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Attorney General, Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and interested members of the public in the development of information necessary to complete the reports required by subsections (a), (b), and (d).

(2) Consultation under paragraph (1) shall not interfere with the timely submission to Congress of the budget for a fiscal year.

(3) The Secretary may award grants to, and enter into cooperative agreements with, affected States and affected Indian tribes to facilitate the participation of such entities in the development of information under this subsection. The Secretary may also take appropriate action to facilitate the participation of interested members of the public in such development under this subsection.

(4) The potential for reuse of the site.

(5) The proximity of the site to populated areas.

(6) The proximity of the site to populated areas.

Subsection (c)(2)(F), Pub. L. 103–337, §3160(c)(2)–(4), added subpart (F).

Subsection (f), Pub. L. 103–337, §3160(d), added subsec. (f).

§ 2585. Accelerated schedule for environmental restoration and waste management activities

(a) Accelerated cleanup

The Secretary of Energy shall accelerate the schedule for environmental restoration and waste management activities and projects for a site at a Department of Energy defense nuclear facility if the Secretary determines that such an accelerated schedule will achieve meaningful, long-term cost savings to the Federal Government and could substantially accelerate the release of land for local reuse.

(b) Consideration of factors

In making a determination under subsection (a), the Secretary shall consider the following:

(1) The cost savings achievable by the Federal Government.

(2) The amount of time for completion of environmental restoration and waste management activities and projects at the site that can be reduced from the time specified for completion of such activities and projects in the baseline environmental management report required to be submitted for 1995 under section 3153 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 7274k), the predecessor provision to section 2584 of this title.

(3) The potential for reuse of the site.

(4) The risks that the site poses to local health and safety.

(5) The proximity of the site to populated areas.

(c) Report

Not later than May 1, 1996, the Secretary shall submit to Congress a report on each site for which the Secretary has accelerated the schedule for environmental restoration and waste management activities and projects under subsection (a). The report shall include an explanation of the basis for the determination for that site required by such subsection, including an explanation of the consideration of the factors described in subsection (b).

(d) Savings provision

Nothing in this section may be construed to affect a specific statutory requirement for a specific environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment.

(1) The cost savings achievable by the Federal Government.

(2) The amount of time for completion of environmental restoration and waste management activities and projects at the site that can be reduced from the time specified for completion of such activities and projects in the baseline environmental management report required to be submitted for 1995 under section 3153 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 7274k), the predecessor provision to section 2584 of this title.

(3) The potential for reuse of the site.

(4) The risks that the site poses to local health and safety.

(5) The proximity of the site to populated areas.
§ 2586. Defense waste cleanup technology program

(a) Establishment of program

The Secretary of Energy shall establish and carry out a program of research for the development of technologies useful for (1) the reduction of environmental hazards and contamination resulting from defense waste, and (2) environmental restoration of inactive defense waste disposal sites.

(b) Coordination of research activities

(1) In order to ensure nonduplication of research activities by the Department of Energy regarding technologies referred to in subsection (a), the Secretary shall coordinate the research activities of the Department of Energy relating to the development of such technologies with the research activities of the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies relating to the same matter.

(2) To the extent that funds are otherwise available for obligation, the Secretary may enter into cooperative agreements with the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies for the conduct of research for the development of technologies referred to in subsection (a).

(c) Definitions

As used in this section:

(1) The term “defense waste” means waste, including radioactive waste, resulting primarily from atomic energy defense activities of the Department of Energy.

(2) The term “inactive defense waste disposal site” means any site (including any facility) under the control or jurisdiction of the Secretary of Energy which is used for the disposal of defense waste and is closed to the disposal of additional defense waste, including any site that is subject to decontamination and decommissioning.


References in Text


Codification

Section was formerly set out as a note under section 7274k of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

Amendments

2003—Subsec. (b)(2). Pub. L. 108–136, § 3141(g)(6)(D), inserted “the predecessor provision to section 2584 of this title” before period at end.

§ 2587. Report on environmental restoration expenditures

Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31), the Secretary of Energy shall submit to Congress a report on how the environmental restoration and waste management funds for defense activities of the Department of Energy were expended during the fiscal year preceding the fiscal year during which the budget is submitted. The report shall include details on expenditures by operations office, installation, budget category, and activity. The report also shall include any schedule changes or modifications to planned activities for the fiscal year in which the budget is submitted.


Codification

Section was formerly classified to section 2774a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

Amendments


§ 2588. Public participation in planning for environmental restoration and waste management at defense nuclear facilities

The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Attorney General, Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and interested members of the public in any planning conducted by the Secretary for environmental restoration and waste management at Department of Energy defense nuclear facilities.

PART B—CLOSURE OF FACILITIES

§ 2601. Projects to accelerate closure activities at defense nuclear facilities

(a) In general

The Secretary of Energy shall select and carry out closure-acceleration projects in accordance with this section.

(b) Purpose

The purpose of a closure-acceleration project shall be, within a fixed period of time, to clean up or decommission a Department of Energy defense nuclear facility or portion thereof and to make the facility safe by stabilizing, consolidating, treating, or removing nuclear materials from the facility in order to reduce significantly or eliminate future costs at the facility.

(c) Eligible projects

(1) The Secretary of Energy may establish a closure-acceleration project as eligible for selection under subsection (e) by—

(A) developing a plan for the project that meets the criteria under paragraph (2); and

(B) determining that the project will achieve significant long-term cost savings to the Federal Government from the baseline cost estimate made by the Department of Energy for the project.

(2) A plan for a closure-acceleration project under this section shall—

(A) define a clear, delineated scope of work for completion of the project;

(B) demonstrate that, with respect to the site of the proposed project, there is a regulatory agreement between the Department of Energy and other appropriate authorities for the implementation of environmental remediation requirements that would allow for successful completion of the project;

(C) demonstrate, to the maximum extent possible, the support of State and local elected officials and the public for the project;

(D) contain performance-based provisions to be included in the contract for the project, including—

(i) clearly stated and results-oriented performance criteria and measures;

(ii) appropriate criteria and incentives for the contractor to meet and exceed the performance criteria effectively and efficiently;

(iii) specific incentives for cost savings;

(iv) financial accountability; and

(v) when appropriate, reduction of fee for failure to meet minimum performance criteria and standards;

(E) demonstrate that the project will use new and innovative cleanup and waste management technology with potential for application to other locations and facilities without requiring the development of new technologies; and

(F) demonstrate that the project can be completed within 10 years from the date of its selection.
(d) Program administration

The Secretary of Energy, acting through the Assistant Secretary for Environmental Management, shall implement a program to carry out the provisions of this section.

(e) Selection of projects

(1) The Secretary of Energy shall select closure-acceleration projects to be carried out under this section from among those projects established as eligible under subsection (c) that will result in the most significant long-term cost savings to the Government and the most significant reduction of imminent risk.

(2) For each project selected, the Secretary shall submit to Congress a report setting forth the reasons why the project was selected, based on the criteria under subsection (c)(2) and paragraph (1) of this subsection.

(f) Multiyear contracts

Notwithstanding subsections (a) and (e) of section 3903 of title 41, the Secretary of Energy may enter into multiyear contracts to carry out projects selected under this section for up to 10 program years.

(g) Funding

(1) In the budget submitted to Congress under section 1105(a) of title 31 each year, the President shall set forth funds for carrying out closure-acceleration projects under this section as a separate item in the environmental restoration and waste management account of the Department of Energy budget.

(2) Funds appropriated for purposes of carrying out projects selected under this section shall remain available until expended.

(3) If a closure-acceleration project is being carried out at a defense nuclear facility with funds appropriated for such projects, the Secretary of Energy may not reduce the funds otherwise allocated to that defense nuclear facility for environmental restoration and waste management by reason of the funds being used for the project at that facility.

(4) Funds appropriated for purposes of carrying out projects selected under this section may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(h) Annual report

The Secretary of Energy shall submit each year to Congress a report on the status of each closure-acceleration project being carried out under this section. The report shall include, for each such project, the following:

(1) A description of the funding already provided for the project.

(2) A description of the extent of the cleanup, decommissioning, stabilization, consolidation, treatment, or removal activities completed.

(3) A comparison of the actual results of the project to the original proposal and the actual cost of the project to the originally proposed cost.

(4) A description of the funding needed in future fiscal years for completion of the project.

(i) Duration of program

No closure-acceleration project selected under this section may be carried out after September 23, 2011.

(j) Savings provision

Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.


CODIFICATION

In subsec. (f), ‘‘subsections (a) and (e) of section 3903 of title 41’’ substituted for ‘‘section 304B(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c(d))’’ on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Title 41, Public Contracts, was formerly classified to section 7274n of Title 10, Code of Federal Regulations, and will be disposed of—

(1) does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste;

(2) has had highly radioactive radionuclides removed to the maximum extent practical; and

(3A) does not exceed concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, and will be disposed of—

(1) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations; and

(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; or

(3B) exceeds concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, but will be disposed of—

AMENDMENTS


DEFENSE SITE ACCELERATION COMPLETION


‘‘(a) IN GENERAL—Notwithstanding the provisions of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.), the requirements of section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842), and other laws that define classes of radioactive waste, with respect to material stored at a Department of Energy site at which activities are regulated by a covered State pursuant to approved closure plans or permits issued by the State, the term ‘high-level radioactive waste’ does not include radioactive waste resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy (in this section referred to as the ‘Secretary’), in consultation with the Nuclear Regulatory Commission (in this section referred to as the ‘Commission’), determines—

(1) does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste;

(2) has had highly radioactive radionuclides removed to the maximum extent practical; and

(3A) does not exceed concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, and will be disposed of—

(1) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations; and

(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; or

(3B) exceeds concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, but will be disposed of—
“(i) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations; (ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; and (iii) pursuant to plans developed by the Secretary in consultation with the Commission.

“(b) MONITORING BY NUCLEAR REGULATORY COMMISSION.—(1) The Commission shall, in coordination with the covered State, monitor disposal actions taken by the Department of Energy pursuant to subparagraphs (A) and (B) of subsection (a)(3) for the purpose of assessing compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations.

“(2) If the Commission considers any disposal actions taken by the Department of Energy pursuant to those subparagraphs to be not in compliance with those performance objectives, the Commission shall, as soon as practicable after discovery of the noncompliant conditions, inform the Department of Energy, the covered State, and the following congressional committees:

“(A) The Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Appropriations of the House of Representatives.

“(B) The Committee on Armed Services, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, and the Committee on Appropriations of the Senate.

“(3) For fiscal year 2005, the Secretary shall, from amounts available for defense site acceleration completion, reimburse the Commission for all expenses, including salaries, that the Commission incurs as a result of performance under subsection (a) and this subsection for fiscal year 2005. The Department of Energy and the Commission may enter into an interagency agreement that specifies the method of reimbursement. Amounts received by the Commission for performance under subsection (a) and this subsection may be retained and used for salaries and expenses associated with those activities, notwithstanding section 2302 of title 31, United States Code, and shall remain available until expended.

“(4) For fiscal years after 2005, the Commission shall include in the budget justification materials submitted to Congress in support of the Commission budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) the amounts required, not offset by revenues, for performance under subsection (a) and this subsection.

“(c) INAPPLICABILITY TO CERTAIN MATERIALS.—Subsection (a) shall not apply to any material otherwise covered by that subsection that is transported from the covered States.

“(d) COVERED STATES.—For purposes of this section, the following States are covered States:

“(1) The State of South Carolina.

“(2) The State of Idaho.

“(e) CONSTRUCTION.—(1) Nothing in this section shall impair, alter, or modify the full implementation of any Federal Facility Agreement and Consent Order or other applicable consent decree for a Department of Energy site.

“(2) Nothing in this section establishes any precedent or is binding on the State of Washington, the State of Oregon, or any other State not covered by subsection (d) for the management, storage, treatment, and disposal of radioactive and hazardous materials.


“(4) Nothing in this section shall be construed to affect in any way the obligations of the Department of Energy to comply with section 4306A of the Atomic Energy Defense Act (50 U.S.C. 2567).


“[f] JUDICIAL REVIEW.—Judicial review shall be available in accordance with chapter 7 of title 5, United States Code, for the following:

“(1) Any determination made by the Secretary or any other agency action taken by the Secretary pursuant to this section.

“(2) Any failure of the Commission to carry out its responsibilities under subsection (b).”

SANDIA NATIONAL LABORATORIES

Pub. L. 108–199, div. H, § 127, Jan. 23, 2004, 118 Stat. 440, provided that: “Funds appropriated in this, or any other Act hereafter, may not be obligated to pay, on behalf of the United States or a contractor or subcontractor of the United States, in this year or any other fiscal year, a requirement to post bond or any other financial responsibility requirement relating to closure or post-closure care and monitoring of Sandia National Laboratories and properties held or managed by Sandia National Laboratories prior to implementation of closure or post-closure monitoring. The State of New Mexico or any other entity may not enforce against the United States or a contractor or subcontractor of the United States, in this year or any other fiscal year, a requirement to post bond or any other financial responsibility requirement relating to closure or post-closure care and monitoring of Sandia National Laboratories in New Mexico and properties held or managed by Sandia National Laboratories in New Mexico.”

§ 2602. Reports in connection with permanent closures of Department of Energy defense nuclear facilities

(a) Training and job placement services plan

Not later than 120 days before a Department of Energy defense nuclear facility (as defined in section 2286g of title 42) permanently ceases all production and processing operations, the Secretary of Energy must submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of the training and job placement services needed to enable the employees at such facility to obtain employment in the environmental remediation and cleanup activities at such facility. The discussion shall include the actions that should be taken by the contractor operating and managing such facility to provide retraining and job placement services to employees of such contractor.

(b) Closure report

Upon the permanent cessation of production operations at a Department of Energy defense nuclear facility, the Secretary of Energy shall submit to Congress a report containing—

(1) a complete survey of environmental problems at the facility;

(2) budget quality data indicating the cost of environmental restoration and other remediation and cleanup efforts at the facility; and

(3) a discussion of the proposed cleanup schedule.

§ 2611. Defense environmental management privatization projects

(a) Authority to enter into contracts

The Secretary of Energy may, using funds authorized to be appropriated by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) for a project referred to in that section, enter into a contract that—

(1) is awarded on a competitive basis;
(2) requires the contractor to construct or acquire any equipment or facilities required to carry out the contract;
(3) requires the contractor to bear any of the costs of the construction, acquisition, and operation of such equipment or facilities that arise before the commencement of the provision of goods or services under the contract; and
(4) provides for payment to the contractor under the contract only upon the meeting of performance specifications in the contract.

(b) Notice and wait

(1) The Secretary may not enter into a contract under subsection (a), exercise an authorization to proceed with such a contract or extend any contract period for such a contract by more than one year until 30 days after the date on which the Secretary submits to the congressional defense committees a report with respect to the contract.
(2) Except as provided in paragraph (3), a report under paragraph (1) shall set forth—

(A) the anticipated costs and fees of the Department under the contract, including the anticipated maximum amount of such costs and fees;
(B) any performance specifications in the contract;
(C) the anticipated dates of commencement and completion of the provision of goods or services under the contract;
(D) the allocation between the Department and the contractor of any financial, regulatory, or environmental obligations under the contract;
(E) any activities planned or anticipated to be required with respect to the project after completion of the contract;
(F) the site services or other support to be provided the contractor by the Department under the contract;
(G) the goods or services to be provided by the Department or contractor under the contract with respect to such goods or services;
(H) if the contract provides for financing of the project by an entity or entities other than the United States, a detailed comparison of the costs of financing the project through such entity or entities with the costs of financing the project by the United States;
(I) the schedule for the contract;
(J) the costs the Department would otherwise have incurred in obtaining the goods or services covered by the contract if the Department had not proposed to obtain the goods or services under this section;
(K) an estimate and justification of the cost savings, if any, to be realized through the contract, including the assumptions underlying the estimate;
(L) the effect of the contract on any ancillary schedules applicable to the facility concerned, including milestones in site compliance agreements; and
(M) the plans for maintaining financial and programmatic accountability for activities under the contract.
(3) In the case of a contract under subsection (a) at the Hanford Reservation, the report under paragraph (1) shall set forth—

(A) the matters specified in paragraph (2); and
(B) if the contract contemplates two pilot vitrification plants—

(i) an analysis of the basis for the selection of each of the plants in lieu of a single pilot vitrification plant; and
(ii) a detailed comparison of the costs to the United States of two pilot plants with the costs to the United States of a single pilot plant.

(c) Cost variations

(1)(A) The Secretary may not enter into a contract for a project referred to in subparagraph (B), or obligate funds attributable to the capital portion of the cost of such a contract, whenever the current estimated cost of the project exceeds the amount of the estimated cost of the project as shown in the most recent budget justification data submitted to Congress.

(B) Subparagraph (A) applies to the following:

(i) A project authorized by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85);
(ii) A project authorized by section 3103 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2824) for which a contract has not been entered into as of November 18, 1997.
(2) The Secretary may not obligate funds attributable to the capital portion of the cost of a contract entered into before such date for a project authorized by such section 3103 whenever the current estimated cost of the project equals or exceeds 110 percent of the amount of the estimated cost of the project as shown in the most recent budget justification data submitted to Congress.

(d) Use of funds for termination of contract

Not later than 15 days before the Secretary obligates funds available for a project authorized by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) to terminate the contract for the project under subsection (a), the Secretary shall notify
the congressional defense committees of the Secretary’s intent to obligate the funds for that purpose.

(e) Annual report on contracts

(1) Not later than February 28 of each year, the Secretary shall submit to the congressional defense committees a report on the activities, if any, carried out under each contract referred to in paragraph (2) during the preceding year. The report shall include an update with respect to each such contract of the matters specified under subsection (b)(1) as of the date of the report.

(2) A contract referred to in paragraph (1) is the following:

(A) A contract under subsection (a) for a project referred to in that subsection.


(f) Assessment of contracting without sufficient appropriations

Not later than 90 days after November 18, 1997, the Secretary shall submit to the congressional defense committees a report assessing whether, and under what circumstances, the Secretary could enter into contracts for defense environmental management privatization projects in the absence of sufficient appropriations to meet obligations under such contracts without thereby violating the provisions of section 3141 of title 31.


REFERENCES IN TEXT

Section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998, referred to in subsecs. (a), (c)(1)(B)(i), and (d), is section 3102(i) of Pub. L. 105–85, div. C, title XXXI, Nov. 18, 1997, 111 Stat. 2028, which is not classified to the Code.


AMENDMENTS


PART D—HANFORD RESERVATION, WASHINGTON

§ 2621. Safety measures for waste tanks at Hanford Nuclear Reservation

(a) Identification and monitoring of tanks

Not later than February 3, 1991, the Secretary of Energy shall identify which single-shelled or double-shelled high-level nuclear waste tanks at the Hanford Nuclear Reservation, Richland, Washington, may have a serious potential for release of high-level waste due to uncontrolled increases in temperature or pressure. After completing such identification, the Secretary shall determine whether continuous monitoring is being carried out to detect a release or excessive temperature or pressure at each tank so identified. If such monitoring is not being carried out, as soon as practicable the Secretary shall install such monitoring, but only if a type of monitoring that does not itself increase the danger of a release can be installed.

(b) Action plans

Not later than March 5, 1991, the Secretary of Energy shall develop action plans to respond to excessive temperature or pressure or a release from any tank identified under subsection (a).

(c) Prohibition

Beginning March 5, 1991, no additional high-level nuclear waste (except for small amounts removed and returned to a tank for analysis) may be added to a tank identified under subsection (a) unless the Secretary determines that no safer alternative than adding such waste to the tank currently exists or that the tank does not pose a serious potential for release of high-level nuclear waste.

(d) Report

Not later than May 5, 1991, the Secretary shall submit to Congress a report on actions taken to promote tank safety, including actions taken pursuant to this section, and the Secretary’s timetable for resolving outstanding issues on how to handle the waste in such tanks.


AMENDMENTS


§ 2622. Hanford waste tank cleanup program reforms

(a) Establishment of Office of River Protection

The Secretary of Energy shall establish an office at the Hanford Reservation, Richland, Washington, to be known as the “Office of River Protection” (in this section referred to as the “Office”).

(b) Management and responsibilities of Office

(1) The Office shall be headed by a senior official of the Department of Energy, who shall re-
port to the Assistant Secretary of Energy for Environmental Management.

(2) The head of the Office shall be responsible for managing, consistent with the policy direction established by the Department, all aspects of the River Protection Project, Richland, Washington.

(3)(A) The Assistant Secretary of Energy for Environmental Management shall delegate in writing responsibility for the management of the River Protection Project, Richland, Washington, to the head of the Office.

(B) Such delegation shall include, at a minimum, authorities for contracting, financial management, safety, and general program management that are equivalent to the authorities of managers of other operations offices of the Department of Energy.

(C) The head of the Office shall, to the maximum extent possible, coordinate all activities of the Office with the manager of the Richland Operations Office of the Department of Energy.

(c) Department responsibilities

The Secretary shall provide the head of the Office with the resources and personnel necessary to carry out the responsibilities specified in subsection (b)(2).

(d) Report

The Assistant Secretary of Energy for Environmental Management shall submit to the Committee on Armed Services of the House of Representatives, the Secretary of Commerce and on National Security of the House of Representatives an integrated management plan for all programs relating to the retrieval and treatment of tank waste privatization contracts, of the Department of Energy at Hanford in an efficient and streamlined manner.

(e) Report

Not later than 2 years after the commencement of operations of the Office, the Secretary shall submit to the committees referred to in subsection (d) a report describing—

(1) any progress in or resulting from the utilization of the Tank Waste Remediation System; and

(2) any improvements in the management structure of the Department at Hanford with respect to the Tank Waste Remediation System as a result of the Office.

(f) Termination

(1) The Office shall terminate on the later to occur of the following dates:

(A) September 30, 2010.

(B) The date on which the Assistant Secretary of Energy for Environmental Management determines, in consultation with the head of the Office, that continuation of the Office is no longer necessary to carry out the responsibilities of the Department of Energy under the Tri-Party Agreement.

(2) The Assistant Secretary shall notify, in writing, the committees referred to in subsection (d) of a determination under paragraph (1).

(3) In this subsection, the term “Tri-Party Agreement” means the Hanford Federal Facility Agreement and Consent Order entered into among the Department of Energy, the Environmental Protection Agency, and the State of Washington Department of Ecology.

§ 2623. River Protection Project

The tank waste remediation system environmental project, Richland, Washington, including all programs relating to the retrieval and treatment of tank waste at the site at Hanford, Washington, under the management of the Office of River Protection, shall be known and designated as the “River Protection Project.” Any reference to that project in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the River Protection Project.

(A) September 30, 2010.

(B) The date on which the Assistant Secretary of Energy for Environmental Management determines, in consultation with the head of the Office, that continuation of the Office is no longer necessary to carry out the responsibilities of the Department of Energy under the Tri-Party Agreement.

(2) The Assistant Secretary shall notify, in writing, the committees referred to in subsection (d) of a determination under paragraph (1).

(3) In this subsection, the term “Tri-Party Agreement” means the Hanford Federal Facility Agreement and Consent Order entered into among the Department of Energy, the Environmental Protection Agency, and the State of Washington Department of Ecology.


AMENDMENTS


2001—Subsec. (f). Pub. L. 107–107 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: “(1) The Office shall terminate 5 years after the commencement of operations under this section unless the Secretary determines that termination on that date would disrupt effective management of the Hanford Tank Farm operations.”

“(2) The Secretary shall notify, in writing, the committees referred to in subsection (d) of a determination under paragraph (1).”

2000—Subsec. (b). Pub. L. 106–398, §1 [div. C, title XXXI, §3141(b)], substituted “managing, consistent with the policy direction established by the Department, all aspects of the River Protection Project, Richland, Washington” for “managing all aspects of the Tank Waste Remediation System (also referred to as the Hanford Tank Farm operations), including those portions under privatization contracts, of the Department of Energy at Hanford” in par. (2) and added par. (3).

Subsec. (c). Pub. L. 106–398, §1 [div. C, title XXXI, §3141(c)], substituted “head” for “manager” and “to carry out the responsibilities specified in subsection (b)(2)” for “to manage the tank waste privatization program at Hanford in an efficient and streamlined manner.”

Subsec. (d). Pub. L. 106–398, §1 [div. C, title XXXI, §3141(d)], amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committees on Commerce and on National Security of the House of Representatives an integrated management plan for all aspects of the Hanford Tank Farm operations, including the roles, responsibilities, and reporting relationships of the Office.”

§ 2623. River Protection Project

The tank waste remediation system environmental project, Richland, Washington, including all programs relating to the retrieval and treatment of tank waste at the site at Hanford, Washington, under the management of the Office of River Protection, shall be known and designated as the “River Protection Project.” Any reference to that project in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the River Protection Project.
§ 2624. Funding for termination costs of River Protection Project, Richland, Washington

The Secretary of Energy may not use appropriated funds to establish a reserve for the payment of any costs of termination of any contract relating to the River Protection Project, Richland, Washington (as designated by section 2023 of this title), that is terminated after October 30, 2000. Such costs may be paid from—

(1) appropriations originally available for the performance of the contract concerned;
(2) appropriations currently available for privatization initiatives in carrying out environmental restoration and waste management activities necessary for national security programs, and not otherwise obligated; or
(3) funds appropriated specifically for the payment of such costs.


AMENDMENTS

2003—Pub. L. 108–136, § 3141(g)(22)(D), in introductory provisions, substituted “section 3023 of this title” for “section 3141” and “October 30, 2000” for “the date of the enactment of this Act”.

PART E—SAVANNAH RIVER SITE, SOUTH CAROLINA

§ 2631. Accelerated schedule for isolating high-level nuclear waste at the Defense Waste Processing Facility, Savannah River Site

The Secretary of Energy shall accelerate the schedule for the isolation of high-level nuclear waste in glass canisters at the Defense Waste Processing Facility at the Savannah River Site, South Carolina, if the Secretary determines that the acceleration of such schedule—

(1) will achieve long-term cost savings to the Federal Government; and
(2) could accelerate the removal and isolation of high-level nuclear waste from long-term storage tanks at the site.


§ 2632. Multi-year plan for clean-up

The Secretary of Energy shall develop and implement a multi-year plan for the clean-up of nuclear waste at the Savannah River Site that results, or has resulted, from the following:

(1) Nuclear weapons activities carried out at the site.
(2) The processing, treating, packaging, and disposal of Department of Energy domestic and foreign spent nuclear fuel rods at the site.


AMENDMENTS


§ 2633. Continuation of processing, treatment, and disposal of legacy nuclear materials

The Secretary of Energy shall continue operations and maintain a high state of readiness at the H–canyon facility at the Savannah River Site, Aiken, South Carolina, and shall provide technical staff necessary to operate and so maintain such facility.


AMENDMENTS


§ 2634. Continuation of processing, treatment, and disposition of legacy nuclear materials

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F–canyon and H–canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall provide technical staff necessary to operate and so maintain such facilities.


§ 2635. Continuation of processing, treatment, and disposition of legacy nuclear materials

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F–canyon and H–canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall provide technical staff necessary to operate and so maintain such facilities.


§ 2636. Continuation of processing, treatment, and disposal of legacy nuclear materials

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F–canyon and H–canyon facilities at the Savannah River Site and shall provide technical staff necessary to operate and maintain such facilities at that state of readiness.

**AMENDMENTS**


## § 2637. Continuation of processing, treatment, and disposal of legacy nuclear materials

The Secretary of Energy shall continue operations and maintain a high state of readiness at the H–canyon facility and the F–canyon facility at the Savannah River Site, and shall provide technical staff necessary to operate and maintain such facilities, pending the development and implementation of the plan referred to in section 2632 of this title.


**AMENDMENTS**


## § 2638. Limitation on use of funds for decommissioning F–canyon facility

No amounts authorized to be appropriated or otherwise made available for the Department of Energy by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398) or any other Act may be obligated or expended for purposes of commencing the decommissioning of the F–canyon facility at the Savannah River Site until the Secretary of Energy submits to the Committee on Armed Services jointly submit to the Committee on Armed Services of the House of Representatives, and the Defense Nuclear Facilities Safety Board, a report setting forth:—

(1) an assessment whether or not all materials present in the F–canyon facility as of the date of the report that required stabilization have been safely stabilized as of that date;

(2) an assessment whether or not the requirements applicable to the F–canyon facility to meet the future needs of the United States for fissile materials disposition can be met through full use of the H–canyon facility at the Savannah River Site; and

(3) if it appears that one or more of the requirements described in paragraph (2) cannot be met through full use of the H–canyon facility—

(A) an identification by the Secretary of each such requirement that cannot be met through full use of the H–canyon facility; and

(B) for each requirement so identified, the reasons why such requirement cannot be met through full use of the H–canyon facility and a description of the alternative capability for fissile materials disposition that is needed to meet such requirement.


**REFERENCES IN TEXT**


**AMENDMENTS**

2003—Pub. L. 108–136, §3141(g)(24)(C), inserted section catchline, struck out former subsec. heading, and, in introductory provisions, substituted “the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398) or any other Act” for “this or any other Act” and “the Secretary of Energy” for “the Secretary”.

Pub. L. 108–136, §3115(b)(2), substituted “a report setting forth—” and pars. (1) to (3) for “the following;” and former pars. (1) to (3) which contained similar provisions.

Pub. L. 108–136, §3115(b)(1), in introductory provisions, substituted “submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and the Defense Nuclear Facilities Safety Board,” for “and the Defense Nuclear Facilities Safety Board jointly submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives”.

**SUBCHAPTER V—SAFEGUARDS AND SECURITY MATTERS**

### § 2651. Prohibition on international inspections of Department of Energy facilities unless protection of restricted data is certified

(a) Prohibition on inspections

The Secretary of Energy may not allow an inspection of a nuclear weapons facility by the International Atomic Energy Agency until the Secretary certifies to Congress that no restricted data will be revealed during such inspection.

(b) Omitted

(c) Restricted data defined

In this section, the term “restricted data” has the meaning provided by section 2014(y) of title 42.


**CONCILIATION**

Subsec. (a) of section 3154 of Pub. L. 104–106 was formerly set out as a note under section 2164 of Title 42, prior to renumbering by Pub. L. 108–136.

AMENDMENTS
2003—Pub. L. 108–136, § 3141(h)(2)(D), redesignated par. (1) of subsec. (a) as entire subsec. (a) and par. (2) of subsec. (a) as subsec. (c) and, in subsec. (c), inserted heading and substituted “In this section” for “‘For purposes of paragraph (1)’”. Subsec. (c) was editorially transferred to follow subsec. (b), to reflect the probable intent of Congress.

§ 2652. Restrictions on access to national laboratories by foreign visitors from sensitive countries

(a) Background review required
The Secretary of Energy may not admit to any facility of a national laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list unless the Secretary first completes a background review with respect to that individual.

(b) Moratorium pending certification
(1) During the period described in paragraph (2), the Secretary may not admit to any facility of a national laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list.
(2) The period referred to in paragraph (1) is the period beginning on November 4, 1999, and ending on the later of the following:
(B) The date that is 45 days after the date on which the Secretary submits to Congress the certifications described in paragraph (3).

(3) The certifications referred to in paragraph (2) are one certification each by the Director of Counterintelligence of the Department of Energy, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, of each of the following:
(A) That the foreign visitors program at that facility complies with applicable orders, regulations, and policies of the Department of Energy relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such orders, regulations, and policies.
(B) That the foreign visitors program at that facility includes adequate protections against the inadvertent release of Restricted Data, information important to the national security of the United States, and any other sensitive information the disclosure of which might harm the interests of the United States.
(C) That the foreign visitors program at that facility does not pose an undue risk to the national security interests of the United States.

(c) Waiver of moratorium
(1) The Secretary of Energy may waive the prohibition in subsection (b) on a case-by-case basis with respect to any specific individual or any specific delegation of individuals whose admission to a national laboratory is determined by the Secretary to be in the interest of the national security of the United States.
(2) Not later than the seventh day of the month following a month in which a waiver is made, the Secretary shall submit a report in writing providing notice of each waiver made in that month to the following:
(A) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.
(B) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(3) Each such report shall be in classified form and shall contain the identity of each individual or delegation for whom such a waiver was made and, with respect to each such individual or delegation, the following information:
(A) A detailed justification for the waiver.
(B) For each individual with respect to whom a background review was conducted, whether the background review determined that negative information exists with respect to that individual.
(C) The Secretary’s certification that the admission of that individual or delegation to a national laboratory is in the interest of the national security of the United States.
(4) The authority of the Secretary under paragraph (1) may be delegated only to the Director of Counterintelligence of the Department of Energy.

(d) Exception to moratorium for certain individuals
The moratorium under subsection (b) shall not apply to any person who—
(1) is, on October 5, 1999, an employee or assignee of the Department of Energy, or of a contractor of the Department; and
(2) has undergone a background review in accordance with subsection (a).

(e) Exception to moratorium for certain programs
The moratorium under subsection (b) shall not apply—
(1) to activities relating to cooperative threat reduction with states of the former Soviet Union; or
(2) to the materials protection control and accounting program of the Department.

(f) Sense of Congress regarding background reviews
It is the sense of Congress that the Secretary of Energy, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence should ensure that background reviews carried out under this section are completed in not more than 15 days.

(g) Definitions
For purposes of this section:
(1) The term “background review”, commonly known as an indices check, means a review of information provided by the Director of Central Intelligence and the Director of the
Federal Bureau of Investigation regarding personal background, including information relating to any history of criminal activity or to any evidence of espionage.

(2) The term "sensitive countries list" means the list prescribed by the Secretary of Energy known as the Department of Energy List of Sensitive Countries as in effect on January 1, 1999.

(3) The term "national laboratory" means any of the following:
(A) Lawrence Livermore National Laboratory, Livermore, California.
(B) Los Alamos National Laboratory, Los Alamos, New Mexico.
(C) Sandia National Laboratories, Albuquerque, New Mexico and Livermore, California.

(4) The term "Restricted Data" has the meaning given that term in section 2014(y) of title 42.


CODIFICATION
Section was formerly classified to section 7383c of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS
Subsec. (d)(1). Pub. L. 108–136, § 3141(h)(4)(D)(ii), substituted "October 5, 1999," for "the date of the enactment of this Act," in the original, which for purposes of codification had been changed to "October 5, 1999," thus requiring no change in text.

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 Central 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 Title 50, War and National Defense.

§ 2653. Background investigations of certain personnel at Department of Energy facilities

(a) In general
The Secretary of Energy shall ensure that an investigation meeting the requirements of section 2165 of title 42 is made for each Department of Energy employee, or contractor employee, at a national laboratory or nuclear weapons production facility who—
(1) carries out duties or responsibilities in or around a location where Restricted Data is present; or
(2) has or may have regular access to a location where Restricted Data is present.

(b) Compliance
The Secretary shall have 15 months from October 5, 1999, to meet the requirement in subsection (a).

(c) Definitions
In this section, the terms "national laboratory" and "Restricted Data" have the meanings given such terms in section 2653(g) of this title.


CODIFICATION
Section was formerly classified to section 7383a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS
2003—Subsec. (b). Pub. L. 108–136, § 3141(h)(4)(D)(i), substituted "October 5, 1999," for "the date of the enactment of this Act" in the original, which for purposes of codification had been changed to "October 5, 1999," thus requiring no change in text.

§ 2654. Department of Energy counterintelligence polygraph program

(a) New counterintelligence polygraph program required
The Secretary of Energy shall carry out, under regulations prescribed under this section, a new counterintelligence polygraph program for the Department of Energy. The purpose of the new program is to minimize the potential for release or disclosure of classified data, materials, or information.

(b) Authorities and limitations
(1) The Secretary shall prescribe regulations for the new counterintelligence polygraph program required by subsection (a) in accordance with the provisions of subchapter II of chapter 5 of title 5 (commonly referred to as the Administrative Procedures Act).

(2) In prescribing regulations for the new program, the Secretary shall take into account the results of the Polygraph Review.

(3) Not later than six months after obtaining the results of the Polygraph Review, the Secretary shall issue a notice of proposed rulemaking for the new program.

(c) Omitted

(d) Report on further enhancement of personnel security program

(1) Not later than January 1, 2003, the Administrator for Nuclear Security shall submit to Congress a report setting forth the recommendations of the Administrator for any legislative action that the Administrator considers appropriate in order to enhance the personnel security program of the Department of Energy.

(2) Any recommendations under paragraph (1) regarding the use of polygraphs shall take into account the results of the Polygraph Review.
(e) Polygraph Review defined

In this section, the term “Polygraph Review” means the review of the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences.


CODIFICATION


Section was formerly classified to section 2653 of this title. The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


EFFECTIVE DATE OF REPEAL

Pub. L. 107–314, div. D, title XLV, § 4504(c), formerly Pub. L. 107–107, div. C, title XXXI, § 3152(c), Dec. 28, 2001, 115 Stat. 1377; renumbered Pub. L. 107–314, div. D, title XLV, § 4504(c), and amended Pub. L. 108–136, div. C, title XXXI, § 3141(h)(5)(A), Nov. 24, 2003, 117 Stat. 1772, provided that the repeal of this section is effective 30 days after the Secretary of Energy submits to the Committees on Armed Services of the Senate and House of Representatives the Secretary’s certification that the final rule for the new counterintelligence polygraph program required by section 2654(a) of this title has been fully implemented (Such certifications were submitted Oct. 31, 2006.).

§ 2656. Notice to congressional committees of certain security and counterintelligence failures within nuclear energy defense programs

(a) Required notification

The Secretary of Energy shall submit to the Committees on Armed Services of the Senate and House of Representatives a notification of each significant nuclear defense intelligence loss. Any such notification shall be provided only after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate.

(b) Significant nuclear defense intelligence losses

In this section, the term “significant nuclear defense intelligence loss” means any national security or counterintelligence failure or compromise of classified information at a facility of the Department of Energy or operated by a contractor of the Department that the Secretary considers likely to cause significant harm or damage to the national security interests of the United States.

(c) Manner of notification

Notification of a significant nuclear defense intelligence loss under subsection (a) shall be provided, in accordance with the procedures established pursuant to subsection (d), not later than 30 days after the date on which the Department of Energy determines that the loss has taken place.

(d) Procedures

The Secretary of Energy and the Committees on Armed Services of the Senate and House of Representatives shall each establish such procedures as may be necessary to protect from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is submitted pursuant to this section and that are otherwise necessary to carry out the provisions of this section.

(e) Statutory construction

(1) Nothing in this section shall be construed as authority to withhold any information from the Committees on Armed Services of the Senate and House of Representatives on the grounds that providing the information to those committees would constitute the unauthorized disclosure of classified information, information relating to intelligence sources and methods, or sensitive law enforcement information.

(2) Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to the Congress, including the requirement under section 413 of this title for the President to ensure that the congressional intelligence committees are kept fully informed of the intelligence activities of the United States and for those committees to notify promptly other congressional committees of any matter relating to intelligence activities requiring the attention of those committees.


CODIFICATION

Section was formerly classified to section 7833b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

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 Central 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 ref-
§ 2657. Submittal of annual report on status of security functions at nuclear weapons facilities

Not later than September 1 each year, the Secretary of Energy shall submit to the congressional defense committees the report entitled "Annual Report to the President on the Status of Safeguards and Security of Domestic Nuclear Weapons Facilities", or any successor report to such report.


CODIFICATION
Section was formerly set out as a note under section 7274m of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

1999—Pub. L. 106–65 struck out subsec. (a) designation and heading and struck out heading and text of subsec. (b). Text read as follows: "The Secretary shall include with each report submitted under subsection (a) in fiscal years 1998 through 2000 any comments on such report by the members of the Department of Energy Security Management Board established under section 3161 that such members consider appropriate."

§ 2658. Report on counterintelligence and security practices at national laboratories

(a) In general
Not later than March 1 of each year, the Secretary of Energy shall submit to the Congress a report for the preceding year on counterintelligence and security practices at the facilities of the national laboratories (whether or not classified activities are carried out at the facility).

(b) Content of report
The report shall include, with respect to each national laboratory, the following:

(1) The number of employees, including full-time counterintelligence and security professionals and contractor employees.
(2) A description of the counterintelligence and security training courses conducted and, for each such course, any requirement that employees successfully complete that course.
(3) A description of each contract awarded that provides an incentive for the effective performance of counterintelligence or security activities.
(4) A description of the requirement that an employee report the travel to sensitive countries of that employee (whether or not the travel was for official business).
(5) The number of trips by individuals who traveled to sensitive countries, with identification of the sensitive countries visited.

(c) National laboratory defined
In this section, the term "national laboratory" has the meaning given that term in section 2652(g)(3) of this title.


CODIFICATION
Section was formerly classified to section 7383f of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

§ 2659. Report on security vulnerabilities of national laboratory computers

(a) Report required
Not later than March 1 of each year, the National Counterintelligence Policy Board shall prepare a report on the security vulnerabilities of the computers of the national laboratories.

(b) Preparation of report
In preparing the report, the National Counterintelligence Policy Board shall establish a so-called "red team" of individuals to perform an operational evaluation of the security vulnerabilities of the computers of one or more national laboratories, including by direct experimentation. Such individuals shall be selected by the National Counterintelligence Policy Board from among employees of the Department of Defense, the National Security Agency, the Central Intelligence Agency, the Federal Bureau of Investigation, and of other agencies, and may be detailed to the National Counterintelligence Policy Board from such agencies without reimbursement and without interruption or loss of civil service status or privilege.

(c) Submission of report to Secretary of Energy and to FBI Director
Not later than March 1 of each year, the report shall be submitted in classified and unclassified form to the Secretary of Energy and the Director of the Federal Bureau of Investigation.

(d) Forwarding to congressional committees
Not later than 30 days after the report is submitted, the Secretary and the Director shall each separately forward that report, with the recommendations in classified and unclassified form of the Secretary or the Director, as applicable, in response to the findings of that report, to the following:

(1) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.
(2) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.
(e) First report

The first report under this section shall be the report for the year 2000. That report shall cover each of the national laboratories.

(f) National laboratory defined

In this section, the term "national laboratory" has the meaning given that term in section 2652(g)(3) of this title.


Codification

Section was formerly classified to section 7383g of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

Amendments


PART B—CLASSIFIED INFORMATION

§ 2671. Review of certain documents before declassification and release

(a) In general

The Secretary of Energy shall ensure that, before a document of the Department of Energy that contains national security information is released or declassified, such document is reviewed to determine whether it contains restricted data.

(b) Limitation on declassification

The Secretary may not implement the automatic declassification provisions of Executive Order 12958 if the Secretary determines that such implementation could result in the automatic declassification and release of documents containing restricted data.

(c) Restricted data defined

In this section, the term "restricted data" has the meaning provided by section 2014(y) of title 42.


REFERENCES IN TEXT

Executive Order 12958, referred to in subsec. (b), which was formerly set out as a note under section 435 of this title, was revoked by Ex. Ord. No. 13526, § 6.2(g), Dec. 29, 2009, 75 F.R. 731.

Codification

Section was formerly set out as a note under section 2162 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

§ 2672. Protection against inadvertent release of Restricted Data and Formerly Restricted Data

(a) Plan for protection against release

The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a plan to prevent the inadvertent release of records containing Restricted Data or Formerly Restricted Data during the automatic declassification of records under Executive Order No. 12958 (50 U.S.C. 435 note).

(b) Plan elements

The plan under subsection (a) shall include the following:

(1) The actions to be taken in order to ensure that records subject to Executive Order No. 12958 are reviewed on a page-by-page basis for Restricted Data and Formerly Restricted Data unless they have been determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.

(2) The criteria and process by which documents are determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.

(3) The actions to be taken in order to ensure proper training, supervision, and evaluation of personnel engaged in declassification under that Executive order so that such personnel recognize Restricted Data and Formerly Restricted Data.

(4) The extent to which automated declassification technologies will be used under that Executive order to protect Restricted Data and Formerly Restricted Data from inadvertent release.

(5) Procedures for periodic review and evaluation by the Secretary of Energy, in consultation with the Director of the Information Security Oversight Office of the National Archives and Records Administration, of compliance by Federal agencies with the plan.

(6) Procedures for resolving disagreements among Federal agencies regarding declassification procedures and decisions under the plan.

(7) The funding, personnel, and other resources required to carry out the plan.

(8) A timetable for implementation of the plan.

(c) Limitation on declassification of certain records

(1) Effective on October 17, 1998, and except as provided in paragraph (3), a record referred to in subsection (a) may not be declassified unless the agency having custody of the record reviews the record on a page-by-page basis to ensure that the record does not contain Restricted Data or Formerly Restricted Data.

(2) Any record determined as a result of a review under paragraph (1) to contain Restricted Data or Formerly Restricted Data may not be declassified until the Secretary of Energy, in conjunction with the head of the agency having custody of the record, determines that the document is suitable for declassification.

(3) After the date occurring 60 days after the submission of the plan required by subsection (a) to the committees referred to in paragraphs (1) and (2) of subsection (d), the requirement under paragraph (1) to review a record on a page-by-page basis shall not apply in the case of a record determined, under the actions specified
in the plan pursuant to subsection (b)(1), to be a record that is highly unlikely to contain Restricted Data or Formerly Restricted Data.

(d) Submission of plan
The Secretary of Energy shall submit the plan required under subsection (a) to the following:
(1) The Committee on Armed Services of the Senate.
(2) The Committee on Armed Services of the House of Representatives.
(3) The Assistant to the President for National Security Affairs.

(e) Submission of reviews
The Secretary of Energy shall, in each even-numbered year, submit a summary of the results of the periodic reviews and evaluations specified in the plan pursuant to subsection (b)(5) to the committees and Assistant to the President specified in subsection (d).

(f) Report and notification regarding inadvertent releases
(1) The Secretary of Energy shall submit to the committees and Assistant to the President specified in subsection (d) a report on inadvertent releases of Restricted Data or Formerly Restricted Data under Executive Order No. 12958 that occurred before October 17, 1998.
(2) The Secretary of Energy shall, in each even-numbered year beginning in 2010, submit to the committees and Assistant to the President specified in subsection (d) a report identifying any inadvertent releases of Restricted Data or Formerly Restricted Data under Executive Order No. 12958 discovered in the two-year period preceding the submittal of the report.

(g) Definition
In this section, the term “Restricted Data” has the meaning given that term in section 2014(y) of title 42.

References in Text
Executive Order No. 12958, referred to in subsecs. (a), (b)(1), and (f), which was formerly set out as a note under section 435 of this title, was revoked by Ex. Ord. No. 13526, § 6.2(g), Dec. 29, 2009, 75 F.R. 731.

Codification
Section was formerly set out as a note under section 435 of this title prior to renumbering by Pub. L. 108–136.

Amendments

2000—Subsec. (f)(2). Pub. L. 106–398 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Not later than 30 days after any such inadvertent release occurring after the date of the enactment of this Act, the Secretary of Energy shall notify the committees and Assistant to the President specified in subsection (d) of such releases.”

Effective Date of 2000 Amendment
Pub. L. 106–398, § 1 [div. C, title XXXI, § 3193(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–461, provided that: “The amendment made by subsection (a) [amending this section] apply [sic] with respect to inadvertent releases of Restricted Data and Formerly Restricted Data that are discovered on or after the date of the enactment of this Act (Oct. 30, 2000).”

§ 2673. Supplement to plan for declassification of Restricted Data and Formerly Restricted Data
(a) Supplement to plan
The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a supplement to the plan required under subsection (a) of section 2672 of this title.

(b) Contents of supplement
The supplement shall provide for the application of that plan (including in particular the element of the plan required by subsection (b)(1) of section 2672 of this title) to all records subject to Executive Order No. 12958 that were determined before October 17, 1998, to be suitable for declassification.

(c) Limitation on declassification of records
All records referred to in subsection (b) shall be treated, for purposes of subsection (c) of section 2672 of this title, in the same manner as records referred to in subsection (a) of such section.

(d) Submission of supplement
The Secretary of Energy shall submit the supplement required under subsection (a) to the recipients of the plan referred to in subsection (d) of section 2672 of this title.

References in Text
Executive Order No. 12958, referred to in subsecs. (a), (b)(1), and (f), which was formerly set out as a note under section 435 of this title, was revoked by Ex. Ord. No. 13526, § 6.2(g), Dec. 29, 2009, 75 F.R. 731.

Codification
Section was formerly set out as a note under section 435 of this title prior to renumbering by Pub. L. 108–136.

Amendments
2008—Subsec. (e). Pub. L. 110–417, § 3121(b), substituted “in each even-numbered year” for “on a periodic basis” and “subsection (b)(5)” for “subsection (b)(4)”.
Subsec. (f). Pub. L. 110–417, § 3121(a), added par. (2) and struck out former par. (2) which read as follows: “Commencing with inadvertent releases discovered on or after October 30, 2000, the Secretary of Energy shall, on a quarterly basis, submit a report to the committees and Assistant to the President specified in subsection (d). The report shall state whether any inadvertent releases described in paragraph (1) occurred during the immediately preceding quarter and, if so, shall identify each such release.”

§ 2674. Protection of classified information during laboratory-to-laboratory exchanges

(a) Provision of training

The Secretary of Energy shall ensure that all Department of Energy employees and Department of Energy contractor employees participating in laboratory-to-laboratory cooperative exchange activities are fully trained in matters relating to the protection of classified information and to potential espionage and counterintelligence threats.

(b) Countering of espionage and intelligence-gathering abroad

(1) The Secretary shall establish a pool of Department employees and Department contractor employees who are specially trained to counter threats of espionage and intelligence-gathering by foreign nationals against Department employees and Department contractor employees who travel abroad for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.

(2) The Director of Counterintelligence of the Department of Energy may assign at least one employee from the pool established under paragraph (1) to accompany a group of Department employees or Department contractor employees who travel to any nation designated to be a sensitive country for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.

§ 2675. Identification in budget materials of amounts for declassification activities and limitation on expenditures for such activities

(a) Amounts for declassification of records

The Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) specific identification, as a budgetary line item, of the amounts required to carry out programmed activities during that fiscal year to declassify records pursuant to Executive Order No. 12858 (50 U.S.C. 435 note), or any successor Executive order, or to comply with any statutory requirement to declassify Government records.

(b) Certification required with respect to automatic declassification of records

No records of the Department of Energy that have not as of October 5, 1999, been reviewed for declassification shall be subject to automatic declassification unless the Secretary of Energy certifies to Congress that such declassification would not harm the national security.

(c) Report on automatic declassification of Department of Energy records

Not later than February 1, 2001, the Secretary of Energy shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a report on the efforts of the Department of Energy relating to the declassification of classified records under the control of the Department of Energy. Such report shall include the following:

(1) An assessment of whether the Department will be able to review all relevant records for declassification before any date established for automatic declassification.

(2) An estimate of the number of records, if any, that the Department will be unable to review for declassification before any such date and the effect on national security of the automatic declassification of those records.

(3) An estimate of the length of time by which any such date would need to be extended to avoid the automatic declassification of records that have not yet been reviewed as of such date.

References to Text

Executive Order No. 12858, referred to in subsec. (a), which was formerly set out as a note under section 435 of this title, was revoked by Ex. Ord. No. 13526, § 6.2(g), Dec. 29, 2009, 75 F.R. 731.

Codification

Section was formerly set out as a note under section 435 of this title prior to renumbering by Pub. L. 108–136.

Amendments


Subsec. (c). Pub. L. 108–136, § 3141(h)(13)(D)(iii), substituted “subsection (c) of section 2672 of this title” for “section 2672(o)(1) of the Act”.

Subsec. (d). Pub. L. 108–136, § 3141(h)(13)(D)(iv), substituted “subsection (d) of section 2672 of this title” for “section 2672(d)(1) of the Act”.

Codification

Section was formerly classified to section 7383b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

References to Text

Executive Order No. 12858, referred to in subsec. (a), which was formerly set out as a note under section 435 of this title, was revoked by Ex. Ord. No. 13526, § 6.2(g), Dec. 29, 2009, 75 F.R. 731.

Codification

Section was formerly set out as a note under section 435 of this title prior to renumbering by Pub. L. 108–136.

Amendments

PART C—EMERGENCY RESPONSE

§ 2691. Responsibility for Defense Programs Emergency Response Program

The Office of Military Applications under the Assistant Secretary of Energy for Defense Programs shall retain responsibility for the Defense Programs Emergency Response Program within the Department of Energy.


SUBCHAPTER VI—PERSONNEL MATTERS

PART A—PERSONNEL MANAGEMENT

§ 2701. Authority for appointment of certain scientific, engineering, and technical personnel

(a) Authority

(1) Notwithstanding any provision of title 5 governing appointments in the competitive service and General Schedule classification and pay rates, the Secretary of Energy may—

(A) establish and set the rates of pay for not more than 200 positions in the Department of Energy for scientific, engineering, and technical personnel whose duties will relate to safety at defense nuclear facilities of the Department; and

(B) appoint persons to such positions.

(2) The rate of pay for a position established under paragraph (1) may not exceed the rate of pay payable for level III of the Executive Schedule under section 5314 of title 5.

(3) To the maximum extent practicable, the Secretary shall appoint persons under paragraph (1)(B) to the positions established under paragraph (1)(A) in accordance with the merit system principles set forth in section 2301 of title 5.

(4) The Secretary may not appoint more than 100 persons during fiscal year 1995 under the authority provided in this subsection.

(b) OPM review

(1) The Secretary shall enter into an agreement with the Director of the Office of Personnel Management under which agreement the Director shall periodically evaluate the use of the authority set forth in subsection (a)(1). The Secretary shall reimburse the Director for evaluations conducted by the Director pursuant to the agreement. Any such reimbursement shall be credited to the revolving fund referred to in section 1304(e) of title 5.

(2) If the Director determines as a result of such evaluation that the Secretary of Energy is not appointing persons to positions under such authority in a manner consistent with the merit system principles set forth in section 2301 of title 5 or is setting rates of pay at levels that are not appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved, the Director shall notify the Secretary and Congress of that determination.

(3) Upon receipt of a notification under paragraph (2), the Secretary shall—

(A) take appropriate actions to appoint persons to positions under such authority in a manner consistent with such principles or to set rates of pay at levels that are appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved; or

(B) cease appointment of persons under such authority.

(c) Termination

(1) The authority provided under subsection (a)(1) shall terminate on September 30, 2016.

(2) An employee may not be separated from employment with the Department of Energy or receive a reduction in pay by reason of the termination of authority under paragraph (1).


REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS


1997—Subsec. (c). Pub. L. 105–65, § 3189(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to a study to be conducted by the Environmental Protection Agency.
Subsec. (c)(1), Pub. L. 105–85, §3139(b), substituted “September 30, 1999” for “September 30, 1997”.
Subsec. (d), Pub. L. 105–85, §3139(a)(2), redesignated subsec. (d) as (c).

§ 2702. Whistleblower protection program

(a) Program required

The Secretary of Energy shall establish a program to ensure that covered individuals may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures.

(b) Covered individuals

For purposes of this section, a covered individual is an individual who is an employee of the Department of Energy, or of a contractor of the Department, who is engaged in the defense activities of the Department.

(c) Protected disclosures

For purposes of this section, a protected disclosure is a disclosure—

(1) made by a covered individual who takes appropriate steps to protect the security of the information in accordance with guidance provided under this section;

(2) made to a person or entity specified in subsection (d); and

(3) of classified or other information that the covered individual reasonably believes to provide direct and specific evidence of any of the following:

(A) A violation of law or Federal regulation.

(B) Gross mismanagement, a gross waste of funds, or abuse of authority.

(C) A false statement to Congress on an issue of material fact.

(d) Persons and entities to which disclosures may be made

A person or entity specified in this subsection is any of the following:

(1) A member of a committee of Congress having primary responsibility for oversight of the department, agency, or element of the Government to which the disclosed information relates.

(2) An employee of Congress who is a staff member of such a committee and has an appropriate security clearance for access to information of the type disclosed.


(4) The Federal Bureau of Investigation.

(5) Any other element of the Government designated by the Secretary as authorized to receive information of the type disclosed.

(e) Official capacity of persons to whom information is disclosed

A member of, or an employee of Congress who is a staff member of, a committee of Congress specified in subsection (d) who receives a protected disclosure under this section does so in that member or employee’s official capacity as such a member or employee.

(f) Assistance and guidance

The Secretary, acting through the Inspector General of the Department of Energy, shall provide assistance and guidance to each covered individual who seeks to make a protected disclosure under this section. Such assistance and guidance shall include the following:

(1) Identifying the persons or entities under subsection (d) to which that disclosure may be made.

(2) Advising that individual regarding the steps to be taken to protect the security of the information to be disclosed.

(3) Taking appropriate actions to protect the identity of that individual throughout that disclosure.

(4) Taking appropriate actions to coordinate that disclosure with any other Federal agency or agencies that originated the information.

(g) Regulations

The Secretary shall prescribe regulations to ensure the security of any information disclosed under this section.

(h) Notification to covered individuals

The Secretary shall notify each covered individual of the following:

(1) The rights of that individual under this section.

(2) The assistance and guidance provided under this section.

(3) That the individual has a responsibility to obtain that assistance and guidance before seeking to make a protected disclosure.

(i) Complaint by covered individuals

If a covered individual believes that that individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the individual may submit a complaint relating to such matter to the Director of the Office of Hearings and Appeals of the Department of Energy.

(j) Investigation by Office of Hearings and Appeals

(1) For each complaint submitted under subsection (i), the Director of the Office of Hearings and Appeals shall—

(A) determine whether or not the complaint is frivolous; and

(B) if the Director determines the complaint is not frivolous, conduct an investigation of the complaint.

(2) The Director shall submit a report on each investigation undertaken under paragraph (1)(B) to—

(A) the individual who submitted the complaint on which the investigation is based;

(B) the contractor concerned, if any; and

(C) the Secretary of Energy.

(k) Remedial action

(1) Whenever the Secretary determines that a covered individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the Secretary shall—

(A) in the case of a Department employee, take appropriate actions to abate the action; or

(B) in the case of a contractor employee, order the contractor concerned to take appropriate actions to abate the action.
§ 2703. Employee incentives for employees at closure project facilities

(a) Authority to provide incentives

Notwithstanding any other provision of law, the Secretary of Energy may provide to any eligible employee of the Department of Energy one or more of the incentives described in subsection (d).

(b) Eligible employees

An individual is an eligible employee of the Department of Energy for purposes of this section if the individual—

(1) has worked continuously at a closure facility for at least two years;

(2) is an employee (as that term is defined in section 2105(a) of title 5);

(3) has a fully satisfactory or equivalent performance rating during the most recent performance period and is not subject to an adverse notice regarding conduct; and

(4) meets any other requirement or condition under subsection (d) for the incentive which is provided the employee under this section.

(c) Closure facility defined

For purposes of this section, the term “closure facility” means a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 2001 of this title.

(d) Incentives

The incentives that the Secretary may provide under this section are the following:

(1) The right to accumulate annual leave provided by section 6303 of title 5 for use in succeeding years until it totals not more than 90 days, or not more than 720 hours based on a standard work week, at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on a biweekly pay periods, occurring in a year, except that—

(A) any annual leave that remains unused when an employee transfers to a position in a department or agency of the Federal Government shall be liquidated upon the transfer by payment to the employee of a lump sum for leave in excess of 30 days, or in excess of 240 hours based on a standard work week; and

(B) upon separation from service, annual leave accumulated under this paragraph shall be treated as any other accumulated annual leave is treated.

(2) The right to be paid a retention allowance in a lump sum in compliance with paragraphs (1) and (2) of section 5754(a) of title 5 if the employee meets the requirements of section 5754(a) of that title, except that the retention allowance may exceed 25 percent, but may not be more than 30 percent, of the employee’s rate of basic pay.

(e) Agreement

An eligible employee of the Department of Energy provided an incentive under this section shall enter into an agreement with the Sec-

1 See References in Text note below.
triparty to remain employed at the closure facility at which the employee is employed as of the date of the agreement until a specific date or for a specific period of time.

(f) Violation of agreement

(1) Except as provided under paragraph (3), an eligible employee of the Department of Energy who violates an agreement under subsection (e), or is dismissed for cause, shall forfeit eligibility for any incentives under this section as of the date of the violation or dismissal, as the case may be.

(2) Except as provided under paragraph (3), an eligible employee of the Department of Energy who is paid a retention allowance under subsection (d)(2) and who violates an agreement under subsection (e), or is dismissed for cause, before the end of the period or date of employment agreed upon under such agreement shall refund to the United States an amount that bears the same ratio to the aggregate amount so paid to or received by the employee as the unserved part of such employment bears to the total period of employment agreed upon under such agreement.

(3) The Secretary may waive the applicability of paragraph (1) or (2) to an employee otherwise covered by such paragraph if the Secretary determines that there is good and sufficient reason for the waiver.

(g) Report

The Secretary shall include in each report on a closure project under section 2601(h) of this title a report on the incentives, if any, provided under this section with respect to the project for the period covered by such report.

(h) Omitted

(i) Authority with respect to voluntary separations

(1) The Secretary may—

(A) separate from service any employee at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 2601 of this title who volunteers to be separated under this subparagraph even though the employee is not otherwise subject to separation due to a reduction in force; and

(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force.

(3) An employee with critical knowledge and skills (as defined by the Secretary) may not participate in a voluntary separation under paragraph (1)(A) if the Secretary determines that such participation would impair the performance of the mission of the Department of Energy.

(j) Termination

The authority to provide incentives under this section terminates on March 31, 2007.

References in Text


Codification


Amendments


§ 2704. Department of Energy defense nuclear facilities workforce restructuring plan

(a) In general

Upon determination that a change in the workforce at a defense nuclear facility is necessary, the Secretary of Energy shall develop a plan for restructuring the workforce for the defense nuclear facility that takes into account—

(1) the reconfiguration of the defense nuclear facility; and

(2) the plan for the nuclear weapons stockpile that is the most recently prepared plan at the time of the development of the plan referred to in this subsection.

(b) Consultation

(1) In developing a plan referred to in subsection (a) and any updates of the plan under subsection (e), the Secretary shall consult with the Secretary of Labor, appropriate representatives of local and national collective-bargaining units of individuals employed at Department of Energy defense nuclear facilities, appropriate representatives of departments and agencies of State and local governments, appropriate representatives of State and local institutions of higher education, and appropriate representatives of community groups in communities affected by the restructuring plan.

(2) The Secretary shall determine appropriate representatives of the units, governments, institutions, and groups referred to in paragraph (1).

(c) Objectives

In preparing the plan required under subsection (a), the Secretary shall be guided by the following objectives:

(1) Changes in the workforce at a Department of Energy defense nuclear facility—

(A) should be accomplished so as to minimize social and economic impacts;
The Secretary shall, subject to the availability of appropriations for such purpose, work on an ongoing basis with representatives of the Department of Labor, workforce bargaining units, and States and local communities in carrying out a plan required under subsection (a).

(e) Plan updates

Not later than one year after issuing a plan referred to in subsection (a) and on an annual basis thereafter, the Secretary shall issue an update of the plan. Each updated plan under this subsection shall—

1. Be guided by the objectives referred to in subsection (c), taking into account any changes in the function or mission of the Department of Energy defense nuclear facilities and any other changes in circumstances that the Secretary determines to be relevant;

2. Contain an evaluation by the Secretary of the implementation of the plan during the year preceding the report; and

3. Contain such other information and provide for such other matters as the Secretary determines to be relevant.

(f) Submittal to Congress

1. The Secretary shall submit to Congress a plan referred to in subsection (a) with respect to a defense nuclear facility within 90 days after the date on which a notice of changes described in subsection (c)(1)(B) is provided to employees of the facility, or 90 days after the date of the enactment of this Act, whichever is later.

2. The Secretary shall submit to Congress any updates of the plan under subsection (e) immediately upon completion of any such update.

(g) Department of Energy defense nuclear facility defined

In this section, the term “Department of Energy defense nuclear facility” means—

1. A production facility or utilization facility (as those terms are defined in section 2014 of title 42) that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the tritium loading facility at Savannah River, South Carolina, the 236 H facility at Savannah River, South Carolina; and the Mound Laboratory, Ohio), but the term does not include any facility that does not conduct atomic energy defense activities and does not include any facility or activity covered by Executive Order Number 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program;

2. A nuclear waste storage or disposal facility that is under the control or jurisdiction of the Secretary;

3. A testing and assembly facility that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the Nevada Test Site, Nevada; the Pinnellas Plant, Florida; and the Pantex facility, Texas);

4. An atomic weapons research facility that is under the control or jurisdiction of the Secretary (including Lawrence Livermore, Los Alamos, and Sandia National Laboratories); or

5. Any facility described in paragraphs (1) through (4) that—

A. Is no longer in operation;

B. Was under the control or jurisdiction of the Department of Defense, the Atomic Energy Commission, or the Energy Research and Development Administration; and

C. Was operated for national security purposes.


Section was formerly classified to section 7274h of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.


The certificate of commendation presented to a current or former employee under subsection (a) shall include an appropriate citation of the service of the current or former employee described in that subsection, including a citation for dedication, intellect, and sacrifice in furthering the national security interests of the United States by maintaining a strong, safe, and viable United States nuclear deterrent during the Cold War or thereafter.

(c) Department of Energy defined


The training program shall at a minimum include instruction in the following areas:

(1) Department of Energy policy and procedures for management and operation of atomic energy defense facilities.

(2) Methods of evaluating technical performance.

(3) Federal and State environmental laws and requirements for compliance with such en-
environmental laws, including timely compliance with reporting requirements in such laws.

(4) The establishment of program milestones and methods to evaluate success in meeting such milestones.

(5) Methods for conducting long-range technical and budget planning.

(6) Procedures for reviewing and applying innovative technology to environmental restoration and defense waste management.


CODIFICATION

Section was formerly classified to section 7236 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


§ 2722. Stockpile stewardship recruitment and training program

(a) Conduct of program

(1) As part of the stockpile stewardship program established pursuant to section 2521 of this title, the Secretary of Energy shall conduct a stockpile stewardship recruitment and training program at the Sandia National Laboratories, the Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory.

(2) The recruitment and training program shall be conducted in coordination with the Chairman of the Joint Nuclear Weapons Council established by section 179 of title 10 and the directors of the laboratories referred to in paragraph (1).

(b) Support of dual-use programs

(1) As part of the recruitment and training program, the directors of the laboratories referred to in subsection (a)(1) may employ undergraduate students, graduate students, and postdoctoral fellows to carry out research sponsored by such laboratories for military or nonmilitary dual-use programs related to nuclear weapons stockpile stewardship.

(2) Of the amounts authorized to be appropriated to the Secretary of Energy in section 3101(a)(1) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) for weapons activities for core research and development and allocated by the Secretary for education initiatives, $5,000,000 shall be available for employing students and fellows to carry out research referred to in paragraph (1). The amount available under this paragraph shall be allocated equally among the laboratories referred to in subsection (a)(1).

(c) Establishment of retiree corps

As part of the training and recruitment program, the Secretary, in coordination with the directors of the laboratories referred to in subsection (a)(1), shall establish for the laboratories a retiree corps of retired scientists who have expertise in research and development of nuclear weapons. The directors may employ the retired scientists on a part-time basis to provide appropriate assistance on nuclear weapons issues, to contribute relevant information to be archived, and to help to provide training to other scientists.

(d) Report

(1) Not later than February 1, 1995, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the demographic trends of the personnel of the laboratories referred to in subsection (a)(1) and on actions taken by the Department of Energy to remedy identified deficiencies in various skill areas.

(2) The report shall be prepared in coordination with the Chairman of the Joint Nuclear Weapons Council and the directors of the laboratories. Information included in the report shall be aggregated and compiled into statistical categories.

(3) The report shall include the following:

(A) An inventory of the weapons-related tasks that the laboratories need to perform to support their nuclear weapons responsibilities.

(B) An inventory of the skills necessary to complete the weapons-related tasks referred to in subparagraph (A).

(C) For each laboratory, the number of scientists needed in each skill area to perform such tasks.

(D) The number of the scientists providing services in each skill area at each laboratory, stated by age.

(E) An assessment of which skill areas are understaffed.

(F) The number of scientists entering the weapons program at each laboratory, and their skill areas.

(G) The number of full-time equivalent personnel with weapon skills, their distribution by skill and, for each such skill, their distribution by age.

(H) The number of scientists retiring from the weapons program in the five-year period ending on the date of the report and the skill areas in which they worked in the year preceding their retirement.

(I) Based on the information contained in subparagraphs (A) through (H), a projection of the skills areas that will become understaffed in the five years following the date of the report.

(J) A statement of alternative actions that may be taken to retain and recruit scientists for the weapons programs at the laboratories in order to preserve a sufficient skill base and to fulfill stockpile stewardship responsibilities.

(K) Any plans of the Secretary to take any of the alternative actions referred to in subparagraph (J).

REFERENCES IN TEXT

AMENDMENTS

§ 2723. Fellowship program for development of skills critical to the Department of Energy nuclear weapons complex
(a) In general
The Secretary of Energy shall conduct a fellowship program for the development of skills critical to the ongoing mission of the Department of Energy nuclear weapons complex. Under the fellowship program, the Secretary shall provide educational assistance and research assistance to eligible individuals to facilitate the development by such individuals of skills critical to maintaining the ongoing mission of the Department of Energy nuclear weapons complex.

(b) Eligible individuals
Individuals eligible for participation in the fellowship program are United States citizens who are:
(A) to provide training and education to persons who are or may be engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and
(B) to develop curricula for such training and education.

(c) Covered facilities
The Secretary shall carry out the fellowship program at or in connection with the following facilities:
(1) The Kansas City Plant, Kansas City, Missouri.
(2) The Pantex Plant, Amarillo, Texas.
(4) The Savannah River Site, Aiken, South Carolina.
(5) The Lawrence Livermore National Laboratory, Livermore, California.
(6) The Los Alamos National Laboratory, Los Alamos, New Mexico.
(7) The Sandia National Laboratories, Albuquerque, New Mexico, and Livermore, California.

(d) Administration
The Secretary shall carry out the fellowship program at a facility referred to in subsection (c) through the stockpile manager of the facility.

(e) Allocation of funds
The Secretary shall, in consultation with the Assistant Secretary of Energy for Defense Programs, allocate funds available for the fellowship program under subsection (f) among the facilities referred to in subsection (c). The Secretary shall make the allocation after evaluating an assessment by the weapons program director of each such facility of the personnel and critical skills necessary at the facility for carrying out the ongoing mission of the facility.

(f) Agreement
(1) The Secretary may allow an individual to participate in the program only if the individual signs an agreement described in paragraph (2).
(2) An agreement referred to in paragraph (1) shall be in writing, shall be signed by the participant, and shall include the participant’s agreement to serve, after completion of the course of study for which the assistance was provided, as a full-time employee in a position in the Department of Energy for a period of time to be established by the Secretary of Energy of not less than one year, if such a position is offered to the participant.

AMENDMENTS
1999—Subsec. (a). Pub. L. 106–65, § 3162(a), substituted “Secretary shall” for “Secretary shall—”, struck out par. (1) designation before “provide educational assistance”, and struck out pars. (2) and (3) which read as follows:
“(2) employ eligible individuals at the facilities described in subsection (c) in order to facilitate the development of such skills by these individuals; or
“(3) provide eligible individuals with the assistance and the employment.”


Subsec. (c)(5) to (7). Pub. L. 106–65, § 3162(c), added pars. (5) to (7).

Subsec. (f). Pub. L. 106–65, § 3162(d), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: “Of the funds authorized to be appropriated to the Department of Energy for fiscal year 1996 under section 3101(b), $10,000,000 may be used for the purpose of carrying out the fellowship program under this section.”

PART C—WORKER SAFETY
§ 2731. Worker protection at nuclear weapons facilities
(a) Training grant program
(1) The Secretary of Energy is authorized to award grants to organizations referred to in paragraph (2) in order for such organizations—
(A) to provide training and education for persons who are or may be engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and
(B) to develop curricula for such training and education.
(2)(A) Subject to subparagraph (B), the Secretary is authorized to award grants under paragraph (1) to non-profit organizations that have demonstrated (as determined by the Secretary) capabilities in—
   (i) implementing and conducting effective training and education programs relating to the general health and safety of workers; and
   (ii) identifying, and involving in training, groups of workers whose duties include hazardous substance response or emergency response.

(B) The Secretary shall give preferential in the award of grants under this section to employee organizations and joint labor-management training programs that are grant recipients under section 9660a of title 42.

(3) An organization awarded a grant under paragraph (1) shall carry out training, education, or curricula development pursuant to Department of Energy orders relating to employee safety training, including orders numbered 5480.4 and 5480.11.

(b) Enforcement of employee safety standards

(1) Subject to paragraph (2), the Secretary shall assess civil penalties against any contractor of the Department of Energy who (as determined by the Secretary)—
   (A) employs individuals who are engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and
   (B) fails (i) to provide for the training of such individuals to carry out such hazardous substance response or emergency response, or (ii) to certify to the Department of Energy that such employees are adequately trained for such response pursuant to orders issued by the Department of Energy relating to employee safety training (including orders numbered 5480.4 and 5480.11).

(2) Civil penalties assessed under this subsection may not exceed $5,000 for each day in which a failure referred to in paragraph (1)(B) occurs.

(c) Regulations

The Secretary shall prescribe regulations to carry out this section.

(d) Definitions

For the purposes of this section, the term ‘‘hazardous substance’’ includes radioactive waste and mixed radioactive and hazardous waste.

(e) Funding

Of the funds authorized to be appropriated pursuant to section 3101(9)(A) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190), $10,000,000 may be used for the purpose of carrying out this section.

(2) The actions that the Secretary has taken or will take to fulfill the requirements set forth in paragraphs (1), (2), and (3) of subsection (a).
§ 2733. Program to monitor Department of Energy workers exposed to hazardous and radioactive substances

(a) In general

The Secretary shall establish and carry out a program for the identification and on-going medical evaluation of current and former Department of Energy employees who are subject to significant health risks as a result of the exposure of such employees to hazardous or radioactive substances during such employment.

(b) Implementation of program

(1) The Secretary shall, with the concurrence of the Secretary of Health and Human Services, issue regulations under which the Secretary shall implement the program. Such regulations shall, to the extent practicable, provide for a process to—

(A) identify the hazardous substances and radioactive substances to which current and former Department of Energy employees may have been exposed as a result of such employment;

(B) identify employees referred to in subparagraph (A) who received a level of exposure identified under paragraph (2)(B);

(C) determine the appropriate number, scope, and frequency of medical evaluations and laboratory tests to be provided to employees who have received a level of exposure identified under paragraph (2)(B) to permit the Secretary to evaluate fully the extent, nature, and medical consequences of such exposure;

(D) make available the evaluations and tests referred to in subparagraph (C) to the employees referred to in such subparagraph;

(E) ensure that privacy is maintained with respect to medical information that personally identifies any such employee; and

(F) ensure that employee participation in the program is voluntary.

(2) In determining the most appropriate means of carrying out the activities referred to in subparagraphs (A) through (D) of paragraph (1), the Secretary shall consult with the Secretary of Health and Human Services under the agreement referred to in subsection (c).

(B) The Secretary of Health and Human Services, with the assistance of the Director of the Centers for Disease Control and the Director of the National Institute for Occupational Safety and Health, and the Secretary of Labor shall identify the levels of exposure to the substances referred to in subparagraph (A) of paragraph (1) that present employees referred to in such subparagraph with significant health risks under Federal and State occupational, health, and safety standards;

(3) In prescribing the guidelines referred to in paragraph (1), the Secretary shall consult with representatives of the following entities:

(A) The American College of Occupational and Environmental Medicine.

(B) The National Academy of Sciences.

(C) The National Council on Radiation Protection.

(D) Any labor organization or other collective bargaining agent authorized to act on the behalf of employees of a Department of Energy defense nuclear facility.

(4) The Secretary shall provide for each employee identified under paragraph (1)(D) and provided with any medical examination or test under paragraph (1)(E) to be notified by the appropriate medical personnel of the identification and the results of any such examination or test. Each notification under this paragraph shall be provided in a form that is readily understandable by the employee.

(5) The Secretary shall collect and assemble information relating to the examinations and tests carried out under paragraph (1)(E).

(6) The Secretary shall commence carrying out the program described in this subsection not later than October 23, 1993.

(c) Agreement with Secretary of Health and Human Services

Not later than April 23, 1993, the Secretary shall enter into an agreement with the Secretary of Health and Human Services relating to the establishment and conduct of the program required and regulations issued under this section.

(d) Definitions

In this section:

(1) The term “Department of Energy defense nuclear facility” has the meaning given that term in section 2704(g) of this title.

(2) The term “Department of Energy employee” means any employee of the Department of Energy employed at a Department of Energy defense nuclear facility, including any employee of a contractor or subcontractor of the Department of Energy employed at such a facility.

CODIFICATION
Section was formerly classified to section 7274i of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

CHANGE OF NAME

§ 2734. Programs for persons who may have been exposed to radiation released from Hanford Nuclear Reservation

(a) Funding
Of the funds authorized to be appropriated to the Department of Energy under title XXXI of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510), the Secretary of Energy shall make available $3,000,000 to the State of Washington, $1,000,000 to the State of Oregon, and $1,000,000 to the State of Idaho. Such funds shall be used to develop and implement programs for the benefit of persons who may have been exposed to radiation released from the Department of Energy Hanford Nuclear Reservation (Richland, Washington) between the years 1944 and 1972.

(b) Programs
The programs to be developed by the States may include only the following activities:
(1) Preparing and distributing information on the health effects of radiation to health care professionals, and to persons who may have been exposed to radiation.
(2) Developing and implementing mechanisms for referring persons who may have been exposed to radiation to health care professionals with expertise in the health effects of radiation.
(3) Evaluating and, if feasible, implementing, registration and monitoring of persons who may have been exposed to radiation released from the Hanford Nuclear Reservation.
(c) Plan and reports
(1) The States of Washington, Oregon, and Idaho shall jointly develop a single plan for implementing this section.
(2) Not later than May 5, 1991, such States shall submit to the Secretary of Energy and the Congress a copy of the plan developed under paragraph (1).
(3) Not later than May 5, 1992, such States shall submit to the Secretary of Energy and the Congress a single report on the implementation of the plan developed under paragraph (1).
(4) In developing and implementing the plan, such States shall consult with persons carrying out current radiation dose and epidemiological research programs (including the Hanford Thyroid Disease Study of the Centers for Disease Control and the Hanford Environmental Dose Reconstruction Project of the Department of Energy), and may not cause substantial damage to such research programs.

(d) Prohibition on disclosure of exposure information
(1) Except as provided in paragraph (2), a person may not disclose to the public the following:
(A) Any information obtained through a program that identifies a person who may have been exposed to radiation released from the Hanford Nuclear Reservation.
(B) Any information obtained through a program that identifies a person participating in any of the programs developed under this section.
(C) The name, address, and telephone number of a person requesting information referred to in subsection (b)(1).
(D) The name, address, and telephone number of a person who has been referred to a health care professional under subsection (b)(2).
(E) The name, address, and telephone number of a person who has been registered and monitored pursuant to subsection (b)(3).
(F) Information that identifies the person from whom information referred to in this paragraph was obtained under a program or any other third party involved with, or identified by, any such information so obtained.
(G) Any other personal or medical information that identifies a person or party referred to in subparagraphs (A) through (F).
(H) Such other information or categories of information as the chief officers of the health departments of the States of Washington, Oregon, and Idaho jointly designate as information covered by this subsection.
(2) Information referred to in paragraph (1) may be disclosed to the public if the person identified by the information, or the legal representative of that person, has consented in writing to the disclosure.
(3) The States of Washington, Oregon, and Idaho shall establish uniform procedures for carrying out this subsection, including procedures governing the following:
(A) The disclosure of information under paragraph (2).
(B) The use of the Hanford Health Information Network database.
(C) The future disposition of the database.
(D) Enforcement of the prohibition provided in paragraph (1) on the disclosure of information described in that paragraph.


REFERENCES IN TEXT
Title XXXI of the National Defense Authorization Act for Fiscal Year 1991, referred to in subsec. (a), is
In this part:

(1) The term “DOE national security authorization” means an authorization of appropriations for activities of the Department of Energy in carrying out programs necessary for national security.

(2) The term “congressional defense committees” means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(3) The term “minor construction threshold” means $10,000,000.

In no event may the total amount of funds obligated pursuant to a DOE national security authorization for a fiscal year exceed the total amount authorized to be appropriated by that authorization for that fiscal year.

(2) Prohibited items

Funds appropriated pursuant to a DOE national security authorization may not be used for an item for which Congress has specifically denied funds.

§ 2742. Reprogramming

(a) In general

Except as provided in subsection (b) and in sections 2750 and 2751 of this title, the Secretary of Energy may not use amounts appropriated pursuant to a DOE national security authorization for a program—

(1) in amounts that exceed, in a fiscal year—

(A) 115 percent of the amount authorized for that program by that authorization for that fiscal year; or

(B) $5,000,000 more than the amount authorized for that program by that authorization for that fiscal year; or

(2) which has not been presented to, or requested of, Congress.

(b) Exception where notice-and-wait given

An action described in subsection (a) may be taken if—

(1) the Secretary submits to the congressional defense committees a report referred to in subsection (c) with respect to such action; and

(2) a period of 30 days has elapsed after the date on which such committees receive the report.

(c) Report

The report referred to in subsection (a) is a report containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of the proposed action.

(d) Computation of days

In the computation of the 30-day period under subsection (b), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

(e) Limitations

(1) Total amount obligated

In no event may the total amount of funds obligated pursuant to a DOE national security authorization for a fiscal year exceed the total amount authorized to be appropriated by that authorization for that fiscal year.

(2) Prohibited items

Funds appropriated pursuant to a DOE national security authorization may not be used for an item for which Congress has specifically denied funds.
§ 2743. Minor construction projects

(a) Authority

Using operation and maintenance funds or facilities and infrastructure funds authorized by a DOE national security authorization, the Secretary of Energy may carry out minor construction projects.

(b) Annual report

The Secretary shall submit to the congressional defense committees on an annual basis a report on each exercise of the authority in subsection (a) during the preceding fiscal year. Each report shall provide a brief description of each minor construction project covered by the report.

(c) Cost variation reports to congressional committees

If, at any time during the construction of any minor construction project authorized by a DOE national security authorization, the estimated cost of the project is revised and the revised cost of the project exceeds the minor construction threshold, the Secretary shall immediately submit to the congressional defense committees a report explaining the reasons for the cost variation.

(d) Minor construction project defined

In this section, the term "minor construction project" means any plant project not specifically authorized by law for which the approved total estimated cost does not exceed the minor construction threshold.


CODIFICATION

Section was formerly classified to section 7386c of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

NOTIFICATION


(1) the amount authorized for the project; or
(2) the amount of the total estimated cost for the project as shown in the most recent budget justification data submitted to Congress.

(b) Exception where notice-and-wait given

An action described in subsection (a) may be taken if—

(1) the Secretary of Energy has submitted to the congressional defense committees a report on the actions and the circumstances making such action necessary; and
(2) a period of 30 days has elapsed after the date on which the report is received by the committees.

(c) Computation of days

In the computation of the 30-day period under subsection (b), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

(d) Exception for minor projects

Subsection (a) does not apply to a construction project with a current estimated cost of less than the minor construction threshold.


CODIFICATION

Section was formerly classified to section 7386c of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.
§ 2745. Fund transfer authority
(a) Transfer to other Federal agencies
The Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to other Federal agencies for the performance of work for which the funds were authorized. Funds so transferred may be merged with and be available for the same purposes and for the same time period as the authorizations of the Federal agency to which the amounts are transferred.

(b) Transfer within Department of Energy

(1) Transfers permitted
Subject to paragraph (2), the Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to any other DOE national security authorization. Amounts of authorizations so transferred may be merged with and be available for the same purposes and for the same period as the authorization to which the amounts are transferred.

(2) Maximum amounts
Not more than 5 percent of any such authorization may be transferred to another authorization under paragraph (1). No such authorization may be increased or decreased by more than 5 percent by a transfer under such paragraph.

(c) Limitations
The authority provided by this subsection to transfer authorizations—
(1) may be used only to provide funds for items relating to activities necessary for national security programs that have a higher priority than the items from which the funds are transferred; and
(2) may not be used to provide funds for an item for which Congress has specifically denied funds.

(d) Notice to Congress
The Secretary of Energy shall promptly notify the congressional defense committees of any transfer of funds to or from any DOE national security authorization.

§ 2746. Conceptual and construction design
(a) Conceptual design
(1) Requirement
Subject to paragraph (2) and except as provided in paragraph (3), before submitting to Congress a request for funds for a construction project that is in support of a national security program of the Department of Energy, the Secretary of Energy shall complete a conceptual design for that project.

(2) Requests for conceptual design funds
If the estimated cost of completing a conceptual design for a construction project exceeds $3,000,000, the Secretary shall submit to Congress a request for funds for the conceptual design before submitting a request for funds for the construction project.

(3) Exceptions
The requirement in paragraph (1) does not apply to a request for funds—
(A) for a construction project the total estimated cost of which is less than the minor construction threshold; or
(B) for emergency planning, design, and construction activities under section 2747 of this title.

(b) Construction design
(1) Authority
Within the amounts authorized by a DOE national security authorization, the Secretary may carry out construction design (including architectural and engineering services) in connection with any proposed construction project if the total estimated cost for such design does not exceed $600,000.

(2) Limitation on availability of funds for certain projects
If the total estimated cost for construction design in connection with any construction project exceeds $600,000, funds for that design must be specifically authorized by law.

§ 2747. Authority for emergency planning, design, and construction activities
(a) Authority
The Secretary of Energy may use any funds available to the Department of Energy pursuant to a DOE national security authorization, including funds authorized to be appropriated for advance planning, engineering, and construction design, and for plant projects, to perform planning, design, and construction activities for any Department of Energy national security program construction project that, as determined by the Secretary, must proceed expeditiously in order to protect public health and safety, to meet the needs of national defense, or to protect property.

(b) Limitation
The Secretary may not exercise the authority under subsection (a) in the case of a construc-
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tion project until the Secretary has submitted to the congressional defense committees a report on the activities that the Secretary intends to carry out under this section and the circumstances making those activities necessary.

(c) Specific authority

The requirement of section 2746(b)(2) of this title does not apply to emergency planning, design, and construction activities conducted under this section.


Codification

Section was formerly classified to section 7386f of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

Amendments


§ 2748. Scope of authority to carry out plant projects

In carrying out programs necessary for national security, the authority of the Secretary of Energy to carry out plant projects includes authority for maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto.


Codification

Section was formerly classified to section 7386g of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

§ 2749. Availability of funds

(a) In general

Except as provided in subsection (b), amounts appropriated pursuant to a DOE national security authorization for operation and maintenance or for plant projects may, when so specified in an appropriations Act, remain available until expended.

(b) Exception for program direction funds

Amounts appropriated for program direction pursuant to a DOE national security authorization for a fiscal year shall remain available to be obligated only until the end of that fiscal year.


1 So in original. Probably should be “authorization”.

§ 2750. Transfer of defense environmental management funds

(a) Transfer authority for defense environmental management funds

The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer defense environmental management funds from a program or project under the jurisdiction of that office to another such program or project.

(b) Limitations

(1) Number of transfers

Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

(2) Amounts transferred

The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed $5,000,000.

(3) Determination required

A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer is necessary—

(A) to address a risk to health, safety, or the environment; or

(B) to assure the most efficient use of defense environmental management funds at the field office.

(4) Impermissible uses

Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) Exemption from reprogramming requirements

The requirements of section 2742 of this title shall not apply to transfers of funds pursuant to subsection (a).

(d) Notification

The Secretary, acting through the Assistant Secretary of Energy for Environmental Management, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) Definitions

In this section:

(1) The term “program or project” means, with respect to a field office of the Department of Energy, a program or project that is for environmental restoration or waste management activities necessary for national security programs of the Department, that is being carried out by that office, and for which defense environmental management funds have been authorized and appropriated.

(2) The term “defense environmental management funds” means funds appropriated to
the Department of Energy pursuant to an authorization for carrying out environmental restoration and waste management activities necessary for national security programs.


CODIFICATION

Section was formerly classified to section 7386i of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


§ 2751. Transfer of weapons activities funds

(a) Transfer authority for weapons activities funds

The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer weapons activities funds from a program or project under the jurisdiction of that office to another such program or project.

(b) Limitations

(1) Number of transfers

Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

(2) Amounts transferred

The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed $5,000,000.

(3) Determination required

A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer—

(A) is necessary to address a risk to health, safety, or the environment; or

(B) will result in cost savings and efficiencies.

(4) Limitation

A transfer may not be carried out by a manager of a field office under subsection (a) to cover a cost overrun or scheduling delay for any program or project.

(5) Impermissible uses

Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) Exemption from reprogramming requirements

The requirements of section 2742 of this title shall not apply to transfers of funds pursuant to subsection (a).

(d) Notification

The Secretary, acting through the Administrator for Nuclear Security, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) Definitions

In this section:

(1) The term “program or project” means, with respect to a field office of the Department of Energy, a program or project that is for weapons activities necessary for national security programs of the Department, that is being carried out by that office, and for which weapons activities funds have been authorized and appropriated.

(2) The term “weapons activities funds” means funds appropriated to the Department of Energy pursuant to an authorization for carrying out weapons activities necessary for national security programs.


CODIFICATION

Section was formerly classified to section 7386j of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


§ 2752. Funds available for all national security programs of the Department of Energy

Subject to the provisions of appropriation Acts and section 2742 of this title, amounts appropriated pursuant to a DOE national security authorization for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.


CODIFICATION

Section was formerly classified to section 7386k of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


§ 2753. Notification of cost overruns for certain Department of Energy projects

(a) Establishment of cost and schedule baselines

(1) Stockpile life extension projects

(A) In general

The Administrator for Nuclear Security shall establish a cost and schedule baseline
for each nuclear stockpile life extension project of the National Nuclear Security Administration.

(B) Per unit cost

The cost baseline developed under subparagraph (A) shall include, with respect to each life extension project, an estimated cost for each warhead in the project.

(C) Notification to congressional defense committees

Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Administrator shall submit the cost and schedule baseline to the congressional defense committees.

(2) Defense-funded construction projects

(A) In general

The Secretary of Energy shall establish a cost and schedule baseline under the project management protocols of the Department of Energy for each construction project that is—

(i) in excess of $50,000,000; and

(ii) carried out by the Department using funds authorized to be appropriated for a fiscal year pursuant to a DOE national security authorization.

(B) Notification to congressional defense committees

Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Secretary shall submit the cost and schedule baseline to the congressional defense committees.

(3) Defense environmental management projects

(A) In general

The Secretary shall establish a cost and schedule baseline under the project management protocols of the Department of Energy for each defense environmental management project that is—

(i) in excess of $50,000,000; and

(ii) carried out by the Department pursuant to such protocols.

(B) Notification to congressional defense committees

Not later than 30 days after establishing a cost and schedule baseline under subparagraph (A), the Secretary shall submit the cost and schedule baseline to the congressional defense committees.

(b) Notification of costs exceeding baseline

The Administrator or the Secretary, as applicable, shall notify the congressional defense committees not later than 30 days after determining that—

(1) the total cost for a project referred to in paragraph (1), (2), or (3) of subsection (a) will exceed an amount that is equal to 125 percent of the cost baseline established under subsection (a) for that project; and

(2) in the case of a stockpile life extension project referred to in subsection (a)(1), the cost for any warhead in the project will exceed an amount that is equal to 200 percent of the cost baseline established under subsection (a)(1)(B) for each warhead in that project.

(c) Notification of determination with respect to termination or continuation of projects

Not later than 90 days after submitting a notification under subsection (b) with respect to a project, the Administrator or the Secretary, as applicable, shall—

(1) notify the congressional defense committees with respect to whether the project will be terminated or continued; and

(2) if the project will be continued, certify to the congressional defense committees that—

(A) a revised cost and schedule baseline has been established for the project and, in the case of a stockpile life extension project referred to in subparagraph (A) or (B) of subsection (a)(1), a revised estimate of the cost for each warhead in the project has been made;

(B) the continuation of the project is necessary to the mission of the Department of Energy and there is no alternative to the project that would meet the requirements of that mission; and

(C) a management structure is in place adequate to manage and control the cost and schedule of the project.

(d) Applicability of requirements to revised cost and schedule baselines

A revised cost and schedule baseline established under subsection (c) shall—

(1) be submitted to the congressional defense committees with the certification submitted under subsection (c)(2); and

(2) be subject to the notification requirements of subsections (b) and (c) in the same manner and to the same extent as a cost and schedule baseline established under subsection (a).

§ 2761. Restriction on use of funds to pay penalties under environmental laws

(a) Restriction

Funds appropriated to the Department of Energy for the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy may not be used to pay a penalty, fine, or forfeiture in regard to a defense activity or facility of the Department of Energy due to a failure to comply with any environmental requirement.

(b) Exception

Subsection (a) shall not apply with respect to an environmental requirement if—

(1) the President fails to request funds for compliance with the environmental requirement; or

(2) the Congress has appropriated funds for such purpose (and such funds have not been sequestered, deferred, or rescinded) and the Secretary of Energy fails to use the funds for such purpose.

CODIFICATION

Section was formerly classified to section 2733a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


§ 2762. Restriction on use of funds to pay penalties under Clean Air Act

None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96–540) or any other Act may be used to pay any penalty, fine, forfeiture, or settlement resulting from a failure to comply with the Clean Air Act (42 U.S.C. 7401 et seq.) with respect to any defense activity of the Department of Energy if (1) the Secretary finds that compliance is physically impossible within the time prescribed for compliance, or (2) the President has specifically requested appropriations for compliance and the Congress has failed to appropriate funds for such purpose.


REFERENCES IN TEXT


The Clean Air Act, referred to in text, is Act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

CODIFICATION

Section was formerly classified to section 2773 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriations act:


AMENDMENTS


PART C—OTHER MATTERS

§ 2771. Single request for authorization of appropriations for common defense and security programs

The Secretary shall submit to the Congress for fiscal year 1980, and for each subsequent fiscal year, a single request for authorizations for appropriations for all programs of the Department of Energy involving scientific research and development in support of the armed forces, military applications of nuclear energy, strategic and critical materials necessary for the common defense, and other programs which involve the common defense and security of the United States.


CODIFICATION

Section was formerly classified to section 2731 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


SUBCHAPTER VIII—ADMINISTRATIVE MATTERS

PART A—CONTRACTS

§ 2781. Costs not allowed under covered contract

(a) In general

The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Energy.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.
(7) Contributions or donations, regardless of the recipient.
(8) Costs of advertising designed to promote the contractor or its products.
(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.
(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the performance of the contract and the cost of which exceeds the amount of the standard commercial fare.

(b) Regulations; costs of information provided to Congress or State legislatures and related costs

(1) Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 1707 of title 41.
(2) In any regulations implementing subsection (a), the Secretary may not treat as not allowable (by reason of such subsection) the section (a)(2), the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:
(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or advice of experts, with respect to topics directly related to the performance of the contract.
(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.
(c) “Covered contract” defined

In this section, “covered contract” means a contract for an amount more than $100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

(d) Effective date

Subsection (a) shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) are issued.

(1) Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 1707 of title 41.
(2) In any regulations implementing subsection (a), the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:
(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or advice of experts, with respect to topics directly related to the performance of the contract.
(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.
(c) “Covered contract” defined

In this section, “covered contract” means a contract for an amount more than $100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

(d) Effective date

Subsection (a) shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) are issued.

(1) Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 1707 of title 41.
(2) In any regulations implementing subsection (a), the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:
(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or advice of experts, with respect to topics directly related to the performance of the contract.
(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.
(c) “Covered contract” defined

In this section, “covered contract” means a contract for an amount more than $100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

(d) Effective date

Subsection (a) shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) are issued.

(1) Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 1707 of title 41.
(2) In any regulations implementing subsection (a), the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:
(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or advice of experts, with respect to topics directly related to the performance of the contract.
(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.
(c) “Covered contract” defined

In this section, “covered contract” means a contract for an amount more than $100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

(d) Effective date

Subsection (a) shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) are issued.

(1) Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 1707 of title 41.
(2) In any regulations implementing subsection (a), the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:
(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or advice of experts, with respect to topics directly related to the performance of the contract.
(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.
(c) “Covered contract” defined

In this section, “covered contract” means a contract for an amount more than $100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

(d) Effective date

Subsection (a) shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) are issued.

(1) Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 1707 of title 41.
§ 2783. Contractor liability for injury or loss of property arising out of atomic weapons testing programs

(a) Short title

This section may be cited as the “Atomic Testing Liability Act”.

(b) Federal remedies applicable; exclusiveness of remedies

(1) Remedy

The remedy against the United States provided by sections 1346(b) and 2672 of title 28, by the Act of March 9, 1920 (46 U.S.C. App. 741–752), 1 or by the Act of March 3, 1925 (46 U.S.C. App. 781–790), 2 as appropriate, for injury, loss of property, personal injury, or death shall apply to any civil action for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States.

(2) Exclusivity

The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining civil liability arising from any act or omission of the contractor without regard to when the act or omission occurred. The employees of a contractor referred to in paragraph (1) shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, for the purposes of any such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

(c) Procedure

A contractor against whom a civil action or proceeding described in subsection (b) is brought shall promptly deliver all processes served upon that contractor to the Attorney General of the United States. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (b), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.

(d) Actions covered

The provisions of this section shall apply to any action, within the provisions of subsection (b), which is pending on November 5, 1990, or commenced on or after such date. Notwithstanding section 2401(b) of title 28, if a civil action or proceeding to which this section applies is pending on November 5, 1990, and is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of that title, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim, and any claim or subsequent civil action or proceeding shall thereafter be subject to the provisions of section 2401(b) of title 28.

(e) “Contractor” defined

For purposes of this section, the term “contractor” includes a contractor or cost reimbursement subcontractor of any tier participating in the conduct of the United States atomic weapons testing program for the Department of Energy (or its predecessor agencies, including the Manhattan Engineer District, the Atomic Energy Commission, and the Energy Research and Development Administration). Such term also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or any of its predecessor agencies).

References in Text

The Act of March 9, 1920, referred to in subsec. (b)(1), is act Mar. 9, 1920, ch. 95, 41 Stat. 525, commonly known as the “Suits in Admiralty Act”., which was classified generally to chapter 20 (§§741 to 743, 744 to 752) of former Title 46, Appendix, Shipping, and was repealed and restated in chapter 309 of Title 46, Shipping, by Pub. L. 109–304, §§6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710. Section 30901 of Title 46 provides that chapter 309 of Title 46 may be cited as the Suits in Admiralty Act. For disposition of sections of former Title 46, Appendix, to Title 46, see Disposition Table preceding section 101 of Title 46.

The Act of March 3, 1925, referred to in subsec. (b)(1), is act Mar. 3, 1925, ch. 249, 43 Stat. 1112, commonly known as the “Public Vessels Act”, which was classified generally to chapter 22 (§§781 to 790) of former Title 46, Appendix, Shipping, and was repealed and restated in chapter 311 of Title 46, Shipping, by Pub. L. 109–304, §§6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710. Section 31101 of Title 46 provides that chapter 311 of Title 46 may be cited as the Public Vessels Act. For disposition of sections of former Title 46, Appendix, to Title 46, see Disposition Table preceding section 101 of Title 46.

Codification

Section was formerly classified to section 2212 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.
§ 2784. Notice-and-wait requirement applicable to certain third-party financing arrangements

(a) Notice-and-wait requirement

The Secretary of Energy may not enter into an arrangement described in subsection (b) until 30 days after the date on which the Secretary notifies the congressional defense committees in writing of the proposed arrangement.

(b) Covered arrangements

(1) In general

Except as provided in paragraph (2), an arrangement referred to in subsection (a) is any alternative financing arrangement, third-party financing arrangement, public-private partnership, privatization arrangement, private capital arrangement, or other financing arrangement that—

(A) is entered into in connection with a project conducted using funds authorized to be appropriated to the Department of Energy to carry out programs necessary for national security; and

(B) involves a contractor or Federal agency obtaining and charging to the Department of Energy as an allowable cost under a contract the use of office space, facilities, or other real property assets with a value of at least $5,000,000.

(2) Exception

An arrangement referred to in subsection (a) does not include an arrangement that—

(A) involves the Department of Energy or a contractor acquiring or entering into a capital lease for office space, facilities, or other real property assets; or

(B) is entered into in connection with a capital improvement project undertaken as part of an energy savings performance contract under section 8287 of title 42.


Subsec. (d), Pub. L. 108–136, § 3141(k)(4)(D)(ii), substituted “November 5, 1990,” for “the date of the enactment of this Act” in two places in the original, which for purposes of codification had been changed to “November 5, 1990,” thus requiring no change in text.

§ 2784a. Laboratory-directed research and development

(a) Authority

Government-owned, contractor-operated laboratories that are funded out of funds available to the Department of Energy for national security programs are authorized to carry out laboratory-directed research and development.

(b) Regulations

The Secretary of Energy shall prescribe regulations for the conduct of laboratory-directed research and development at such laboratories.

(c) Funding

Of the funds provided by the Department of Energy to such laboratories for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.

(d) “Laboratory-directed research and development” defined

For purposes of this section, the term “laboratory-directed research and development” means research and development work of a creative and innovative nature which, under the regulations prescribed pursuant to subsection (b), is selected by the director of a laboratory for the purpose of maintaining the vitality of the laboratory in defense-related scientific disciplines.


CODIFICATION

Section was formerly classified to section 7257a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


§ 2784b. Establishment of the new national laboratory

(a) Provisions applicable

The provisions of this section shall apply to any program carried out by the Department of Energy in the conduct of laboratory-directed research and development.

(b) Laboratorystatute

The provisions of this section shall apply to any program carried out by the Department of Energy in the conduct of laboratory-directed research and development.

(c) Funding

Of the funds provided by the Department of Energy to such laboratories for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.

(d) “Laboratory-directed research and development” defined

For purposes of this section, the term “laboratory-directed research and development” means research and development work of a creative and innovative nature which, under the regulations prescribed pursuant to subsection (b), is selected by the director of a laboratory for the purpose of maintaining the vitality of the laboratory in defense-related scientific disciplines.


CODIFICATION

Section was formerly classified to section 7257a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


§ 2784c. Establishment of the new national laboratory

(a) Provisions applicable

The provisions of this section shall apply to any program carried out by the Department of Energy in the conduct of laboratory-directed research and development.

(b) Laboratorystatute

The provisions of this section shall apply to any program carried out by the Department of Energy in the conduct of laboratory-directed research and development.

(c) Funding

Of the funds provided by the Department of Energy to such laboratories for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.

(d) “Laboratory-directed research and development” defined

For purposes of this section, the term “laboratory-directed research and development” means research and development work of a creative and innovative nature which, under the regulations prescribed pursuant to subsection (b), is selected by the director of a laboratory for the purpose of maintaining the vitality of the laboratory in defense-related scientific disciplines.


CODIFICATION

Section was formerly classified to section 7257a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


§ 2784d. Establishment of the new national laboratory

(a) Provisions applicable

The provisions of this section shall apply to any program carried out by the Department of Energy in the conduct of laboratory-directed research and development.

(b) Laboratorystatute

The provisions of this section shall apply to any program carried out by the Department of Energy in the conduct of laboratory-directed research and development.

(c) Funding

Of the funds provided by the Department of Energy to such laboratories for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.

(d) “Laboratory-directed research and development” defined

For purposes of this section, the term “laboratory-directed research and development” means research and development work of a creative and innovative nature which, under the regulations prescribed pursuant to subsection (b), is selected by the director of a laboratory for the purpose of maintaining the vitality of the laboratory in defense-related scientific disciplines.


CODIFICATION

Section was formerly classified to section 7257a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS


§ 2784e. Establishment of the new national laboratory

(a) Provisions applicable

The provisions of this section shall apply to any program carried out by the Department of Energy in the conduct of laboratory-directed research and development.

(b) Laboratorystatute

The provisions of this section shall apply to any program carried out by the Department of Energy in the conduct of laboratory-directed research and development.

(c) Funding

Of the funds provided by the Department of Energy to such laboratories for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.

(d) “Laboratory-directed research and development” defined

For purposes of this section, the term “laboratory-directed research and development” means research and development work of a creative and innovative nature which, under the regulations prescribed pursuant to subsection (b), is selected by the director of a laboratory for the purpose of maintaining the vitality of the laboratory in defense-related scientific disciplines.

§ 2792. Limitations on use of funds for laboratory directed research and development purposes

(a) General limitations

(1) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for weapons activities may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the national security mission of the Department of Energy.

(2) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for environmental restoration, waste management, or nuclear materials and facilities stabilization may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the national security mission of the Department of Energy.

(b) Limitation in fiscal year 1998 pending submission of annual report

Not more than 30 percent of the funds authorized to be appropriated or otherwise made available to the Department of Energy in fiscal year 1998 for laboratory directed research and development may be obligated or expended for such research and development until the Secretary of Energy submits to the congressional defense committees the report required by section 2793(b) of this title in 1998.

(c) Omitted

(d) Assessment of funding level for laboratory directed research and development

The Secretary shall include in the report submitted under such section 2793(b)(1) of this title in 1998 an assessment of the funding required to carry out laboratory directed research and development, including a recommendation for the percentage of the funds provided to Government-owned, contractor-operated laboratories for national security activities that should be made available for such research and development under section 2791(c) of this title.

(e) "Laboratory directed research and development" defined

In this section, the term "laboratory directed research and development" has the meaning given that term in section 2791(d) of this title.

§ 2793. Limitation on use of funds for certain research and development purposes

(a) Limitation

No funds authorized to be appropriated or otherwise made available to the Department of Energy for fiscal year 1997 under section 3101 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201) may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the national security mission of the Department of Energy.

(b) Annual report

(1) Not later than February 1 each year, the Secretary of Energy shall submit to the congressional defense committees a report on the funds expended during the preceding fiscal year on activities under the Department of Energy Laboratory Directed Research and Development Program. The purpose of the report is to permit an assessment of the extent to which such activities support the national security mission of the Department of Energy.

(2) Each report shall be prepared by the officials responsible for Federal oversight of the funds expended on activities under the program.

(3) Each report shall set forth the criteria utilized by the officials preparing the report in determining whether or not the activities reviewed by such officials support the national security mission of the Department.
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REFERENCES IN TEXT

CODIFICATION
Subsec. (b) of this section was formerly classified to section 7257b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 107–314, § 4812(c), formerly Pub. L. 105–85, § 3137(c), substituted “Not later than February 1 each year, the Secretary of Energy shall submit” for “The Secretary of Energy shall annually submit”.

§ 2794. Critical technology partnerships and cooperative research and development centers

(a) Partnerships

For the purpose of facilitating the transfer of technology, the Secretary of Energy shall ensure, to the maximum extent practicable, that atomic energy defense activities research on, and development of, any dual-use critical technology is conducted through cooperative research and development agreements, or other arrangements, that involve laboratories of the Department of Energy and other entities.

(b) Cooperative research and development centers

(1) Subject to the availability of appropriations provided for such purpose, the Administrator for Nuclear Security shall establish a cooperative research and development center described in paragraph (2) at each national security laboratory.

(2) A cooperative research and development center described in this paragraph is a center to foster collaborative scientific research, technology development, and the appropriate transfer of research and technology to users in addition to the national security laboratories.

(3) In establishing a cooperative research and development center under this subsection, the Administrator—

(A) shall enter into cooperative research and development agreements with governmental, public, academic, or private entities; and

(B) may enter into a contract with respect to constructing, purchasing, managing, or leasing buildings or other facilities.

(c) Definitions

In this section:

(1) The term “dual-use critical technology” means a technology—

(A) that is critical to atomic energy defense activities, as determined by the Secretary of Energy;

(B) that has military applications and non-military applications; and

(C) that either—

(i) appears on the list of national critical technologies contained in a biennial report on national critical technologies submitted to Congress by the President pursuant to section 6683(d) of title 42; and

(ii) has not been expressly deleted from such list by such a report subsequently submitted to Congress by the President;

or

(i) appears on the list of critical technologies contained in an annual defense critical technologies plan submitted to Congress by the Secretary of Defense pursuant to section 2506 of title 10; and

(ii) has not been expressly deleted from such list by such a plan subsequently submitted to Congress by the Secretary.

The term “cooperative research and development agreement” has the meaning given that term by section 3710a(d) of title 15.

The term “other entities” means—

(A) firms, or a consortium of firms, that are eligible to participate in a partnership or other arrangement with a laboratory of the Department of Energy, as determined in accordance with applicable law and regulations;

(B) firms, or a consortium of firms, described in subparagraph (A) in combination with one or more of the following:

(i) Institutions of higher education in the United States.

(ii) Departments and agencies of the Federal Government other than the Department of Energy.

(iii) Agencies of State Governments.

(iv) Any other persons or entities that may be eligible and appropriate, as determined in accordance with applicable laws and regulations.

(4) The term “atomic energy defense activities” does not include activities covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program.

(5) The term “national security laboratory” has the meaning given that term in section 2471 of this title.


REFERENCES IN TEXT
Section 6683 of title 42, referred to in subsec. (c)(1)(C)(i)(I), was omitted from the Code.

Section 2506 of title 10, referred to in subsec. (c)(1)(C)(iii), was added generally by Pub. L. 104–201, div. A, title VIII, § 8226(d), Sept. 23, 1996, 110 Stat. 2613, and, as so amended, no longer relates to submission of a plan to Congress.

Executive Order No. 12344, dated February 1, 1982, referred to in subsec. (c)(4), is set out as a note under section 3511 of this title.

1 See References in Text note below.
§ 2795. University-based research collaboration program

(a) Findings

Congress makes the following findings:

(1) The maintenance of scientific and engineering competence in the United States is vital to long-term national security and the defense and national security missions of the Department of Energy.

(2) Engaging the universities and colleges of the Nation in research on long-range problems of vital national security interest will be critical to solving the technology challenges faced within the defense and national security programs of the Department of Energy in the next century.

(3) Enhancing collaboration among the national laboratories, universities and colleges, and industry will contribute significantly to the performance of these Department of Energy missions.

(b) Program

The Secretary of Energy shall establish a university program at a location that can develop the most effective collaboration among national laboratories, universities and colleges, and industry in support of scientific and engineering advancement in key Department of Energy defense and national security program areas.

(c) Funding

Of the funds authorized to be appropriated in title XXXI of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) to the Department of Energy for fiscal year 1998, the Secretary shall make $5,000,000 available for the establishment and operation of the program under subsection (b).

(2) Paragraph (1) applies to the following persons and entities:

(A) Any State that acquires ownership or control of real property at Department of Energy defense nuclear facilities for the purpose of permitting the economic development of the property.

(B) Any political subdivision of a State that acquires ownership or control.

(C) Any other person or entity that acquires such ownership or control.

(D) Any successor, assignee, transferee, lessee, or lessor of a person or entity described in subparagraphs (A) through (C).

(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

(c) Conditions

(1) No indemnification on a claim for injury may be provided under this section unless the person or entity making a request for the indemnification—

(A) notifies the Secretary of Energy in writing within two years after such claim accrues;
(B) furnishes to the Secretary copies of pertinent papers received by the person or entity; (C) furnishes evidence or proof of the claim; (D) provides, upon request by the Secretary, access to the records and personnel of the person or entity for purposes of defending or settling the claim; and (E) begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Secretary.  

(2) For purposes of paragraph (1)(A), the date on which a claim accrues is the date on which the person asserting the claim knew (or reasonably should have known) that the injury to person or property referred to in subsection (b)(1) was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located.

(d) Authority of Secretary of Energy  

(1) In any case in which the Secretary of Energy determines that the Secretary may be required to indemnify a person or entity under this section for any claim for injury to person or property referred to in subsection (b)(1), the Secretary may settle or defend the claim on behalf of that person or entity.  

(2) In any case described in paragraph (1), if the person or entity that the Secretary may be required to indemnify does not allow the Secretary to settle or defend the claim, the person or entity may not be indemnified with respect to that claim under this section.

(e) Relationship to other law  

Nothing in this section shall be construed as affecting or modifying in any way section 9620(h) of title 42.

(f) Definitions  

In this section:

(1) The term “defense nuclear facility” has the meaning provided by the term “Department of Energy defense nuclear facility” in section 2286g of title 42.  

(2) The terms “hazardous substance”, “release”, and “pollutant or contaminant” have the meanings provided by section 9601 of title 42.

(2003 Amendment)  


§ 2812. Engineering and manufacturing research, development, and demonstration by plant managers of certain nuclear weapons production plants  

(a) Authority for programs at nuclear weapons production facilities  

The Administrator for Nuclear Security shall authorize the head of each nuclear weapons production facility to establish an Engineering and Manufacturing Research, Development, and Demonstration Program under this section.

(b) Projects and activities  

The projects and activities carried out through the program at a nuclear weapons production facility under this section shall support innovative or high-risk design and manufacturing concepts and technologies with potentially high payoff for the nuclear weapons complex. Those projects and activities may include—

(1) replacement of obsolete or aging design and manufacturing technologies;  

(2) development of innovative agile manufacturing techniques and processes; and  

(3) training, recruitment, or retention of essential personnel in critical engineering and manufacturing disciplines.

(c) Funding  

The Administrator may authorize the head of each nuclear weapons production facility to obligate up to $3,000,000 of funds within the Advanced Design and Production Technologies Campaign available for such facility during fiscal year 2001 to carry out projects and activities of the program under this section at that facility.

(d) Report  

The Administrator for Nuclear Security shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, not later than September 15, 2001, a report describing, for each nuclear weapons production facility, each project or activity for which funds were obligated under the program, the criteria used in the selection of each such project or activity,
the potential benefits of each such project or activity, and the Administrator’s recommendation concerning whether the program should be continued.

(e) Definition

For purposes of this section, the term “nuclear weapons production facility” has the meaning given that term in section 2471(2) of this title.


Codification

Section was formerly set out as a note under section 7274r of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

Activities at Covered Nuclear Weapons Facilities

Pub. L. 108–447, div. C, title III, § 308, Dec. 8, 2004, 118 Stat. 2659, provided that: “The Administrator of the National Nuclear Security Administration may authorize the manager of a covered nuclear weapons research, development, testing or production facility to engage in research, development, and demonstration activities with respect to the engineering and manufacturing capabilities at such facility in order to maintain and enhance such capabilities at such facility: Provided, That of the amount allocated to a covered nuclear weapons facility each fiscal year from amounts available to the Department of Energy for such fiscal year for national security programs, not more than an amount equal to 2 percent of such amount may be used for these activities: Provided further, That for purposes of this section, the term ‘covered nuclear weapons facility’ means the following:

“(1) The Kansas City Plant, Kansas City, Missouri.


“(3) The Pantex Plant, Amarillo, Texas.

“(4) The Savannah River Plant, South Carolina.

“(5) The Nevada Test Site.”

Similar provisions were contained in the following prior appropriation acts:


§ 2813. Pilot program relating to use of proceeds of disposal or utilization of certain Department of Energy assets

(a) Purpose

The purpose of this section is to encourage the Secretary of Energy to dispose of or otherwise utilize certain assets of the Department of Energy by making available to the Secretary the proceeds of such disposal or utilization for purposes of defraying the costs of such disposal or utilization.

(b) Use of proceeds to defray costs

(1) Notwithstanding section 3302 of title 31, the Secretary may retain from the proceeds of the sale, lease, or disposition of an asset under subsection (c) an amount equal to the cost of the sale, lease, or disposal of the asset. The Secretary shall utilize amounts retained under this paragraph to defray the cost of the sale, lease, or disposal.

(2) For purposes of paragraph (1), the cost of a sale, lease, or disposal shall include—

(A) the cost of administering the sale, lease, or disposal;

(B) the cost of recovering or preparing the asset concerned for the sale, lease, or disposal; and

(C) any other cost associated with the sale, lease, or disposal.

(c) Covered transactions

Subsection (b) applies to the following transactions:

(1) The sale of heavy water at the Savannah River Site, South Carolina, that is under the jurisdiction of the Defense Environmental Management Program.

(2) The sale of precious metals that are under the jurisdiction of the Defense Environmental Management Program.

(3) The lease of buildings and other facilities located at the Hanford Reservation, Washington, that are under the jurisdiction of the Defense Environmental Management Program.

(4) The lease of buildings and other facilities located at the Savannah River Site that are under the jurisdiction of the Defense Environmental Management Program.

(5) The disposal of equipment and other personal property located at the Rocky Flats Defense Environmental Technology Site, Colorado, that is under the jurisdiction of the Defense Environmental Management Program.

(d) Applicability of disposal authority

Nothing in this section shall be construed to limit the application of subchapter II of chapter 5 and section 549 of title 40 to the disposal of equipment and other personal property covered by this section.

(e) Report

Not later than January 31, 1999, the Secretary shall submit to the congressional defense committees a report on amounts retained by the Secretary under subsection (b) during fiscal year 1998.


Codification

Section was formerly set out as a note under section 7256 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

Amendments


CODIFICATION

§ 2813. Pilot program relating to use of proceeds of disposal or utilization of certain Department of Energy assets

(a) Purpose

The purpose of this section is to encourage the Secretary of Energy to dispose of or otherwise utilize certain assets of the Department of Energy by making available to the Secretary the proceeds of such disposal or utilization for purposes of defraying the costs of such disposal or utilization.

(b) Use of proceeds to defray costs

(1) Notwithstanding section 3302 of title 31, the Secretary may retain from the proceeds of the sale, lease, or disposition of an asset under subsection (c) an amount equal to the cost of the sale, lease, or disposal of the asset. The Secretary shall utilize amounts retained under this paragraph to defray the cost of the sale, lease, or disposal.

(2) For purposes of paragraph (1), the cost of a sale, lease, or disposal shall include—

(A) the cost of administering the sale, lease, or disposal;

(B) the cost of recovering or preparing the asset concerned for the sale, lease, or disposal; and

(C) any other cost associated with the sale, lease, or disposal.

(c) Covered transactions

Subsection (b) applies to the following transactions:

(1) The sale of heavy water at the Savannah River Site, South Carolina, that is under the jurisdiction of the Defense Environmental Management Program.

(2) The sale of precious metals that are under the jurisdiction of the Defense Environmental Management Program.

(3) The lease of buildings and other facilities located at the Hanford Reservation, Washington, that are under the jurisdiction of the Defense Environmental Management Program.

(4) The lease of buildings and other facilities located at the Savannah River Site that are under the jurisdiction of the Defense Environmental Management Program.

(5) The disposal of equipment and other personal property located at the Rocky Flats Defense Environmental Technology Site, Colorado, that is under the jurisdiction of the Defense Environmental Management Program.

(d) Applicability of disposal authority

Nothing in this section shall be construed to limit the application of subchapter II of chapter 5 and section 549 of title 40 to the disposal of equipment and other personal property covered by this section.

(e) Report

Not later than January 31, 1999, the Secretary shall submit to the congressional defense committees a report on amounts retained by the Secretary under subsection (b) during fiscal year 1998.


CODIFICATION

Section was formerly set out as a note under section 7256 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.
§ 2814. Department of Energy energy parks program

(a) In general

The Secretary of Energy may establish a program to permit the establishment of energy parks on former defense nuclear facilities.

(b) Objectives

The objectives for establishing energy parks pursuant to subsection (a) are the following:

(1) To provide locations to carry out a broad range of projects relating to the development and deployment of energy technologies and related advanced manufacturing technologies.

(2) To provide locations for the implementation of pilot programs and demonstration projects for new and developing energy technologies and related advanced manufacturing technologies.

(3) To set a national example for the development and deployment of energy technologies and related advanced manufacturing technologies in a manner that will promote energy security, energy sector employment, and energy independence.

(4) To create a business environment that encourages collaboration and interaction between the public and private sectors.

(c) Consultation

In establishing an energy park pursuant to subsection (a), the Secretary shall consult with—

(1) the local government with jurisdiction over the land on which the energy park will be located;

(2) the local governments of adjacent areas; and

(3) any community reuse organization recognized by the Secretary at the former defense nuclear facility on which the energy park will be located.

(d) Report required

Not later than 120 days after January 7, 2011, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of the program under subsection (a). The report shall include such recommendations for additional legislative actions as the Secretary considers appropriate to facilitate the development of energy parks on former defense nuclear facilities.

(e) Defense nuclear facility defined

In this section, the term "defense nuclear facility" has the meaning given the term "Department of Energy defense nuclear facility" in section 2286g of title 42.


CODIFICATION

Section was formerly set out as a note under section 7274 of Title 42, The Public Health and Welfare, prior to being renumbered by Pub. L. 108–136.

AMENDMENTS


Pub. L. 108–136, § 3141(k)(15)(C)(i), (ii), inserted section catchline and directed striking subsec. heading "Semiannual report to Congress of local impact assistance" which was executed by striking "Semiannual report to Congress of local impact assistance", to reflect the probable intent of Congress.

§ 2821. Semiannual reports on local impact assistance

The Secretary of Energy shall submit to Congress every six months a report setting forth a description of, and the amount or value of, all local impact assistance provided during the preceding six months under section 2704(c)(6) of this title.


CODIFICATION

Section was formerly set out as a note under section 7274h of Title 42, The Public Health and Welfare, prior to being renumbered by Pub. L. 108–136.

AMENDMENTS


Pub. L. 108–136, § 3141(k)(15)(C)(i), (ii), inserted section catchline and directed striking subsec. heading "Semiannual report to Congress of local impact assistance" which was executed by striking "Semiannual report to Congress of local impact assistance", to reflect the probable intent of Congress.

§ 2822. Payment of costs of operation and maintenance of infrastructure at Nevada Test Site

Notwithstanding any other provision of law and effective as of September 30, 1996, the costs associated with operating and maintaining the infrastructure at the Nevada Test Site, Nevada, with respect to any activities initiated at the site after that date by the Department of Defense pursuant to a work-for-others agreement may be paid for from funds authorized to be appropriated to the Department of Energy for activities at the Nevada Test Site.


CHAPTER 43—PREVENTING WEAPONS OF MASS DESTRUCTION PROLIFERATION AND TERRORISM

Sec. 2901. Findings.

2902. Definitions.

SUBCHAPTER I—PROLIFERATION SECURITY INITIATIVE

2901. Proliferation Security Initiative Improvement Initiative.

2912. Authority to provide assistance to cooperative countries.

SUBCHAPTER II—ASSISTANCE TO ACCELERATE PROGRAMS TO PREVENT WEAPONS OF MASS DESTRUCTION PROLIFERATION AND TERRORISM

2911. Statement of policy.
2901. Findings

The 9/11 Commission has made the following recommendations:

(1) Strengthen “counter-proliferation” efforts

The United States should work with the international community to develop laws and an international legal regime with universal jurisdiction to enable any state in the world to capture, interdict, and prosecute smugglers of nuclear material.

(2) Expand the Proliferation Security Initiative

In carrying out the Proliferation Security Initiative, the United States should—

(A) use intelligence and planning resources of the North Atlantic Treaty Organization (NATO) alliance;

(B) make participation open to non-NATO countries; and

(C) encourage Russia and the People’s Republic of China to participate.

(3) Support the Cooperative Threat Reduction program

The United States should expand, improve, increase resources for, and otherwise fully support the Cooperative Threat Reduction program.


2902. Definitions

In this chapter:

(1) The terms “prevention of weapons of mass destruction proliferation and terrorism” and “prevention of WMD proliferation and terrorism” include activities under—

(A) the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2731; 50 U.S.C. 2362 note);

(B) the programs for which appropriations are authorized by section 3101(a)(2) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2729);

(C) programs authorized by section 5854 of title 22 and programs authorized by section 5902 of title 22; and

(D) a program of any agency of the Federal Government having a purpose similar to that of any of the programs identified in subparagraphs (A) through (C), as designated by the United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism and the head of the agency.

(2) The terms “weapons of mass destruction” and “WMD” mean chemical, biological, and nuclear weapons, and chemical, biological, and nuclear materials used in the manufacture of such weapons.

(3) The term “items of proliferation concern” means—

(A) equipment, materials, or technology listed in—

(i) the Trigger List of the Guidelines for Nuclear Transfers of the Nuclear Suppliers Group;

(ii) the Annex of the Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software, and Related Technology of the Nuclear Suppliers Group; or

(iii) any of the Common Control Lists of the Australia Group; and

(B) any other sensitive items.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title XVIII of Pub. L. 110–53, which enacted this chapter, amended section 402 of this title and sections 5952 and 5963 of Title 22, Foreign Relations and Intercourse, and amended provisions set out as notes under sections 2551 and 5952 of Title 22. For complete classification of title XVIII to the Code, see Tables.


SUBCHAPTER I—PROLIFERATION SECURITY INITIATIVE

§2911. Proliferation Security Initiative improvements and authorities

(a) Sense of Congress

It is the sense of Congress, consistent with the 9/11 Commission’s recommendations, that the President should strive to expand and strengthen the Proliferation Security Initiative (in this subchapter referred to as “PSI”) announced by the President on May 31, 2003, with a particular emphasis on the following:

(1) Issuing a presidential directive to the relevant United States Government agencies and departments that directs such agencies and departments to—

(A) establish clear PSI authorities, responsibilities, and structures;

(B) include in the budget request for each such agency or department for each fiscal year, a request for funds necessary for United States PSI-related activities; and

(C) provide other necessary resources to achieve more efficient and effective performance of United States PSI-related activities.

(2) Increasing PSI cooperation with all countries.
§ 2912. Authority to provide assistance to cooperative countries

(a) In general
The President is authorized to provide assistance under subsection (b) to any country that cooperates with the United States and with other countries allied with the United States to prevent the transport and transshipment of items of proliferation concern in its national territory or airspace or in vessels under its control or registry.

(b) Types of assistance
The assistance authorized under subsection (a) consists of the following:

(1) Assistance under section 2763 of title 22.

(3) Drawdown of defense 1 excess defense articles and services under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321).

(c) Congressional notification

Assistance authorized under this section may not be provided until at least 30 days after the date on which the President has provided notice thereof to the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives and the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate, in accordance with the procedures applicable to reprogramming notifications under section 634A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1(a)), and has certified to such committees that such assistance will be used in accordance with the requirement of subsection (e) of this section.

(d) Limitation

Assistance may be provided to a country under subsection (a) in no more than 3 fiscal years.

(e) Use of assistance

Assistance provided under this section shall be used to enhance the capability of the recipient country to prevent the transport and transshipment of items of proliferation concern in its national territory or airspace, or in vessels under its control or registry, including through the development of a legal framework in that country to enhance such capability by criminalizing proliferation, enacting strict export controls, and securing sensitive materials within its borders, and to enhance the ability of the recipient country to cooperate in PSI operations.

(f) Limitation on ship or aircraft transfers

(1) Limitation

Except as provided in paragraph (2), the President may not transfer any excess defense article that is a vessel or an aircraft to a country that has not agreed, in connection with such transfer, that it will support and assist efforts by the United States, consistent with international law, to interdict items of proliferation concern until 30 days after the date on which the President has provided notice of the proposed transfer to the committees described in subsection (c) in accordance with the procedures applicable to reprogramming notifications under section 634A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1(a)), in addition to any other requirement of law.

(2) Exception

The limitation in paragraph (1) shall not apply to any transfer, not involving significant military equipment, in which the primary use of the aircraft or vessel will be for counternarcotics, counterterrorism, or counter-proliferation purposes.

1 See in original. The word “defense” probably should not appear before “excess”.


REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsection (b)(2), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424. Chapters 4 and 5 of part II of the Act are classified generally to parts IV (§2346 et seq.) and V (§2347 et seq.), respectively, of subchapter II of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

SUBCHAPTER II—ASSISTANCE TO ACCELERATE PROGRAMS TO PREVENT WEAPONS OF MASS DESTRUCTION PROLIFERATION AND TERRORISM

§2921. Statement of policy

It shall be the policy of the United States, consistent with the 9/11 Commission’s recommendations, to eliminate any obstacles to timely obligating and executing the full amount of any appropriated funds for threat reduction and nonproliferation programs in order to accelerate and strengthen progress on preventing weapons of mass destruction (WMD) proliferation and terrorism. Such policy shall be implemented with concrete measures, such as those described in this chapter, including the removal and modification of statutory limits to executing funds, the expansion and strengthening of the Proliferation Security Initiative, the establishment of the Office of the United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism under subchapter III, and the establishment of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism under subtitle E. 1 As a result, Congress intends that any funds authorized to be appropriated to programs for preventing WMD proliferation and terrorism under this subchapter will be executed in a timely manner.


REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title XVIII of Pub. L. 110–53, which enacted this chapter, amended section 402 of this title and sections 5952 and 5983 of Title 22, Foreign Relations and Intercourse, and amended provisions set out as notes under sections 2551 and 5952 of Title 22. For complete classification of title XVIII to the Code, see Tables.


§2922. Authorization of appropriations for the Department of Defense Cooperative Threat Reduction Program

(a) Fiscal year 2008

(1) In general

Subject to paragraph (2), there are authorized to be appropriated to the Department of Defense Cooperative Threat Reduction Program such sums as may be necessary for fiscal year 2008 for the following purposes:

1 See References in Text below.
(A) Chemical weapons destruction at Shchuch'ye, Russia.
(B) Biological weapons proliferation prevention.
(C) Acceleration, expansion, and strengthening of Cooperative Threat Reduction Program activities.

(2) Limitation
The sums appropriated pursuant to paragraph (1) may not exceed the amounts authorized to be appropriated by any national defense authorization Act for fiscal year 2008 (whether enacted before or after August 3, 2007) to the Department of Defense Cooperative Threat Reduction Program for such purposes.

(b) Future years
It is the sense of Congress that in fiscal year 2008 and future fiscal years, the President should accelerate and expand funding for Cooperative Threat Reduction programs administered by the Department of Defense and such efforts should include, beginning upon August 3, 2007, encouraging additional commitments by the Russian Federation and other partner nations, as recommended by the 9/11 Commission.


§ 2923. Authorization of appropriations for the Department of Energy programs to prevent weapons of mass destruction proliferation and terrorism

(a) In general
Subject to subsection (b), there are authorized to be appropriated to Department of Energy National Nuclear Security Administration Defense Nuclear Nonproliferation such sums as may be necessary for fiscal year 2008 to accelerate, expand, and strengthen the following programs to prevent weapons of mass destruction (WMD) proliferation and terrorism:

(1) The Global Threat Reduction Initiative.
(2) The Nonproliferation and International Security program.
(3) The International Materials Protection, Control and Accounting program.
(4) The Nonproliferation and Verification Research and Development program.

(b) Limitation
The sums appropriated pursuant to subsection (a) may not exceed the amounts authorized to be appropriated by any national defense authorization Act for fiscal year 2008 (whether enacted before or after August 3, 2007) to Department of Energy National Nuclear Security Administration Defense Nuclear Nonproliferation for such purposes.

cies for preventing WMD proliferation and terrorism, including—

(A) measurable milestones and targets to which departments and agencies can be held accountable;
(B) identification of gaps, duplication, and other inefficiencies in existing activities, initiatives, and programs and the steps necessary to overcome these obstacles;
(C) plans for preserving the nuclear security investment the United States has made in Russia, the former Soviet Union, and other countries;
(D) prioritized plans to accelerate, strengthen, and expand the scope of existing initiatives and programs, which include identification of vulnerable sites and material and the corresponding actions necessary to eliminate such vulnerabilities;
(E) new and innovative initiatives and programs to address emerging challenges and strengthen United States capabilities, including programs to attract and retain top scientists and engineers and strengthen the capabilities of United States national laboratories;
(F) plans to coordinate United States activities, initiatives, and programs relating to the prevention of WMD proliferation and terrorism, including those of the Department of Energy, the Department of Defense, the Department of State, and the Department of Homeland Security, and including the Proliferation Security Initiative, the G-8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction, United Nations Security Council Resolution 1540, and the Global Initiative to Combat Nuclear Terrorism;
(G) plans to strengthen United States commitments to international regimes and significantly improve cooperation with other countries relating to the prevention of WMD proliferation and terrorism, with particular emphasis on work with the international community to develop laws and an international legal regime with universal jurisdiction to enable any state in the world to interdict and prosecute smugglers of WMD material, as recommended by the 9/11 Commission; and
(H) identification of actions necessary to implement the recommendations of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, established under subtitle E of this title.¹

(3) Leading inter-agency coordination of United States efforts to implement the strategy and policies described in this section.

(4) Conducting oversight and evaluation of accelerated and strengthened implementation of initiatives and programs to prevent WMD proliferation and terrorism by relevant government departments and agencies.

(5) Overseeing the development of a comprehensive and coordinated budget for programs and initiatives to prevent WMD proliferation and terrorism, ensuring that such budget adequately reflects the priority of the challenges and is effectively executed, and carrying out other appropriate budgetary authorities.

(d) Staff

The Coordinator may—

(1) appoint, employ, fix compensation, and terminate such personnel as may be necessary to enable the Coordinator to perform his or her duties under this chapter;
(2) direct, with the concurrence of the Secretary of a department or head of an agency, the temporary reassignment within the Federal Government of personnel employed by such department or agency, in order to implement United States policy with regard to the prevention of WMD proliferation and terrorism;
(3) use for administrative purposes, on a reimbursable basis, the available services, equipment, personnel, and facilities of Federal, State, and local agencies;
(4) procure the services of experts and consultants in accordance with section 3109 of title 5, relating to appointments in the Federal Service, at rates of compensation for individuals not to exceed the daily equivalent of the rate of pay payable for a position at level IV of the Executive Schedule under section 5315 of title 5; and
(5) use the mails in the same manner as any other department or agency of the executive branch.

(e) Consultation with Commission

The Office and the Coordinator shall regularly consult with and strive to implement the recommendations of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, established under subtitle E of this title.¹

(f) Annual report on strategic plan

For fiscal year 2009 and each fiscal year thereafter, the Coordinator shall submit to Congress, at the same time as the submission of the budget for that fiscal year under title 31, a report on the strategy and policies developed pursuant to subsection (c)(2), together with any recommendations of the Coordinator for legislative changes that the Coordinator considers appropriate with respect to such strategy and policies and their implementation or the Office of the Coordinator.


¹ See References in Text note below.
§ 2932. Sense of Congress on United States-Russia cooperation and coordination on the prevention of weapons of mass destruction proliferation and terrorism

It is the sense of the Congress that, as soon as practical, the President should engage the President of the Russian Federation in a discussion of the purposes and goals for the establishment of the Office of the United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism (in this section referred to as the “Office”), the authorities and responsibilities of the United States Coordinator for the Prevention of Weapons of Mass Destruction Proliferation and Terrorism (in this section referred to as the “United States Coordinator”), and the importance of strong cooperation between the United States Coordinator and a senior official of the Russian Federation having authorities and responsibilities for preventing weapons of mass destruction proliferation and terrorism commensurate with those of the United States Coordinator, and with whom the United States Coordinator should coordinate planning and implementation of activities within and outside of the Russian Federation having the purpose of preventing weapons of mass destruction proliferation and terrorism.